

Sun Bldg. Ltd. P'ship v. Value Learning & Teaching Acad.

State of Ohio, Court of Common Pleas, Hamilton County

March 26, 2018, Entered

CASE NO. A1404504

Reporter

2018 Ohio Misc. LEXIS 2 *

SUN BUILDING LIMITED PARTNERSHIP, et al,
Plaintiffs, Vs. VALUE LEARNING & TEACHING
ACADEMY, d.b.a VLT Academy, et al, Defendants.

Prior History: [Sun Bldg. L.P. v. Value Learning & Teaching Acad., Inc., 2017-Ohio-8727, 2017 Ohio App. LEXIS 5154 \(Ohio Ct. App., Hamilton County, Nov. 29, 2017\)](#)

Core Terms

Contracts, matter of fact, Corrupt, funds, community school, purposes, public official, deposited, attorney general, public funds, political subdivision, violations, Faithless, reasons, public contract, strictly liable, Servant, conclusions of law, General's, services, joint and several, Judgments, fiduciary duty, bank account, fact finding, common law, fiduciary, benefits, Courts, void

Judges: [*1] HON. STEVEN E. MARTIN, JUDGE.

Opinion by: STEVEN E. MARTIN

Opinion

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENTS ON THE STATE'S CLAIMS

The matter before the Court is the final resolution of the claims asserted by the Ohio Department of Education ("ODE") and the Ohio Attorney General (collectively "the State"). Those claims are set forth in ODE's May 22, 2015, intervening complaint and the Attorney General's February 2, 2016, intervening complaint ("AG Complaint"). Those claims are identical and are referred to here as "the State's Claims."

The parties have agreed to submit the State's Claims for resolution without a trial based on stipulated facts and

documents, admissions in the pleadings, and other documentary evidence.¹ The parties have submitted briefs and made oral arguments regarding the State's Claims. Based on its review of that evidence, briefing, and argument, the Court makes the following findings of fact, conclusions of law and judgments.

This document is organized topically to more clearly explain the Court's decision. Findings of fact and conclusions of law are therefore intermingled. In order to satisfy *Civ. R. 52*'s requirement that findings [*2] of fact be made separately from conclusions of law, the Court has preceded all findings of fact with the phrase "[t]he Court finds as a matter of fact that." All numbered paragraphs not preceded by that phrase are conclusions of law.

Background

1. The Court finds as a matter of fact that Value Learning & Teaching Academy ("VLT") was a community school organized under *R.C. Chapter 3314*. A community school is commonly referred to as a charter school. VLT opened in 2005 and closed in July of 2005. *Stips.* ¶¶ 1, 3.

2. The Court finds as a matter of fact that VLT was formed by the April, 2005, contract between VLT's governing authority and Educational Resource Consultants of Ohio, Inc. ("ERCO"). That contract was

¹The parties filed stipulations establishing certain facts. "*Stipulations Regarding The State's Claims*," on June 16, 2017 ("*Stips.*"). They also stipulated to the authenticity and admissibility of a number of documents filed with the stipulations. *Stips.* ¶ 45. Those documents were consecutively paginated with numbers prefixed with the designation "JS." Documents filed with those stipulations will be referenced by referring to the JS page numbers where they are found. The parties stipulated that they could file additional documentary evidence with their briefs. *Stips.* ¶ 45.

entered into pursuant to [R.C. 3314.03](#). *Stips*, ¶ 4(a).

3. The Court finds as a matter of fact that VLT has permanently closed and ceased operating as a community school. It ceased operating in the summer of 2014. *Findings of Fact and Conclusions of Law Regarding the Distribution of Community School Funds*, entered Sept. 22, 2016, ¶ 3.

4. The Court finds as a matter of fact that Defendant Valerie Lee ("Valerie") was VLT's Superintendent from VLT's inception through its closure in July of 2014. She was an employee of [*3] VLT during that entire time. *Stips*. ¶ 6.

5. The Court finds as a matter of fact that Valerie was the owner of account No. 69688771 with Fifth Third Bank from at least December of 2007 through June of 2014 ("Valerie's Account"). *Stips*. ¶ 14.

6. The Court finds as a matter of fact that Clyde Lee ("Clyde") was Valerie's husband at all times relevant to this case. Clyde was an employee of VLT from July 1, 2008, through June 30, 2017. *Stips*. ¶¶ 9, 18.

7. The Court finds as a matter of fact that CEED, Inc. ("CEED") was a for profit corporation organized by Clyde. Clyde was the sole shareholder of CEED. *Stips*. ¶ 21.

8. The Court finds as a matter of fact that CEED had a series of contracts with VLT to provide maintenance and janitorial services to VLT for the properties leased by VLT for its operations, including:

- a. A contract dated Sept. 4, 2007.
- b. A contract dated Sept. 5, 2008.
- c. A contract dated Sept. 4, 2009.
- d. A contract dated Sept. 7, 2010.
- e. A contract dated July 1, 2011.
- f. A contract dated Aug. 25, 2011.
- g. A contract dated Sept. 9, 2013.

Stips, ¶22. Those contracts are collectively referred to as "the CEED Contracts."

7. The Court finds as a matter of fact that Valerie and Clyde were signatories [*4] on account No. 7021663013 with Fifth Third Bank from at least February 12, 2007, ("CEED's Account"). As signatories on that account they were both authorized to withdraw funds from account No. 7021663013. *Stips*, ¶ 15.

8. The Court finds as a matter of fact that VLT paid CEED a total of \$1,855,047.17 pursuant to the CEED Contracts between December 19, 2007 and July 17,

2014. Most of those funds were deposited into CEED's Account. Some portions of those payments were deposited directly into Valerie's Account. Other funds were either transferred from CEED's Account to Valerie's Account or withdrawn by Valerie from the CEED's account. Those transactions are detailed in table 1 below. *Stips*, ¶ 35.

9. The Court finds as a matter of fact that Echole Harris ("Echole") is Valerie's daughter. She was an employee of VLT from at least July 1, 2006, through VLT's closure in 2014. *Stips*. ¶¶ 10, 36.

10. The Court finds as a matter of fact that Echole held various positions with VLT from at least July 1, 2006, through VLT's closure in 2014. She was a VLT employee during that entire time. Harris' employment was the result of various contracts whereby she agreed to provide services to VLT. *Stips*. ¶ 36. [*5] The contracts referenced in this paragraph are referred to as the "Echole Contracts."

11. The Court finds as a matter of fact that Valerie was an owner of account No. 31082037 with Fifth Third Bank from at least April 19, 2008, through July 18, 2014 ("Echole Account"). *Stips*. ¶ 16.

12. The Court finds as a matter of fact that all payments for the services Echole provided pursuant to Echole Contracts from May of 2008 through June of 2014 were directly deposited by VLT into the Echole Account. Those dates and the amount of those payments are detailed in table 2 below. *Stips*. ¶ 37.

13. The Court finds as a matter of fact that Judy McConnell ("McConnell") was VLT's Treasurer/Business Manager from July 1, 2007, through June 30, 2012. *Stips*. ¶¶ 7, 38.

14. The Court finds as a matter of fact that VLT was funded by state operating funds provided pursuant to [R.C. 3314.08](#) and federal pass through grants. All those funds were public funds appropriated for educational purposes. *Stips*. ¶ 4.

15. The State asserts multiple claims against Valerie, Clyde, Echole, and/or McConnell:

- That Valerie and McConnell are strictly liable, under [R.C. 9.39](#), for illegal disbursements of VLT's funds ("Strict Liability Claims"): payments [*6] pursuant to the CEED Contracts, the Echole Contracts, and for compensation of VLT officers in excess of the amounts authorized by VLT's charter

("Excess Compensation Claims").

- Echole Harris is also directly liable for the amounts paid on the Echole Contracts.

- That VLT is entitled to all compensation paid Valerie and Clyde while they were in breach their fiduciary duty of loyalty to VLT (the "Faithless Servant Claims").

- That Valerie and Clyde are liable for three times the amount VLT paid on the CEED Contracts pursuant to [R.C. 2923.34](#), Ohio Corrupt Practices Act ("Corrupt Practices Act Claims")

Those claims are asserted on behalf of VLT. The State asks that all funds recovered on its claims be distributed pursuant to [R.C. 3314.074](#).

Jurisdiction and Venue

16. This Court has subject matter jurisdiction over the State's Claims by virtue of [R.C. 2305.01](#).

17. No party has disputed that they were properly served or has otherwise contested personal jurisdiction.

18. Venue is proper here because all of the State's Claims arose in Hamilton County, Ohio.

The Attorney General has Standing to Press the State's Claims

19. The Attorney General has standing to press the State's Claims pursuant to [R.C. 117.42](#). That statute authorizes the Attorney General [*7] to sue on certain types of claims when the Auditor of State requests that action. The State's claims are the types described in [R.C. 117.42](#). The Auditor of State requested that the Attorney General prosecute the State's Claims.

