

Filing # 95832387 E-Filed 09/17/2019 01:19:18 PM

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.:
DIVISION:

THE SCHOOL BOARD OF DUVAL
COUNTY, FLORIDA, and
DUVAL TEACHERS UNITED,

Plaintiffs,

v.

CITY OF JACKSONVILLE,

Defendant.

**EMERGENCY COMPLAINT FOR DECLARATORY JUDGMENT,
A WRIT OF QUO WARRANTO, AND ANCILLARY INJUNCTIVE RELIEF**

Plaintiffs, The School Board of Duval County, Florida (the "School Board") and Duval Teachers United ("DTU") (collectively "Plaintiffs"), under Florida Rules of Civil Procedure 1.100 and 1.110, sue the City of Jacksonville ("City") for declaratory and ancillary injunctive relief.

INTRODUCTION

1. The Duval County School District is one of the oldest school districts in Florida. Unfortunately, its schools and facilities are some of the oldest in the state as well. Many schools that were built long ago to segregate African-American children are still in use and are in deplorable condition. Unlike other counties in Florida, Duval County does

not impose impact fees on development. Thus, the amount of money available to the School Board to maintain existing schools and to renovate or build new schools is largely dependent upon state capital funding, which has declined over the years.

2. Many of the district's schools are in desperate need of maintenance, repair, renovation, and, in some cases, replacement to keep students safe and make the educational environment conducive to learning. Presently, this cannot be accomplished due to a severe lack of funding.

3. In the spring of 2019, the School Board took action to address this crisis. After deliberation, debate, and community input, it passed a resolution ("Resolution") pursuant to Section 212.055(6), Florida Statutes, to place a statement before the voters of Duval County in a referendum election to let the voters decide whether to assess a one-half cent school capital outlay surtax, which would raise funds for capital improvements ("School Capital Surtax").

4. Section 212.055(6) provides that when the School Board takes such action and passes such a resolution, the statement "**shall** be placed on the ballot by the governing body of the county" (emphasis added), which is the City of Jacksonville.

5. Despite its mandatory duty, the City of Jacksonville, through the City Council, has refused to put the School Capital Surtax on the ballot.

6. The City of Jacksonville's failure to place the School Capital Surtax before the voters is contrary to a plain reading of the statute and relies on a fundamental misapprehension of its power vis-à-vis the School Board.

JURISDICTION, VENUE, AND PARTIES

7. Plaintiff School Board is the constitutionally established school board for Duval County, Florida. *See* Art. IX, § 4, Fla. Const.

8. Plaintiff DTU is an employee organization certified by the Florida Public Employees Relations Commission as the exclusive representative for purposes of bargaining for United Office Personnel of Duval, classroom teachers, and paraprofessionals who are employees of Duval County Public Schools. The DTU is responsible for bargaining for Duval County Public School employees within each of those units with respect to wages, hours, and terms and conditions of employment.

9. Defendant City of Jacksonville is a municipal corporation. Art. 1, § 1.101, Jacksonville City Charter. All legislative powers of the City of Jacksonville are vested in the City Council as the governing body of Duval County. *Id.* at § 5.07. The City, acting through its City Council, is a proper party under Section 86.091, Florida Statutes.

10. All conditions precedent to the bringing of this action have occurred, been performed, or been waived. In particular, Jacksonville Ordinance Sec. 108.503 does not apply as this is not litigation between "agencies," and even if it were, the City cannot by

ordinance limit the School Board's rights provided by the Florida Constitution and Florida Statutes.

11. This Court has jurisdiction under Sections 26.012, 86.011, 86.021, and 86.051, Florida Statutes.

12. Venue is properly in this Court pursuant to Section 47.011, Florida Statutes.

GENERAL ALLEGATIONS

The School Board Is Established and Protected by the Florida Constitution

13. The School Board is a governmental agency of the State of Florida. The School Board existed long before the formation of Jacksonville's consolidated government in 1968. Indeed, unlike some-forty or more boards and commissions created by the City of Jacksonville and its authorities, the School Board is a constitutionally established entity and is the subject of literally hundreds of pages of state general statutes.

14. Since the Constitution of 1885, the Constitutions of the State of Florida have established a uniform statewide system of free public schools. The Florida Constitution provides, "Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education" Art. IX, § 1, Fla. Const.

