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September 21, 2004

Mr. Leonard H. Beck
2515 McCawber Dr.
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Ophelia M. Waters, Esquire
Deputy Attorney General
Carvel State Office Building
820 N. French Street, 6th Fl.
Wilmington, DE 19801

Re: Beck v. Brady
C.A. No. 460-N
Date Submitted: September 16, 2004

Dear Mr. Beck and Ms. Waters:

This is the Court's decision on the Respondent Attorney General's motion to dismiss Petitioner Leonard H. Beck's request for declaratory judgment that would resolve the Petitioner's question of whether there is a contract between the State of Delaware and its taxpayers with regard to certain aspects of public education. As described below, there is no justiciable controversy. Thus, the Respondent's motion to dismiss is granted.¹

¹ The parties' written submissions sufficiently inform the Court of their contentions. Thus, oral argument is unnecessary.

An actual controversy is a prerequisite to obtaining a declaratory judgment.² While this Court is obligated to construe the term “actual controversy” liberally,³ the Court must not construe it so liberally as to enter the realm of rendering advisory opinions.⁴

After identifying the parties (the Petitioner and the Respondent Attorney General), the Petitioner’s complaint, captioned “Request for a Declaratory Judgment,” reads as follows:

3. Delaware State Law Title 14., Chapter 27., School Attendance, paragraphs 2701, 2702, 2722 (b), 2732 (d), 2730 (9), and 2730 (b) ‘prosecution for criminal contempt of Court,’ require that the Legal Guardian must enroll each Youth, and the State will teach each Youth.

² See, e.g., *Gannett Co. v. Bd. of Managers for the Del. Criminal Justice Information Sys.*, 840 A.2d 1232, 1237 (Del. 2003) (“In order for a court to exercise declaratory judgment jurisdiction, there must be an ‘actual controversy’: ‘(1) It must be a controversy involving the rights or other legal relations of the party seeking declaratory relief; (2) It must be a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claim; (3) the controversy must be between parties whose interests are real and adverse; (4) the issue involved in the controversy must be ripe for judicial determination.’”) (citations omitted).

³ See *Rollins Int’l, Inc. v. Int’l Hydronics Corp.*, 303 A.2d 660, 662 (Del. 1973) (“[T]he term ‘actual controversy’ should be liberally interpreted to give wide scope to the provisions of the [Declaratory Judgment Act] within the purposes thereof.”).

⁴ See *Anonymous v. State*, 2000 WL 739252 (Del. Ch. May 10, 2000) (stating that the Declaratory Judgment Act, 10 Del. C. Ch. 65, is “not to be used as a means of eliciting advisory opinions from the courts”) (quoting *Stroud v. Milliken Enterprises, Inc.*, 552 A.2d 476, 479 (Del. 1989)); *Marshall v. Hill*, 93 A.2d 524, 525 (Del. Super. 1952) (“The Declaratory Judgments Act may not be invoked merely to seek legal advice.”).

4. I ask the Court to decide if this is a contract between the State and her Legal Guardians and Taxpayers.

Thus, the Petitioner's pleading does not allege a single instance of actual harm or controversy. In other words, from the face of Petitioner's pleading, deciding whether, with regard to public education, a contract exists between the State of Delaware and its taxpayers would be a purely academic exercise. Since there is not an actual, live controversy between the parties, the Petitioner's request is non-justiciable. Accordingly, Respondent's motion to dismiss is granted.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-NC