

0431W/rfw

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.

12-9
0/A 2-7-89
FILED

SID J. WHITE

NOV 16 1988

CLERK, SUPREME COURT

By Deputy Clerk

PETITIONERS' INITIAL BRIEF

WARNER, FOX, SEELEY & DUNGEY,
ATTORNEYS, P.A.

Thomas E. Warner

THOMAS E. WARNER
Fla. Bar No. 176725
1000 South Federal Highway
Post Office Drawer 6
Stuart, FL 34995
(407)287-4444
Attorneys for Petitioners

TABLE OF CONTENTS

Table of Citations..... ii, iii

STATEMENT OF THE CASE AND FACTS..... 5

SUMMARY OF ARGUMENT..... 8

ARGUMENT..... 11-21

CHAPTER 76-432, PROVIDING FOR
NON-PARTISAN SCHOOL BOARD ELECTIONS IN
MARTIN COUNTY VIOLATES THE FLORIDA
CONSTITUTION ARTICLE III, SECTION
11(a)(1) PROHIBITING SPECIAL LAWS
PERTAINING TO THE ELECTION,
JURISDICTION AND DUTIES OF OFFICERS
BECAUSE: (A) SCHOOL BOARD MEMBERS ARE
OFFICERS WITHIN THE MEANING OF THE
CONSTITUTION; (B) SCHOOL BOARDS ARE
NOT "SPECIAL DISTRICTS" WHICH ARE
EXCEPTED FROM THE CONSTITUTIONAL
PROHIBITION AGAINST SPECIAL LAWS; AND
(C) ARTICLE III, SECTION 11(a)(1)
ASSURES UNIFORMITY IN THE LAWS
PERTAINING TO SCHOOL BOARDS WHICH ARE
PART OF THE UNIFORM SYSTEM OF FREE
PUBLIC SCHOOLS.

A. SCHOOL BOARD MEMBERS ARE OFFICERS
WITHIN THE MEANING OF ARTICLE III,
SECTION 11(a)(1) OF THE FLORIDA
CONSTITUTION (1968)..... 11-15

B. SCHOOL BOARDS ARE NOT SPECIAL
DISTRICTS WHICH ARE EXCEPTED FROM THE
CONSTITUTIONAL PROHIBITION AGAINST
SPECIAL LAWS..... 15-20

C. ARTICLE III, SECTION 11(a)(1) ASSURES
UNIFORMITY IN THE LAWS PERTAINING TO
SCHOOL BOARDS WHICH ARE PART OF THE
UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS... 20-21

CONCLUSION..... 22

CERTIFICATE OF SERVICE..... 23

TABLE OF CITATIONS

<u>Blackburn v. Brorein,</u> 70 So.2d 293 (Fla. 1954).....	4, 7
<u>Clyatt v. Hocker,</u> 39 Fla. 477, 22 So. 721, 723 (Fla. 1897).....	7
<u>Coon v. Board of Public Instruction of Okaloosa County,</u> 203 So.2d 497 (Fla. 1967).....	4, 8
<u>Farrey v. Bettendorf,</u> 96 So.2d 889 (Fla. 1957).....	12
<u>Hayek v. Lee County,</u> 231 So.2d 214 (Fla. 1970).....	8, 13, 15
<u>Kane v. Robbins, No. 48-86-1440 (Fla. 4th DCA,</u> April 6, 1988.....	2, 16
<u>Scarborough v. Webb's Cut Rate Drug Co.,</u> 8 So.2d 913 (Fla. 1942).....	12
<u>School Board of Escambia County v. State,</u> 353 So.2d 834 (Fla. 1977).....	2, 4, 9, 10, 11
<u>Shad v. DeWitt,</u> 27 So.2d 517 (Fla. 1946).....	4, 8, 9
<u>Southern Bell Telephone and Telegraph Co. v. D'Alemberte,</u> 21 So. 570, 572 (Fla. 1897).....	12
 Florida Constitution Article III, Section 11(a)(1) (1968).....	 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 16, 17
 Florida Constitution Article III, Section 20 (1885).....	 8, 9, 14
 Florida Constitution Article VII, Section 9(a) (1968).....	 13
 Florida Constitution Article VII, Section 10.....	 12
 Florida Constitution Article VII, Section 12.....	 12