20. [R.C. 117.42](#) is not limited to situations involving unauditible entities. There is no language to that effect in [R.C. 117.42](#). "Courts will not add words into a legislative enactment," [Vill. of Terrace Park v. Anderson Twp. Bd. of Zoning Appeals, 2015-Ohio-4602, 48 N.E.3d 143 \(1st Dist.\) ¶ 28](#), and an "unambiguous statute must be applied ... without adding ... any words[.]" [State v. Vanzandt, 142 Ohio St. 3d 223, 2015-Ohio-236, ¶ 7, 28 N.E.3d 1267](#)(emphasis added).

21. [R.C. 117.42](#) is not limited to situations where a finding for recovery ("FFR") has been issued pursuant to [R.C. 117.28](#). There is no language saying that in [R.C.](#)

[117.42](#) or [R.C. 117.28](#). Missing language to that effect cannot be read into the statutes. [State v. Vanzandt, supra, Vill. of Terrace Park v. Anderson Twp. Bd. of Zoning Appeals, supra](#). Moreover, the Attorney General long ago opined that the General Code analog to [R.C. 117.42](#) was not limited to claims based on FFRs, and the statutory language analyzed in that opinion has been reenacted multiple times without significant change. [1925 Opinions of the Ohio Attorney General, Op. No. 2773, 1925 Ohio AG LEXIS 295](#). That suggests that the General Assembly approved of the Attorney General's construction of that language. [Maitland v. Ford Motor Co., 103 Ohio St. 3d 463, 2004-Ohio-5717, ¶ 26, 816 N.E.2d 1061](#).

22. The Attorney General also has common law standing to press the State's Claims because those claims seek [*8] to recover public property. The Attorney General has standing to sue to protect public property. [State ex rel. Brown v. Newport Concrete Co., 44 Ohio App. 2d 121, 128, 336 N.E.2d 453 \(1st Dist. 1975\)](#); [State v. Johnson, 1981 Ohio App. LEXIS 13540, **7-8 \(6th Dist.\)](#); [State of Ohio v. United Transp., Inc., 506 F. Supp. 1278, 1281 \(S.D. Ohio 1981\)](#). All of the funds the State seeks to recover were paid out of VLT's funds. Funds paid to a community school pursuant to [R.C. 3314.08](#) are public money. [Cordray v. Internat'l Preparatory Sch., 128 Ohio St. 3d 50, 2010-Ohio-6136, ¶ 27, 941 N.E.2d 1170](#). Further, as a community school VLT was a political subdivision, [State ex rel. Elec. Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas, 129 Ohio St. 3d 30, 2011-Ohio-626, ¶¶ 25-27, 950 N.E.2d 149](#), assets of a political subdivision are public property, [Youngstown Metropolitan Hous. Auth. v. Evatt, 143 Ohio St. 268, 276, 55 N.E.2d 122 \(1944\)](#), so VLT's funds were public property. Any funds recovered that remain after the satisfaction of claims of private creditors will be paid to public school districts pursuant to [R.C. 3314.074](#). The Attorney General therefore has standing to sue to recover the public funds that are the subject of the State's claims.

23. [R.C. 117.28](#) does not limit the Attorney General's common law standing. Although the legislature may restrict the Attorney General's common law standing, the courts require explicit language before they find such a limitation. The statutory language must "clearly support[] such intention," [State ex rel. Cordray v. Marshall, 123 Ohio St. 3d 229, 2009-Ohio-4986, ¶ 18, 915 N.E.2d 633](#). The intent to limit common law standing must be stated in "specific statutory language." [State of Ohio v. United Transp., Inc., 506 F. Supp. 1278, 1283 \(S.D. Ohio 1981\)](#). [R.C. 117.28](#) has no language

limiting the Attorney General's common law standing. Instead, it simply reinforces that standing in a specific context. The precedents consistently [*9] hold that statutory reinforcements of specific areas of the Attorney General's common law standing are not limitations on his general standing. *Marshall*, 123 Ohio St. 3d 229, 2009-Ohio-4986, ¶¶ 16-20, 915 N.E.2d 633; *State ex rel. Merrill v. Ohio Dep't of Nat. Res.*, 130 Ohio St. 3d 30, 2011-Ohio-4612, ¶¶ 32-36, 955 N.E.2d 935; *Plant v. Upper Valley Med. Ctr.*, 1996 Ohio App. LEXIS 1529 (2d Dist. 1996), **6-10; *United Transp., Inc.*, 506 F. Supp. at 1282-1283. Finally on this point, courts have recognized that the attorney general has standing to sue to address misapplications of public funds in cases not involving findings for recovery, the subject of *R.C. 117.28*. *State v. Johnson*, 1981 Ohio App. LEXIS 13540, ** 2, 3 7-8. See also *Dickinson v. Hot Mixed Bituminous Indus.*, 41 Ohio L. Abs. 269, 58 N.E.2d 78 (Franklin Co. App. 1943), *Sylb. 4* ("when the Attorney General has determined that an official was acting wrongfully he is authorized to bring action against the official solely on his official relation").

24. *State ex rel. Rogers v. New Choices Community School*, 2009-Ohio-4608 (2d Dist.), does not undermine the Attorney General's standing. It has no bearing on standing pursuant to *R.C. 117.42* because that statute was not invoked or analyzed in *New Choices*. Further, *New Choices* considered the Attorney General's authority to press claims against a community school, and the State presses no such claims here. Instead, it asserts claims against individuals formerly involved with a community school, and the Courts have allowed the Attorney General to pursue claims against such individuals after *New Choices* was decided. See *Cordray v. Internatl. Preparatory Sch.*, 128 Ohio St. 3d 50, 2010-Ohio-6136, 941 N.E.2d 1170; *DeWine v Scott (In re Scott)*, 566 B.R. 471 (Bankr. N.D. Ohio 2017).

The Absence of a Finding for Recovery is Immaterial.

25. Defendants' arguments that they can have no liability on the State's [*10] claims because the Auditor of State has not issued a finding for recovery lacks merit. There is nothing in the text of *R.C. 117.28* that states that it is the exclusive remedy for recovering public funds. Ohio's appellate courts have consistently rejected the argument that the absence of a finding for recovery precludes the government from acting to recover public funds. *Gibbs v. Greenfield Exempted Vill. Sch. Dist. Bd. of Educ.*, 2001-Ohio-2638, 2001 Ohio

App. LEXIS 6016 (4th Dist.); *State v. Johnson*, 1981 Ohio App. LEXIS 13540 (6th Dist.); *White v. Columbus Bd. of Educ.*, 2 Ohio App. 3d 178, 2 Ohio B. 195, 441 N.E.2d 303 (10th Dist. 1982); *Green Local Teachers Ass'n v. Blevins*, 43 Ohio App. 3d 71, 539 N.E.2d 653 (4th Dist. 1987).

26. *Police and Fireman's Disability & Pension Fund v. Akron*, 149 Ohio App.3d 497, 2002-Ohio-4863, 778 N.E.2d 68 (9th Dist. 2002), and *Mahoning Valley Sanitary Dist. Ex rel. Montgomery v. The Gilbane Bldg. Co.*, 2001 U.S. Dist. LEXIS 25772 (S.D. Ohio), *aff'd 86 Fed. Appx. 856 (6th Cir. 2004)* are not to the contrary. Those cases dealt with what is necessary to bring a claim under *R.C. 117.28*, but they did not hold that *R.C. 117.28* is the exclusive way to recover public funds. Those cases are inapposite because the State is not bringing its claims pursuant to *R.C. 117.28*.

27. A finding for recovery is not a necessary element for enforcing a public official's strict liability for the loss of public funds. That liability is based on *R.C. 9.39*. *Cordray v. Internatl. Preparatory Sch.*, 128 Ohio St. 3d 50, 2010-Ohio-6136, ¶29, 941 N.E.2d 1170. There is no such limitation in the text of *R.C. 9.39*; it applies to "[a]ll public officials," making them "liable for all public money received or collected by them or by their subordinates" (emphasis added). That open-ended language does not limit liability to situations prompting an FFR; it makes no exceptions. That unqualified text, together with the principle [*11] that statutes protecting public funds must be liberally construed in favor of the public, *Oriana House, Inc. v. Montgomery*, 108 Ohio St.3d 419, 2006-Ohio-1325, ¶ 13, 844 N.E.2d 323 (2006), makes it clear that no FFR is required to enforce the liability established by *R.C. 9.39*. In addition, both the Supreme Court and the Hamilton County Court of Appeals have recognized strict liability under the common law codified by *R.C. 9.39* in cases that did not involve FFRs. *Seward v. Nat'l Sur. Co.*, 120 Ohio St. 47, 7 Ohio Law Abs. 173, 165 N.E. 537 (1929); *State ex rel. Bolsinger v. Swing*, 54 Ohio App. 251, 23 Ohio Law Abs. 65, 6 N.E.2d 999 (1st Dist. 1936).

The State's Claims are not time barred

28. Although the Defendants generically pled statute of limitations as a defense to all the State's claims, they have waived that defense as to the State's Excess Compensation and Faithless Servant claims. A defendant asserting an affirmative defense must do more than simply plead it; he must also prove it when

the case comes on for resolution. The failure to do so waives the defense. [Gallagher v. Cleveland Browns Football Co.](#), 74 Ohio St. 3d 427, 1996-Ohio-320, 659 N.E.2d 1232. The Defendants have not made any argument or produced any evidence supporting their limitations defense to the Excess Compensation or Faithless Servant claims. They have therefore waived their statute of limitations defenses to the State's Excess Compensation and Faithless Servant claims.

