

CONSERVE COMMUNITY
LLC, JULIE LEIZERMAN,
PATRICIA LINS, LAWRENCE
SUTTER, ALICE AND
TIMOTHY ACKMERAN,
JUELY K. AND TIMOTHY J.
BARTHOLOMEW, JOAN
KRULL, KENNETH ALAN
BUSSART, BORGERT COME
BOURGEOIS AND SHARON
KYLE BOURGEOIS, MARY
HERMES, AND SHARA WEITZ
LAMMER,

Plaintiffs,

v.

Case No. 09 CV 54

Unclassified - Civil: 30703

CONSERVE SCHOOL
CORPORATION, CONSERVE
SCHOOL TRUST, C. DANIEL
BLYTHE, JOHN F. CALHOUN,
MICHAEL J. SULLIVAN,
RONALD V. KAZMAR,
MICHAEL X. CRONIN, JAMES
RINN, STEFAN ANDERSON,
AND JOHN DOES 1-5,

Defendants.

NOTICE OF MOTION
AND MOTION TO INTERVENE
OF J.B. VAN HOLLEN, ATTORNEY GENERAL OF WISCONSIN

PLEASE TAKE NOTICE that Attorney General J.B. Van Hollen, at a time, date, and place to be set by the court, moves the court pursuant to Wis. Stat. § 803.09 for leave to intervene as a plaintiff in this action. A copy of the Complaint setting forth the Attorney General's claims is attached hereto as Exhibit A. The grounds for this motion are set forth below.

Intervention As Of Right

1. Under Wis. Stat. § 803.09(1), “[a] movant must meet four requirements to intervene as a matter of right: 1) the motion to intervene must be timely; 2) the movant must claim an interest in the subject of the action; 3) ‘the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest;’ and 4) the existing parties do not adequately represent the movant’s interest.” *City of Madison v. Wis. Employment Relations Comm’n*, 2000 WI 39, ¶ 11, 234 Wis. 2d 550, 610 N.W.2d 94 (citation and footnote omitted).

2. This motion to intervene is timely. The case was originally commenced on or about February 20, 2009. No answer has been filed and, although a motion to dismiss is pending, no decision has been entered on that motion. No deadline for discovery has been entered, no trial is scheduled and, as such, no existing party will be prejudiced by intervention.

3. The Attorney General claims an interest in the subject of the above-captioned case. “The interest which entitles one to intervene in a suit between other parties must be an interest of such direct and immediate character that the intervenor will either gain or lose by the direct operation of the judgment.” *City of Madison v. Wis.*

Employment Relations Comm'n, 2000 WI 39, ¶ 11 n.9, 234 Wis. 2d 550, 610 N.W.2d 94 (quoting *Lodge 78, Int'l Ass'n of Machinists v. Nickel*, 20 Wis. 2d 42, 46, 121 N.W.2d 297 (1963)). The Attorney General's interest in this case originates from the Attorney General's powers under Wis. Stat. § 181.1430(1) and Wis. Stat. § 701.10. The Attorney General's Complaint sets forth, in greater detail, the concerns raised by the subject matter of this case. This interest is unique to the Attorney General as his interests are independent of any other party to this litigation and are guided by his determination as to what is in the best interests of the State of Wisconsin.

4. The disposition of this case may as a practical matter impair or impede the Attorney General's ability to protect his interest. The Attorney General is charged with the supervision of non-stock corporations that exceed or abuse the authority conferred upon them by law. *See* Wis. Stat. § 181.1430(1). He is also charged with the supervision of charitable trusts holding property for charitable purposes in this State. *See* Wis. Stat. § 701.10. If the Attorney General was not allowed to intervene, his powers under Wis. Stat. § 181.1430(1) and Wis. Stat. § 701.10 would be impaired and impeded. In addition, the events at the center of this lawsuit may lead to consequences that could not be reversed in the future, including irreparable harm to the Conserve School Corporation, and the loss of assets from the Trust being directed to the Conserve School Corporation for the non-profit purposes set forth in the Conserve School Corporation's Articles of Incorporation.

5. The existing parties in the above-captioned case do not adequately represent the Attorney General's interest. "This requirement is satisfied 'if the applicant

shows that the representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.’” *Wolff v. Town of Jamestown*, 229 Wis. 2d 738, 747, 601 N.W.2d 301 (Ct. App. 1999) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). The burden is so minimal that even when an existing party seeks the same outcome as the intervenor and the parties have “tactically similar” positions, this prong is met if the intervenor is “in a better position . . . to provide full ventilation of the legal and factual context.” *Wolff*, 229 Wis. 2d at 748 (quoting *Nuesse v. Camp*, 385 F.2d 694, 703 (D.C. Cir. 1967)). In this case, the parties dispute whether the current plaintiffs have standing. If this court determines that the plaintiffs do not have standing and the Attorney General is not permitted to intervene, the actions of the defendants described in the Attorney General’s Complaint would remain unaddressed. As set forth in the Attorney General’s Complaint, the defendants’ actions are questionable and there is a real need to review the legality of defendants’ actions. Moreover, the Conserve School Corporation is currently managed by directors with a clear and direct conflict of interest who have not obtained independent counsel for it. Therefore, no party to this litigation is able or willing to address whether the Conserve School Corporation is being operated in accordance with Wisconsin law and is having its rights fully protected.

Permissive Intervention

6. Under Wis. Stat. § 803.09(2), “upon timely motion anyone may be permitted to intervene in an action when a movant’s claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of

claim or defense upon any statute or executive order or rule administered by a federal or state governmental officer or agency or upon any regulation, order, rule, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely motion may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” The plaintiffs’ claims in the above-captioned case have questions of law and fact in common with the Attorney General’s claims set forth in the Complaint attached as Exhibit A. The Attorney General’s intervention will not “unduly delay or prejudice the adjudication of the rights of the original parties.” The plaintiffs’ rights will not be unduly delayed or prejudiced by the intervention because the intervention prevents dismissal of this case if the court finds that the present plaintiffs lack standing. The defendants’ rights will not be unduly delayed or prejudiced by the intervention because it is in the defendants’ best interests for the merits of the case to be heard. If this court does not rule on the construction of the Trust document at issue, Conserve School Corporation runs the risk of losing all Trust funding to the Culver Military Academy and Conserve School Corporation may cease to exist.

WHEREFORE, Attorney General J.B. Van Hollen respectfully asks that this court allow intervention according to the attached Complaint as a matter of right or, in the alternative, allow permissive intervention in the court's discretion.

Dated this __ day of April, 2009.

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