OA 2-7-89

IN THE SUPREME COURT OF THE STATE OF FLORIDA
CASE NO.: 72,697

CHARLES W. KANE, SHERIDAN PLYMALE, PETER WALSON, LISA LYONS, E. CLARK GIBSON, STEWART R. HERSHEY and BETTY WALSON,

Petitioners,

vs.

PEGGY S. ROBBINS, as Supervisor of Elections for Martin County, Florida, and the SCHOOL BOARD OF MARTIN COUNTY, FLORIDA,

Respondents.
_____/

ANSWER BRIEF OF RESPONDENT
THE SCHOOL BOARD OF MARTIN COUNTY, FLORIDA

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STATEMENT OF THE CASE AND FACTS

This Respondent, The School Board of Martin County, Florida (School Board) concurs with the Petitioners' Statement of the Case and Facts, except for the following areas of disagreement:

1. Petitioners in the first paragraph state a conclusionary position that the decision in this case will decide whether the Legislature has the power to pass special laws pertaining to the election of school boards. This Court decided that question in the affirmative 11 years ago, and that decision was cited for authority in the Fourth District Court of Appeals' Opinion which upheld the constitutional validity of Ch 76-432, Laws of Florida, and which Opinion is the subject of this appeal. School Board of Escambia County v. State, 353 So.2d 834 (Fla.1977).

2. Petitioners, also in their first paragraph conclusionary statement, state that the issues in this case involve special laws pertaining to the jurisdiction and duties of school boards, which is incorrect. School boards are corporate bodies, with specific corporate powers and duties. Florida Statutes Sections 230.21,.23 (1987). These powers and duties are not at issue in this case. The statute which is the subject of Petitioners' constitutional challenge pertains solely to candidates for election to the School Board of Martin County, Florida, in their capacity as candidates during the election process. The issue in this case is whether the Legislature has the constitutional authority to provide for the election of candidates to the Martin County School Board by the Special Act in question, which allowed the citizens of Martin County to decide for themselves if they wanted their candidates to run on a non-partisan basis. The

larger issue is whether the constitution restricts the Legislature to the sole mechanism of general law when it addresses the election of school board members, or whether the Legislature has the constitutional ability and flexibility to utilize either general law or special acts as it may in its collective wisdom deem appropriate. What is also at issue is whether this Court is prepared to recede from its prior holding in Escambia County, supra, as it pertains to the election of School Board Members and therefore place at risk the legality of those individuals serving on seven (7) member school boards whose authority to run as candidates and be elected as members is derived solely from special acts pertaining to their election. What is also at issue is the legality of the composition of the Martin County School Board as well as the other Non-Partisan School Boards in this state. There is no issue in this case regarding the jurisdiction or duties of school boards as corporate entities.

SUMMARY OF ARGUMENT

Petitioners, by their challenge to the constitutionality of Ch. 76-432, Laws of Florida (1976) have created constitutional conflict between two sections of the Florida Constitution (1968): Article lll, Section ll(a)(l), and Article IX, Section 4(a). The Trial Court and the Fourth District Court of Appeal have harmonized these constitutional provisions by upholding the constitutionality of the Special Act. Respondent School Board of Martin County requests this Court to affirm the decision of the Fourth District Court of Appeal.

Article IX, Section 4(a), Florida Constitution (1968) has as its specific subject matter the election of school board members, and allows the Legislature to utilize either General Law or Special Law to provide for such elections.

Article III, Section ll(a)(l) Florida Constitution (1968) prohibits Special Laws pertaining to the "election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies." If school board members are officers for purposes of this provision, and school boards are also not considered special districts or local governmental agencies for purposes of this provision, and the Special Act has more than an incidental effect on the election of members, then the unrestrictive provisions of Article IX, Section 4(a) which allow Special Acts become in conflict with the restrictive provision of Article III, Section ll(a)(l) which prohibits Special Acts. Given this Court's past decision in The School Board of Escambia County v.State, 353 So.2d 834 (Fla.1977) which found constitutional a Special Act

pertaining to the election of two additional school board members in Escambia County, the result would be a judicial rewriting of a single sentence in Article IX, Section 4(a). Such a result would allow Special Acts which pertain to the election of additional school board members, but prohibit Special Acts in other situations; alternatively, this Court would have to recede from Escambia County, Supra, and thereby jeopardize the legality of all seven member school boards in Florida whose composition and election are pursuant to their respective Special Acts. This Respondent feels such a result is unwarranted and unnecessary.