29. The Defendants' argument that the State's claims are time barred by [R.C. 2901.13](#) is not well taken. That statute controls criminal prosecutions [*12] and does not apply in civil proceedings. [McKay v. Cutlip](#), 80 Ohio App. 3d 487, 493, 609 N.E.2d 1272 (9th Dist. 1992); [Prebble v. Hinson](#), 825 F. Supp. 185, 188 (S.D. Ohio 1993).

30. Defendants misconstrue [R.C. 2923.34\(J\)](#) in arguing that it limits the State's Corrupt Practices Act claims to contracts formed within five years of the assertion of those claims. [R.C. 2923.34](#) creates a civil cause of action for violations of [R.C. 2923.32](#), which in turn addresses "pattern[s]" of corrupt activity, rather than individual instances within a pattern. Hence when [R.C. 2923.34\(J\)](#) states that an action "may be commenced at any time within five years after the unlawful conduct terminates," it is speaking to an action addressing the pattern as a whole, rather than the individual acts constituting the pattern. The entire pattern is therefore cognizable if suit is brought within five years of the last illegal act in the pattern, even if the pattern started more than five years before the case is filed. See e.g. [Iron Workers Local Union v. Philip Morris, Inc.](#), 29 F. Supp.2d 801, 809-813 (N.D. Ohio 1998) (examining conduct going back to 1958 because the illegal conduct was still ongoing when the case was filed in 1997). The State's Corrupt Practices Act claim is based on the pattern of CEED contracts formed between September 5, 2008, and September 17, 2013. Several of those contracts were formed within five years of the assertion of the State's Corrupt Practices Act Claim in May [*13] of 2015. The State's Corrupt Practices Act Claim is therefore timely as to the entire pattern of CEED contracts.

31. Moreover, [R.C. 2923.34\(J\)](#) does not apply against the State. "The state, absent express statutory provision to the contrary, is exempt from the operation of a generally worded statute of limitations." [State, Dep't of Transp. v. Sullivan](#), 38 Ohio St.3d 137, 527 N.E.2d 798 (1988), *syllb. 1*. This case is being brought by the State: The Attorney General and ODE. [R.C. 2923.34\(J\)](#) makes

no "express statutory provision" for it applying to the State. [R.C. 2923.34\(J\)](#) therefore has no application here.

Valerie Lee and Judy McConnell are strictly liable for illegal disbursements of VLT's funds during their terms with VLT

32. "The legal principle is settled in this state that" public bodies, "in their financial transactions, are invested only with limited powers[.]" [State ex rel. Locher v. Menning](#), 95 Ohio St. 97, 99, 115 N.E. 571 (1916). "The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the" public body. *Id.* Consistent with that, public funds may "be disbursed *only by clear authority of law.*" [State ex rel. Smith v. Maharry](#), 97 Ohio St. 272, 119 N.E. 822, 15 Ohio L. Rep. 590 (1918), *syllb. 1*(emphasis added).

33. Ohio looks to public officials to enforce those principles and [*14] holds them strictly liable for violations occurring during their time in office. The liability of public officials is strict: "Over the years, [the Supreme Court] has held public officials liable for the loss of public funds, even though illegal or otherwise blameworthy acts on their part were not the proximate cause of the loss of public funds." [Cordray v. Internatl. Preparatory Sch.](#), 128 Ohio St. 3d 50, 2010-Ohio-6136, ¶27, 941 N.E.2d 1170 (quoting [State v. Herbert](#), 49 Ohio St.2d 88, 96, 358 N.E.2d 1090(1976)).

34. A public official is strictly liable for illegal disbursements of public funds during her term if she is directly involved in the receipt or collection of her office's public funds or supervises those who are directly involved in the receipt or collection of those funds. [Cordray](#), 128 Ohio St. 3d 50, 2010-Ohio-6136, ¶29, 941 N.E.2d 1170. An official is involved in the receipt or collection of public funds if he or she has authority over the bank accounts those funds are paid into or has the ability to withdraw those funds or write checks against them. [Ohio Attorney General v. The International Preparatory School](#), 2012 Ohio Misc. LEXIS 247 (Cuyahoga C.P.), ¶¶ 17-20; [DeWine v Scott \(In re Scott\)](#), 566 B.R. 471, 478 (Bankr. N.D. Ohio 2017).

35. Those principles are codified in [R.C. 9.39](#). [Cordray](#), 128 Ohio St. 3d 50, 2010-Ohio-6136, ¶29, 941 N.E.2d 1170.

36. An "officer, employee, or duly authorized representative of a community school is a public official." [Cordray, 128 Ohio St. 3d 50, 2010-Ohio-6136, ¶25, 941 N.E.2d 1170.](#)

37. The Court finds as a matter of fact that:

- VLT was a community school. *Stips*, ¶ 1.
- Valerie was an officer of VLT; she was its Chief Executive and Superintendent. *Stips*, ¶ 6.
- Valerie was an [*15] employee of VLT. *Stips*, ¶ 6.
- Valerie was an authorized representative of VLT; she was authorized to take money out of its bank accounts. *Stips*, ¶ 6.
- The State operating funds paid VLT pursuant to [R.C. 3314.08](#) were electronically transferred from ODE to VLT's account with Park National Bank, account No. 330904. *Stips*, ¶¶ 5, 4
- Valerie was a signatory on Park National Bank account No. 330904. *Stips*, ¶ 5.
- Valerie had authority to withdraw funds from Park National Bank account No. 330904 and wrote checks against that account. *Stips*, ¶ 5.

38. The Court therefore concludes that Valerie is strictly liable for all disbursements of VLT's funds that were not authorized by statute.

39. The Court finds as a matter of fact that:

- McConnell was an officer of VLT as its Treasurer/Business Manager from fiscal year 2008 through fiscal year 2012. *Stips*. ¶ 38.
- McConnell was an employee of VLT. *AG Complaint*, ¶ 139; *McConnell Answer*, ¶ 139.
- McConnell was an authorized representative of VLT; she was authorized to write money out of the bank account containing its public funds during fiscal years 2008, 2009, 2010, 2011 and 2012, and in fact wrote checks on that account during that time. *Stips*, ¶ 5.
- Fiscal 2008 began [*16] on July 1, 2007, and Fiscal 2012 ended on June 30, 2012. *Stips*, ¶ 7.

40. The Court therefore concludes that McConnell was strictly liable for all disbursements of VLT's funds that were not authorized by statute made between July 1, 2007, and June 30, 2012.

The CEED Contracts violated [R.C. 2921.42\(A\)\(4\)](#). [R.C. 2921.42\(H\)](#) therefore made \$1,694,973.84 in payments on those contracts illegal.

41. [R.C. 2921.42\(A\)\(4\)](#) prohibits a public official from having "*an interest in the... benefits of a public contract entered into by or for the use of the political subdivision with which the public official is connected*" (emphasis added). Undisputed facts establish that the CEED Contracts violated this provision.

42. The CEED Contracts were "public contracts for purposes of [R.C. 2921.42\(A\)\(4\)](#) for the reasons set out in paragraphs 43 through 46 below.

43. [R.C. 2921.42\(I\)\(1\)](#) states that a contract purchasing "services ... for the use of ... any ... political subdivisions" is a public contract.

44. The Court finds as a matter of fact that:

- The CEED Contracts each provided that they were for "janitorial services" provided to VLT. *Stips*, ¶ 22.
- The CEED Contracts were with VLT. *Stips*, ¶ 22.
- VLT was a community school community school organized under [R.C. Chapter 3314](#). *Stips*. ¶ 1.

45. As a community school VLT [*17] was a political subdivision. [State ex rel. Elec. Classroom of Tomorrow v. Cuyahoga Cry. Court of Common Pleas, 129 Ohio St. 3d 30, 2011-Ohio-626, ¶¶ 25-27, 950 N.E.2d 149.](#)

46. The CEED Contracts were therefore public contracts for purposes of [R.C. 2921.42\(I\)\(1\)](#) and [R.C. 2921.42\(A\)\(4\)](#).

47. Clyde and Valerie Lees were "public officials" for purposes of [R.C. 2921.42\(A\)\(4\)](#) for the reasons set out in paragraphs 48 through 51 below.

48. [R.C. 2921.01\(A\)](#) states that an "any... employee... of ... any political subdivision" is a public official.

49. The Court finds as a matter of fact that:

- Valerie was an employee of VLT during its entire existence. *Stips*, ¶ 6.
- Clyde became a VLT employee in July of 2008 and remained so through June 30, 2014. *Stips*, ¶ 21.

- VLT was a community school community school organized under [R.C. Chapter 3314](#). *Stips*, ¶ 1.

50. As a community school VLT was a political subdivision. [State ex rel. Elec. Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas, 129 Ohio St. 3d 30, 2011-Ohio-626, ¶¶ 25-27, 950 N.E.2d 149.](#)

51. Valerie and Clyde were therefore public officials for purposes of [R.C. 2921.01\(A\)](#) and [R.C. 2921.42\(A\)\(4\)](#).

