



**CCIN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA**

**STATE OF ALABAMA *ex rel.* BOARD  
OF SCHOOL COMMISSIONERS  
OF MOBILE COUNTY,**

**Plaintiff,**

**v.**

**RODNEY LOTT, BARRY YONKER,  
and FICTITIOUS DEFENDANTS A  
THROUGH Z,**

**Defendants.**

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**CV-2022-\_\_\_\_\_**

**COMPLAINT FOR EJECTMENT**

**COMES NOW** the State of Alabama *ex rel.* the Board of School Commissioners of Mobile County and hereby files its Complaint as follows:

**I. PARTIES**

1. This civil action is brought by the State of Alabama (the “State”) on behalf of the Board of School Commissioners of Mobile County, Alabama (the “Board” and both collectively referred to herein as Plaintiffs). Attached as Exhibit A is a true and correct copy of undersigned counsel for the Board’s authorization to bring suit and appointment as a Deputy Attorney General for this purpose.

2. The Board is a public and governmental entity generally charged with operating the public schools of Mobile County, Alabama and has the capacity to sue in its own right. See Morgan v. Bd. of School Comm’rs of Mobile County, 26 So. 2d 108 (Ala. 1946); Louviere v. Mobile County School Bd., 670 So. 2d 873 (Ala. 1995).

3. Defendant Rodney Lott is a resident of Mobile County, Alabama over the age of nineteen and currently living or residing on the property of Hankins Middle School and receiving

mail there at 5820 Katherine Hankins Drive, Theodore, Alabama.

4. Defendant Barry Yonker is a resident of Mobile County, Alabama over the age of nineteen and currently living or residing on the property of Hankins Middle School and receiving mail there at 5820 Katherine Hankins Drive, Theodore, Alabama.

5. Fictitious parties A through Z are persons or persons also living or residing (whether permanently or temporarily) on the property of Hankins Middle School at or near the mailing address 5820 Katherine Hankins Drive, Theodore, Alabama without legal right, title, or authorization to do so and whose names are not currently known to Plaintiffs but who will added by amendment at such time as Plaintiffs discover their names.

## **II. JURISDICTIONAL ALLEGATIONS**

6. This action is brought pursuant to, although not exclusively under, ALA. CODE § 6-6-280, *et seq.*

7. ALA. CODE § 6-6-281 requires that any action for the recovery of public school lands “shall be commenced by and in the name of the State of Alabama or in the name of the State of Alabama for the use of the schools or other educational or governmental institutions to which, or for the use of which, the lands sued for were donated, granted, purchased, or held.”

8. The Board also sues in its own right, to the extent necessary or proper to enable additional or alternative causes of action not governed by or subject to § 6-6-281.

## **III. STATEMENT OF FACTS**

9. Plaintiffs adopt and incorporates paragraphs one through eight, inclusive, as if stated herein.

10. Hankins Middle School is a public middle school owned and operated by the Board, located at 5750 Katherine Hankins Drive, Theodore, Alabama, in Mobile County. Attached as

Exhibit B is a true and correct copy of the current and valid Warranty Deed giving legal title to the Hankins Middle School property to the Board. Said Warranty Deed is also properly recorded in the records of the Mobile County Probate Court at Book 5148, Page 0634.

11. The Board now and at all times relevant to this action has possessed all legal right, title, and interest to the Hankins Middle School property, which includes the Defendants' and/or fictitious defendants' mailing address at 5820 Katherine Hankins Drive as described herein.

12. Defendants and/or the fictitious defendants have for some time resided on a portion of the Hankins Middle School property in a trailer, a dilapidated house, some sheds, and/or other structures erected by them or other persons. At no time have any of them had permission or authority from the Board even to be present temporarily on the property. They have no valid lease or written document under any color of law authorizing them to be there, and no title or other right to be present. Rather, they are 'squatters' who have in the past relied on the word of persons unauthorized to permit them to occupy the property and now refuse to leave upon being instructed to do so by the Board.

13. Defendants and/or the fictitious defendants are, to say the least, not model squatters. They have guests coming and going in vehicles and on foot at all hours of the day (including school hours) for purposes the Board and Hankins Middle School staff can only guess at. Defendants and/or the fictitious defendants and/or their guests have been observed by Hankins Middle School staff in states of obvious intoxication – again even during school hours. The Mobile Police Department School Resource Officer assigned to Hankins Middle School (the "SRO") has seen one individual vomiting in the morning hours while pupils were present. To the eyes of Hankins Middle School staff and the SRO, there appear to be some kind of sales transactions occurring on at least some of these occasions. Defendants and/or the fictitious defendants have erected signs or

banners reading 'Car Wash.' There have been multiple parental complaints to Hankins Middle School staff about this situation. It is obviously inappropriate, illegal, and unsafe.