Florida Constitution Article IX, Section 4 (1968).....	4, 5, 8, 16
Florida Constitution Article IX, Section 4(a) 1968.....	8
Chapter 76-432, Laws of Florida, 1976.....	1, 4, 5, 7, 11, 17, 18
1972 Op. Att'y Gen. Fla. 072-46 (February 15, 1972).....	11
1979 Op. Att'y Gen. Fla. 079-106 (December 14, 1979).....	11
1980 Op. Att'y Gen. Fla. 080-26 (April 1, 1980).....	11
Florida Statutes §165.031(5) (1985).....	13
Florida Statutes §200.001(8)(c) (1985).....	13
Florida Statutes §230.08 (1987).....	17

STATEMENT OF THE CASE AND FACTS

This Court has exercised its discretionary jurisdiction to review a decision of the Fourth District Court of Appeal which holds that Article III, Section 11(a)(1) of the Florida Constitution (1968) does not prohibit special laws pertaining to the election of school boards. This Court's decision in this case will decide whether the legislature has the power to pass special laws pertaining to the election, jurisdiction and duties of every school board in the state.

Petitioners are the Executive Board of the Republican Executive Committee of Martin County, Florida. On September 6, 1985 Petitioners filed suit against Respondent, Peggy S. Robbins, as Supervisor of Elections. Respondent, the Martin County School Board, was permitted to intervene as a party defendant. (R 183-84).

The suit challenged the constitutionality of Chapter 76-432, Laws of Florida, 1976, a special law providing for non-partisan school board elections in Martin County. (R 183-84). Petitioners claimed that the special law violated Article III, Section 11(a)(1) of the Florida Constitution (1968) which provides:

Section 11. Prohibited Special Laws.

- (a) There shall be no special law or general law of local application pertaining to:
 - (1) election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies. (R 183-84).

After a non-jury trial, the trial court entered an order on June 7, 1986, upholding the validity of the special law and denying the constitutional challenge. (R 192-93). The trial court expressly held that Article III, Section 11(a)(1) of the Florida Constitution (1968) does not apply to school boards because: (1) school boards are special districts within the meaning of the Constitution and; (2) school board members are not officers. (R 192-93) Petitioners appealed the trial court's order to the Fourth District Court of Appeal by Notice of Appeal dated June 24, 1986. (R 194).

On April 6, 1988, a three judge panel of the the Fourth District Court of Appeal issued a 2 to 1 decision, affirming the trial court and upholding the constitutionality of the special law. Judge Walden wrote a dissenting opinion to the decision. The majority opinion expressly held that Article III, Section 11(a) (1) "is at best ambiguous with respect to whether a school board is included within the exceptions for special districts and local governmental agencies." Kane v. Robbins, No. 4-86-1440 at 3, (Fla. 4th DCA, April 6, 1988). In addition, the majority opinion cited School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977) for the proposition that this Court had previously upheld the constitutionality of a special law governing the election of school board members.

Petitioners timely petitioned this Court to exercise its discretionary jurisdiction to decide this issue of

constitutional construction. This Court granted certiorari
review on October 21, 1988.

SUMMARY OF ARGUMENT

Article III, Section 11(a)(1) of the Florida Constitution, 1968 prohibits special laws pertaining to the election of officers, except officers of municipalities, chartered counties, special districts and local governmental agencies. Chapter 76-432, Laws of Florida 1976, is a special law which pertains to the election of "officers" (school board members in Martin County). Since school boards are not special districts within the meaning of the Florida Constitution, Chapter 76-432 is a special law which is unconstitutional.

Article IX of the Florida Constitution (1968) creates school boards and provides for a uniform system of free public schools. Article IX delegates a portion of the sovereign power of the state to the district school boards to operate and control the public schools and determine taxes. Thus, school board members are officers within the definition set forth in Blackburn v. Brorein, 70 So.2d 293, 297 (Fla. 1954).

