

IN THE DISTRICT COURT OF WASHINGTON COUNTY, OKLAHOMA

The State of Oklahoma on relation of
RUTH W. BROWN and DARLENE ESSARY,

Plaintiff,

vs.

EDWIN S. DUNAWAY, E. F. KINDSVATER, MILO L.
MARGENAU, W. A. FORREST, JOE HENTON, members
of the Board of City Commissioners of the
City of Bartlesville, Oklahoma; E. E. JONES,
Manager of the City of Bartlesville, Oklahoma;
E. R. CHRISTOPHER, MRS. LLOYD LYND, DR.
ELIZABETH CHAMBERLIN, DON KOPPEL, RUSSELL
BLACHLY, GEORGE COHRS and VIRGINIA LASLEY,

Defendants.

No. _____

P E T I T I O N

Comes now the plaintiff and for cause of action against the defendants and each of them, alleges and states:

1. That the City of Bartlesville is a municipal corporation, duly organized and existing as a City under and by virtue of the laws of this State and operating under a charter form of government.

2. That Relator Ruth W. Brown, is the duly appointed and qualified librarian of the public library and reading room of said City, and has been such librarian since prior to 1925. That Relator Darlene Essary is a duly appointed, qualified and acting member of the Board of Directors of the public library and reading room of said City, and is a resident tax payer thereof.

That the defendants Edwin S. Dunaway, E. F. Kindsvater, Milo L. Margenau, W. A. Forrest and Joe Henton are, and were prior to May, 1950, the duly qualified and acting members of the Board of City Commissioners of said City. That the defendant E. E. Jones is the duly qualified and acting manager of said City. That the defendants, E. R. Christopher, Mrs. Lloyd Lynd, Dr. Elizabeth Chamberlin, Don Koppel, Russell Blachly and George Cohrs, claim and pretend to be and constitute the Library Board of the public library and reading room of said City. That the defendant Virginia Lasley claims and pretends to be the librarian or acting librarian of the public library and reading room of said City, and as such, claims the right to the custody and possession of the books, records and appurtenances of said public library, and under such claim has the custody and possession thereof.

3. That during the year 1911, the City Council of said City decided to establish and maintain a public library and reading room in said City and pursuant to such decision enacted an ordinance in compliance with the statutes of the State of Oklahoma then in effect, being Chapter LXXI of the Wilson Revised Statutes of Oklahoma of 1903, as amended by Chapter 91 of the Session Laws of 1911, and have ever since maintained and operated a public library in compliance with the terms and conditions of said Statutes, which as amended are now found in Title 65, Chapter 4, Sections 71-80, both inclusive, of the Oklahoma Statutes of 1941. Said ordinance is found in Article VI, Sections 228 to 234, both inclusive, of the revised ordinances of the City of Bartlesville of 1924. That pursuant to said statutes and the ordinance of said City enacted pursuant to and in harmony with the terms of said Statutes, a Library Board consisting of six directors was created, said directors to hold office for a term of three years, one-third of whom should be appointed each year. That prior to the month of May, 1950, and at all times subsequent thereto, Relator Darlene Essary and Russell Davis, Richard Kane, Mrs. Effie Freiburger and Mrs. Olga Beecher, are and were the duly qualified and acting members of the Library Board of the public library and reading room of said City. That a vacancy exists in that one of the six members of said Library Board has vacated his office, leaving only the above named five members constituting said Board.

4. That on June 14, 1950, said City Commissioners enacted Ordinance No. 1453 of said City of Bartlesville, repealing said Article VI of the Revised Ordinances of 1924, and providing for a new Library Board to consist of six members to serve two years each, three of whom were to be appointed each year, and pursuant to said purported ordinance, the said Board of City Commissioners purported and attempted to appoint said defendants E. R. Christopher, Mrs. Lloyd Lynd, Dr. Elizabeth Chamberlin, Don Koppel, Russell Blachly and George Cohrs, as members of said Library Board, who now claim to have the right to exercise the powers and the duties of the Library Board of the public library of said City. Said Ordinance No. 1453 also provides that the Library Board thereby created and the members thereof shall be subject to removal at any time by the Board of Commissioners, without cause. Said Ordinance No. 1453 also provides that the librarian may be appointed with the approval of the Board of Commissioners and shall be subject to removal at any time by said Board of Commissioners.