52. Clyde and Valerie Lee each had "an interest in" the "benefits of the CEED Contracts for purposes of [R.C. 2921.42\(A\)\(4\)](#) for the reasons set out in paragraphs 53 and 57 below.

53. An official has an interest in a contract for purposes of [R.C. 2921.42\(A\)](#) if he has "an ownership interest in" the private party to the contract. [OH Eth. Op. 89-008 \(Ohio Ethics Comm.\), 1989 Ohio Ethics Comm. LEXIS 40, *7.](#)

54. The Court finds as a matter of fact that CEED was incorporated by Clyde Lee and that Clyde Lee was its sole [*18] shareholder. *Stips*, ¶ 21.

55. One also has an interest in the benefits of public contract for purposes of [R.C. 2921.42\(A\)](#) if she "receives a share of the contract's proceeds." [OH Eth. Op. 89-006 \(Ohio Ethics Comm.\), 1989 Ohio Ethics Comm. LEXIS 38, *6; OH Eth. Op. 89-008 \(Ohio Ethics Comm.\), 1989 Ohio Ethics Comm. LEXIS 40, *7.](#) Further, one has an interest in a contract if she has a "financial stake" or an "advantage accruing from" it. [OH Eth. Op. 93-008 \(Ohio Ethics Comm.\), 1993 Ohio Ethics Comm. LEXIS 42, **8-9.](#) Finally, one need not actually exercise her right to that stake or advantage, she need only have the right to draw on it. [1993 Ohio Ethics Comm. LEXIS 42 at *9.](#)

56. The Court finds as a matter of fact that:

- The money VLT paid pursuant to the CEED contracts was deposited in Fifth Third account No. 7021663013. *Stips*, ¶¶ 15, 22, 35.

- Valerie had the right to withdraw or transfer funds from that account and hence had an interest in the proceeds of the CEED contracts. *Stips*, ¶ 15.

57. Clyde and Valerie therefore had "an interest in... the benefits of the CEED contracts for purposes of [R.C. 2921.42\(A\)\(4\)](#).

58. No Defendant offered any briefing in support of the proposition that the CEED contracts were covered by [R.C. 2921.42\(B\)](#) or [\(C\)](#). At oral argument, counsel for the Lees and Echole Harris asserted for the first time that the State has the burden of disproving [*19] the applicability of [R.C. 2921.42\(B\)](#) or [\(C\)](#) and that the State had not met that burden. No authority was offered for the proposition that the State has the burden of proof, and the Ethics Commission has opined that an official seeking to invoke [R.C. 2921.42\(C\)](#) "must demonstrate compliance with all of [its] requirements." [OH Eth. Op. 93-008 \(Ohio Ethics Comm.\), 1993 Ohio Ethics Comm. LEXIS 42, *11.](#) The Court concludes that the Defendants had the burden of showing that the CEED Contracts fell within the provisions of [R.C. 2921.42\(B\)](#) and [\(C\)](#). The Defendants failed to meet that burden because they failed to come forward with any briefing or authority on those statutes' applicability here.

59. Regardless of who has the burden, undisputed facts preclude the application of [R.C. 2921.42\(B\)](#) and [\(C\)](#).

60. [R.C. 2921.42\(B\)\(3\)](#) makes [R.C. 2921.42\(B\)](#) as a whole inapplicable if the official owns more than five percent of the contracting companies outstanding shares.

61. The Court finds as a matter of fact that Clyde was "the sole shareholder of CEED, Inc." *Stips*, ¶ 21.

62. Clyde's ownership of more than five percent of CEED's outstanding shares precluded the application of [R.C. 2921.42\(B\)](#).

63. [R.C. 2921.42\(C\)\(3\)](#) makes [R.C. 2921.42\(C\)](#) as a whole inapplicable unless the "treatment accorded the political subdivision ... is either preferential to or the same as that accorded other customers [*20] or clients in similar transactions."

64. The Court finds as a matter of fact that CEED had no other customers or clients during the time the CEED contracts were in effect. *Stips*, ¶ 34.

65. The absence of other customers or clients prevents the showing required by [R.C. 2921.42\(C\)\(3\)](#) and hence the application of [R.C. 2921.42\(C\)](#) as a whole.

66. Clyde and Valerie each had interests in the CEED Contracts in violation of [R.C. 2921.42\(A\)\(4\)](#), making them void under [R.C. 2921.42\(H\)](#). That made any payments on the CEED Contracts unauthorized by statute.

67. The Court finds as a matter of fact that VLT paid CEED \$1,694,973.84 between September 20, 2008, and June 17, 2014 pursuant to the CEED Contracts. *Stips.* ¶ 35, entries from September 20, 2008 through June 17, 2014.

68. Valerie is strictly for the payments described in paragraph 67 above.²

The Echole Contracts violated [R.C. 2921.42\(A\)\(4\)](#). [R.C. 2921.42\(H\)](#) therefore made \$328,188.38 in payments on those contracts illegal.

69. [R.C. 2921.42\(A\)\(4\)](#) prohibits a public official from having "an interest in ... a public contract entered into by or for the use of the political subdivision with which the public official is connected" (emphasis added). Undisputed facts establish that the Echole Contracts also violated this provision.

70. The Echole Contracts were "public [*21] contracts" for purposes of [R.C. 2921.42\(A\)\(4\)](#) for the reasons set out in paragraphs 71 through 74 below.

71. [R.C. 2921.42\(I\)\(1\)\(a\)](#) states that a public contract is one that purchases "services ... for the use of ...any ...political subdivision[.]"

72. The Court finds as a matter of fact that:

- The Echole Contracts obtained her services in various capacities. *Stips.* ¶ 36.
- The Echole Contracts were with VLT. *Stips.* ¶ 36.
- VLT was a community school, and community schools are political subdivisions. *Stips.* ¶ 1; [State ex rel. Elec. Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas, 129 Ohio St. 3d 30, 35, 2011-Ohio-626, 950 N.E.2d 149, ¶¶ 25-27.](#)

73. The Echole contracts were therefore public contracts for purposes of [R.C. 2921.42\(A\)\(4\)](#) and [\(I\)\(1\)\(a\)](#).

74. Valerie was a "public official" for the reasons discussed in paragraphs 48 through 51 above.

75. Valerie Lee had "an interest in" the "benefits of" the Echole Contracts for purposes of [R.C. 2921.42\(A\)\(4\)](#) for the reasons set out in paragraphs 76 and 79 below.

76. One has an interest in the benefits of a public contract for purposes of [R.C. 2921.42\(A\)](#) if she "receives a share of the contract's proceeds." [OH Eth. Op. 89-006 \(Ohio Ethics Comm.\), 1989 Ohio Ethics Comm. LEXIS 38, *6; OH Eth. Op. 89-008 \(Ohio Ethics Comm.\), 1989 Ohio Ethics Comm. LEXIS 40, *7.](#) Further, one has an interest in the benefits of a contract if she has a "financial stake" an "advantage accruing from" it. [OH Eth. Op. 93-008 \(Ohio Ethics Comm.\), 1993 Ohio Ethics Comm. LEXIS 42, **8-9.](#) One need not [*22] actually exercise her right to that stake or advantage; she need only have the right to draw on it. [1993 Ohio Ethics Comm. LEXIS 42 at *9.](#)

77. The Court finds as a matter of fact that:

- Every paycheck VLT issued to Echole from May 23, 2008, through June 30, 2014, was directly deposited in Fifth Third Bank account No. 31082037. *Stips.* ¶¶ 16, 36, 27; *Deposition of Fifth Third Bank, Mark Bauknecht, Records Custodian,* filed June 14, 2017, pp. 36-73.
- Valerie was an owner of Fifth Third Bank account No. 31082037. *Stips.* ¶¶ 16, 36, 27; *Deposition of Fifth Third Bank, Mark Bauknecht, Records Custodian, filed June 14, 2017, pp. 36-73.*

78. Valerie therefore had an interest in the Echole Contracts for purposes of [R.C. 2921.42\(A\)\(4\)](#).

79. The Defendants had the burden of showing that the Echole Contracts fit within [R.C. 2921.42\(B\)](#) and [\(C\)](#), as discussed in paragraph 58 above. They did not address those statutes in their briefing and did not present any authority for their assertions about those statutes in oral argument. They therefore failed to meet their burden.

80. Valerie each had interests in the Echole Contracts in violation of [R.C. 2921.42\(A\)\(4\)](#), making them void under [R.C. 2921.42\(H\)](#). That made any payments on the Echole Contracts unauthorized by statute.

81. The Court finds as a matter of fact [*23] that VLT paid Echole \$328,188.38 between May 23, 2008 and June 30, 2014, pursuant to the Echole Contracts. *Stips.* ¶ 37.

²The State is only seeking to recover payments made on CEED contracts formed after September 30, 2007, the effective date of [R.C. 2921.42\(H\)](#). The first contract CEED formed after that date was formed on September 5, 2008. "Contract between VLT and CEED, dated Sept. 5, 2008," JS pp. 1635-1639. The State therefore only seeks recovery based on payments made after that date.