Furthermore, several opinions of this Court have recognized that school board members are officers within the meaning of the Florida Constitution. Shad v. DeWitt, 27 So.2d 517 (Fla. 1946); Coon v. Board of Public Instruction of Okaloosa County, 203 So.2d 497 (Fla. 1967); School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977).

Article III, Section 11(a)(1) of the Florida Constitution (1968) excepts officers of "special districts" from its prohibition against special laws. However, school

boards are not "special districts" within the Constitution and therefore Chapter 76-432 is not a permitted special law.

It is a fundamental rule that various provisions of the Constitution should be construed together in order to determine their meaning and purpose. Several provisions of the Florida Constitution expressly distinguished between "school districts" and "special districts," and several Florida statutes contain definitions which differentiate between school boards and special districts. Finally, the legislative history of the Florida Constitution reveals that the terms "special districts and local governmental agencies" were meant to refer to unique bodies such as port authorities and hospital boards. There is no evidence of any intent to include school boards within the meaning of the term "special district."

The majority opinion of the Fourth District Court of Appeal stated that, "[T]here are no public policy issues involved." However, Article IX of the Florida Constitution sets forth the public policy of a uniform system of free public schools. Article III, Section 11(a) prevents interference with the uniform system of public schools, by prohibiting special laws pertaining to the election, jurisdiction or duties of district school board officers. If the decision of the Fourth District is allowed to stand, the Florida legislature would have the authority to change the election, jurisdiction and duties of school boards on a county-by-county basis, contrary to the intent of the uniform system described by the Florida constitution.

Since the legislature has provided by general law for the partisan election of school boards throughout the state and since the overwhelming majority of school boards throughout the state are elected on a partisan basis, there is certainly no evidence of any public policy that prefers non-partisan school board elections. Public policy will be best served if the decision of the Fourth District below is quashed and the legislature is prohibited from passing special laws which would interfere with the election, jurisdiction or duties of local school boards.

ARGUMENT

CHAPTER 76-432, PROVIDING FOR NON-PARTISAN SCHOOL BOARD ELECTIONS IN MARTIN COUNTY VIOLATES THE FLORIDA CONSTITUTION ARTICLE III, SECTION 11(a)(1) PROHIBITING SPECIAL LAWS PERTAINING TO THE ELECTION, JURISDICTION AND DUTIES OF OFFICERS BECAUSE: (A) SCHOOL BOARD MEMBERS ARE OFFICERS WITHIN THE MEANING OF THE CONSTITUTION; (B) SCHOOL BOARDS ARE NOT "SPECIAL DISTRICTS" WHICH ARE EXCEPTED FROM THE CONSTITUTIONAL PROHIBITION AGAINST SPECIAL LAWS; AND (C) ARTICLE III, SECTION 11(a)(1) ASSURES UNIFORMITY IN THE LAWS PERTAINING TO SCHOOL BOARDS WHICH ARE PART OF THE UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS.

A. SCHOOL BOARD MEMBERS ARE OFFICERS WITHIN THE MEANING OF ARTICLE III, SECTION 11(a)(1) OF THE FLORIDA CONSTITUTION (1968).

School board members clearly hold office and are officers within the meaning of the Constitution. In Blackburn v. Brorein, 70 So.2d 293 (Fla. 1954), this Court adopted a definition of "office" which gives meaning to the terms office holder or "officer," in the instant case:

The term "office" implies a delegation of a portion of the sovereign power to, and possession of it, by the person filling the office; a public office being an agency for the state, and the persons whose duty it is to perform the agency being a public officer. The term embraces the idea of tenure, duration, emolument and duties, and has respect to a permanent public trust to be exercised in behalf of government, and not a merely transient, occasional, or incidental employment.

Blackburn, 70 So.2d at 297 (citing Clyatt v. Hocker, 39 Fla. 477, 22 So. 721, 723 (Fla. 1897)).

Applying that definition, school board members have clearly been delegated a portion of the sovereign power.