Petitioners have failed to carry their strong burden of proof by failing to demonstrate beyond a reasonable doubt that school board members are officers for purposes of Article III, Section 11(a)(1). Petitoners have failed to prove beyond a reasonable doubt that even if school board members were such officers that school boards are not considered special districts under Article III, Section 11(a)(1). Petitioners have failed to prove beyond a reasonable doubt that even if school board members are officers, and school boards are not considered special districts for purposes of Article III, Section II(a)(1), that school boards are also not considered local governmental agencies thereby making the election of their members exempt from the prohibition of the Article. And finally, even if Petitioners had carried their successive heavy burdens of proof, they have not demonstrated that the Special Act in question, which allows school board candidates in Martin County to campaign

without political party affiliation, has anything more than an incidental effect on the election of school board members.

Having failed in carrying their burden of proof, Petitioners' challenge to the constitutionality of Ch. 76-432, Laws of Florida, must fail. The Special Act must be upheld as constitutional because Petitioners have not proved otherwise beyond every reasonable doubt. This Court should affirm the decision of the Fourth District Court of Appeal.

ARGUMENT

THE CONSTITUTION DOES NOT RESTRICT THE LEGISLATURE TO THE SOLE USE OF GENERAL LAW IN PROVIDING FOR THE ELECTION OF SCHOOL BOARD MEMBERS, AND CH. 76-432 LAWS OF FLORIDA DOES NOT VIOLATE THAT SECTION OF THE CONSTITUTION WHICH PROHIBITS SPECIAL LAWS IN REGARD TO THE ELECTION, JURISDICTION AND DUTIES OF CERTAIN CONSTITUTIONAL OFFICERS.

Martin County's Special Act comes to this Court, as it did to the Trial Court and to the Fourth District Court of Appeal, cloaked with a strong presumption of constitutional validity. State v. Kinnen, 398 So.2d 1360 (Fla. 1981). The burden of proving its unconstitutionality rests on Petitioners, and they must remove all reasonable doubt as to the statute's constitutionality. Bonvento v. Board of Public Instruction, 194 S.2d 605 (Fla. 1967). It is well established that courts will presume in favor of the constitutionality of a statute, and will be inclined to a construction favorable to its validity. Smetal Corporation v. West Lake Investment Co., 126 Fla. 595, 172 So. 58 (Fla. 1937). If a doubt exists as to the constitutionality of a statute, the doubt should be resolved in favor of its constitutionality. Williams v. Town of Dunnellon, 125 Fla. 114, 169 So. 631 (Fla. 1936). It is presumed that a statute is constitutional, and the burden rests on the party claiming the contrary to clearly establish his contention. Neisel v. Moran, 80 Fla. 98, 85 So. 346 (Fla. 1920).

It has been held that the Constitution is not a grant of legislative power, but a limitation on legislative power. Savage v. Board of Public Instruction, 133 So. 341 (Fla. 1931). Had the constitutional framers meant to limit the Legislature to providing for school board member elections by general law only,

it is reasonable to believe they would have done so in that specific section of the 1968 constitution which addresses such elections. Article IX, Section 4(a), however, allows for member elections "as provided by law". The phrase "as provided by law " has been held by this Court to mean by either General Law or Special Act. Ison v. Zimmerman, 373 So.2d 431 (Fla. 1979). That this was the intent of the constitutional revisors is made clear by the next provision, Section 5 of Article IX, which specifically restricts the Legislature to providing for the employment of school superintendents "by General Law." That these two Sections were adopted contemporaneously, one following the other, shows that the framers knew the distinction. They did not hesitate to limit the Legislature to general law in the companion section because that was their intent. By not providing a like restriction in Section 4, it is clear that they did not intend to so limit the Legislature regarding the election of school board members.

Petitioners' argument strains logic and rationality. The pertinent single sentence of Article IX, Section 4(a) reads:

> "In each school district there shall be a school board composed of five or more members chosen by vote of the electors for appropriately staggered terms of four years, as provided by law."