15. The public education system established by Article IX of the Florida Constitution provides for governance by the state Board of Education, which "shall be a body corporate and have such supervision of the system of free public education as is

provided by law.” Art. IX, § 2, Fla. Const. Within the state education system, each county constitutes a school district that is administered by an elected school board. Florida law requires, “The district school system shall be considered as a part of the state system of public education.” § 1001.32(1), Fla. Stat. To that end, “All actions of district school officials shall be consistent and in harmony with state laws and with rules and minimum standards of the state board.” § 1001.32(1), Fla. Stat.

16. The Florida Constitution gives district school boards all necessary power to “operate, control and supervise all free public schools within the school district.” Art. IX, § 4(b), Fla. Const.

17. In accordance with this Constitutional provision, the Florida Legislature has given the School Board extensive and comprehensive powers and duties. Florida Statutes provide that the School Board “shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.” § 1001.32(2), Fla. Stat. This includes the right to employ counsel, sue and be sued, establish, organize and operate schools, eliminate and consolidate schools, and oversee school facilities, including approving plans for constructing, maintaining, protecting, and condemning school property. § 1001.41–.43, Fla. Stat.

18. Further, the School Board, with the superintendent,¹ must prepare and approve plans regarding school facilities, including school construction, maintenance, repairs, and renovations. *See* §§ 1001.51(2), (10), Fla. Stat.; Ch. 1013, Fla. Stat. Pursuant to Section 1001.42(11), the School District is required to approve and adopt a districtwide school building program which includes purchasing school sites for construction of schools, expanding existing sites, supervising school construction, contracting for additions, alterations, and repairs of school buildings and properties, and insuring that all buildings provide for the safety and well-being of students.

19. The School Board is required to “[p]rovide adequately for the proper maintenance and upkeep of school plants, so that students may attend school without sanitary or physical hazards, and provide for the necessary heat, lights, water, power and other supplies and utilities necessary for the operation of the schools.” § 1001.42(11)8.(c), Fla. Stat.

20. To fund school capital outlay projects, the Florida Legislature has granted the School Board the power to levy a discretionary sales surtax. *See* § 212.055(6), Fla. Stat. Section 212.055(6) provides:

(6) School capital outlay surtax.

(a) The school board in each county may levy, pursuant to resolution conditioned to take effect only upon approval by a

¹ Notably, Superintendent Dr. Diana Greene (“Superintendent”) is also a Constitutional officer. *See* Art. IX., § 5, Fla. Const.

majority vote of the electors of the county voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent.

(b) The resolution shall include a statement that provides a brief and general description of the school capital outlay projects to be funded by the surtax. The statement shall conform to the requirements of s. 101.161 **and shall be placed on the ballot by the governing body of the county.**

§ 212.055(6)(a)–(b), Fla. Stat. (emphasis added).

Duval Teachers United

21. DTU, as the bargaining representative for the United Office Personnel of Duval, classroom teachers, and paraprofessionals, is responsible for negotiating working conditions on behalf of those employees. DTU has a responsibility to those employees to ensure their working conditions are safe, adequate, appropriate learning environments for teachers, support staff, and students. The grave continuing problems related to functional safe facilities in Duval County Public Schools has caused disruption to the ability of the members of DTU's bargaining units to perform their duties for Duval County's public-school students. Delay in placing the proposed sales surtax on the ballot for consideration by voters delays efforts to remedy these problems that members of DTU's bargaining units face daily in reporting to the facilities where they work. This delay has a direct effect on the working conditions of members of DTU's bargaining units. It also inhibits the Duval County School District's ability to negotiate in good faith for

working conditions with DTU as the district does not have the financial ability to improve conditions without the proposed sales surtax.

22. DTU is also responsible for negotiating the wages of Duval County Public School Employees. State law has mandated salary increases based partially on student performance. The inability to improve and retrofit facilities to keep up with educational best practices as they relate to technology and to have the highest level of learning in Duval County Public Schools, directly affects student growth and gains. This lack of growth directly affects the wages of members in the DTU. Further, many members in the DTU are taxpayers and citizens of Duval County.

The Consolidated City of Jacksonville

23. As stated in the City Charter, the Consolidated City of Jacksonville consists of the “county government of Duval County, the municipal government of the City of Jacksonville, the Duval County Air Improvement Authority, the east Duval County Mosquito Control District, the northeast Duval County Mosquito Control District, and all boards, bodies, and officers thereof ...” Art. 1, § 1.101, Jacksonville City Charter. The enumerated entities are “consolidated into a single government which may exercise any and all powers of the county and the several municipalities.” Art. VIII, § 3, Fla. Const.

