

ORIGINAL

IN THE SUPREME COURT OF OHIO

HOPE ACADEMY BROADWAY
CAMPUS, et al.,

Plaintiffs-Appellants,

v.

WHITE HAT MANAGEMENT, LLC, et
al.,

Defendants-Appellees.

Case No. 2013-2050

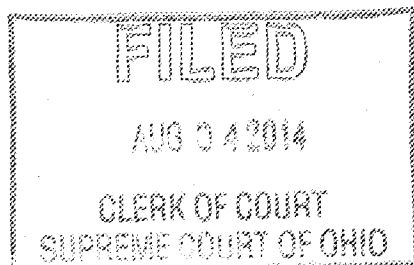
Appeal from the Franklin County
Court of Appeals, Tenth Appellate
District

Court of Appeals Case No.
12-AP-000496

MERIT BRIEF OF *AMICUS CURIAE*
OHIO COALITION FOR QUALITY EDUCATION
IN SUPPORT OF APPELLEES WHITE HAT MANAGEMENT, LLC, ET AL.

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
A. Ohio’s Community School System	2
B. Summary Of Argument	4
II. INTEREST OF <i>AMICUS CURIAE</i> OHIO COALITION FOR QUALITY EDUCATION	7
III. STATEMENT OF FACTS	7
IV. ARGUMENT IN SUPPORT OF APPELLEES	8
<i>Amicus</i> Proposition of Law No. 1: Fees that community schools pay to management companies to provide operational services do not constitute public money in the hands of management companies, and property purchased with those fees is owned by the management companies.	
A. Under Statutorily Authorized Management Agreements, The Property Purchased And Used By Management Companies Is Owned By The Companies.	8
B. Management Fees Do Not Become Public Funds Simply Because Management Companies Provide Operational Services To Public Entities.	10
<i>Amicus</i> Proposition of Law No. 2: Fees paid to management companies are ordinary service fees, and nothing about them requires management companies to act as a purchasing agent when spending those fees.	
	15
<i>Amicus</i> Proposition of Law No. 3: Management companies are private independent contractors, not agents for community schools or public officials, and thus they do not serve as fiduciaries for the schools.	
	18
A. No Agency Relationship Exists Between Community Schools And Management Companies.	19
B. Management Companies Are Not Public Officials.	24
1. The Ohio Revised Code does not declare management companies to be public officials.	24
2. Finding that a private company becomes a public official when it provides services to a public entity would violate long standing legal principles.	29

3.	There is no limit to the Schools' reasoning, which would fundamentally alter every contract between public and private entities.....	30
4.	The public official theory would have damaging consequences for community schools.	31
V.	CONCLUSION	33
CERTIFICATE OF SERVICE		

TABLE OF AUTHORITIES

	Page
 CASES	
<i>Aetna Life Ins. Co. v. Schilling</i> , 67 Ohio St.3d 164, 616 N.E.2d 893 (1993).....	30
<i>Boice v. Village of Ottawa Hills</i> , 137 Ohio St.3d 412, 2013-Ohio-4769, 999 N.E.2d 649	7
<i>Boley v. Goodyear Tire & Rubber Co.</i> , 125 Ohio St.3d 510, 2010-Ohio-2550, 929 N.E.2d 448.....	28
<i>Chesapeake & Potomac Tel. Co. v. Manning</i> , 186 U.S. 238, 22 S.Ct. 881, 46 L.Ed. 1144 (1902).....	29
<i>Cincinnati City School Dist. Bd. of Edn. v. Conners</i> , 132 Ohio St.3d 468, 2012-Ohio-2447, 974 N.E.2d 78.....	1
<i>Cincinnati Golf Mgt., Inc. v. Testa</i> , 132 Ohio St.3d 299, 2012-Ohio-2846, 971 N.E.2d 929	22
<i>Cincinnati v. Scheer & Scheer Dev.</i> , 169 Ohio App.3d 101, 2006-Ohio-1221, 862 N.E.2d 122 (1st Dist.)	21
<i>City of Norwood v. Horney</i> , 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115.....	30
<i>Construction Systems, Inc. v. Garlikov & Assocs., Inc.</i> , 10th Dist. Franklin No. 11AP-802, 2012-Ohio-2947.....	23, 24
<i>Cordray v. Internatl. Preparatory School</i> , 128 Ohio St.3d 50, 2010-Ohio-6136, 941 N.E.2d 1170.....	28, 29
<i>Councell v. Douglas</i> , 163 Ohio St. 292, 126 N.E.2d 597 (1955).....	5, 19, 20, 21
<i>Funk v. Hancock</i> , 26 Ohio App.3d 107, 498 N.E.2d 490 (12th Dist. 1985).....	24
<i>Groob v. KeyBank</i> , 108 Ohio St.3d 348, 2006-Ohio-1189, 843 N.E.2d 1170.....	18

<i>Hanson v. Kynast</i> , 24 Ohio St.3d 171, 494 N.E.2d 1091 (1986)	20
<i>Health Alliance of Greater Cincinnati v. Christ Hospital</i> , 1st Dist. Hamilton No. C-070426, 2008-Ohio-4981	22, 23
<i>Hope Academy Broadway Campus v. White Hat Mgt., LLC</i> , 2013-Ohio-5036, 4 N.E.3d 1087 (10th Dist.)	1, 18
<i>Hoyt v. Nationwide Mut. Ins. Co.</i> , 10th Dist. Franklin No. 04-AP-941, 2005-Ohio-6367, ¶ 30	18, 19
<i>Hughes v. Railway Co.</i> , 39 Ohio St. 461 (1883)	21
<i>Indep. Ins. Agents of Ohio, Inc. v. Fabe</i> , 63 Ohio St.3d 310, 587 N.E.2d 814 (1992)	26
<i>Ish v. Crane</i> , 13 Ohio St. 574 (1862)	20
<i>Moore v. State Auto. Mut. Ins. Co.</i> , 88 Ohio St.3d 27, 723 N.E.2d 97 (2000)	27
<i>Oriana House, Inc. v. Montgomery</i> , 10th Dist. Franklin No. 03AP-1178, 2004-Ohio-4788	11
<i>Oriana House, Inc. v. Montgomery</i> , 108 Ohio St.3d 419, 2006-Ohio-1325, 844 N.E.2d 323	10, 11, 12
<i>Paterson v. Equity Trust Co.</i> , 9th Dist. Lorain No. 11CA009993, 2012-Ohio-860	19
<i>Slovak v. Adams</i> , 141 Ohio App.3d 838, 753 N.E.2d 910 (2001)	19
<i>State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Edn.</i> , 111 Ohio St.3d 568, 2006-Ohio-5512, 857 N.E.2d 1148	2, 13
<i>State ex rel. Oriana House, Inc. v. Montgomery</i> , 110 Ohio St.3d 456, 2006-Ohio-4854, 854 N.E.2d 193	29
<i>Stone v. Davis</i> , 66 Ohio St.2d 74, 419 N.E.2d 1094 (1981)	18

<i>Wallace v. Wallace</i> , 4th Dist. Washington No. 05CA54, 2006-Ohio-4875	14
<i>Walter v. Murphy</i> , 61 Ohio App.3d 553, 573 N.E.2d 678 (9th Dist. 1988).....	20
<i>Wells v. One2One Learning Found.</i> , 39 Cal. 4th 1164, 48 Cal. Rptr. 3d 108, 141 P.3d 225 (2006)	26
<i>Wheeling Steel Corp. v. Porterfield</i> , 24 Ohio St.2d 24, 263 N.E.2d 249 (1970).....	27