Both the number of members elected as well as the method of their election have to do with the election of school board members. All election elements are included within that single sentence of Section 4(a), Article IX, which directs that the Legislature provide for such election "by law." This Court has previously upheld the constitutionality of a Special Act

providing for the election of seven school board members in the Escambia County school district. School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977). Among other things, the Special Act in Escambia County, Ch. 76-356 Laws of Florida, authorized candidates to qualify and run for election to two additional seats on the School Board, authorized their election, and provided details regarding campaign procedures.

Some examples from that Special Act which were upheld by this Court:

> "Section 2. ...the two additional members shall be...elected at the next general election.
>
> Section 4.(2)(a) Candidates...shall qualify with the Division of Elections...filing shall be on forms provided for that purpose by the Division of Elections.
>
> Section 4.(2)(b) Candidates shall qualify in groups where multiple school board offices are to be filled.
>
> Section 4.(2)(c) Each candidate qualifying for school board office shall pay the Division of Elections a qualifying fee of 5 percent of the annual salary.
>
> Section 4.(2)(d) All candidates for school board office shall subscribe to an oath or affirmation in writing to be filed with the Division of Elections upon qualifying in which he shall state: (List of nine specific statements to be sworn to by the candidate as a requirement of his qualification for election.)
>
> Section 4.(7) Candidates for school board office may accept contributions and may incur only such expenses as are authorized by law. They shall keep an accurate record of their contributions and expenses and shall file reports...
>
> Section 5.2, referendum question:
>
> Do you favor increasing the membership of the Escambia County District School Board by two additional members elected at large? (emphasis supplied)

This Special Act is the sole authority for the election, qualification and assumption of official duties by these two

additional School Board Members. This Special Act, as many others in the state, clearly and specifically pertains to the election of School Board Members, and these provisions have been upheld as constitutional by this Court. How else but by a Special Act could a given school district be authorized to elect more than five members? Can it be reasonably concluded that in the one sentence of Section 4(a) of Article IX the Framers intended on the one hand that the Legislature not be limited to general law in providing for the number of school board members to be elected in a school district, or the procedures of their election, while simultaneously intending that the Legislature should be restricted to only general law when the issue is political party affiliation during the election process? They would clearly have used distinguishing language to that effect, if that were their intent. The Decision of the Fourth District Court of Appeal concurred in this analysis. The Petitioners have offered no evidence that the drafters intended the phrase "by law" in Article IX, Section 4(a) to be limited to the single interpretation "by general law". Petitioners searched the records of the 1968 Constitutional Revision Commission and found nothing which clearly supports their position. The burden of proving their case beyond a reasonable doubt resting with Petitioners, it is clear that they have failed to meet that burden.

The School Board's position is in harmony with the relevant provisions of the Constitution while Petitioners' position puts them in conflict. Petitioners' argument that Article III, Section 11(a)(1) prohibits special laws regarding the election of

school board members creates a direct conflict with Article IX, Section 4(a). The School Board's position is that the prohibitions of Article III, Section 11(a)(1) do not apply to the election of school board members for any of the following reasons:

(1) That the constitutional framers would have specified this limitation in the Article and Section directly pertaining to the election of school board members if that was their intent, in Article IX, Section 4(a).

(2) That school board members are not constitutional officers subject to the limitations of Article III, Section 11(a)(1) because they are

(a) Either not constitutional officers for purposes of this provision or

(b) If they are considered constitutional officers, then school boards are special districts and/or local governmental agencies. As officers thereof board members' elections would be specifically exempt from the special law prohibition of the Section, as provided therein;

(c) That even if they were to be considered as constitutional officers, and not members or officers of a special district or local governmental agency, their election as non-partisan candidates has an incidental effect on their election, jurisdiction and duties as school board members, and therefore is not cognizable by nor violative of the prohibitions of the Section.

A. MEMBERS OF THE MARTIN COUNTY SCHOOL BOARD ARE NOT CONSTITUTIONAL OFFICERS FOR PURPOSES OF ARTICLE III, SECTION 11(a)(1).