82. Valerie is strictly liable for all those payments, jointly and severally with Echole.

83. McConnell is strictly liable for those payments, jointly and severally with Valerie and Echole, to the extent of the \$222,195.07 paid on them between May 23, 2008, and June 30, 2012.

Valerie Lee and Judy McConnell are not strictly liable what the State characterizes as excessive compensation

84. The Ohio Attorney General has alleged that VLT paid Valerie Lee \$145,020.31 and Judy McConnell \$92,635.15 in excess compensation. This claim is rejected. The Court can find no law that supports this claim.

Echole Harris is also liable for the \$328,188.38 paid her pursuant to the Echole Contracts.

85. Payments made pursuant to contracts violating [R.C. 2921.42](#) may be recovered from the recipients. That is true for at least two independently sufficient reasons.

86. First, that conclusion is warranted by the language of [R.C. 2921.42](#) and a related statute. [R.C. 2921.42\(H\)](#) states that "[a]ny public contract in which a public official, a member of the public official's family, or any of the public official's business associates has [*24] an interest in violation of this section is void and unenforceable" (emphasis added). Courts of last resort construing statutes making such conflicted contracts "void" consistently hold that public funds paid pursuant to those contracts can be recovered from the recipient. See e.g. [Arthur v. Trindel](#), 168 Neb. 429, 96 N.W.2d 208, 210 (Neb. 1959); [Sioux Falls Taxpayers Ass'n v. City of Sioux Falls](#), 69 S.D. 93, 7 N.W.2d 136, 140 (S.D. 1942); [City of Bangor v. Ridley](#), 117 Me. 297, 104 A. 230, 231 (Me. 1918); [Indep. Sch. Dist. No. 5 v. Collins](#), 15 Idaho 535, 98 P. 857, 858 (Id. 1908). In addition, [R.C. 102.08\(B\)](#) implicitly recognizes the existence of civil liability under [R.C. 2921.42](#) by immunizing officials from that liability in some circumstances.

87. Second, "[R.C. 2307.60\(A\)\(1\)](#)", by its plain and unambiguous terms, creates a statutory cause of action for damages resulting from any criminal act. The wording chosen by the Ohio General Assembly is explicit[.]" [Jacobson v. Kaforey](#), 149 Ohio St. 3d 398, 2016-Ohio-8434, ¶10, 75 N.E.3d 203. [R.C. 2921.42](#) is a

criminal statute and VLT was damaged by payments made on contracts violating that criminal statute. Further, no provision of law "specifically except[s]" claims based on damages from violations of [R.C. 2921.42](#) from [R.C. 2307.60\(A\)\(1\)](#)'s general rule. Nothing in [R.C. 2921.42](#) makes such an exception. Defendants are incorrect in asserting that [R.C. 117.28](#) limits [R.C. 2307.60](#) because [R.C. 117.28](#) does not mention [R.C. 2307.60](#); it therefore does not "specifically except" any conduct from [R.C. 2307.60](#).

88. The Echole Contracts violated [R.C. 2921.42](#) and Echole received \$328,188.38 in payments pursuant to those contracts, as discussed in paragraphs 69-81 above. Echole is therefore [*25] liable to VLT for all those payments, jointly and severally with Valerie and McConnell. The liability of Valerie and McConnell described in this paragraph is the same as, and not in addition to, the liability described in paragraphs 82 and 83 above.

Valerie Lee and Clyde Lee have forfeited their right to the \$1,239,520.29 in compensation they received from VLT between January 1, 2008, and June 30, 2014, because they were violating the fiduciary duties to VLT during that time.

89. "An agent is entitled to no compensation for conduct which is disobedient or which is a breach of his duty of loyalty; if such conduct constitutes a willful and deliberate breach of his contract of service, he is not entitled to compensation *even for properly performed services*[" [Financial Dimensions, Inc. v. Zifer](#), 1999 Ohio App. LEXIS 5879 (1st. Dist.), *25 (emphasis added). That rule is known as the "faithless servant doctrine." "Clearly, the 'faithless servant doctrine' is a recognized rule of law in the state of Ohio which requires a disloyal and deceitful employee to forgo his compensation during such period of 'faithlessness.'" [Financial Dimensions, Inc.](#), 1999 Ohio App. LEXIS 5879 at *25; [Roberto v. Brown Cty. Gen. Hosp.](#), 59 Ohio App.3d 84, 86, 571 N.E.2d 467 (12th Dist.1989); [Buckingham, Doolittle & Burroughs, L.L.P. v. Bonasera](#), 157 Ohio Misc.2d 1, 2010-Ohio-1677, ¶¶ 53, 54, 926 N.E.2d 375 (Franklin C.P.). It applies "even though the conduct of the agent does not harm the principal, and even though the agent believes that his conduct is for the benefit [*26] of the principal and that he is justified in so acting." [Restatement \(Second\) of Agency, § 469, cmt. a](#). "[S]pecific intent to defraud is not necessary to render an employee's misconduct sufficient to warrant the forfeiture of compensation." *Application of the*

"Faithless Servant Doctrine, 24 A.L.R.6th 399 (2007), § 2. A "principal is entitled to recover from his unfaithful agent any [compensation already] paid by the principal." Phansalkar v. Andersen Weinroth & Co., L.P., 344 F.3d 184, 200 (2d Cir. 2003).

90. Although the faithless servant rule is most frequently applied to agents, it applies to other fiduciaries as well. See e.g. 19 C.J.S. *Corporations* § 626 ("As a general rule, a corporate officer forfeits all right to compensation which might otherwise be due when he or she breaches his or her fiduciary duty to the corporation."); Bogert, *The Law Of Trusts And Trustees* §§ 543(V), n. 9, 980.

91. Employees owe fiduciary duties to their employers. Restatement (Third) of Agency (2006), §1.01, Cmt. c.

92. It "is a well-worn, but no less true, statement of public policy that ... a public official is a fiduciary." State v. McKelvey, 12 Ohio St. 2d 92, 95, 232 N.E.2d 391 (1967).

93. Public officials are also agents for their public bodies. State ex rel. Taylor v. Pinney, 13 Ohio Dec. 210, 210-211 (Franklin Co. C.P. 1902)("public officials... are the agents of the public"); Cleveland E. Ry. v. Cleveland, 19 Ohio N.P. (n.s.) 577, 25 Ohio Dec. 467, 472 (Cuyahoga Co. C.P. 1906)("All public officers are agents, and their official powers are fiduciary").

94. Community schools' officials are fiduciaries of their schools. Bd. of Educ. of Theodore Roosevelt Pub. Cmty. Sch. v. Conners, 2014 Ohio Misc. LEXIS 91, *14 (Hamilton C.P.); Matter of John Hazelwood (Oh. Bd. of Ed. 2013), pp. 21-23; [*27] Matter of Jorethia Chuck (Oh. Bd. of Ed. 2014), pp. 32-34.

95. The Court finds as a matter of fact that:

- Valerie was an employee of VLT during the entire time VLT operated. *Stips*, ¶ 6.
- Valerie was VLT's superintendent during the entire time VLT operated. *Stips*, ¶ 6.
- Clyde was an employee of VLT from July 1, 2008, through June 30, 2014. *Stips*, ¶ 18.
- Clyde was VLT's project manager from July 1, 2008, through June 30, 2014. *Stips*, ¶ 18.
- VLT was a community School organized under R.C. Chapter 3314. *Stips*, ¶ 1.

96. As a community school VLT was a public school, a

public office, and a political subdivision. R.C. 3314.01(B); Cordray v. Internatl. Preparatory School, 128 Ohio St. 3d 50, 2010-Ohio-6136, ¶¶ 21-24, 941 N.E.2d 1170; State ex rel. Elec. Classroom of Tomorrow, 129 Ohio St. 3d 30, 2011-Ohio-626, ¶¶ 26-27, 950 N.E.2d 149.

97. Valerie and Clyde therefore owed fiduciary duties to VLT as employees, public officials, agents, and community school officials.

98. As fiduciaries of VLT, Valerie and Clyde had the "duty not to deal with [VLT] as ...an adverse party in a transaction connected with the agency relationship." Restatement (Third) Of Agency § 8.03 (2006). An agent acts adversely to his principal when he does business with the principal:

When an agent deals with the principal on the agent's own account, the agent's own interests are irreconcilably in tension with the principal's interests because the interest of each is furthered by action—negotiating [*28] a higher or a lower price, for example—that is incompatible with the interests of the other. If an agent acts on behalf of the principal in a transaction with the agent, the agent's duty to act loyally in the principal's interest conflicts with the agent's self-interest. Even if the agent's divided loyalty does not result in demonstrable harm to the principal, the agent has breached the agent's duty of undivided loyalty. *Id.* at Cmt. b.

That duty applies to agents of public bodies. Halliday v. Norfolk & Western Railway Co., 44 Ohio L. Abs. 208, 213-214, 62 N.E.2d 716 and Syll. 2 (Franklin Co. App. 1945).

99. The Court finds as a matter of fact that CEED was a for profit company organized and solely owned by CEED. *Stips*, ¶ 21.

