

Cite as 626 F.Supp. 459 (M.D.Tenn. 1985)

sy—i.e., religious beliefs. The alternative to this system would require either blanket accession to any employee claiming subjective religious imperatives—and not merely with regard to leaves of absence—or some kind of case by case decision making, with all of the obvious burdens such would entail. The present system has evolved out of collective bargaining at which plaintiff, as a union member, was represented. There is no evidence that his religious views have been stigmatized by this process. Indeed, he was permitted to observe his religious holidays, albeit under the guise of a personal day. (This Court recognizes that plaintiff was thereby deprived of a day's leave that he might have used otherwise; but such imposition is minimal under the circumstances.) There is no evidence, for example, that plaintiff has lost a day's pay, been threatened with termination or faced any kind of retaliation or more than the most indirect pressure from defendant. Whatever minimal infringement on plaintiff's free exercise of religion might be discernible on the facts of this case, it cannot be said to rise to the level of a Constitutional violation.<sup>3</sup>

Plaintiff's claim under the establishment clause is similarly without merit. Although he refers to the establishment clause in his Amended Complaint and refers loosely in the plural to religious freedoms in his memoranda, he never articulates a basis for his claim. He does not assert, for example, that a particular religion is being advanced or suppressed by defendant's actions. Whatever the case may be, it is clear from the facts that defendant's action is not a "purposeful or surreptitious effort to express some kind of governmental advocacy of a particular religious message." *Lynch v. Donnelly*, 465 U.S. 668, 104 S.Ct. 1355, 1363, 79 L.Ed.2d 604 (1984). It is more accurately stated that "whatever benefit to one faith or reli-

gion or to all religion," is involved in defendant's application of the cba to plaintiff, "is indirect, remote and incidental." *Id.* at 1364.

Plaintiff has not vigorously pursued the equal protection argument found in the second cause of action of his Amended Complaint. Because this Court has found plaintiff's First Amendment claims without merit, his equal protection claim—subject as it is to a less stringent standard of review in this situation—must similarly be denied. See *McGovern v. Maryland*, 366 U.S. 420, 425–26, 81 S.Ct. 1101, 1104–05, 6 L.Ed.2d 393 (1961).

Accordingly, it is hereby ORDERED that plaintiff's motion for summary judgment is denied and that defendant's motion for summary judgment of dismissal is granted.



**AMERICAN NATIONAL FIRE  
INSURANCE COMPANY,  
Plaintiff,**

v.

**James C. CHICK, Defendant.**

**Civ. A. No. 3:85-0561.**

United States District Court,  
M.D. Tennessee,  
Nashville Division.

May 16, 1985.

Addressing its jurisdiction, the District Court, Neese, Senior District Judge, sitting by designation and assignment, held that: (1) Declaratory Judgment Act did not serve as required independent basis of federal ju-

3. It should be noted that *Ronald Philbrook v. Ansonia Board of Education, et al.*, 757 F.2d 476 (2d Cir.1985), a similar case brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, and the First Amendment, does not hold to the contrary. One of various factors

distinguishing that case from the matter at bar was the offer by plaintiff (also a school teacher) to take the dates at issue in that case as personal days or, alternatively, to pay the school district the full cost of a substitute teacher rather than be docked a pro rata share of his salary.

isdiction, and (2) complaint was insufficient to invoke court's diversity jurisdiction.

Dismissed.

### 1. Declaratory Judgment ⇐272

Federal Declaratory Judgment Act, 28 U.S.C.A. § 2201 et seq., was only procedural in nature and did not serve as required independent basis of federal jurisdiction.

### 2. Federal Courts ⇐314

Conclusory allegations that plaintiff and defendant were citizens of different states were insufficient to invoke district court's diversity jurisdiction; plaintiff alleged that its principal place of business was in Ohio, but failed to allege state or states by which it had been incorporated so as to satisfy requirements of 28 U.S.C.A. § 1332(a)(1).

### 3. Federal Courts ⇐317

Because complaint's allegations were insufficient to establish diversity of citizenship, court was not at liberty to assume existence in fact of its jurisdiction.

### 4. Federal Civil Procedure ⇐650

Fed.Rules Civ.Proc.Rule 8(a)(2) 28 U.S.C.A. does not sanction setting-out in complaint of detailed accounting of all facts or theory on which plaintiff's claim is based.

Arthur McClellan, McClellan, Powers & Ehmling, Gallatin, Tenn., for plaintiff.

James C. McBroom, Finch & McBroom, Nashville, Tenn., for defendant.

## MEMORANDUM OPINION, ORDER, ALLOWANCE AND STAY

NEESE, Senior District Judge, Sitting by Designation and Assignment.

[1] The plaintiff undertook to invoke the limited jurisdiction of this Court on two grounds. One was under " \* \* \* the terms and provisions of 28 U.S.C. § 2201 \* \* \* ." This is a section of the federal Declaratory Judgment Act; it is only procedural in nature and does not serve as a required independent basis of federal jurisdiction, *Skelly*

*Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671, 70 S.Ct. 876, 878, 94 L.Ed. 1194 (1950).