24. As a charter government, the Consolidated City of Jacksonville has “all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.” Art. VIII, § 1(g), Fla. Const. It may enact county

ordinances, but such ordinances must not be “inconsistent with general law,” Art. VIII, § 1(g), Fla. Const., including Florida law providing that the School Board may procure for itself “the provision of legal services for the district school board.” § 1001.43(10), Fla. Stat.

25. The Charter establishes that Office of General Counsel is a “central service” that has “the responsibility for furnishing legal services to the city and its independent agencies.” Art. 7, § 7.01, Jacksonville City Charter. The School Board, as a matter of comity and efficiency, has often utilized the city’s central services, including services of the Office of General Counsel. But the Charter does not abrogate the right of the School Board to exercise the power provided in Section 1001.41, Florida Statutes, to procure “legal services” or to “contract, sue, and be sued.”

26. Section 7.02 of the Charter provides that the General Counsel is the chief legal officer for the consolidated government of Jacksonville and that his legal opinion regarding consolidated government issues is binding “unless and until it is overruled or modified by a court of competent jurisdiction or an opinion of the Attorney General of the State of Florida dealing with a matter of solely state law.” Art. 7, § 7.02, Jacksonville City Charter. Of course, the General Counsel’s opinion is not binding outside the City of Jacksonville and is not binding if overruled or modified by a court of competent jurisdiction, such as the Circuit Court for Florida’s Fourth Judicial Circuit.

*To Address Infrastructure Needs,
The School Board Passed a Resolution to Levy a School Capital Surtax*

27. Sixty-five-percent of the school district's buildings are more than fifty years old, and the district has not built a new school since 2010. Unable to fund the district's growth, tens of thousands of students are taught in trailers rather than traditional classrooms. The district can afford to repair only the most urgent facility problems such as safety systems and air conditioning failures. Over the last school year, the district paid \$11 million in air-conditioning work alone.

28. The lack of funding has led to an extensive backlog of maintenance and repair needs—the district currently has about \$243 million in deferred maintenance, a number that increases by about \$500,000 each month.

29. This lack of funding has had a detrimental effect on students and teachers. It has also harmed the DTU's ability to ensure its members enjoy working conditions that are safe, adequate, and constitute an appropriate learning environment.

30. To fulfill its Constitutional and statutory duties, the School Board undertook an extensive investigation under the direction of professional engineers to survey all schools in Duval County and develop a comprehensive School Building Plan as provided by Florida law. It spent many months working intensely with the Superintendent to develop this plan to address the school district's significant capital infrastructure needs, including numerous public meetings throughout the county.

31. While the School Board prepared this plan, the General Counsel's Office initially advised that the City Council had a ministerial duty to place a sales surtax on the ballot if a resolution requesting a referendum were passed by the School Board.

32. However, by memorandum dated May 5, 2019, the General Counsel contradicted its prior advice, indicating that the City Council "has legislative discretion regarding whether and when to place the sales surtax referendum on the ballot," because although "the word 'shall' looks – on its face – like a command ... [it is] directory rather than mandatory."

33. On May 7, 2019, the School Board approved the Resolution drafted by the General Counsel's Office to upgrade and modernize its aging schools with the twin aims of keeping students safe and making the environment more conducive to learning.

34. Pursuant to Section 212.055(6), Florida Statutes, the Resolution requests the City Council to place the School Capital Surtax before the voters in a referendum election. A copy of the Resolution is attached as Composite Exhibit A.

35. In approving the Resolution, the School Board determined that it was in the best interest of the school district and its students to levy a sales surtax in accordance with sections 212.055(6) and 212.054, Florida Statutes, in an amount equal to one-half-cent to fund the improvements.

36. In its Resolution, the School Board requested that the City Council direct the Supervisor of Elections to hold a county-wide referendum election on November 5,

2019, where voters would be asked to authorize the School Board to collect the one-half cent School Capital Surtax for fifteen years. The statement regarding the School Capital Surtax, which is to be placed on the ballot, reads:

OFFICIAL BALLOT

**School District of Duval County, Florida
Special Election – November 5, 2019**

**School Capital Outlay Sales Surtax to Improve
Safety and the Learning Environment**

To upgrade aging schools through repairs and modernization, to keep schools safe and to continue to promote a conducive learning environment, to improve technology, and to replace existing or build new schools, shall the Duval County School Board be authorized to levy a 15-year half-cent sales surtax, with expenditures based upon the Surtax Capital Outlay Plan, and monitored by an independent citizens committee?