100. The Court finds as a matter of fact that all money VLT paid CEED pursuant to the CEED Contracts went into bank accounts that Valerie owned or had the authority to withdraw funds from. *Stips*, ¶¶ 14, 15, 35.

101. Clyde and Valerie violated their fiduciary duty of loyalty to VLT with regard to the CEED Contracts. CEED was a for profit company, Clyde was its sole owner, and Clyde therefore had an interest in CEED striking the most profitable deal with VLT that he could.

That conflicted with VLT's interest in obtaining the services CEED provided at [*29] the lowest possible cost. Valerie shared that conflict; she too was a fiduciary of VLT, but all of the money VLT paid CEED went into either an account she co-owned or into her own account.

102. VLT could not ratify or otherwise absolve the Valerie and Clyde from their violations of their duty of loyalty. That is barred by statute. Those violations were based on their illegal interests in the CEED contracts, in violation of [R.C. 2921.42\(A\)\(4\)](#). [R.C. 3314.03\(A\)\(11\)](#) required VLT to comply with [R.C. 2921.42](#). VLT was therefore powerless to authorize violations of the statute. In addition, [R.C. 2921.42\(H\)](#) makes contracts violating the statute "void" and no one can effectively consent to or ratify a void contract. [Easley v. Pettibone Michigan Corp., 990 F.2d 905, 909 \(6th Cir.1993\)](#).

103. Ratification and absolution are also barred by agency law. Although a principal can consent to violations of fiduciary duties, other "bodies of law ... may impose additional limitations on the efficacy of a criminal's consent." [Restatement \(Third\) of Agency, §8.06](#) (2006), *cmt. b*. A principal has no ability to direct an agent to take actions violating the criminal law, [Restatement \(Third\) of Agency, §8.09](#) (2006), *cmt. c*. "A "private person may not excuse a criminal act" because "crime effects the overall security of the citizenry, not merely the interests of the immediate parties." Consistent with that, a "corporation's [*30] board of directors could not ratify [a] criminal act." [State v. Warner, 1989 Ohio App. LEXIS 4226 \(1st Dist.\)](#), ** 64, 65, 66, *aff'd in relevant respects, 55 Ohio St.3d 31, 65-66, 564 N.E.2d 18 (1990)*. The conduct at issue here was illegal; it violated [R.C. 2921.42](#), a criminal law. It therefore cannot be excused or ratified.

104. A fiduciary violating his/her duties forfeits compensation otherwise due during the "period of 'faithlessness.'" [Financial Dimensions, Inc. v. Zifer, 1999 Ohio App. LEXIS 5879 \(1st Dist.\)](#), *25; [Roberto v. Brown Cry. Gen. Hosp., 59 Ohio App.3d 84, 86, 571 N.E.2d 467 \(12th Dist.1989\)](#). In this case, the faithlessness began in December of 2007 (the first date the State can document that Valerie had the ability to access the funds paid CEED) and ended on June 30, 2014 (the date the last CEED Contract expired)(the "Period of Disloyalty").

105. The Court finds as a matter of fact that Valerie and

Clyde were, respectively, paid at least³ \$887,441.46 and \$352,078.83 during the Period of Disloyalty. VLT is entitled to recover all those funds.

Valerie Lee and Clyde Lee are jointly and severally liable for \$5,084,921.52 in damages under Ohio's Corrupt Practices Act.

106. [R.C. 2923.34\(A\)](#) gives any "person who is injured ... by a violation of [section 2923.32 of the Revised Code](#)" a right of civil recovery. [R.C. 2923.32\(A\)\(1\)](#) in turn provides that no "person employed by, or associated with, any enterprise shall ... participate in ... the affairs of the enterprise through a pattern of corrupt activity[.]" [R.C. 2923.34](#), when read together with [R.C. 2921.32](#) [*31], establishes six elements for recovery. The State has proven each element and done so by clear and convincing evidence, entitling VLT to treble damages under [R.C. 2923.34\(E\)](#).

107. The State's Corrupt Practices Act claim is brought on behalf of VLT. VLT was a "person" for purposes of [R.C. 2923.34\(A\)](#) for the reasons set out in the next three paragraphs.

108. [R.C. 2923.31\(G\)](#) states that government entities are "persons."

109. The Court finds as a matter of fact that VLT was a community school organized under [R.C. Chapter 3314. Stips, ¶ 1](#).

110. VLT was therefore a public office and political subdivision. [Cordray, 128 Ohio St. 3d 50, 2010-Ohio-6136, ¶¶ 20-24, 941 N.E.2d 1170](#); [Elec. Classroom of Tomorrow, 129 Ohio St. 3d 30, 2011-Ohio-626, ¶¶ 26-27, 950 N.E.2d 149](#). That made it a government entity and hence a "person" for purposes of [R.C. 2923.31\(G\)](#) and [R.C. 2923.34\(A\)](#).

111. The State's Corrupt Practices Act Claim is brought against Valerie Lee and Clyde Lee. They are "persons" for purposes of [R.C. 2923.32\(A\)\(1\)](#) for the reasons set out in the next three paragraphs.

112. [R.C. 1.59](#) and [R.C. 2923.31\(G\)](#) state that

³Both Valerie and Clyde were actually paid more than that. The State was only able to prove the amounts paid them during calendar years 2008 through 2014. The CEED contracts began in September of 2007, four months before those payroll records began.

individuals are persons.

113. The Court finds as a matter of fact that Valerie and Clyde are both individuals.

114. Valerie and Clyde are therefore "persons" for purposes of [R.C. 1.59](#), [R.C. 2923.31\(G\)](#), and [R.C. 2923.32\(A\)\(1\)](#).

115. Valerie Lee and Clyde Lee were "employed by" VLT and VLT was "an enterprise" for purposes of [R.C. 2923.32\(A\)\(1\)](#) for the reasons set out in the next five paragraphs.

116. The Court finds as a matter of fact that [*32] Valerie and Clyde Lee were both employed by VLT from at least July 1, 2008, through June 30, 2014. *Stips*, ¶¶ 3, 6, 18.

117, [R.C. 2923.31\(C\)](#) states that an enterprise includes government bodies.

118. The Court finds as a matter of fact that VLT was a community school organized under [R.C. Chapter 3314](#). *Stips*, ¶ 1.

119. VLT was therefore a public office and political subdivision. [Cordray, 128 Ohio St. 3d 50, 2010-Ohio-6136, ¶¶ 20-24, 941 N.E.2d 1170](#); [Elec. Classroom of Tomorrow, 129 Ohio St. 3d 30, 2011-Ohio-626, ¶¶ 26-27, 950 N.E.2d 149](#). That made it an "enterprise" within the meaning of [R.C. 2923.31\(C\)](#) and [R.C. 2923.32\(A\)\(1\)](#).

120. A plaintiff adequately pleads/proves an enterprise by pleading and proving the existence of one of the specified of recognized entities listed in the statute, so the State has met its burden on this point. See [In re Ins. Brokerage Antitrust Litig., 618 F.3d 300, 364 \(3d Cir. 2010\)](#); [Webster v. Omnitrition Int'l, 79 F.3d 776, 786 \(9th Cir. 1996\)](#).

121. Valerie and Clyde Lee each "participate[d] in, directly or indirectly, the affairs of the relevant "enterprise" for purposes of [R.C. 2923.32\(A\)\(1\)](#) for the reasons set out in the next three paragraphs.

122. That enterprise was VLT.

123. The Court finds as a matter of fact that Valerie participated in VLT's affairs in a number of ways:

- She was its superintendent. *Stips*, ¶ 6.
- She was an employee of VLT, and paid

\$870,961.47 for work done as a VLT employee. *Stips*, ¶¶ 6, 8.

- She was a signatory on VLT's bank account and wrote checks on that account. *Stips*, ¶ 5.

124. The Court finds as a matter [*33] of fact that Clyde participated in VLT's affairs in a number of ways:

- He was a VLT employee from July 1, 2008, through June 30, 2014, and was paid \$352,078.83 for work done as a VLT employee. *Stips*, ¶¶ 18, 19, 20.

- He was VLT's project manager. As such he represented VLT in transactions with local government, in purchasing, and in transactions with construction related vendors. *Stips*, ¶¶ 18, 19; See e.g. *Contract between VLT and Clyde Lee, dated July 1, 2008*, JS pp. 1609; *Project manager/building management director Primary-High School Academies—Job Description*, JS pp. 1615.

125. Valerie and Clyde Lee's participation in the affairs of VLT constituted a "pattern of corrupt activity" for purposes of [R.C. 2923.32\(A\)\(1\)](#) for the reasons set out in the next 11 paragraphs.

126. [R.C. 2923.31\(E\)](#) defines a "Pattern of corrupt activity" as "two or more incidents of corrupt activity ... that are *related to the affairs of the same enterprise*, are *not isolated*, and are *not so closely related to each other and connected in time and place that they constitute a single event*" (emphasis added). Each of those elements is present here.

127. Corrupt activity. [R. C. 2923.31\(I\)\(2\)\(a\)](#) identifies a violation of [R. C. 2921.42](#) as corrupt activity. Each of the CEED Contracts violated [*34] [R.C. 2921.42](#), as discussed at paragraphs 41 through 66 above.

