Supreme Court of Florida

No. 76,345

SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, Petitioner,

vs.

JACKIE WINCHESTER, Supervisor of Elections, Respondent.

[July 27, **19901**

PER CURIAM.

In Kane v. Robbins, **556** So.2d **1381** (Fla. **1989),** this Court held that a special law providing for the nonpartisan election of Martin County School Board members was invalid. As a consequence, the School Board of Palm Beach County filed a complaint for declaratory relief seeking a determination of the validity of chapter **71-393,** Laws of Florida, under which its members are elected. In the Kane decision, the Martin County

special act was declared invalid because it was enacted in violation of article 111, section 11(a)(1), Florida Constitution, which states:

> 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.

(Emphasis added.)

The Palm Beach County School Board asserted that Kane was distinguishable because Palm Beach County is now a chartered county, which makes the county subject to the exception contained in section 11(a)(1) of article 111; that the prohibition in section 11(a)(1), which was applied in Kane, is inapplicable to chartered counties; and that the provisions of chapter 71-393, Laws of Florida, have validly applied to Palm Beach County since it became a chartered county. The trial court rejected the school board's position, stating in its final order:

> If there had been no Charter for Palm Beach County, we would be controlled by the Kane decision. Without the Charter, the 1971 act changing the election to non-partisan would be invalid. The Charter dictates that the validity of any of its ordinances . . . shall continue as if the Charter had not passed. This raises a question of whether the Charter can adopt and validate an invalid ordinance. If the law was unconstitutional then it must still have the same status.

> The Charter gives the County power to make the election non-partisan but it was never done once the County got the power and authority to do so. The power must first exist, it cannot be used now for then, no more than a light switch can give light until after it has the power.

On the school board's motion for emergency relief, the Fourth District Court of Appeal affirmed the trial court and certified the matter to be of great public importance. School Board v. Winchester, No. 90-1892 (Fla. 4th DCA July 18, 1990). We have jurisdiction.[1] Because of the impending elections, we have acquired the records and briefs filed by the parties in the district court of appeal and have authorized no additional briefing in this Court.

The legislature enacted chapter 71-393 subject to a referendum. The citizens of Palm Beach County approved the act, and they have elected school board members under this act for almost eighteen years.

This Court has a duty to construe a statute as constitutional if it is reasonably possible to do so. See Sandlin v. Criminal Justice Standards & Training Comm'n, 531

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[1] In addition to certifying the matter as one of great public importance, the district court of appeal also purported to certify the trial court's order to this Court for immediate resolution pursuant to article V, section 3(b)(5) of the Florida Constitution and rule 9.125, Florida Rules of Appellate Procedure. However, this procedure is inconsistent with the fact that the district court of appeal affirmed the order of the trial court. Because the school board has now filed a notice to invoke discretionary jurisdiction, we have determined to accept jurisdiction under article V, section 3(b)(4) of the Florida Constitution.

So. 2d 1544 (Fla. 1988); Corn v. State, 332 So. 2d 4 (Fla. 1976). Clearly, the prohibition of article III, section 11(a)(1), is not applicable to chartered counties. Under the special circumstances in this case, we find that it is reasonable to uphold the statute because it was not challenged prior to Palm Beach County's becoming a chartered county and because its provisions are presently constitutional under article 111, section 11, Florida Constitution. We find that Kane does not control since that decision was not applying the constitution to a chartered county.

Accordingly, we hold that the provisions of chapter 71-393, Laws of Florida, are presently constitutional. We therefore quash the decision of the district court of appeal and direct that this cause be remanded to the trial court for the entry of a judgment consistent with the views expressed in this opinion.

It is so ordered.

SHAW, C.J., and OVERTON, McDONALD, BARKETT and KOGAN, JJ., concur
EHRLICH, J., dissents with an opinion, in which GRIMES, J., concurs
GRIMES, J., dissents with an opinion, in which EHRLICH, J., concurs

NO MOTION FOR REHEARING WILL BE ALLOWED.

EHRLICH, J., dissenting.

I am of the opinion that the trial judge was eminently correct in his analysis in his order on Plaintiff's Complaint for Declaratory Judgment.

This Court struck down a similar special act in Kane v. Robbins, 556 So.2d 1381 (Fla. 1989), but the school board asserts, and the majority agrees, that Kane is distinguishable because Palm Beach County is now a chartered county. There is no dispute that Kane would control except for the fact that long after the passage by the legislature, in 1971, of the special act in question the electorate of Palm Beach County approved a County Home Rule Charter, effective January 1, 1985. The majority now says that what was invalid at its inception is now valid by virtue of the subsequently adopted charter. I do not accept such judicial legerdemain. The trial judge put his finger on the nub of the question when he correctly held: "The court finds that the Charter did not adopt, ratify or specifically legitimatize the 1971 act allowing the election of school board members to be nonpartisan."

The travesty of the whole scenario is that now that the county is chartered it no longer needs to rely on special acts of the legislature to bring about nonpartisan election of members of the school board. The county itself has the authority to enact such a provision as the one at issue. Yet it has never done so.

I readily agree that what the majority is doing makes things easier for the county and the school board but that should not be the basis of a ruling by this Court.

The majority says "that it is reasonable to uphold the statute because it was not challenged prior to Palm Beach County's becoming a chartered county and because its provisions are presently constitutional." I cannot accept being "reasonable" as a legal basis for upholding the constitutionality of a special act which was unconstitutional at its inception. The critical dispositive factor in my opinion is that if the statute was unconstitutional at its inception, the adoption of the charter does not in some mysterious, mystical manner make it constitutional now. While such a ruling may not be harmful in this case, and may in fact be highly desirable from the point of view of the school board, it carries with it the potential for doing harm under other factual circumstances, and this is what makes it "bad law."

I would approve the decision below. I, therefore, respectfully dissent.

GRIMES, J., concurs

GRIMES, J., dissenting.

I can sympathize with the unspoken desire to avoid disruption of the impending school board election in Palm Beach County. However, I cannot join in accomplishing that result without a rational basis for doing so.

There is no dispute that chapter 71-393, Laws of Florida, was invalid because it was enacted in violation of article 111, section 11(a)(1) of the Florida Constitution. Kane v. Robbins, 556 So.2d 1381 (Fla. 1989). Palm Beach County did not become a chartered county until several years after the enactment of chapter 71-393. The only portion of the Palm Beach County charter which may be pertinent to this issue is section 6.2 which states that "adoption of this Home Rule Charter shall not affect any existing obligations of Palm Beach County, the validity of any of its ordinances, or the term of office of any elected county officer which terms shall continue as if this charter had not passed." Palm Beach County has never acted in its capacity as a chartered county to authorize nonpartisan elections for members of the school board.

I know of no legal theory by which it could be said that the adoption of the home rule charter breathed life into the constitutionally invalid special law. See Broward County v. Plantation Imports, Inc., 419 So.2d 1145 (Fla. 4th DCA 1982).

I respectfully dissent.

EHRLICH, J., concurs

Direct Appeal of Judgment of Trial Court, in and for Palm Beach County,
Edward Rodgers,, Judge, Case No. CL-90-4956-AA - Certified by the District Court of Appeal,
Fourth District, Case No. 90-1892

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