A uniform system of free public schools is created by Article IX of the Florida Constitution (1968) which, inter alia, provides that each county will constitute a school district with a school board composed of five or more members, chosen by a vote of the electors. The Constitution delegates to each school board the responsibility to operate, control and supervise all the public schools within the school district and to determine the rate of school district taxes. Florida Constitution Article IX, Section 4(a) (1968). Thus, the Florida Constitution delegates a portion of the sovereign power of the state to the school boards, within each county, to permanently hold the public trust and exercise these governmental powers. As such, the "office" of school board member is created by the Florida Constitution and school board members are "officers."

This Court has recognized that school board members are officers within the meaning of Article III, Section 20 of the Florida Constitution (1885) which was the predecessor to Article III, Section 11(a)(1) of the Florida Constitution (1968). Coon v. Board of Public Instruction of Okaloosa County, 203 So.2d 497 (Fla. 1967); Shad v. DeWitt, 27 So.2d 517 (Fla. 1946). Decisions regarding Article III, Section 20 of the 1885 Constitution, are applicable to, and control the interpretation of, Article III, Section 11(a)(1) of the 1968 Constitution. Hayek v. Lee Co., 231 So.2d 214 (Fla. 1970),

In Coon v. Board of Public Instruction of Okaloosa County, 203 So.2d 497 (Fla. 1967), this Court held that a

curative act validating an issue of school district bonds, did not violate Article III, Section 20, on the grounds that it attempted to regulate the jurisdiction and duties of certain county officers, because the act had only an "incidental" impact on the duties of county "officers." In Shad v. DeWitt, 27 So.2d 517 (Fla. 1946), the court held that an act establishing a civil service system for Duval County employees, including employees of the Board of Public Instruction, had only an "incidental affect" upon the jurisdiction and duties of county "officers" and hence was not volative of Article III, Section 20 of the 1885 Constitution. It is clear that these cases were based upon the principle that school board members are "officers" within the meaning of the Florida Constitution and that the special acts in question would have been unconstitutional, but for their merely incidental effect on the jurisdiction or duties of officers.

More recently, this Court dealt with these issues in School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977). In Escambia County, the trial court struck down certain provisions of a special act which provided for non-partisan school board elections in Escambia County. (Similar to the act in this case). The trial court specifically held that school board members were officers within the meaning of Article III, Section 11(a)(1) of the Florida Constitution (1968) and that school boards did not qualify for any of the exceptions set forth in that Section. The case was appealed to this Court on

other grounds and the issue of whether a special law pertaining to school board elections would violate Article III, Section 11(a)(1) of the Florida Constitution (1968) was not submitted directly to this Court. However, this Court cited the trial court's holding and at least implicitly approved it. Escambia County, 353 So.2d at 836, 839.

The issue that was submitted to this Court in Escambia County was whether another provision of the special act violated Article III, Section 11(a) of the Florida Constitution (1968). This other provision reduced school board members' salaries to \$200.00 a month. Since filing fees for the election of school board members are based on their salary, the question was whether a provision reducing salaries of school board members was a prohibited special law "pertaining to the election...of officers...." Escambia County, 353 So.2d at 839. This Court held that any such effect, (reducing salaries, and thus filing fees), upon the election of school board members was so "incidental and tenuous" as not to be cognizable by the prohibition of Article III, Section 11(a), Florida Constitution. Id. at 839. (emphasis added).

Implicit in this Court's finding was that, first, school board members were officers within Article III, Section 11(a), and, second, that if the effect of the officer's salary reduction had not been so "incidental and tenuous," this provision of the special law would have violated Article III, Section 11(a)(1) of the Florida Constitution (1968). Thus,

Escambia County stands for the position advocated by Petitioners in this case, and not as cited by the Fourth District.

Finally, the Attorney General of the State of Florida has concluded on several occasions that school board members are officers and that a special act providing for non-partisan elections is prohibited by Article III, Section 11(a)(1) of the Florida Constitution (1968). See, 1980 Op. Att'y Gen. Fla. 080-26 (April 1, 1980); 1979 Op. Att'y Gen. Fla. 079-106 (December 14, 1979); and 1972 Op. Att'y Gen. Fla. 072-46 (February 15, 1972).

