

The Supreme Court of the State of Louisiana

ORLEANS PARISH SCHOOL BOARD

No.2020-C-00932

VS.

**THE CITY OF NEW ORLEANS AND NORMAN
WHITE, IN HIS OFFICIAL CAPACITY AS
THE CHIEF FINANCIAL OFFICER FOR THE
CITY OF NEW ORLEANS**

IN RE: The City of New Orleans - Applicant Defendant; Norman White, individually and in his capacity as Chief Financial Officer for the City of New Orleans - Applicant Defendant; Applying For Writ Of Certiorari, Parish of Orleans Civil, Orleans Civil District Court Number(s) 2019-05174, Court of Appeal, Fourth Circuit, Number(s) 2020-CA-0043;

December 22, 2020

Writ application granted in part. See per curiam.

JDH

SJC

JTG

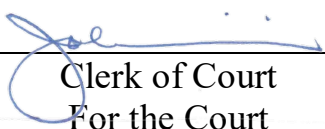
WJC

JBM

Johnson, C.J., would grant and docket.

Weimer, J., would grant and docket.

Supreme Court of Louisiana
December 22, 2020


Clerk of Court
For the Court

12/22/2020

SUPREME COURT OF LOUISIANA

No. 2020-C-0932

ORLEANS PARISH SCHOOL BOARD

VERSUS

**THE CITY OF NEW ORLEANS AND NORMAN WHITE, IN HIS
OFFICIAL CAPACITY AS THE CHIEF FINANCIAL OFFICER FOR THE
CITY OF NEW ORLEANS**

**ON SUPERVISORY WRIT TO THE CIVIL DISTRICT COURT,
PARISH OF ORLEANS**

PER CURIAM

Writ granted in part and denied in part. In this case the court of appeal enjoined the City of New Orleans from withholding tax proceeds collected on behalf of the Orleans Parish School Board in order for the City to fund various retirement systems. It also enjoined the City from withholding a collection fee of 1.6% pursuant to La. R.S. 47:338.107(C) from sales and use taxes collected for the School Board, and from withholding a collection fee of 2% pursuant to La. R.S. 47:1997.1 from ad valorem taxes collected for the School Board. This matter is now before us on the application of the City.

The court of appeal held that a “constitutional directive” prevented the application of La. R.S. 47:1997.1, and as to La. R.S. 47:338.107(C), citing La. Const. art. VII § 14(A) and jurisprudence holding that dedicated taxes collected by the City could not be constitutionally diverted from political subdivisions in cases not involving the Orleans Parish School Board, concluded the rationale of those cases to be “equally applicable” in this instance.

While there appears to be no statutory authority for the City to divert School Board tax monies to fund retirement systems, the withholding of a collection fee for sales and use taxes and ad valorem taxes is addressed by legislation. Without addressing the constitutionality or merits of these statutes, we note that issues of constitutionality are not properly resolved in summary fashion. See **Barber v. Louisiana Workforce Commission**, 15-1700, p. 1 (La. 10/9/15), 176 So.3d 398, 398 (per curiam). See also **Farmer’s Seafood Company v. State ex rel. Department of Public Safety**, 10-1534, pp. 2-3 (La. 9/3/10), 44 So.3d 676, 678 (per curiam); **Women’s Health Clinic v. State**, 01-2645, p. 2 (La. 11/9/01), 804 So.2d 625, 626 (per curiam); **Kruger v. Garden District Association**, 99-3344, pp. 2-3 (La. 3/24/00), 756 So.2d 309, 311 (per curiam).

Issues of constitutionality are properly raised in an ordinary proceeding where a full record can be developed and a finding of unconstitutionality can be appealed directly to the supreme court.

Accordingly, we vacate the issuance of the preliminary injunctions enjoining the City of New Orleans from withholding a collection fee from the proceeds of sales and use taxes and ad valorem taxes collected by it for the Orleans Parish School Board, and remand to the trial court for further proceedings. In all other respects the writ is denied.