The Trial Court held that Martin County School Board Members are not constitutional officers subject to Article III, Section 11(a)(1). In examining the total thrust of this Section, it appears the Constitutional Revisors were concerned with constitutional officers who, individually, exercise legal

authority and have individual jurisdiction, power, and authority, rather than members of boards whose authority is collegial and corporate. Such officers as the Sheriff, Property Appraiser, Supervisor of Elections, Tax Collector, and Clerk of Court would be examples of constitutional officers who exercise individually the powers of their office. School board members have no individual authority. The State of Florida also appears to recognize this distinction administratively. School Board Member Jody Bond Smith testified that the Secretary of State's office had issued to her an Identification Card which said she was a duly commissioned Member of the Martin County School Board, District 4. R.49. Defendants Exhibit 4 at trial. On the other hand, the Martin County Supervisor of Elections, Peggy S. Robbins, testified at trial that she is a constitutional officer and that the State of Florida does not issue her an Identification Card. R.62,63. School board members have no individual or constitutional authority, and only the school board, as a corporate body, has power. Article IX, Section 4, Fla. Const. (1968). Florida Statutes Sections 230.21,.23 (1987). The Petitioners in their Initial Brief seem confused on this point, and repeatedly seem to disregard the legal distinction between school board members as individuals and school boards as corporate bodies.

In determining whether Article III, Section 11(a)(1) applies to a given situation, three questions should be asked: (1) is the individual in question an officer within the meaning of the Article for the purposes of the provision; (2) if so, does the individual fit into one of the exceptions; and (3) if he is an

officer but does not fit into one of the exception categories, is the effect of the special act only incidental? In the instant case, the questions are, respectively, (a) are school board members "officers" for purposes of the provision; and, if so, are they officers of special districts or local governmental agencies, and therefore exempt from its provisions; and, if not, is the effect of the Special Act in question only incidental to their election? The courts have usually approached these questions in reverse order.

The predecessor of Article III, Section 11(a)(1) in the 1968 Constitution was Article III, Section 20 of the 1885 Constitution, which read in pertinent part:

> "The Legislature shall not pass special or local laws...regulating the jurisdiction and duties of any class of officers, except municipal officers..."

The 1885 Constitution also provided for the election of three school trustees, who had the individual and collective duty and responsibility for supervision of all the schools in the school district, and the authority to levy and collect school taxes. Fla. Const. Art. XII, Section 10 (1885), as amended. It would seem that with specific constitutionally authorized responsibilities, school trustees would fit the definition of "officers" as proposed by Petitioners in citing Blackburn v. Brorein, 70 So.2d 293 (Fla. 1954).

But if they were "officers", then Art. III, Section 20 would prohibit special acts regarding their duties. An earlier Supreme Court spoke of the ability of the Legislature to enact special acts relating to the duties of the school trustees and boards of

public instruction:

> "The lawmaking power of the Legislature necessarily extends to creating, defining, and limiting the powers and duties of boards of public instruction and trustees of special tax school districts, with respect to public funds raised for the support and maintenance of our public free schools, and constitutional provisions and restrictions...are not to be deemed transgressed by (such) legislation..." Savage v. Board of Public Instruction for Hillsborough County, 133 So. 341, 344 (Fla. (1931).

A 1936 Supreme Court Opinion held that constitutional provisions pertaining to state, county, and municipal officers were not applicable to school district officers, specifically trustees. State ex rel. Smith v. Hamilton, 166 So. 742 (Fla. 1936). School board members today are given no individual duties, and indeed have no individual authority. They are not referred to as "officers" in the Constitution, but as "members". All authority is given to the school board itself as a body. Fla.Const.Art. IX, Section 4 (1968). While school trustees had the responsibility of supervision of the schools, the school boards under the 1968 Constitution have the responsibility for the operation, control and supervision of all schools within their respective school districts. School board members have no individual responsibility.

In the cases cited for authority by the Petitioners the respective appellate courts did not have before them a contested question of whether school board members were constitutional officers within the purview of Article III, Section 11(a)(1), and did not so hold. The courts approached the problem first from the point of whether there was only an incidental effect on the

duties of the officials involved. When resolving that question in the affirmative, they could hold the special act restrictions of the Section not to be violated, the special act in question constitutional, and therefore they did not have to reach the question of whether the officials involved were or were not constitutional officers, county officers, or any other type of officers.