Clearly, the great weight of authority, including this Court's own decisions, supports the determination that school board members are officers to which the prohibition of special laws pertaining to their election in Article III, Section 11(a)(1) applies. Thus, because chapter 76-432 is a special law directly pertaining to the method and manner of school board elections, it is unconstitutional.

B. SCHOOL BOARDS ARE NOT SPECIAL DISTRICTS WHICH ARE EXCEPTED FROM THE CONSTITUTIONAL PROHIBITION AGAINST SPECIAL LAWS.

Article III, Section 11(a)(1) of the Florida Constitution (1968) excepts officers of "special districts" from its prohibition against special laws. However, school boards are not "special districts" within the Constitution and therefore Chapter 76-432 is not a permitted special law.

It is a fundamental rule of statutory construction that an exemption (proviso) to a general clause is to be strictly construed and limited to objects fairly contemplated within its terms. Southern Bell Telephone and Telegraph Co. v. D'Alemberte, 21 So. 570, 572 (Fla. 1897), reaffm'd in Farrey v. Bettendorf, 96 So.2d 889 (Fla. 1957). Another fundamental rule is that the various provisions of the Constitution should be construed together in order to determine their meaning and purpose. Scarborough v. Webb's Cut Rate Drug Co., 8 So.2d 913 (Fla. 1942).

Other provisions of the Florida Constitution clearly distinguish between the terms, "special districts" and "school districts". Article III, Section 9(a) of the Florida Constitution (1968) provides:

Local Taxes - Counties, school districts and municipalities shall, and special districts may be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes,.... (emphasis added).

Article VII, Section 10 of the Florida Constitution (1968) provides:

Pledging Credit - Neither the state nor any county, school district, municipality, special district, or agency of any them shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person; but this shall not prohibit laws authorizing:... (emphasis added).

Article VII, Section 12 of the Florida Constitution (1968) provides:

Local Bonds - Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificate, payable from ad valorem taxation and maturing more than 12 months after issuance... (emphasis added).

Thus the framers of the Constitution not only specifically recognized that the terms "school district" and "special district" were different but also distinguished between the powers and authority granted to them. See, Florida Constitution, Article VII, Section 9(a)(1968).

Furthermore, as pointed out by Judge Walden in his dissent, below, several Florida statutes specifically distinguish school boards from special districts. A definition of "special district" is set forth in Chapter 165 of the Florida Statutes on Municipalities, and indicates that a school district board is not a special district. Florida Statutes, §165.031(5): "special district means a local unit of special government, except a district school board, created pursuant to general or special law for the purpose of performing prescribed specialized functions... within limited boundaries." (emphasis added). An almost identical definition of "special district" is set forth in Chapter 200, Determination of Millage. Florida Statutes, §200.001(8)(c) (1985).

Finally the legislative history of the 1968 Constitution was thoroughly reviewed and documented in Hayek v. Lee County, 231 So.2d 214 (Fla. 1970). This history reveals no intent by the framers to include the term "school boards"

within the meaning of "special districts or local governmental agencies."

The Florida Constitution of 1885 contained a provision which is similar to the current Article III, Section 11(a)(1) of the 1968 Constitution.^{1/} However, the 1885 Florida Constitution did not except "special districts or local governmental agencies" from the prohibition against special laws.

As redrafted and initially proposed, the text of Article III, Section 11(a)(1) of the 1968 Florida Constitution provided:

The legislature shall not pass any special law or local law pertaining to election, jurisdiction, duties or fees of officers, except officers of municipalities or chartered counties.... (Appendix at 10).

The minutes of the Interim (Joint) Constitution Revision Committee of the legislature for October 9, 1967, indicate consideration of adding "special districts" to the exceptions.