128. The Court finds as a matter of fact that were six CEED Contracts formed between 2008 and 2013. *Stips*, ¶ 22.

129. Multiple violations of the same statute suffice to support a pattern of corrupt activity. [Ripley v. Montgomery, 2007-Ohio-7151 \(10th Dist.\) ¶ 34](#); [Baker v. Pfeifer, 940 F. Supp. 1168, 1181 \(S.D. Ohio 1996\)](#).

130. That corrupt activity was all related to the enterprise in question, VLT.

131. They incidents of corrupt activity were not so closely related in time to constitute a single event.

132. The Court finds as a matter of fact that each CEED contract covered a distinct period of time and each was signed at a distinct time. Each was approved by distinct votes at distinct board meetings. *Stips*, ¶¶ 26, 28, 29, 31, 32, 33.

133. Valerie and Clyde both engaged in that pattern.

134. The Court finds as a matter of fact that Clyde formed CEED and signed contracts with VLT on behalf of VLT. *Stips*, ¶ 21; Contract between VLT and CEED, dated Sept. 5, 2008, J.S. pp. 1639; Contract between VLT and CEED, dated August 4, 2009, JS pp. 1644; Contract between VLT and CEED, dated Sept. 7, 2010, JS pp.1649; Contract between VLT and CEED, dated July 1, 2011. p. 1654; Contract between VLT and CEED, dated August 25, 2011, JS pp. 1659; Contract between VLT [*35] and CEED, dated Sept. 17, 2013, J.S. pp. 1663.

135. The Court finds as a matter of fact that Valerie shared the proceeds of the CEED contracts paid by the public office they worked for. *Stips*, ¶¶ 15, 35.

136. The State has proven a "closed period" pattern of criminal activity by showing a pattern of past illegality of sufficient duration to indicate that it was not a series of isolated events. See *GICC Capital Corp. v. Tech. Fin. Grp., Inc.*, 67 F.3d 463, 466 (2d Cir. 1995); *United States v. Bergrin*, 650 F.3d 257, 267 (3d Cir. 2011). That dispenses with the need to prove a "continuing threat" of criminal activity.

137. VLT was "injured," for purposes of *R.C. 2923.34(A)*, by the violation of *R.C. 2923.32(A)(1)* described above for the reasons set out in the next two paragraphs..

138. The Court finds as a matter of fact that VLT paid out \$1,694,973.84 of its funds pursuant to the CEED contracts. *Stips*, ¶35, entries from Sept. 20, 2008 through June 17, 2017.

139. Those payments were illegal because the CEED contracts violated *R.C. 2921.42(A)(4)* and were hence void under *R.C. 2921.42(H)*, as discussed in paragraphs 41 through 66 above. That illegal disposition of VLT's funds constitutes injury for purposes of *R.C. 2923.34(A)*.

140. The State has proven its Corrupt Practices Act claim with stipulated facts. That is clear and convincing evidence within the meaning of *R.C. 2923.34(E)*. That justifies an award of treble damages [*36] under that statute.

141. All parties participating in a pattern of corrupt activity are jointly and severally liable. *TJX Cos., Inc. v. Hall*, 183 Ohio App.3d 236, 2009-Ohio-3372, 916 N.E.2d 862 (8th Dist.), ¶26.

142. Valerie Lee and Clyde Lee are therefore jointly and severally liable to VLT for \$5,084,921.52, three times the amount of the injury described above.

Judgments

143. In light of the foregoing, the Court ORDERS that judgment be and hereby is entered in favor of VLT and against Valarie Lee in the amount of \$6,132,071.24, based on:

 [Go to table1](#)

Valerie Lee's liability on the Corrupt Practices Act claim is joint and several with Clyde Lee's. Valerie Lee's liability on the payments on the Echole Contracts is joint and several with Echole Harris' for the entire amount of that claim and joint and several with McConnell for \$222,195.07.

144. In light of the foregoing, the Court further ORDERS that judgment be and hereby is entered in favor of VLT and against Clyde Lee in the amount of \$5,448,520.23, based on:

 [Go to table2](#)

Clyde Lee's liability on the Corrupt Practices Act Claim is joint and several with Valerie Lee's.

145. In light of the foregoing, the Court further ORDERS that judgment be and hereby is entered in favor of VLT and against Echole Harris in the amount of \$328,188.38, based on the payments she received pursuant to the Echole Contracts, as discussed at ¶¶ 43-47, 55-58 above. Echole Harris' liability is joint and several with Valerie Lee's for the full amount of those payments and joint and several with Judy McConnell's to the extent of \$222,195.07.

146. In light of the foregoing, the Court further ORDERS that judgment be and hereby is entered in favor of VLT and against Judy McConnell in the amount of \$222,195.07, based on her strict liability for payments made on the Echole Contracts. Judy McConnell's liability on all those claims is joint and several with Valerie Lee's. It is also joint and several with Echole

Harris' liability for payment on the Echole contracts.

147. Interest shall run on the judgments entered herein at the statutory rate from the date these Findings of Fact, Conclusions of Law and Judgments are filed with the Clerk of Courts.

148. All [*38] funds collected on the judgments entered herein shall be distributed in the manner required by [R.C. 3314.074](#).

149. Each party shall bear its own costs.

150. These Findings of Fact, Conclusions of Law, and Judgments dispose of all claims remaining in this case and this is a final judgment. The clerk shall serve notice of these Findings of Fact, Conclusions of Law and Judgments as required by [Civ. R. 58\(B\)](#).

IT IS SO ORDERED

3-26-18

Dated

/s/ Steven E. Martin

Judge, Martin

Table 1

VLT Payments on CEED Contracts

 [Go to table3](#)

Table 2

VLT Payments on Echole [*41] Contracts

 [Go to table4](#)

Table1 ([Return to related document text](#))

Claims	Amount
Strict Liability Claim for payments on CEED contracts/ Corrupt Practices Act ⁴	\$5,096,441.40
Strict Liability Claim for payments on Echole contracts	\$328,188.38
Faithless Servant Claim.	\$887,441.46
Total	\$6,132,071.24

Table1 ([Return to related document text](#))**Table2** ([Return to related document text](#))

Claim	Amount
Faithless Servant Claim	\$352,078.83
Corrupt Practices Act [*37] Claim	\$5,096,441.40
Total	\$5,448,520.23

Table2 ([Return to related document text](#))**Table3** ([Return to related document text](#))

Date	Amount paid by VLT to CEED	Deposited to CEED Account	Portion transferred to Valerie or Valerie's Account
12/19/2007	\$20,825.00	\$20,825.00	
1/30/2008	\$20,825.00	\$11,000.00	\$9,825 deposited in Valerie's Account
2/20/2008	\$20,825.00	\$9,000.00	\$11,825 deposited in Valerie's Account
3/31/2008	\$20,825.00	\$9,000.00	\$11,825 deposited in Valerie's Account
4/24/2008	\$20,825.00	\$9,000.00	\$11,825 deposited in Valerie's Account
5/27/2008	\$20,825.00	\$9,000.00	\$11,825 deposited in Valerie's Account
6/25/2008	\$20,825.00	\$20,825.00	\$11,825 Withdrawal by Valerie
6/18/2008	\$20,825.00	\$20,825.00	
7/18/2008	\$20,825.00	\$9,000.00	\$11,825 cash out, deposited in Valerie's Account
8/22/2008	\$20,825.00	\$9,500.00	\$11,325 cash out, deposited in Valerie's Account
9/20/2008	\$20,825.00	\$10,000.00	\$10,825 [*39] cash out, deposited in Valerie's

⁴ The liability on these claims overlaps. Valerie is strictly liable for the payments as a public official, and those payments are also one third of the Corrupt Practices Act Claim.

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Date	Amount paid by VLT to CEED	Deposited to CEED Account	Portion transferred to Valerie or Valerie's Account Account
10/28/2008		\$10,000.00	\$10,825 cash out, deposited in Valerie's Account
11/25/2008	\$20,825.00	\$10,000.00	\$10,825 cash out, deposited in Valerie's Account
12/26/2008	\$20,825.00	\$20,825.00	\$10,425 transferred to Valerie Account
12/19/2008	\$20,825.00	\$20,825.00	
1/30/2009	\$20,825.00	\$20,825.00	
1/31/2009			\$10,825 transferred to Valerie's Account
2/26/2009	\$20,825.00	\$15,285.00 [\$15,825.00]	\$5,000 cash out, deposited Valerie's Account
3/31/2009	\$20,825.00	\$20,825.00	
4/29/2009	\$20,825.00	\$20,825.00	
6/2/2009	\$20,825.00	\$20,825.00	\$10,985 to Valerie
7/15/2009	\$20,825.00	\$20,825.00	
8/14/2009	\$20,825.00	\$20,825.00	
8/14/2009	\$8,000.00	\$8,000.00	
9/15/2009	\$20,825.00	\$20,825.00	
10/15/2009	\$20,825.00	\$20,825.00	
11/16/2009	\$20,825.00	\$20,825.00	
12/11/2009	\$20,825.00	\$20,825.00	
1/14/2010	\$20,825.00	\$20,825.00	
2/12/2010	\$20,825.00	\$20,825.00	
3/15/2009	\$20,825.00	\$20,825.00	
4/14/2010	\$20,825.00	\$20,825.00	
5/14/2010	\$20,825.00	\$20,825.00	
6/14/2007	\$20,825.00	\$20,825.00	
7/16/2010	\$20,825.00	\$20,825.00	
9/13/2010	\$20,825.00	\$20,825.00	
[8/13/2010]			
9/15/2010	\$25,325.00	\$25,325.00	
10/15/2010	\$25,325.00	\$25,325.00	
11/15/2010	\$25,325.00	\$25,325.00	
12/9/2010	\$25,325.00	\$25,325.00	
1/14/2011	\$25,325.00	\$25,325.00	