CONSTITUTIONAL PROVISIONS

Fourth Amendment to the U.S. Constitution.....	29
Fifth Amendment to the U.S. Constitution.....	29

STATUTES

R.C. 9.38.....	26, 28
R.C. 9.39.....	28, 29
R.C. 102.01.....	26, 32
R.C. 117.01.....	<i>passim</i>
R.C. 117.10.....	28, 32
R.C. 149.43.....	32
R.C. 1332.01.....	26, 27
R.C. 2903.211.....	26
R.C. 2907.10.....	26, 27
R.C. 2921.01.....	26
R.C. 2930.01.....	26
R.C. 3314.01.....	2, 8, 25
R.C. 3314.02.....	2, 9

R.C. 3314.03.....	9
R.C. 3314.024.....	<i>passim</i>
R.C. 3314.026.....	9, 25
R.C. 3314.08.....	13
Tex. Education Code Ann. § 12.1051 (2011).....	26
OTHER AUTHORITIES	
1 Restatement of the Law 2d, Agency, Section 220.....	20
2 Restatement of the Law 3d, Agency, Sections 6.01-6.03.....	22
Am.Sub.H.B. No. 215, Section 50.52, Subsection 2(B), 147 Ohio Laws, Part I, 2043	13
Imagine Schools, data from Spring 2012 Imagine Schools Family Survey, http://www.imagineschools.com/measures-of-excellence/parent-choice/ (accessed July 31, 2014).....	2
Ohio Alliance for Public Charter Schools, <i>2013 Value Added Comparisons: Charter Schools Provide High Quality Options</i> , http://www.oapcs.org/files/u1/Overall_Value_Added_2013_0.pdf (accessed July 31, 2014)	2
Ohio Alliance for Public Charter Schools, <i>Analysis of 2011-2012 Value-Added Data</i> (version 2, Oct. 4, 2012), http://www.oapcs.org/files/u253/OAPCS_Value_Added_Analysis_Oct_2012. pdf (accessed July 31, 2014).....	2
Ohio Alliance for Public Charter Schools, <i>Starting a School</i> , http://www.oapcs.org/resources/starting-a-charter-school (accessed July 31, 2014).....	3
Philanthropy Roundtable, <i>Charter Schools: Challenges and Opportunities</i> , comments of Bryan Hassel, http://www.philanthropyroundtable.org/ topic/excellence_in_philanthropy/charter_schools_challenges_and_ opportunities (accessed July 31, 2014).....	3, 17

I. INTRODUCTION

The unanimous decision below honoring the parties' negotiated contract comports fully with Ohio's time-honored right to contract. "The right to contract freely with the expectation that the contract shall endure according to its terms is as fundamental to our society as the right to write and to speak without restraint." *Cincinnati City School Dist. Bd. of Edn. v. Conners*, 132 Ohio St.3d 468, 2012-Ohio-2447, 974 N.E.2d 78, ¶ 15 (quotation and citation omitted). That fundamental right is enjoyed not only by private parties, including education-affiliated companies, but also by public parties, including public schools, with limited exceptions.

Through this litigation, however, the Plaintiff schools (the "Schools") seek to upset that settled right, and in the process to rewrite, through the courts, Ohio's education laws enacted by the General Assembly. Specifically, the Schools ask that the Court hold that personal property purchased and owned *by private management companies* to provide services to community schools somehow becomes *owned by the schools* notwithstanding the clear language of contracts to the contrary. The Schools' assertion, if adopted, would upset the settled expectations for those in the community school program, fundamentally altering the statutory framework under which community schools operate. It would also be an undeserved windfall for the Schools and an undeserved burden for education management companies. After all, the Schools' proposed rule would require management companies to purchase all supplies and durable goods used at the school, even before a school opens, incur all of that expense and risk, yet retain none of the benefits, specifically, ownership of the items it purchased.

Rejecting this drastic conclusion, the court below recognized that the parties' Management Agreement "contemplates that White Hat will purchase property to execute its educational model and . . . will own [the] property it purchases." *Hope Academy Broadway Campus v. White Hat Mgt., LLC*, 2013-Ohio-5036, 4 N.E.3d 1087, ¶ 21 (10th Dist.). For these

reasons and those explained herein, *amicus curiae* the Ohio Coalition for Quality Education (the “Coalition”), a grassroots advocate for community schools, urges the Court to affirm the decision below.

A. Ohio’s Community School System

Community schools, Ohio’s term for what other states refer to as “charter” schools, were first authorized in 1997 as a means of enhancing our district-based public school system. R.C. 3314.01; *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Edn.*, 111 Ohio St.3d 568, 2006-Ohio-5512, 857 N.E.2d 1148. Codified in Chapter 3314 of the Revised Code, Ohio’s community school program aims to infuse innovation into the public education system while expanding the educational options available to Ohio’s parents and students. Ohio’s 350 community schools, located largely in “challenged” urban districts, afford at least one option—a public school of their choice—to many families with few others. R.C. 3314.02(A)(3) and (C)(1) (noting that community schools may open in Ohio’s “challenged” school districts). Urban community schools have consistently outperformed traditional schools in the same area. *See* Ohio Alliance for Public Charter Schools, *Analysis of 2011-2012 Value-Added Data* (version 2, Oct. 4, 2012), http://www.oapcs.org/files/u253/OAPCS_Value_Added_Analysis_Oct_2012.pdf (accessed July 31, 2014) (“Overall, Ohio’s urban charters had a higher percentage of schools scoring ‘above expectations’ . . . and higher percentage of ‘meets or exceeds expected growth’ schools”); Ohio Alliance for Public Charter Schools, *2013 Value Added Comparisons: Charter Schools Provide High Quality Options*, http://www.oapcs.org/files/u1/Overall_Value_Added_2013_0.pdf (accessed July 31, 2014) (providing statistics indicating that urban community schools outperformed traditional schools on the State’s “Value Added” measure). Likewise, parents consistently give high satisfaction ratings to community schools. *See* Imagine Schools, data from Spring 2012 Imagine Schools

Family Survey, <http://www.imagineschools.com/measures-of-excellence/parent-choice/> (accessed July 31, 2014).

As is true for every other public school in Ohio and elsewhere, community schools engage private companies to provide services to the schools. For instance, public schools across the spectrum engage private food, busing, and tutorial companies to support school operations. Similarly, some community schools engage private “management companies,” as contemplated by the Revised Code, *see, e.g.*, R.C. 3314.024, to provide the schools a variety of services. These companies bring expertise, intellectual property, and economies of scale to the schools they service, in many instances reducing a school’s need to hire an array of individual service providers.

That expertise is often critical for community schools. “Undertaking a charter startup can be a daunting task and success can be difficult. It calls for . . . an incredible capacity to fill the many areas of expertise required to develop a sustainable school.” Ohio Alliance for Public Charter Schools, *Starting a School*, <http://www.oapcs.org/resources/starting-a-charter-school> (accessed July 31, 2014). For instance, one barrier to founding a charter school is “the difficulty charters have in finding the financing required for a large capital project” because “[l]enders are nervous” about loaning to charter schools. Philanthropy Roundtable, *Charter Schools: Challenges and Opportunities*, comments of Bryan Hassel, http://www.philanthropyroundtable.org/topic/excellence_in_philanthropy/charter_schools_challenges_and_opportunities (accessed July 31, 2014). Management companies help develop and provide expertise in an array of areas, from educational to administrative to financial assistance. They also often make the upfront capital investment themselves, purchasing the necessary property for school use, with the understanding that it may take some years before they can

recoup that money from a school's management fee. Without a management company to absorb operating losses, a school would be forced to either find a willing lender or close the school.