_____ For the Half-Cent Tax

_____ Against the Half-Cent Tax

37. Consistent with the Resolution, the School Board later approved a Master Facilities Plan (the “Plan”). The Plan provides details about how the School Board intends to use the funds raised by the surtax: building 28 new schools, consolidating 21 schools, removing 438 trailers that are currently being used as classrooms, and using \$1.08 billion for repairs that would provide an 11-year reduction in building age.

38. As required by statute, the Florida Office of Program Policy Analysis and Government Accountability approved the Plan.

39. General Counsel approved the language of the Resolution.

40. On May 28, 2019, at the School Board's request, the City Council president introduced Ordinance 2019-380 (the "Ordinance"), accompanied with the required legislative fact sheet ("Fact Sheet"), which would have provided the School Board the special election that it requested. The Ordinance, Resolution, and Fact Sheet are attached as Composite Exhibit A.

*Despite its Mandatory Duty,
The City Council Refused to Place the School Capital Surtax on the Ballot*

41. As a result of the opinion of the Office of General Counsel that the City Council was not obligated to place the School Capital Surtax on the ballot, a prolonged, highly politicized process ensued. Various demands and "offers" were made to the School Board to change its plan or to pay third parties in order to have the matter put on the ballot.

42. After introduction of the Ordinance, the City Council took the following steps to delay, frustrate, and otherwise usurp the authority of the School Board to present the School Capital Surtax to the electors of Duval County:

a) On May 28, 2019, rather than move the Ordinance forward, the City Council referred the Ordinance to its Finance and Rules Committees.

b) On June 4, 2019, the Finance and Rules Committee did not approve the Ordinance but instead re-referred the Ordinance.

c) On June 11, 2019, the City Council merely took public comment but took no action on the Ordinance.

d) On June 18, 2019, the Finance Committee offered and approved an amendment that would delay the referendum election until November 2020 and which would purport to have the "Joint Planning Committee" (1) review the School Board's Plan; (2) review the amount to be borrowed and forecasted revenue; (3) review the set of priorities of expenditures based on the forecasted revenue; and (4) provide an advisory recommendation to the City Council and the Duval County School Board no later than June 1, 2020, while the Rules Committee merely deferred the Ordinance. *See* Finance Amendment attached as Exhibit B.

e) On June 25, 2019, rather than act on the Ordinance, the City Council re-referred the Ordinance to the Finance and Rules Committees.

f) On June 29, 2019, the newly elected City Council members were installed for their positions, effective July 1, 2019.

g) On July 16, 2019, the Finance and Rules Committees for a third time deferred the Ordinance for consideration, even though the City Council auditor found the School Board's estimates for sales tax revenue reasonable (an issue some had questioned).

h) On August 6, 2019, for a fourth time the Finance and Rules Committees deferred consideration of the Ordinance pending a joint meeting with the School Board.

i) On August 12, 2019, the Office of General Counsel provided a formal opinion advising the City Council that it could refuse to place the School Board's School Capital Surtax on any ballot.

j) On August 13, 2019, the City Council and School Board held a joint meeting at which no agreement was reached.

k) On August 20, 2019, the Finance Committee withdrew the Ordinance from consideration for various reasons, including that members disagreed with nuances of the School Board's Plan. However, the Rules Committee approved the Ordinance, thus submitting it to the City Council, under its rules.

l) In advance of the August 27, 2019 City Council meeting, City Council member Matthew Carlucci sought to introduce a floor amendment to move the date of the referendum election to 2020. *See City Council Agenda - Substitutions and Amendments*, attached as Exhibit C.

m) On August 27, 2019, rather than allowing appropriate public debate, the City Council removed the public, including the School Board and other elected officials, from City Council chambers.

n) Thereafter, the City Council discussed the merits of the Plan, in particular the amount of funding to be provided to charter schools—not the timing of the Referendum—and voted to withdraw the Ordinance from further consideration. *See Minutes of the City Council*, Attached as Exhibit D.