^{1/} Article III, Section 20 of the Constitution of 1885 provided in part:

The legislature shall not pass a special or local law in any of the following enumerated cases: That is to say regulating the jurisdiction and duties of any class of officers, except municipal officers...; for opening and conducting elections for state and county officers, and for designating the places of voting.... (Appendix at 12).

The committee minutes of October 30, 1967, reflect that the legislature was concerned with exempting governmental bodies such as port authorities and hospital boards from the prohibitions on special laws. (Appendix at 17). Thus, the terms "special districts or authorities" were added to this section and it was amended to read:

The legislature shall not pass any special law or local law pertaining to the election jurisdiction, duties or fees of officers, except officers of municipalities, chartered counties, special districts, or authorities. (Appendix at 15).

Subsequently, the staff of the Joint Subcommittee on Style and Drafting substituted the words "local governmental agencies" for "authorities" in the final draft of this constitutional provision. (Appendix at 19). Hayek v. Lee County, 231 So.2d 214, 217 (Fla. 1970). The June 24, 1968 report of the Interim Constitution Revision Committee confirms that the substitution of the words "local governmental agencies" for "authorities" was not intended to affect a substantive change from the earlier constitutional provision, other than to authorize passage of special laws pertaining to unique bodies such as port authorities and hospital boards. (Appendix at 17). Hayek, 231 So.2d, 214, 217 (Fla. 1970).

Surely the Constitutional Revision Committee would have been more specific if it had intended to except school boards from the prohibition against special laws. Certain

provisions of the Constitution distinguish between the terms, "school districts" and "special districts." To declare that the term, "special district" is "ambiguous," as the Fourth District did in the majority opinion, and include school boards within its meaning, violates fundamental rules of constitutional construction and ignores the case law and the legislative history of the 1968 Florida Constitution.

C. ARTICLE III, SECTION 11(a)(1) ASSURES UNIFORMITY IN THE LAWS PERTAINING TO SCHOOL BOARDS WHICH ARE PART OF THE UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS.

The majority opinion of the Fourth District Court of Appeal states: "[T]here are no public policy issues involved." Kane v. Robbins, No. 4-86-1440 at 3 (Fla. 4th DCA, April 6, 1988). Petitioners respectfully submit that the Constitution, as an act of the people and the ultimate charter between the people and their government, is the highest indication of the state's "public policy."

Article IX of the Florida Constitution (1968) creates a uniform system of free public schools. Article III, Section 11(a)(1) of the Florida Constitution prevents the legislature from thwarting this uniform system by passing special laws with regard to district school board officers. Article III, Section 11(a)(1) of the Florida Constitution (1968) prohibits special laws pertaining not only to elections, but also as to the duties and jurisdiction of "officers." If the decision of the Fourth District Court of Appeal in this case is allowed to

stand, the Florida legislature will have the power and authority to enact special laws which may regulate and change the duties and jurisdiction of school boards on a county-by-county basis, throughout the state, thus permitting the dismemberment of the uniform system. No reasonable person could conclude that this is the intent of the Florida Constitution or general law.

If anything, the comment of the district court, below, in regard to "public policy," can be construed to mean nothing more than a determination by the appellate court that non-partisan elections do not serve any particular public purpose of the state. Indeed, the legislature has provided by general law that school board elections shall be partisan. Florida Statutes §230.08 (1987), and an overwhelming majority of counties in the state of Florida elect their school board members in partisan elections. Public policy will be best served if this Court quashes the decision of the Fourth District Court of Appeal and declares that special laws pertaining to the election of school board members, and in particular Chapter 76-432, are unconstitutional under Article III, Section 11(a)(1) of the Florida Constitution (1968).

CONCLUSION

For the reasons set forth above, Petitioners respectfully request that this Court declare Chapter 76-432, Laws of Florida (1976) unconstitutional, and quash the decision of the Fourth District Court of Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the within and foregoing document has been furnished by U.S. mail this 15th day of November, 1988, to: James S. Telepman, esquire, Post Office Box 2525, Palm Beach, FL 33480; and Douglas K. Sands, Esquire, 300 Colorado Avenue, Stuart, FL 34994.


THOMAS E. WARNER