While management companies are vital to the community school system, they are, in the end, no different than any other private company that contracts with a school or a district or with any other governmental entity; they provide particular services specified by contract in exchange for compensation. Here, for example, the parties entered into detailed contracts under which the Schools hired the Defendant management companies ("White Hat") to provide specified services to the Schools, in exchange for a fee. As stated in those contracts, the management companies were hired as independent contractors, providing services ranging from busing and janitorial work to employing teachers and providing durable goods, such as computers and desks.

B. Summary Of Argument

In asking that these customary agreements be interpreted in an extraordinary manner to mean that the party purchasing an item not be deemed its owner, the Schools make a host of unavailing arguments.

First, they contend that under Ohio law, the fees a community school pays to a management company for its services constitute "public money" that somehow still belongs to the school even after the money is paid to the company. What is more, the Schools also allege that any property purchased by the company using that money is nonetheless owned by the school. But management companies are private companies providing services to community schools pursuant to a written contract in exchange for a fee. The General Assembly expressly allowed for community schools to enter such arrangements. And tellingly, the legislature did not define the fees as public money or otherwise restrict management companies' rights to purchase property. Management companies are private and the money they are paid is private, just as with

any other vendor that provides services to a school or some other public entity. Property purchased by a management company thus belongs to it, not anyone else.

Second, the Schools argue that White Hat, under the terms of the Management Agreement, acted as “purchasing agent” for the Schools when it purchased goods for school use, meaning that title to those items vests with the Schools. But save for specified instances, the Agreement contains no such requirement. White Hat’s purchases are titled in the Schools’ name only when “the nature of the funding source” requires it. Such is the case, for example, for grant money White Hat obtains for the Schools. Property purchased with grant money is titled in the school’s name and is owned by the school. But the standard fee under the agreement is White Hat’s compensation for its services, which White Hat is free to spend as it sees fit. Because that money is not “public,” the Management Agreement does not require property purchased with it to be owned by the Schools.

Third, the Schools assert that management companies are fiduciaries of community schools, and, therefore, make purchases on the schools’ behalf, either because management companies are “agents” of the schools or because they are “public officials.” Management companies, however, are not agents of community schools. The companies did not agree to be agents under the language of the contracts, nor do the schools control the “mode and manner” by which the companies go about purchasing the property at issue. *Council v. Douglas*, 163 Ohio St. 292, 295, 126 N.E.2d 597 (1955). Rather, management companies are “independent contractors” who enjoy the freedom to make purchases in the manner they desire. They perform specified services for the operation of a school on an arms-length basis. A school’s governing authority always remains responsible for the school’s academic, fiscal, and regulatory performance. And it remains free to terminate its management company, as happened here.

Nor are management companies public officials. Although the General Assembly established a comprehensive legislative system governing community schools and management companies, and likewise defined various entities to be public officials in dozens of provisions throughout the Revised Code, it elected not to designate management companies as public officials. Nor should the Court. Deeming private companies to be public officials simply because they provide services to public bodies would upset long-settled legal principles, not to mention the carefully crafted community school system.

All told, adopting any of the Schools' propositions would radically alter the community school framework set out by the General Assembly, while stripping management companies of their property, in contravention of the plain language of standard management agreements. If a community school wants to own particular property used in a school, it can do so, either by buying it directly or setting forth appropriate language in its negotiated service contracts. Likewise, if a community school wants those providing operational services to the school to be the school's agent, it can hire the service providers directly as employees rather than engaging service providers as independent contractors. By the same token, a community school should be free to take advantage of the specialized expertise offered by an independent management company, as the Schools have done here. But once having made that choice, the Schools have no right to claim ownership over the management company's property.

In addition to the Schools, *amicus curiae* Ohio School Boards Association separately asserts that the Management Agreement is unconscionable and contrary to public policy, and thus unenforceable. But *amici* is too late to make these arguments. Inded, these "issue[s] w[ere] not raised below, and [they are] not raised in [any] proposition of law before this [C]ourt. . . . [The Court] will not consider arguments that have not been raised prior to appeal to this [C]ourt."

Boice v. Village of Ottawa Hills, 137 Ohio St.3d 412, 2013-Ohio-4769, 999 N.E.2d 649, ¶ 40.

Because these new arguments have been “waived,” *id.*, they need not be addressed here.

II. INTEREST OF *AMICUS CURIAE* OHIO COALITION FOR QUALITY EDUCATION

The Ohio Coalition for Quality Education (the “Coalition”) is a grassroots organization that supports, promotes and advocates for community schools and the larger Ohio community school family. The Coalition aims to ensure that Ohio students have an opportunity to receive a quality education through a range of schooling choices. The Coalition has developed relationships with, and advocated on behalf of, various community school management companies, as part of the larger community school family.

The Coalition understands the challenges community schools face to provide quality education without the resources of traditional public school districts. The Coalition is also deeply familiar with the manner in which community schools work with private management companies to implement a variety of educational models. The Coalition submits this brief in support of Defendants because a holding that community schools somehow own the property purchased by management companies and used to operate the schools, despite contractual language to the contrary, violates fundamental contractual principles and runs counter to the statutory framework created by the General Assembly in R.C. Chapter 3314, threatening the future viability of the community school program.

III. STATEMENT OF FACTS

A complete discussion of the pertinent underlying facts is included in White Hat’s merit brief.

IV. ARGUMENT IN SUPPORT OF APPELLEES

Amicus Proposition of Law No. 1: Fees that community schools pay to management companies to provide operational services do not constitute public money in the hands of management companies, and property purchased with those fees is owned by the management companies, subject to a contrary contractual requirement.

There is a critical difference between (1) accepting money from a public entity earmarked for a particular use and (2) payment for services to a public entity under an arms-length contract. A management company's fee plainly falls into the latter category. The funds the company receives from a community school are fees paid for their services in operating the school pursuant to a detailed management agreement. Money paid to a private company in exchange for services is not public money.

In arguing that funds paid to White Hat retain their status as public funds, the Schools advocate a rule that would amount to a court-imposed limitation on the profits that a private company can earn simply because it provides services to a government entity. But the law (to say nothing of Western economic principles) does not support such a rule. Indeed, as the Schools concede, "[t]he General Assembly enacted a policy that allows community schools to contract with *private, for-profit companies* to conduct schools' daily operations." (Emphasis added.) (Appellants' Br. at 8.) The Schools' rule would turn that statutory scheme on its head by deeming private management company funds to be public money. Their arguments, to the extent they have any merit, are more properly directed to the General Assembly.

A. Under Statutorily Authorized Management Agreements, The Property Purchased And Used By Management Companies Is Owned By The Companies.

Chapter 3314 of the Revised Code, which governs the community school program, envisions management companies, by contract, providing services to schools for a fee while maintaining ownership over items they purchase. As authorized by R.C. 3314.01(B), "[a]

community school may . . . contract for *any* services necessary for the operation of the school.” (Emphasis added.) Among the “services” a school may contract for are those provided by an “operator,” also known as a management company. *See* R.C. 3314.02(A)(8) (defining “Operator” as an “organization that manages the daily operations of a community school pursuant to a contract between the operator and the school’s governing authority”); R.C. 3314.026 (regulating termination of school’s contract with management company).