The School Board disagrees with Petitioners analysis of Shad v. DeWitt, 27 So.2d 517 (Fla. 1946). A close reading of the case shows that, while school board employees were within the classification of Duval County employees for civil service purposes, the Court spoke of the regulation of "county officers" by local law.

There is a listing of "County Officers" in Article VIII, Section 1(d) of the 1968 Constitution, which only includes those Officers with individual power and authority, such as the Supervisor of Elections. It does not include school board members. The Shad litigation included as parties defendant the superintendent of public instruction who was then classified as a county officer pursuant to Article VIII, Section 6 of the 1985 Constitution. In citing State ex rel. Glover v. Holbrook, 129 Fla. 241, 176 So. 99 (Fla. 1937), and referencing then Sections 20 and 21 of Article III, of the 1885 Constitution, the Shad court said:

> "Here, as there, we decide that the effect upon the jurisdiction and duties of county officers is only incidental to the design of the act; hence it cannot be successfully contended that these provisions of the Constitution have been violated." Shad

at 520.

The Shad Court found it unnecessary to reach the question of whether school board members were "officers." Clearly, the court could have had in mind the effect of a civil service act on school employees and the consequent effect, for example, on the duties of the school superintendent. Simply stated, the issue of whether school board members were officers within the meaning of Article III, Section 11(a)(1) was not specifically addressed by the court in Shad.

Under the 1885 Constitution, Article XII provided for school district trustees for special tax school districts, and gave them specific duties and responsibilities. As that constitution was amended, the duties of trustees could, at the option of local districts, be transferred to the county board of public instruction, the members of which were provided by law. Finally, by 1957, Section 10A abolished school district trustees, and vested their duties in the county board of public instruction. In 1968, when the entire Constitution was amended, Article IX provided for district school boards having designated responsibilities and authorities, and school district trustees had been fully replaced in the constitutional document by district school boards and their members.

In 1970, the Supreme Court in Hayek v. Lee County, 231 So.2d 214 (Fla. 1970) held that the prior decisions of the Supreme Court in constructing Article III, Section 20, of the 1885 Constitution were to be applicable to and controlling in cases construing Article III, Section 11(a)(1) of the 1968 Constitution. Id. at 218. This suggests that cases involving

school district trustees and Article III, Section 20 of the 1885 Constitution would be controlling as to their present day constitutional successors, the school board members. Therefore, on the basis of Savage, supra, Special Acts pertaining to the powers and duties of members or school boards would be constitutionally acceptable and school board members would not be considered "officers" for purposes of Article III, Section 11(a)(1).

In State ex rel. Glover v. Holbrook, 129 Fla. 241, 176 So. 99 (Fla. 1937), a case involving a challenge to a local act regarding tenure for Orange County school teachers, the court used a rationale that the effect of the special act was "incidental" to the main purpose of the act on the jurisdiction and duties of state or county officers, and therefore it was "unnecessary" to determine whether the school district trustees were "officers" within the meaning of Article III, Section 20. The court did note, however, that its prior decision held that such trustees were "subordinate school officers" subject to removal from office for cause, and that they were not state or county officers within the meaning of another constitutional provision. Id. at 102.

The sum total of Petitioners' arguments regarding whether school board members are constitutional officers within the purview of Article III, Section II(a)(1) is to leave the question in doubt. Notwithstanding Petitioners representations to the contrary, past Appellate Courts in this state have not been willing to go so far as to make a definitive ruling on the issue

with respect to school board members, or their constitutional predecessors, school district trustees. They have stopped short of making such a ruling by invoking the Court created "incidental effect" test mentioned above.

Appellants have not cited a single appellate case which has specifically held that school board members are constitutional officers for purposes of Article III, Section 11(a)(1) of the 1968 Constitution; nor have they cited a single appellate case which has specifically held school district trustees to be constitutional officers for purposes of Section 20, Article III of the 1885 Constitution.

For purposes of Article III, Section 11(a) 1 of the 1968 Constitution, Petitioners have failed to prove beyong a reasonable doubt that school board members are officers.