[2] The other ground of jurisdiction alleged was on the basis of the purported diverse citizenships of the respective parties hereto and the matter in controversy. The plaintiff alleged in conclusory fashion *inter alia* that " \* \* \* the original [sic] [p]laintiff and [d]efendant are citizens of different states \* \* \* ."

This is insufficient. In such a situation, the *facts* which, in legal intendment, constitute the respective citizenships of the parties must " \* \* \* be distinctly and positively averred. \* \* \* " *Robertson v. Cease*, 7 Otto (97 U.S.) 646, 649-650, 25 L.Ed. 1057, 1058 (1878).

The plaintiff alleged distinctly and positively that its principal place of business is in Ohio, but it did not so allege the state or states by which it has been incorporated. This Court's jurisdiction in such a case is limited, as follows:

"The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$10,000 exclusive of interest and costs, and is between— \* \* \* citizens of different states."

28 U.S.C. § 1332(a)(1).

"For the purposes of this section \* \* \* , a corporation shall be deemed a citizen of any State by which it is incorporated and of the State where it has its principal place of business \* \* \* ."

28 U.S.C. § 1332(c).

[3] The allegations of the plaintiff aforementioned being defective, this Court is not at liberty to " \* \* \* assume the existence [in fact] of [its] jurisdiction \* \* \* [for] without a finding that there is federal jurisdiction over a particular claim for relief the federal courts are without power to proceed. \* \* \* " *Memphis Am. Fed. of Tchrs., L. 2032 v. Bd. of Ed.*, 534 F.2d 699, 701[1] (6th Cir.1976), citing *Ex parte McCardle*, 7 Wall. (74 U.S.) 506, 514, 19 L.Ed. 264, 265 (1868). It is " \* \* \* mandatory for a court to inquire [*sua sponte*] into its subject matter jurisdiction. \* \* \* "

Cite as 626 F.Supp. 461 (N.D.Ill. 1985)

*Rauch v. Day & Night Mfg. Co.*, 576 F.2d 697, 699, n. 1 (6th Cir.1978).

[4] (Apart from the foregoing, the plaintiff has not made " \* \* \* a short and plain statement of the claim showing that [it] is entitled to relief \* \* \*." Rule 8(a)(2), F.R.Civ.P. That Rule does not sanction the setting-out in the complaint of a detailed accounting of all the facts or theory on which the plaintiff's claim is based. *Taylor v. Nichols*, 409 F.Supp. 927, 932[4] (D.C.Kan.1976), *judg. aff'd.*, 558 F.2d 561 (10th Cir.1977).)

It appearing that this Court lacks jurisdiction of the subject-matter hereof under the present defective allegations of the plaintiff, this action hereby is

DISMISSED. Rule 12(h)(3), F.R.Civ.P. However: "Defective allegations of jurisdiction may be amended, upon terms, in the trial \* \* \* Court." 28 U.S.C. § 1653.

On the condition \* that the complaint herein is amended properly within 10 days herefrom, *id.*, if the facts permit, to invoke properly the subject-matter jurisdiction of this Court, such amendment(s) will be considered; this order of dismissal hereby is STAYED for 10 days to allow such.



**COMMUNITY CONSOLIDATED SCHOOL DISTRICT NO. 59, an Illinois municipal corporation, Plaintiff,**

v.

**UNITED STATES FIDELITY AND GUARANTY COMPANY, Defendant.**

No. 85 C 328.

United States District Court,  
N.D. Illinois, E.D.

May 22, 1985.

School district brought action against surety to recover on bond executed in con-

\* (The complaint should be redrafted in compli-

nection with construction project. Surety moved for dismissal or stay on grounds that suit was duplicative of state court proceeding. The District Court, Grady, J., held that school district's action would be stayed pending outcome of state court proceedings.

Order accordingly.

**Federal Courts** ←62

Abstention was warranted and school district's action against surety to recover on bond executed in connection with construction project would be stayed pending outcome of state suits, where at least one of state suits involved issues identical to those in federal suit, first case relating to matter was filed in state court six months before federal suit was filed, federal suit was early stage, in that complaint had not yet been answered, case involved exclusively state law claims, and it appeared school district seemed to be bypassing obvious party, the contractor, in order to obtain jurisdiction in case duplicative of already pending state case in which contractor was party and in which all parties' claims could be fully adjudicated.

John A. Relias, Gwenda M. Burkhardt, Vedder, Price, Kaufman & Kammholz, for plaintiff.

Lawrence R. Moelmann, Eric Blomquist, Hinshaw, Culbertson, Moelmann, etc., for defendant.

**MEMORANDUM OPINION**

GRADY, District Judge.

This case is before us on the motion of defendant United States Fidelity & Guaranty Co. ("USF & G") to stay or dismiss plaintiff's complaint because plaintiff's suit is duplicative of litigation now pending in

ance with Rule 8(a)(2), *supra.*)