The General Assembly has placed few limits on that contractual power. For instance, unlike contracts between schools and sponsors, where the General Assembly capped the amount of money a community school may pay to its sponsor, *see* R.C. 3314.03(C) (capping fee paid to sponsor at 3% of a school’s state funding), there is no cap on the percentage of funds a school may pay to a management company. To the contrary, the Revised Code anticipates that far larger amounts may be paid to management companies. *See, e.g.,* R.C. 3314.024 (requiring management companies to provide a detailed accounting to schools where more than 20% of school’s funds are paid to a management company).

Community schools thus enjoy the freedom to contract much like private sector entities. Exercising that freedom, the Schools and others like them have entered into agreements with management companies for the provision of various services, including operational services. The schools pay some percentage or portion of their funds *as fees* to the management companies as consideration for the services provided. The management companies in turn use the fees along with any other moneys available to them to provide their management service, including purchasing supplies and durable goods. Management contracts, in other words, reflect the basic principles taught in first-year contracts classes and Economics 101.

A management company maintains ownership over the property it purchases. Absent express contractual provisions to the contrary, no other rule makes sense. For instance, public schools often hire companies to provide busing services. Yet no one would argue that because the buses were purchased by the busing company with money it may have received from a school, the buses are in fact *school property*. Similarly, a food vendor hired by a school to provide cafeteria services does not give up title to the pots and pans it uses to service the school, regardless of how it paid for those supplies. If the busing company or the food vendor were required to turn over its property, then the contract price would be increased to reflect this arrangement. Likewise, the contract language would expressly provide for the transfer of the property without additional compensation.

The contrary position asserted by the Schools has no logical limit. If the Schools contracted with a developer to construct a building for lease to the Schools, for example, then the Schools would become the owner of the building simply because the developer was paid with “public” funds. Beyond the education context, a private road construction company would be forced to surrender its trucks and heavy equipment to the State because it was paid with State money. No one would take seriously the Schools’ argument under those circumstances, and the result is just as absurd here. The Schools paid a management company to provide services, allowing the Schools the use of the management company’s property without the burdens of ownership. It is not the character of the funds that is critical here, but rather the nature of the contract, as evidenced by the language in the contract itself.

B. Management Fees Do Not Become Public Funds Simply Because Management Companies Provide Operational Services To Public Entities.

Bypassing any discussion of the relevant legislation, the Schools hang their hat on the inapposite case of *Oriana House, Inc. v. Montgomery*, 108 Ohio St.3d 419, 2006-Ohio-1325, 844

N.E.2d 323. In *Oriana House*, the Court addressed whether the State Auditor had authority to audit a community-based correctional facility (“CBCF”) and the private company, Oriana House, hired to operate it. *Id.* at ¶ 1. Naturally, the case turned on the pertinent statutes regarding state audits. As the Court explained, R.C. 117.10 specifically “grants the Auditor discretion to audit ‘the accounts of private . . . corporations receiving public money for their use.’” *Id.* at ¶ 14 (quoting R.C. 117.01(D)). Based on that statute, the Court held that private companies that receive public funds to operate the CBCFs “are subject to audit.” *Id.* at ¶ 15.

Despite this straight-forward understanding of *Oriana House*, the Schools assert that *Oriana House* broadly “held that public funds flowing to a private entity performing a government function *necessarily* retain their public character.” (Emphasis added.) (Appellants’ Br. at 7.) But the Court held no such thing. Indeed, the Court did not even directly hold that the funds in Oriana House’s possession were public funds. Instead, it merely determined that, pursuant to the then-current auditor statute, Oriana House “*receiv[ed]*” public funds, meaning the money *came from* a government entity. *Oriana House* at ¶ 14-15. The State Auditor thus had authority to audit Oriana House regardless whether the money retained its public character in the hands of Oriana House.

The Schools not only misread that decision, but they also ignore a critical distinction between the funds afforded to Oriana House and those paid as fees to management companies. Oriana House “receive[d] 100 percent of the grant money provided by [the Ohio Department of Rehabilitation and Correction] to the Summit County CBCF” and it was “subject to the terms of that grant.” *Oriana House, Inc. v. Montgomery*, 10th Dist. Franklin No. 03AP-1178, 2004-Ohio-4788, ¶ 3, 24. All parties in this case acknowledge that when White Hat uses grant money to purchase property, title is vested in the Schools because such money is “public in nature.”

(Appellants' Br. at 11.) But unlike Oriana House, community school management companies also receive a fee for operational services. Because neither the General Assembly nor the Ohio Department of Education has imposed any restrictions on how management companies spend that money, it thus does not retain any public character, unlike grant monies.

The Schools next insist that the fee payments to private management companies remain public dollars because management companies “perform[] a government function.” (Appellants' Br. at 7.) *Oriana House*, 108 Ohio St.3d 419, 2006-Ohio-1325, 844 N.E.2d 323, however, does not stand for that proposition, as just explained. Nor does the definition of “public money” that applied in that case—which only applies to State Auditor laws—make any reference to performing a government function. *See* R.C. 117.01(C). By the Schools' logic, any service required in the operation of a school, or any other public body for that matter, is a government function, meaning that service providers do not own the money they are paid. That is not the law.

Contrary to the Schools' suggestion, there is no basis, statutory or otherwise, for treating management companies differently than other service providers. In all critical respects, management companies operate just like private busing or food service companies. Management companies, moreover, are not monolithic. They come in all shapes and sizes. Although White Hat's service agreements call for the schools to pay a large majority of their funds to White Hat (*see* Complaint, Exs. A-J, Management Agreements, § 8), other management companies have different arrangements with the schools they serve. Each management company performs a different scope of services for a different level of compensation, as delineated in the agreement negotiated between the community school and management company. Nor would one expect a lockstep approach, given the underlying purpose behind the community school-enabling

legislation of “providing . . . experimental educational programs” through innovative means. *State ex rel. Ohio Congress of Parents & Teachers*, 111 Ohio St.3d 568, 2006-Ohio-5512, 857 N.E.2d 1148, ¶ 6 (quoting Am.Sub.H.B. No. 215, Section 50.52, Subsection 2(B), 147 Ohio Laws, Part I, 2043).

Equally unavailing is the Schools’ suggestion that they should have ownership over property purchased by management companies when the company performs some undefined percentage of the school’s operating needs. For one thing, that proposition is untethered to the text of the Revised Code. Had the General Assembly wanted to impose such a rule, it could have done so. It did not. For another thing, no matter a school’s arrangement with a management company, the company is still an independent service provider hired by contract to provide specified services for payment of a fee. Title to property does not magically transfer from a private company to a school once some undefined threshold percentage of operating services is crossed.

The Schools’ argument is also unpalatable as a simple matter of economics. After all, under the scheme the Schools envision, they are freed of any risks, but keep all the benefits. The management agreements currently contemplate management companies taking the risks of providing certain services for a fee. Management companies thus must properly budget and allocate resources, including the cost-effective purchasing of necessary property. In many instances, management companies are required to spend significant sums of money before a school even opens, purchasing supplies and goods to be used when the school doors first open. And all of that occurs before a school has any formal enrollment, and thus a formal revenue stream from the State. *See* R.C. 3314.08(D)(1) (instructing the Department of Education to pay community schools annually based upon the number of students enrolled in the school). Those

risks, moreover, do not end when the school opens. If a school's expenses exceed its revenue from state funding, as often occurs in the first years of operation, management companies, not the schools, are the ones that bear those losses. As with any service provider, a management company's fixed fee arrangement with the school entails the potential for profits at the risk of a substantial initial investment and potential losses. Remarkably, the Schools suggest that management companies should bear those risks and continue to pay for the property, yet that the property will now be owned by the Schools, all for the same set fee. But that is not the bargain the Schools struck.