43. Had the City of Jacksonville acted reasonably, in good faith, and in compliance with its obligation under Section 212.055(6)(a)–(b), Florida Statutes, when the Resolution was submitted to it by the School Board, the School Capital Surtax could have been placed on the ballot in November 2019 or no later than December 2019. The voters of Duval County would have had the opportunity to determine whether to impose a one-half cent sales tax to repair, renovate, and replace their deteriorating school buildings and facilities.

44. If the City of Jacksonville acts now to place the School Capital Surtax on the ballot, a special election could still be held in December 2019 by mail-in ballot.

45. Instead, the City, acting through its City Council, has failed or refused to place the School Capital Surtax on the ballot.

46. As a consequence, the School District continues to incur \$500,000 each month in increased deferred maintenance costs. These and other expenses would not be incurred if the building plan were submitted to the electorate and approved.

47. Pursuant to Section 86.111, Florida Statutes, Plaintiffs request a speedy hearing and expedited briefing schedule due to the emergency nature of this action.

COUNT I
Declaratory Relief

48. Plaintiffs reallege paragraphs 1 through 47 as fully as if they were restated herein.

49. This is an action for declaratory judgment and ancillary injunctive relief under Chapter 86, Florida Statutes.

50. As a result of the City Council's failure to place the School Capital Surtax on the ballot, a question has arisen as to whether the City Council has the authority to delay indefinitely or refuse to set the School Capital Surtax for a vote by the electors of Duval County.

51. Pursuant to Section 86.021, Florida Statutes, this Court is authorized to determine any question of the construction or validity of a statute, regulation, or municipal ordinance and to declare the "rights, status, or other equitable or legal relations thereunder."

52. Accordingly, Plaintiffs are in doubt concerning their rights and obligations under section 212.055(6), Florida Statutes, and Article IX, § 4(b) of the Florida Constitution.

53. There exists a bona fide, actual, present, and practical need for a declaration that the City, acting through its City Council, has an obligation to put the School Capital Surtax passed by the School Board on the ballot.

54. The declaration sought by Plaintiffs concerns a present, ascertained or ascertainable state of facts, or a present controversy as to a state of facts.

55. The Plaintiffs and the City have an actual, present, adverse, and antagonistic interest, in either law or fact.

56. The antagonistic and adverse interests of the Plaintiffs and the City are before this Court by proper process.

57. The relief sought in this declaratory action by the Plaintiffs is not merely the giving of legal advice or the answer to questions propounded for curiosity.

WHEREFORE, Plaintiffs seek an order from this Court:

a) declaring that the School Board has the sole authority to levy the sales surtax;

b) declaring that the City has no discretion to amend the statement setting forth the School Capital Surtax except as may be necessary to modify the date of the election;

c) declaring that the City is required by section 212.055(6), Florida Statutes to place the School Capital Surtax on the ballot as soon as possible and no later than November 3, 2020;

d) enjoining the City from continuing to delay placing the School Capital Surtax on the ballot;

e) directing the City to place the School Capital Surtax on the ballot as soon as possible and no later than November 3, 2020;

f) awarding Plaintiffs their costs as in equity actions, including their attorneys' fees;

g) and granting all such further and additional relief as this Court deems just and proper.

COUNT II
Quo Warranto

58. Plaintiffs reallege paragraphs 1 through 47 as fully as if they were restated herein.

59. Under Florida law, application for writ of quo warranto is a proper method for challenging the authority of a public official to take a particular action in his or her official capacity and such petitions can be brought by any person. *See Macnamara v. Kissimmee River Valley Sportsmans' Ass'n*, 648 So. 2d 155, 164 (Fla. 2d DCA 1994).

60. The City is a recipient of a power or right derived from the State of Florida.

61. The City abused and exceeded its authority when it voted to withdraw the Ordinance from further consideration on August 27, 2019, thereby refusing to place the School Capital Surtax on the ballot.

62. The Court should exercise its discretion to grant a writ of quo warranto.

WHEREFORE, Plaintiffs ask this Court to issue a writ of quo warranto:

a) stating that the City abused and exceeded its authority when it refused to place the School Capital Surtax on the ballot;

b) enjoining the City from continuing to delay placing the School Capital Surtax on the ballot;

c) directing the City to place the School Capital Surtax on the ballot as soon as possible and no later than November 3, 2020;

d) awarding Plaintiffs their costs as in equity actions, including their attorneys' fees;

e) and granting all such further and additional relief as this Court deems just and proper.

By: /s/ Scott S. Cairns

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