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Date	Amount paid by VLT to CEED	Deposited to CEED Account	Portion transferred to Valerie or Valerie's Account
2/16/2011	\$25,325.00	\$25,325.00	
3/14/2011	\$25,325.00	\$25,325.00	
4/15/2011 [*40]	\$25,325.00	\$25,325.00	
5/13/2011	\$25,325.00	\$25,325.00	
6/16/2011	\$25,325.00	\$25,325.00	
7/13/2011	\$25,325.00	\$25,325.00	
8/15/2011	\$25,325.00	\$25,325.00	
9/16/2011	\$29,825.00	\$29,825.00	
10/13/2011	\$29,825.00	\$29,825.00	
11/10/2011	\$29,825.00	\$29,825.00	
11/14/2011	\$2,588.84		
12/15/2011	\$29,825.00	\$29,825.00	
1/12/2012	\$29,825.00	\$29,825.00	
2/13/2012	\$29,825.00	\$29,825.00	
3/15/2012	\$29,825.00	\$29,825.00	
4/11/2012	\$29,825.00	\$29,825.00	
5/14/2012	\$29,825.00	\$29,825.00	
6/15/2012	\$29,825.00	\$29,825.00	
7/16/2012	\$26,325.00	\$26,325.00	
8/16/2012	\$26,325.00	\$26,325.00	
9/13/2012	\$26,325.00	\$26,325.00	
10/12/2012	\$26,325.00	\$26,325.00	
11/15/2012	\$26,325.00	\$26,325.00	
12/14/2012	\$23,000.00	\$23,000.00	
1/16/2013	\$23,000.00	\$23,000.00	
2/15/2013	\$23,000.00	\$23,000.00	
3/15/2013	\$23,325.00	\$23,325.00	
4/16/2013	\$23,325.00	\$23,325.00	
5/16/2013	\$23,325.00	\$23,325.00	
6/14/2013	\$26,650.00	\$26,650.00	
7/9/2013	\$750.00	\$750.00	
7/15/2013	\$26,325.00	\$23,325.00	
8/15/2013	\$26,325.00	\$23,325.00	
9/16/2013	\$26,325.00	\$23,325.00	
10/16/2013	\$26,635.00	\$23,635.00	
11/14/2013	\$25,000.00	\$25,000.00	
12/16/2013	\$25,000.00	\$25,000.00	
1/16/2014	\$25,000.00	\$25,000.00	
2/13/2014	\$25,000.00	\$25,000.00	
3/12/2014	\$25,000.00	\$25,000.00	

Date	Amount paid by	Deposited to	Portion transferred to Valerie or Valerie's Account
	VLT to CEED	CEED Account	
4/14/2014	\$24,000.00	\$24,000.00	
5/19/2014	\$25,000.00	\$25,000.00	
6/17/2014	\$25,000.00	\$25,000.00	

Table3 ([Return to related document text](#))Table4 ([Return to related document text](#))

Date	Amount
5/23/2008	\$1,798.25
6/6/2008	\$1,798.25
6/20/2008	\$1,798.25
7/3/2008	\$1,798.25
7/18/2008	\$1,798.25
8/1/2008	\$1,798.25
8/15/2008	\$1,798.25
8/29/2008	\$1,542.02
8/29/2008	\$1,795.21
9/12/2008	\$1,947.24
9/26/2008	\$1,902.46
10/10/2018	\$1,902.46
10/24/2008	\$1,902.46
11/7/2008	\$1,902.46
11/21/2008	\$1,902.46
12/5/2008	\$1,902.46
12/19/2008	\$1,902.46
1/2/2009	\$1,909.63
1/16/2009	\$1,914.40
1/30/2009	\$1,903.70
2/13/2009	\$1,903.70
2/27/2009	\$1,903.70
3/13/2009	\$1,924.20
3/27/2009	\$1,924.20
4/10/2009	\$1,924.20
4/24/2009	\$1,924.20
5/8/2009	\$1,924.20
5/22/2009	\$1,897.45
6/11/2009	\$1,892.85
6/19/2009	\$1,892.85
7/16/2009	\$1,892.85
7/17/2009	\$1,892.85
7/31/2009	\$1,892.85
8/14/2009	\$1,701.25
8/28/2009	\$1,105.85
8/28/2009	\$1,371.29
9/16/2009	\$2,052.87
9/30/2009	\$2,172.34
10/16/2009	\$2,048.52
10/30/2009	\$2,048.52

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Date	Amount
11/16/2009	\$2,048.52
11/30/2009	\$2,048.52
12/16/2009	\$2,048.52
12/31/2009	\$2,048.52
1/15/2010	\$2,043.24
1/29/2010	\$2,193.07
2/16/2010	\$2,043.24
2/26/2010	\$2,043.24
3/16/2010	\$2,043.24
3/31/2010	\$2,043.24
4/16/2010	\$2,018.67
4/30/2010	\$2,043.24
5/14/2010	\$2,043.24
5/31/2010	\$2,048.24
6/16/2010	\$2,048.24
6/30/2010	\$2,048.24
7/16/2010	\$2,621.04
7/30/2010	\$2,684.32
8/16/2010	\$2,520.74
8/31/2010	\$2,706.34
9/16/2010	\$2,704.70
9/30/2010	\$2,704.70
10/15/2010	\$2,704.70
10/29/2010	\$2,704.70
11/16/2010	\$2,704.70
11/30/2010 [* 42]	\$2,704.70
12/16/2010	\$2,704.70
12/31/2010	\$2,704.70
1/14/2011	\$2,681.78
1/31/2011	\$2,708.75
2/16/2011	\$2,708.75
2/28/2011	\$2,708.75
3/16/2011	\$2,708.75
3/31/2011	\$2,708.75
4/15/2011	\$2,486.12
4/29/2011	\$2,708.75
5/16/2011	\$2,708.75
5/31/2011	\$2,708.75
6/16/2011	\$2,486.12
6/30/2011	\$2,708.75
7/15/2011	\$2,635.53
7/29/2011	\$2,408.53
8/16/2011	\$2,635.53
8/31/2011	\$2,590.64
9/16/2011	\$2,631.73
9/30/2011	\$2,561.09
10/14/2011	\$2,633.19
10/31/2011	\$1,995.71
11/16/2011	\$1,532.13
11/30/2011	\$2,543.91
12/16/2011	\$1,560.65

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Date	Amount
12/30/2011	\$2,387.94
1/13/2012	\$2,638.71
1/31/2012	\$2,638.71
2/16/2012	\$2,635.20
2/29/2012	\$1,952.41
3/16/2012	\$2,635.20
3/30/2012	\$2,635.19
4/16/2012	\$2,635.20
4/30/2012	\$2,635.20
5/16/2012	\$2,408.73
8/16/2012	\$2,635.19
8/31/2012	\$2,635.20
9/14/2012	\$2,635.20
9/28/2012	\$2,628.12
10/16/2012	\$2,626.62
10/31/2012	\$2,626.61
11/16/2012	\$2,633.67
12/3/2012	\$2,456.58
12/14/2012	\$2,456.58
12/31/2012	\$2,314.00
1/16/2013	\$2,212.70
1/31/2013	\$2,212.70
2/15/2013	\$2,212.71
2/28/2013	\$2,212.70
3/15/2013	\$2,131.45
3/29/2013	\$2,158.54
4/16/2013	\$2,212.70
4/30/2013	\$2,185.62
5/16/2013	\$2,188.96
5/31/2013	\$2,188.97
6/14/2013	\$2,972.30
6/28/2013	\$2,188.97
7/16/2013	\$2,313.82
7/31/2013	\$2,266.43
8/16/2013	\$2,259.67
8/30/2013	\$2,313.82
9/16/2013	\$2,323.97
9/30/2013	\$2,323.96
10/17/2013	\$2,323.97
10/31/2013	\$2,323.96
11/15/2013 [* 43]	\$2,215.44
11/29/2013	\$2,162.85
12/17/2013	\$2,312.70
12/31/2013	\$2,312.71
1/17/2014	\$2,316.77
1/31/2014	\$2,316.76
2/14/2014	\$2,316.77
2/28/2014	\$2,316.77
3/17/2014	\$2,080.62
3/31/2014	\$2,080.62
4/17/2014	\$2,080.62

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Date	Amount
4/30/2014	\$2,080.61
5/16/2014	\$2,080.62
5/30/2014	\$2,080.61
6/17/2014	\$1,982.54
6/30/2014	\$2,080.61

Table4 ([Return to related document text](#))

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