As if this understanding is not plain enough, it bears noting that community schools' and management companies' respective books and records also reflect that this kind of property is owned by the management companies. *See Wallace v. Wallace*, 4th Dist. Washington No. 05CA54, 2006-Ohio-4875, ¶ 11-13 (books and records constitute evidence of ownership). As is true here and in other instances, the community schools' records do not reflect title to or ownership of the property in any way. The management companies' independent, detailed business records, on the other hand, *do* reflect their ownership by accounting for the property as their assets. Suddenly divesting management companies of their property would fundamentally alter the economic foundation of the parties' contractual relationship, not to mention potentially expose management companies to substantial tax liability for depreciating assets that were apparently owned by the schools all along.

The Schools attempt to assuage concerns about the sweeping change in the law they propose by assuring that they "do not suggest that the monies . . . must never convert to White Hat's own private monies," but instead that "White Hat may earn a regular profit . . . after it provides bargained-for services in compliance with the law." (Appellants' Br. at 10.) (quotation

and citation omitted.) In other words, they are asking this Court to impose some undefined judicial limitation on the amount of profit a private company can earn simply because it provides services for a public entity. Unsurprisingly, the Schools cite no legal support for this position. Nor does it make sense as a practical matter. Are they suggesting the management fees are public money unless the management company does not spend it? If so, when does the leftover money suddenly become private? Monthly? Quarterly? And if management companies are actually public officials as the Schools (wrongly) assert (*id.* at 8), how can they earn private profits? Restricting profits for those that do business with the State, moreover, will only serve to make Ohio less competitive with its sister states. Conversely, if a management company loses money servicing a school, do those losses become public debt?

All of these issues can be resolved by simply interpreting the plain terms of the parties' contract—the contract that the General Assembly explicitly authorized community schools to enter. If the agreement calls for the management company to purchase goods *for the school*, those goods are of course the school's property. But if the agreement simply calls for a management company to receive a fee to provide a broad range of services to the school, including supplying equipment, then goods purchased with that money are the company's property. The Schools' proposition of law would have the effect of restricting community schools' freedom to contract by preventing the latter type of agreement. The General Assembly intended just the opposite.

Amicus Proposition of Law No. 2: Fees paid to management companies are ordinary service fees, and nothing about them requires management companies to act as a purchasing agent when spending those fees.

Next, the Schools argue that White Hat served as the purchasing agent for the Schools, meaning property ownership vested with the Schools. (Appellants' Br. at 11.) This argument is based on a provision in the Management Agreement providing for White Hat to purchase certain

property on the Schools' behalf where required by "the nature of the funding source." (*Id.*)

Their argument cannot be squared with the terms of the Agreement.

If, as the Schools claim, White Hat's management fee is of such a nature that property must "be titled in the names of the Schools" (*id.*), then the contractual provision at issue swallows the contract. Because the management fee constitutes the vast majority of White Hat's funding, it would *always* be acting as the Schools' purchasing agent. There is no indication the parties intended such a relationship, particularly given that the Management Agreement expressly labels White Hat an independent contractor. (Complaint, Exs. A-J, Management Agreements, § 14.)

In the end, the Schools' purchasing agent theory offers nothing more than their public money theory. Their argument is based on the notion that "[f]unds from the Ohio Department of Education . . . are designated for a public purpose and retain their public character even after the Schools transfer them to White Hat." (Appellants' Br. at 11.) But the funds are not public in nature, and thus the Management Agreement does not require White Hat to act as purchasing agent when using that money.

Nonetheless, the Schools insist that the original public source of the funds means the money has some public obligation associated with it even when paid to a management company. Here, the Schools assert that "[p]ublic funds can be spent only as authorized by law" and "funds designated for the education of public-school students must be used solely for the benefit of public schools." (*Id.* at 12.) But even accepting that premise does nothing for the Schools' argument. The Schools' did use the money "for the benefit of public schools" when they hired a management company to provide educational services for the school. Once that money reaches

the private management company, it becomes private and the company can use it as it sees fit to fulfill its contractual obligations.

If the mere fact that the money originated from the government is enough to create some “public obligation,” as the Schools suggest, the consequences of their argument reach even further than the public money theory. Must the money still be used “solely for the benefit of public schools” once it reaches the hands of the furniture supplier from whom the management company purchased furniture for the school? Will the school also own whatever the furniture supplier buys with the money? Likewise, would the school own a car purchased by a teacher using the salary she was paid by White Hat out of its management fee? Plainly that is not the law.

Next, the Schools concede that “White Hat may be permitted to make a profit,” but they try to dictate exactly what those profits can be. (Appellants’ Br. at 12 (“[N]othing authorizes White Hat to use public funds to acquire property for itself and then call those assets ‘profits.’”)).) Neither the Management Agreement nor Ohio law imposes any such restrictions. Nor does our market-based economic system, which eschews such interference in economic matters, unlike government-run economies.

Other fiscal realities undermine the Schools’ theory. If community schools had to use their state funding to purchase facilities, equipment, and other goods, many community schools would never open. Charter schools have a particularly difficult time obtaining the necessary upfront capital that would require. See Philanthropy Roundtable, *Charter Schools: Challenges and Opportunities*, comments of Bryan Hassel, http://www.philanthropyroundtable.org/topic/excellence_in_philanthropy/charter_schools_challe

nges_and_opportunities (accessed July 31, 2014). Management companies, on the other hand, can facilitate that funding to help community schools in their critical start-up phase.

This raises a further problem with the Schools' theory. What if a management company uses third-party funding to cover initial capital investments and recoups that cost over time from the school's management fee? Does the school own all property from the beginning, or acquire more of it over time? If the latter, which property belongs to the school? Likewise, management companies often purchase and use property at multiple schools, such as software, buses, or technological equipment. How would ownership of such property be apportioned among the different schools? Once again, the Schools' theory is as impractical as it is illogical.

Amicus Proposition of Law No. 3: Management companies are private independent contractors, not agents for community schools nor public officials, and thus they do not serve as fiduciaries for the schools.

Unless the parties expressly agree otherwise, management companies do not serve as fiduciaries for community schools, particularly as to the function of purchasing property to use in providing the companies' services. Rather, when a management company purchases property, title vests in the company, not the school.

As the court correctly noted below, a "'fiduciary' is defined as a 'person having a duty, created by his undertaking, to act primarily for the benefit of another in matters connected with his undertaking.'" *Hope Academy*, 2013-Ohio-5036, at ¶ 35 (quoting *Groob v. KeyBank*, 108 Ohio St.3d 348, 2006-Ohio-1189, 843 N.E.2d 1170, ¶ 16). In other words, "'[a] 'fiduciary relationship' is one in which special confidence and trust is reposed in the integrity and fidelity of another and there is a resulting position of superiority or influence, acquired by virtue of this special trust.'" *Id.* at ¶ 36 (quoting *Stone v. Davis*, 66 Ohio St.2d 74, 79, 419 N.E.2d 1094 (1981)). A fiduciary relationship must be mutual, meaning both parties must "understand that a special trust or confidence has been reposed." *Hoyt v. Nationwide Mut. Ins. Co.*, 10th Dist.