5. That the maintenance and operation of said public library is in the interest of education and for the public welfare, and is a matter in which the State of Oklahoma has a sovereign interest, and hence is not a matter of purely municipal concern. That the Charter provisions of the said City do not conflict with the state laws with reference to the operation of public libraries of the cities of Oklahoma. That said Ordinance No. 1453 is in conflict with the state laws, 65 O.S. 1941, Sections 71-80, both inclusive, in that under the State Law the Library Board is to hold for terms of three years with two members of the Board to be appointed each year, and may be removed by the Mayor, by and with the consent of the City Commission, only for cause, to-wit, for misconduct or neglect of duty. Said Ordinance No. 1453 is also in violation of the said state law in that the Library Board has the power to appoint a suitable librarian and necessary assistants and fix their compensation without the approval of the Board of Commissioners or City Council, and alone has the power to remove such librarian.

6. That under the state law, the Library Board cannot be removed by the Board of City Commissioners without being given notice of proceedings to remove them and an opportunity to be heard. Said Mayor and City Council have not given the said Library Board notice of an intention to remove them or an opportunity to be heard, and consequently said Russell Davis, Richard Kane, Mrs. Effie Freiburger, Mrs. Olga Beecher and Darlene Essary have not been removed as members of said Library Board and are now the duly qualified and acting members thereof, and the purported appointment of said defendants E. R. Christopher, Mrs. Lloyd Lynd, Dr. Elizabeth Chamberlin, Don Koppel, Russell Blachly and George Cohrs, is without effect and void, and they have no right to exercise the powers and duties of said Library Board.

7. That said legally constituted Library Board has not removed or attempted to remove Relator Ruth W. Brown as such librarian. That on July 25, 1950, the defendants Edwin S. Dunaway, E. F. Kindsvater, Milo L. Margenau, W. A. Forrest and Joe Henton as the Board of City Commissioners, attempted to remove said Relator Ruth W. Brown as such librarian and notified her of such attempted removal, and defendants, acting in their respective capacities as purported members of the Library Board and as members of the Board of Commissioners, attempted to appoint the defendant Virginia Lasley as acting librarian and placed her in charge and custody of the books, records and appurtenances of said library. That Relator Ruth W. Brown objected to such attempted removal and has demanded of the defendants and each

of them that the custody of the books, records and appurtenances of said library be restored to her and that she be placed in possession thereof, but such demand has been denied. That the attempted removal of said Relator was and is illegal and void and the attempted appointment of said Virginia Lasley is likewise illegal and void.

8. That it is the plain legal duty of the defendants to deliver to said Relator Ruth W. Brown, the books, records and appurtenances of said library and to desist from interfering with her exercising the powers and duties as such librarian. That Relators have no plain, speedy and adequate remedy at law.

WHEREFORE, plaintiff prays judgment against the defendants and each of them, adjudging and decreeing that said Ordinance No. 1453 is null and void insofar as it is in conflict with the state law aforesaid; that the attempted appointment of the defendants E. R. Christopher, Mrs. Lloyd Lynd, Dr. Elizabeth Chamberlin, Don Koppel, Russell Blachly and George Cohrs, as members of the Library Board is null and void; that the said Relator Darlene Essary and Russell Davis, Richard Kane, Mrs. Effie Freiburger and Mrs. Olga Beecher are duly qualified and acting members of the Library Board of the public library of said City; that Relator Ruth W. Brown is the duly appointed and qualified librarian of the public library of said City, and is entitled to the custody and possession of the books, records and appurtenances of said library, and is also entitled to the emoluments as such librarian; and that an alternative writ of mandamus issue herein requiring the defendants to show cause why they should not deliver and cause to be delivered to Relator Ruth W. Brown, the books, records and appurtenances of said library, and that upon a final hearing, a peremptory writ of mandamus issue accordingly, and that plaintiff have such other and further relief to which it is justly entitled, together with the costs of this cause.

HURST & HURST

By _____
Attorneys for Plaintiff

STATE OF OKLAHOMA)
) SS
COUNTY OF WASHINGTON)

Ruth W. Brown, being first duly sworn, upon oath states that she is one of the Relators in the above and foregoing Petition; that she has read said Petition, knows the contents thereof, and the matters and things therein stated are true.

Subscribed and sworn to before me this _____ day of September, 1950.

My Commission Expires: _____
Notary Public