14. Defendants and/or the fictitious defendants have also either installed or caused to be installed an unauthorized septic tank system on the property, which is leaking and poses a health and safety hazard, or else it appears that are simply allowing sewage or other unsanitary material to leak directly from a trailer onto the ground. The odor is easily detectable from Katherine Hankins Drive.

15. The Board formerly attempted to evict Defendants from the Hankins Middle School property in an action filed in the Mobile County District Court. Defendants prevailed in that action by pleading, via counsel, that they were not there subject to any lease or instrument enforceable under the Alabama eviction statutes and procedures, and that the only proper remedy for the Board was ejectment. Attached as Exhibit C is a true and correct copy of the Mobile County District Court's August 16, 2022 Order in case number 02-DV-2022-902780 transferring that action to Circuit Court.

16. Due to the existence of § 6-6-281 and the possibility that an ejectment action was not cognizable against Defendants and/or the fictitious defendants except in the name of the State of Alabama, the Board elected to dismiss that action without prejudice subject to the filing of this action in the name of the State of Alabama on behalf of the Board as noted above.

17. The Board has previously notified Defendants and/or the fictitious defendants that they are trespassing both in writing and verbally and asked them to leave, but they continue to unlawfully reside on the premises of Hankins Middle School.

#### **IV. CAUSES OF ACTION**

##### **A. Statutory Ejectment Pursuant to ALA. CODE § 6-6-280 *et seq.***

18. Plaintiffs adopt and incorporate paragraphs one through seventeen, inclusive, as if stated herein.

19. Plaintiffs sue pursuant to ALA. CODE § 6-6-280, *et seq.*, to fully recover possession of all parts of the Hankins Middle School property occupied by Defendants and/or the fictitious defendants. The Board has all legal right and title to said property and Defendants and/or the fictitious defendants are there without permission and unlawfully.

20. Plaintiffs request an order of the Court requiring Defendants, the fictitious defendants, and/or any guests of same to vacate the premises of Hankins Middle School. Plaintiffs also request all compensatory and punitive damages available to them pursuant to this cause of action, including but not necessarily limited to *mesne* profits and damages for waste and/or injury to the land at issue.

**B. Common Law Ejectment**

21. Plaintiffs adopt and incorporate paragraphs one through twenty, inclusive, as if stated herein.

22. Plaintiffs plead in the alternative common-law ejectment based on the facts pleaded herein.

23. Plaintiffs request all compensatory and punitive damages available to them pursuant to this cause of action, including but not necessarily limited to *mesne* profits and damages for waste and/or injury to the land at issue.

**C. Request for Preliminary Injunction and Request for Expedited Hearing**

24. Plaintiffs adopt and incorporate paragraphs one through twenty-three, inclusive, as if stated herein.

25. As stated above, the circumstances outlined above constitute a health and safety

problem involving school children. Pursuant to ALA. R. CIV. P. 65, Plaintiffs request the Court issue a preliminary injunction requiring Defendants and/or the fictitious defendants to immediately depart the Hankins Middle School property. Plaintiffs will suffer irreparable injury without the issuance of a preliminary injunction and have no other adequate remedy at law. Plaintiffs have significantly more than a reasonable chance of success on the ultimate merits and the hardships imposed on any party opposed to the issuance of a preliminary injunction do not unreasonably outweigh the benefits that will accrue to Plaintiffs.

26. Plaintiffs request an expedited hearing on this request for a preliminary injunction as soon as possible after service is made on Defendants.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiffs request judgment in their favor and against Defendants and/or the fictitious parties, ordering them to immediately vacate the Hankins Middle School property and assessing compensatory, punitive, and/or nominal damages, *mesne* profits, and damages for waste and/or injury to the land at issue. Plaintiffs further request such additional and alternative relief as may be available to them in the Court's sound discretion.

**RESPECTFULLY SUBMITTED,**

s/Michael M. Linder, Jr.

**MICHAEL M. LINDER, JR. (LIN036)**

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**Counsel for the State of Alabama by special appointment as Deputy Attorney General and for the Board of School Commissioners of Mobile County**

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DEFENDANTS TO BE SERVED BY PERSONAL SERVICE