Franklin No. 04-AP-941, 2005-Ohio-6367, ¶ 30. Ordinary business relationships generally do not give rise to a fiduciary relationship. *Slovak v. Adams*, 141 Ohio App.3d 838, 846, 753 N.E.2d 910 (2001); *see also Hoyt* at ¶ 30 (“Ordinarily, a business transaction where the parties deal at arm’s length does not create a fiduciary relationship.”).

The Schools fail to offer any basis for finding a fiduciary relationship in this setting. For one thing, the Schools’ contention that the mutuality requirement does not apply “[w]hen dealing with an express, contractually-created fiduciary relationship” (Appellants’ Br. at 18), is contrary to the law. *See Paterson v. Equity Trust Co.*, 9th Dist. Lorain No. 11CA009993, 2012-Ohio-860, ¶ 15, 17 (holding that no express fiduciary relationship based on “[t]he terms of unambiguous contracts . . . interpreted according to their plain meaning”). For another thing, the Management Agreement, as is typical of community school management agreements, expressly states that White Hat is an “independent contractor.” (Complaint, Exs. A-J, Management Agreements, § 14.)

A. No Agency Relationship Exists Between Community Schools And Management Companies.

The Schools assert that, under Ohio law, White Hat was not a contractual service provider, but rather a legally recognized agent of the Schools. This argument fails on both its premise and substance.

At the outset, the Schools’ argument fails because management companies do not serve as agents (let alone fiduciaries) for community schools for the purpose of purchasing property used by management companies in school operations. “The relation of principal and agent or master and servant is distinguished from the relation of employer and independent contractor by the following test: Did the employer retain control, or the right to control, the mode and manner of doing the work contracted for?” *Councell*, 163 Ohio St. at 295, 126 N.E.2d 597. Where the

alleged “principal” does not retain control over the mode and manner of work but “is interested merely in the ultimate result to be accomplished,” an agency relationship is not established. *Id.*

The “control test,” adopted in *Hanson v. Kynast*, 24 Ohio St.3d 171, 173, 494 N.E.2d 1091 (1986), looks to a “variety of factors” to determine whether an agency relationship exists, and is applied within the context of the actions at issue. An agency relationship may be limited in its terms, for example, “to make a particular contract, to buy or sell certain specified property upon specified terms; or to buy or sell certain property generally, and the same as to the performance of any business.” *Ish v. Crane*, 13 Ohio St. 574, 582 (1862). Any fiduciary duties that arise as a result are limited to the scope of the specific agency context. *See Walter v. Murphy*, 61 Ohio App.3d 553, 573 N.E.2d 678 (9th Dist. 1988) (holding that real estate agent’s fiduciary duties were limited to scope of agency with sellers to sell their home, but did not extend to related transaction).

For several reasons, the Schools have not shown any basis for broadly imposing an agency relationship. *First*, a critical factor of the control test is the understanding of the parties as to the nature of their relationship. *See* 1 Restatement of the Law 2d, Agency, Section 220(i) (“In determining whether one . . . is a servant or an independent contractor,” one factor to consider is “whether or not the parties believe they are creating the relation of master and servant.”). Here, the parties agreed in the Management Agreement that White Hat was an “independent contractor,” and not an agent of the Schools.

Second, with respect to purchasing supplies and durable goods, community schools do not retain control over the “mode and manner” of management companies’ work. *Councell*, 163 Ohio St. at 295, 126 N.E.2d 597. To be sure, community school boards maintain governing authority over the schools. But management companies, like any other independent contractors,

are hired to provide specific operational services. Community schools do not maintain control over the manner in which supplies necessary for those services are procured. Instead, the schools are “interested merely in the ultimate result to be accomplished,” *id.*, *i.e.*, that the service is, in fact, completed or the correct amount of supplies provided.

Ohio law requires far more indicia of control to establish an agency relationship. In *Cincinnati v. Scheer & Scheer Dev.*, 169 Ohio App.3d 101, 2006-Ohio-1221, 862 N.E.2d 122 (1st Dist.), for example, the City of Cincinnati contracted with Scheer & Scheer to redevelop a housing area. *Id.* at ¶ 3. The court found an agency relationship where the City exercised “complete contractual oversight” over the project by, for example, sending “inspectors on the job site every day to approve the work” and “controlling not only the financial allocations, but also the mode and manner of the work to be performed.” *Id.* at ¶ 25-26. Community schools, on the other hand, do not exercise that level of control with regard to services provided by management companies generally, or with regard to purchasing supplies used by management companies specifically. *Cf., e.g., Hughes v. Railway Co.*, 39 Ohio St. 461, 475 (1883), paragraphs two and three of the syllabus (holding that no agency relationship was created where railway hired private company to build portion of railroad, specified standards applicable to job, and required company “to do the work as described in the specifications and agreeably to the direction from time to time, of the [railway’s] engineer and his assistants,” because the railway exercised insufficient control to establish an agency relationship). Here, in fact, the Schools allege that they have no information regarding how White Hat carried out its contractual duties. *See Appellees’ Br., Hope Academy Broadway Campus v. White Hat Mgt., LLC*, 10th Dist. Franklin No. 12AP-116, at 4 (May 31, 2012).

Third, community schools are not parties to the purchasing contracts at issue. “[O]ne of the most important factors of the agency relationship is that *the principal itself becomes a party* to contracts that are made on its behalf by the agent.” *Cincinnati Golf Mgt., Inc. v. Testa*, 132 Ohio St.3d 299, 2012-Ohio-2846, 971 N.E.2d 929, ¶ 23 (citing 2 Restatement of the Law 3d, Agency, Sections 6.01-6.03). No such thing happens here. When a management company buys books, desks, or other supplies, it does so on its own behalf. Schools are not named in the contracts, either as a purchaser or otherwise. To the same end, the management company’s financial records, not the school’s records, reflect that the management company owns the property.

The Schools themselves prove this very point. The Schools cite to Management Agreement provisions authorizing White Hat to make purchases “on behalf of” the Schools for certain limited purchases and to apply for grants in the name of the Schools. (See Appellants’ Br. at 16.) But those examples only prove that the parties *did not* intend to create a *general agency relationship* where White Hat would purchase *all* property in the Schools’ name.

The Schools also cite to *Health Alliance of Greater Cincinnati v. Christ Hospital*, 1st Dist. Hamilton No. C-070426, 2008–Ohio-4981, as supposedly involving a similar principal-agent relationship. (Appellants’ Br. at 17-18.) That case, however, involved facts specific to the healthcare industry, where non-profit hospitals essentially ceded corporate control to a for-profit corporation that acted as the corporate parent. See *Health Alliance* at ¶ 21. The hospitals that formed the alliance at issue “surrendered to the Alliance control of their revenue streams, their power to incur debt, their right to transfer title to their property, and their right to amend their articles or regulations without consent of the Alliance.” *Id.* As such, “[t]he hospitals reposed

special confidence and trust in the Alliance, which resulted in a position of superiority on the part of the Alliance, the very essence of a fiduciary relationship.” *Id.*

That extensive record of control is not present here. Most notably, community schools do not cede control to their management company. Rather, they hire the management company to perform specific services at their request. The schools continue to manage their own affairs, sign contracts on their own behalf, collect and allocate their own revenues, maintain their own records, employ their own staff, and prepare their own financial statements. The management companies, on the other hand, similarly manage *their* own affairs, sign contracts on *their* own behalf, etc. And they purchase property for their own use in supplying the services requested by the school customers.