B. THE MARTIN COUNTY SCHOOL BOARD IS A SPECIAL DISTRICT OR LOCAL GOVERNMENTAL AGENCY WITHIN THE MEANING OF ARTICLE III, SECTION 11(a)(1)

The Trial Court concluded that the School Board was a special district for purposes of Article III, Section 11(a)1 of the 1968 Constitution and therefore its members not officers whose election was subject to its prohibitions. The Fourth District Court of Appeal found the Article at best ambiguous with respect to whether a school board is included within the exceptions for special districts and local governmental agencies, but noted that historically school districts in Florida have frequently been treated as special districts.

It is clear that school districts have often been treated in Florida as special districts. A review of Article XII, Florida Constitution, 1885, and the history of both general law and

special or local acts enacted over the years regarding the authority, power, duties and responsibilities of school board members and school trustees, and other aspects of school districts, leaves little doubt this is true. It was pointed out at trial that in 1965 alone, in addition to all the general laws passed relating to school boards and school districts, some forty-two special or local acts were also passed. R.86. This was the frame of reference of the constitutional revisers as they approached their task of reworking the entire constitutional document in 1968.

As recently as 1983, Florida's Attorney General stated:

> "...school districts and their governing boards have historically been treated in the same manner as special districts of the state, that is, having only such power and authority as is granted by the Legislature." AGO 83-72, Oct. 18, 1983.

The historical frame of reference at the time of consideration and enactment of the 1968 Florida Constitution strongly suggests that school districts were so analagous to special districts that considering them to be special districts was something that was "given", without the need for debate and discussion.

Historically, the utilization of Special Acts regarding the election of school board members was also recognized, without concern for the prohibition of Article III, Section 20 of the 1885 Constitution. In 1948 the Florida Attorney General was faced with the question of how candidates for members of the Board of Public Instruction and others should be nominated in the primary elections. His opinion was prefaced with the following statement:

"I assume there is no special law for your County concerning this question".

In the absence of a special law to the contrary, Florida Statutes Section 230.08 (1941) was to provide guidance. 1948 Op. Atty. Gen. 100, March 8, 1948. Florida Statutes Section 230.08 (1941) was the general law counterpart of today's Section 230.08 (1987) providing for partisan election of school board members. A special law for a given school district allowing non-partisan election of school board members, therefore, took precedence over the general law on the same subject prior to 1968.

Treatment of school boards as special districts for many purposes has also carried over into some aspects of general legislation. For example, for purposes of the Local Governmental Comprehensive Planning and Land Developmenet Regulation Act, Chapter 163, Florida Statutes, Part II (1985), Section 163.3164 defines a "governmental agency" as used in the action pertinent part as follows:

> (9) "Governmental agency" means:
>
> . . .
>
> (d) Any school board or other special district, authority, or governmental entity. (Emphasis supplied)

In this particular statute, school boards are considered to be the same as special districts, with both considered to be governmental agencies. Before the 1968 constitutional revision, school districts were sometimes divided into special school taxing districts - a special kind of special district.

It may reasonably be concluded, for purposes of Article III,

Section II(a)(1) of the 1968 Florida Constitution, that school boards were considered the same as special districts. Petitioners have failed to prove otherwise beyond a reasonable doubt.

School boards are also local governmental agencies within the contemplation of Article III, Section II(a)(1). Petitioners at trial conceded that school boards are governmental agencies. R.133. School boards are local in nature as their jurisdiction, operation, and authority is circumscribed by the geographical boundaries of their respective local county/school district boundaries. Fla.Const. Art. IX, Section 4(a) (1968). Florida Statute Section 218.403 (1985) provides definitions for purposes of the Investment of Local Governmental Surplus Funds Act, and defines "unit of local government" as follows:

> "(5) "Unit of local government" means a county, municipality, school district, special district, or any other political subdivision of the state."

Not only the Legislature, but the framers of the 1968 Constitution perceived school districts to be local governmental agencies. While the committee notes of meetings are incomplete and non-specific on this point, a look at the total work product of the Revision Commission, that is, the Constitutional document itself, tells us their thinking. Article VII, Section 8 is entitled, "Aid to Local Governments," and includes school districts within the definition. Article VII, Section 9 is entitled, "Local taxes," and includes school districts within its provisions. Article VII, Section 12 is entitled, "Local bonds," and includes school districts within its scope. The constitutional responsibility of the school board is to "operate,

control and supervise all free public schools within the school district..." Article IX, Section 4(b). And each county comprises a school district. Article IX, Section 4(a), 1968 Fla. Const. School Board Member Jond Bond-Smith testified that the jurisdiction of the school board was local, with the district boundary the same as the county's and the responsibilities of the school board within that boundary including the setting of taxes, owning property, supervising the students, and acting as an employer. This testimony as to the local nature of school board responsibilities was unrefuted by Petitioners. R.50-53.