Tellingly, the Schools seem to contemplate a one-sided principal-agent relationship, where the management companies are paid a set fee and accept all of the risk in running the day-to-day operations of the schools. But for a true agency relationship to exist, the liabilities incurred by a management companies must also belong to the schools. In other words, if a management company were to lose money providing operational services, the school would be obligated to make it whole. That is not how the relationship works in practice. The schools do not assume or guarantee the management company’s debt. Rather, the Schools pay management companies a fee for their services under management agreements, nothing more. That customary contractual relationship, recognized by the parties themselves as an independent contractor relationship, does not give rise to an agency relationship.

* * * * *

Even if the Schools are correct that White Hat served as its agent in some circumstances, under Ohio law agents are not necessarily fiduciaries, but rather must independently meet the requirements to qualify as a fiduciary. In *Construction Systems, Inc. v. Garlikov & Assocs., Inc.*,

10th Dist. Franklin No. 11AP-802, 2012-Ohio-2947, ¶ 39, the Tenth District addressed the appellants' argument that "a principal-agent relationship always creates a fiduciary relationship." Rejecting that contention (the same one the Schools make here), the Court explained that "[a]n 'agency relationship is a consensual fiduciary relationship between two persons . . .'" *Id.* at ¶ 41 (quoting *Funk v. Hancock*, 26 Ohio App.3d 107, 110, 498 N.E.2d 490 (12th Dist. 1985)) (quotation omitted). Accordingly, "even though [appellee] may have acted as an agent for appellants . . ., [appellee] did not have decision-making authority on behalf of [appellants,] . . . and thus a fiduciary relationship was not created." *Id.* In other words, for an agent to qualify as a fiduciary, she must have authority to control the principal's actions. As just explained, because management companies do not meet that test, no fiduciary relationship exists in this setting.

B. Management Companies Are Not Public Officials.

The Schools also argue that White Hat is a "public official" under Ohio law, and thus a fiduciary as well. The Tenth District rightly rejected this theory because it fails on several fronts.

1. The Ohio Revised Code does not declare management companies to be public officials.

The Schools' theory that management companies are "public officials" is flawed in numerous respects, starting with its reading and application of the Revised Code. Chapter 3314, applicable to community schools, plainly contemplates the private nature of management companies. And neither there nor in any other section of the Revised Code are private management companies designated as public officials.

Community schools are regulated extensively by statute, with Chapter 3314 of the Revised Code dedicated entirely to the community school program. Included in those provisions are a number of laws specifically applicable to community school management companies. None of those provisions treat management companies as anything other than private entities.

Rather, they plainly reflect that community schools can engage these private management companies, just as they do any other private service provider, with the private service providers maintaining their private status.

First, the Revised Code authorizes community schools to enter into contracts for any services necessary for the operation of the schools. R.C. 3314.01(B). Nothing in that section suggests that entering into such a contract alters the public/private status of the non-school contracting party.

Second, Chapter 3314 specifically recognizes that community schools will contract with private management companies. R.C. 3314.024 requires a “management company” that contracts with a community school to provide a “detailed accounting” of their services to the school it serves, data that is to be included in the school’s financial statements. Likewise, R.C. 3314.026 sets forth the governing procedures applicable when the “governing authority of a community school intends to terminate its contract” with a management company.

These provisions along with others together confirm the private status of management companies. While the General Assembly has made plain that a community school is a “public school” and thus a public entity, R.C. 3314.01, it has never declared management companies to have a similar public status. Confirming as much, R.C. 3314.024 states that the “detailed accounting” a management company must provide to a community school is “subject to audit during the course of the regular financial audit of the community school.” While R.C. 3314.024 envisions a public audit of the school itself, it notably *does not* declare management companies to be public officials subject to review by the State Auditor. If management companies were already public officials, and thus subject to general audits by the State Auditor, there would be

no reason to make the information they provide expressly “subject to audit” during the “regular financial audit of the school” itself.

Ohio, it bears noting, is not alone in treating management companies as private entities. Indeed, other states also follow the rule that management companies are not public entities unless otherwise provided by statute. *See, e.g., Wells v. One2One Learning Found.*, 39 Cal. 4th 1164, 48 Cal. Rptr. 3d 108, 141 P.3d 225, 245 (2006) (holding private companies that operate charter schools are not public entities for purposes of California False Claims Act and unfair competition law); Tex. Education Code Ann. § 12.1051 (2011) (specifically deeming governing bodies of charter schools and charter holders (but not management companies) to be governmental bodies for purposes of Texas public records and open meetings laws).

Outside of Chapter 3314, the Revised Code similarly gives no indication that private management companies are deemed to be public officials. The General Assembly has defined who is a “public official” in specific contexts, for instance, with respect to audits and ethical obligations, and it has never adopted a definition that clearly applies to any private corporations. *Compare* R.C. 102.01 *with* R.C. 117.01 *and* R.C. 2921.01. In addition to those definitional provisions, the term “public official” appears in more than 100 other sections of the Revised Code. *See, e.g.,* R.C. 9.38, 1332.01, 2903.211, 2907.10, 2930.01. There too, the Revised Code does not make reference to private companies, let alone management companies.

The absence of any reference to management companies further confirms that the companies are not public officials. “[T]he General Assembly knows how to use [specific] words when it so chooses,” and “[t]here is no reason to believe that the General Assembly would omit [language] it intended to include.” *Indep. Ins. Agents of Ohio, Inc. v. Fabe*, 63 Ohio St.3d 310, 314, 587 N.E.2d 814 (1992) The General Assembly knew how to declare entities to be public

officials and has done so in several places. And tellingly, it has never included management companies in that definition. If the General Assembly had intended that management companies be treated as public officials for the purposes of Chapter 3314, it could easily have said so. Yet the General Assembly neither defined management companies that way in Chapter 3314 nor incorporated a definition of public official from elsewhere in the Revised Code. *See Moore v. State Auto. Mut. Ins. Co.*, 88 Ohio St.3d 27, 32, 723 N.E.2d 97 (2000) (“[I]n determining the legislative intent of a statute ‘it is the duty of this court to give effect to the words used [in a statute], not to delete words used or to *insert words not used*.’”) (emphasis added) (quoting *Wheeling Steel Corp. v. Porterfield*, 24 Ohio St.2d 24, 28, 263 N.E.2d 249 (1970)) (second alteration original).

Ignoring the plain intent of the statutory scheme, the Schools rely on the definition of “public official” set forth in R.C. 117.01(E). (Appellants’ Br. at 21.) That conclusion is wrong for a host of reasons. *First*, the definition of public official in R.C. 117.01(E) only applies to that term “[a]s used in” Chapter 117, R.C. 117.01, which addresses the duties of the State Auditor. To be sure, Chapter 117 gives the Auditor the ability to audit public officials. But Chapter 117 is not invoked by plaintiffs’ claims, which center on a contract dispute.

Second, R.C. 117.01’s definition of public official is not incorporated in Chapter 3314. Two other statutes incorporate the public official definition in R.C. 117.01(E), and do so in specific contexts: “Fair competition in cable operations definitions” and “Preliminary polygraph test of sex offense victim.” R.C. 1332.01, 2907.10. Tellingly, Chapter 3314 contains no cross-reference to the R.C. 117.01(E) definition.

Third, declaring White Hat to be a “public official” under R.C. 117.01(E) because it is a management company would render superfluous R.C. 3314.024. Section 3314.024, as

previously mentioned, requires management companies to provide certain financial information for state audit. Under the trial court's holding, however, management companies themselves would be subject to audit as public officials under R.C. 117.10, making the requirements of R.C. 3314.024 meaningless. Such a statutory reading violates the fundamental interpretive rule that "[n]o part [of a statute] should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative." *Boley v. Goodyear Tire & Rubber Co.*, 125 Ohio St.3d 510, 2010-Ohio-2550, 929 N.E.2d 448, ¶ 21.

Fourth, because no statutory definition of public official applies to management companies specifically or in the context of this litigation, picking one section's definition (here, R.C. 117.01(E)) over the others as the "generally applicable" definition for management companies would be nothing more than speculative guesswork. And selecting the R.C. 117.01(E) definition as the generally applicable one also renders meaningless the other statutory provisions that expressly cross-reference and apply the R.C. 117.01(E) definition to precise contexts, for instance, "cable operations." Why would the General Assembly bother to specifically make the R.C. 117.01(E) definition applicable in certain other statutes if it intended that the definition apply in all contexts, as the Schools advocate?

Attempting to connect the R.C. 117.01(E) "public official" definition to this dispute, the Schools cite *Cordray v. Internatl. Preparatory School*, 128 Ohio St.3d 50, 2010-Ohio-6136, 941 N.E.2d 1170. *Cordray*, however, addressed an entirely different question: whether the treasurer for a community school can be held strictly liable for public funds. Critical to the outcome there was the fact that a statute on point, R.C. 9.39, provides that public officials are liable for public money, and that a second statute, R.C. 9.38, expressly adopts the R.C. 117.01(E) definition of

public official for purposes of R.C. 9.39. In other words, the Supreme Court's holding merely confirms that a school's treasurer is a "public official," as designated by the Revised Code. If anything, *Cordray* undercuts the decision here because it addresses a statute that *expressly* references the R.C. 117.01(E) definition.

2. Finding that a private company becomes a public official when it provides services to a public entity would violate long standing legal principles.

The Schools' theory is not only at odds with the terms of the Revised Code, but it also improperly blurs established distinctions between public and private entities. Our legal system has long embraced that distinction. Indeed, as the United States Supreme Court stated more than 100 years ago, "it cannot be presumed that a legislature intends any interference with purely private business." *Chesapeake & Potomac Tel. Co. v. Manning*, 186 U.S. 238, 246, 22 S.Ct. 881, 46 L.Ed. 1144 (1902). *See also State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 2006-Ohio-4854, 854 N.E.2d 193, ¶ 26 (holding that private entities are entitled to a presumption that they do not meet public office requirement of Ohio's Public Records Act).

Starting with our federal Constitution, numerous provisions apply to either private or public affairs exclusively, from protecting private property to prohibiting certain state action. *Compare* the Fifth Amendment to the U.S. Constitution ("nor shall private property be taken for public use") *with* the Fourth Amendment to the U.S. Constitution (prohibiting the government from engaging in "unreasonable searches and seizures"). Similarly, in several different places, the Revised Code expressly defines "public official" or "public office," reflecting the fact that certain Ohio laws apply to public entities only. Other than as expressly altered by state and federal law, private entities are just that—private.

The Schools' pay little heed to these fundamental legal principles, and instead conclude that an ostensibly private business somehow becomes a public official based on the nature of its customers. That proposition not only undermines established distinctions between public and private activity, but it also raises deep constitutional concerns. After all, altering the obligations of management companies and the terms of their management agreements violates the companies' rights to fair notice and freedom to contract. *See City of Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶ 86-87 (explaining that due process requires laws to provide fair notice to enable individuals to conform their conduct); *Aetna Life Ins. Co. v. Schilling*, 67 Ohio St.3d 164, 168, 616 N.E.2d 893 (1993) (explaining that under the Ohio Constitution's Contracts Clause, any change in the law obstructing the contractual rights of either party to a contract is unconstitutional). For these reasons too, the Schools' theory should be rejected.

3. There is no limit to the Schools' reasoning, which would fundamentally alter every contract between public and private entities.

To depart from a century of law, as the Schools suggest, would raise the specter that every private entity that contracts with a public body could be elevated to public official status. The Schools' theory contains no meaningful limiting principle that would prevent extending the ruling to: (1) other community school management companies; (2) any company that provides services to public schools; and even (3) any private entity that provides services to public bodies generally. If the provision of operational services is sufficient to deem a private contractor the representative of its customer, any private company providing services to public schools or other public bodies could just as easily qualify as a public official.

At best, the Schools' proposition of law might be construed as applying to management companies only, even though the reasoning contains no such limitation. They fail to recognize,

however, that management companies, and their service agreements, vary widely. Management companies do not transform from private companies to public officials once they cross some undefined threshold percentage of funds received or services provided.

The Schools' reasoning would likewise reach service providers for public schools outside the community school realm. Management companies enter into contracts with public schools to provide specified services in exchange for compensation. That description could readily apply to any company whose services are solicited by a school. Examples abound: janitorial, school lunch, tutorial, and maintenance services, for instance. At the most basic level, all are private companies providing services to schools in exchange for "public" money. All operate under written contracts that can be terminated by the schools as specified. And none ever have ultimate authority over the schools.

And if a private company that provides services to a public school can qualify as a public official, there is no reason that any other private company that provides services to any public body would not also qualify. For example, the State often hires private contractors to complete highway construction projects. With certain specifications set forth in the contract, the private contractor is given authority to "operate" the construction work as needed to complete the job, which they can only do as the state's "duly authorized representative or agent." (Appellants' Br. at 21 (quoting R.C. 117.01(E)).) Ohio law has never considered such private contractors to be public officials.

4. The public official theory would have damaging consequences for community schools.

Holding management companies to be public officials would also have substantial detrimental effects on the operation of community schools in Ohio. If management companies are considered public officials, they unexpectedly would be subjected to a number of additional

rules and regulations, posing additional costs and efficiency problems. Management companies would generally be subject to audit by the State Auditor for all of their revenues and expenses. *See* R.C. 117.10. Management companies could be open to public records requests regardless whether the records requested are related to the operation of a public school. *See* R.C. 149.43. And officers of the companies may be subject to public employee ethics obligations. *See generally* R.C. 102.01, *et seq.* There are undoubtedly other unforeseen consequences of the trial court's decision as well.

All of these new judicially imposed legal requirements would not only impose new compliance and other regulatory costs on management companies, but they would also change the business model under which management companies have operated in this State (and nationally) for years. The proposed rule of law would essentially rewrite the management agreements as public contracts. Inevitably, management companies will need to alter the way they structure their agreements and, ultimately, run their businesses, potentially leading to inefficiencies, if not an undermining of the quality of education available at community schools.

Indeed, the Schools' theory threatens not only the quality of community schools, but also the viability of the entire community school program. The additional costs and responsibilities imposed on management companies as public officials may well dissuade them from offering their services to Ohio public schools. Many new charter schools would never get off the ground without the assistance of a management company, and current schools may be forced to close, if their management companies terminate the relationship. At the very least, declaring management companies to be public officials would upset the carefully balanced statutory scheme that establishes the respective roles of community schools, management companies, and


others. The end result is a reduction in school choice in Ohio, with Ohio's schoolchildren the ultimate victims.

V. CONCLUSION

For the foregoing reasons, the court of appeals' ruling that White Hat owns the personal property in dispute should be affirmed.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Merit Brief of *Amicus Curiae* Ohio Coalition for Quality Education in Support of Appellees White Hat Management, LLC, et al. was served by e-mail, on August 4, 2014, on the following:

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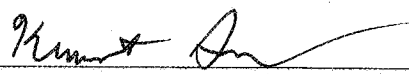
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