Since school boards are for many purposes considered special districts as well as local governmental agencies, then even if school board members were considered "officers", as officers of a special district and local governmental agency their election would be exempt from the Special Act prohibition of Art. III, Section II(a)(1) by its own terms. Petitioners have failed to show beyond a reasonable doubt that school boards, for purposes of Article III, Section II(a)(1), were not considered either special districts or local governmental agencies. Therefore their constitutional challenge must fail.

C. CH. 76-432, LAWS OF FLORIDA ALLOWING SCHOOL BOARD MEMBERS IN MARTIN COUNTY TO RUN FOR OFFICE ON A NON-PARTISAN BASIS PROVIDES ONLY AN INCIDENTAL EFFECT TO THE ELECTION OF THE SCHOOL BOARD MEMBER.

As cited more fully above, the Supreme Court has fashioned a test over many years to determine whether a Special Act may be considered constitutionally valid notwithstanding the possible

prohibition of Article III, Section 11(a)(1) of the 1968 Florida Constitution, and formerly Article III, Section 20 of the 1885 Constitution. Using the incidental effect test in the instant case, the record shows that any effect of a non-partisan candidacy on the election is incidental to the valid purpose of allowing the people to realize their constitutional guarantee of right as contained in the very first Section of the very first Article of our 1968 Constitution - that all political power is inherent in the people. Supervisor of Elections, Peggy S. Robbins, testified that in either a non-partisan or partisan race, anybody can endorse a candidate. R. 38. Anybody can give money to support the candidate. R. 39. The running and election is basically the same, except that more people are permitted to vote in the race if it is non-partisan rather than partisan. A non-partisan candidate cannot ask to speak to a partisan function, but can go and speak if invited. R. 39. Consequently, it is submitted that the Special Act in question has only an incidental effect on the election of school board members, and should be upheld as constitutional.

D. THE METHOD OF ELECTION OF SCHOOL BOARD MEMBERS HAS NO EFFECT ON THE UNIFORMITY OF THE SCHOOL SYSTEM.

School Boards have constitutional responsibility to operate, control and supervise all free public schools within the school district. Article IX, Section 4(b), Fla. Const. 1968. The Legislature is charged with making adequate provisions "by law" (i.e., General or Special Law - Ison, Supra) for a uniform system of free public schools. Art.IX, Section 1, Fla. Const. 1968. The School Board is the corporate entity which operates the

school system, and the manner in which members are elected may vary from school district to school district, as may the number of members who are elected to serve on the school board, without violating the uniformity requirements of the Constitution. This Court has previously held in the Escambia County case, Supra, that a Special Act pertaining to the election of school board members, in that case the number of members authorized to be elected and the election procedures incident thereto, did not violate the uniform system provision of Art. IX, Section 1, Florida Constitution. It is the common plan or purpose of the body corporate, not the variations in methods of electing members or variations in the number of members serving on the body corporate, which is of importance to a uniform system of free public schools. Id at 838.

CONCLUSION

Ch. 76-432, Laws of Florida, which provides for the Non-Partisan Election of members of the School Board of Martin County, Florida, has been upheld as constitutional by the Circuit Court of the Nineteenth Judicial Circuit and by the Fourth District Court of Appeal. For the reasons stated herein, Respondent, The School Board of Martin County, Florida, requests this honorable Court to affirm the decision of the Fourth District Court of Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail this 22nd day of December, 1988, to: Thomas E. Warner, Esq., Warner, Fox, Seeley & Dungey, P.A., 1000 S. Federal Highway, P. O. Drawer 6, Stuart, Florida 34995-0006, Attorney for Petitioners, and James S. Telepman, Esq., Murphy, Reid, Pilotte & Ross, P.A., P. O. Box 2525, Palm Beach, Florida 33480, Attorney for Respondent, Peggy S. Robbins.

DOUGLAS K. SANDS