OA 7-5-95

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IN THE SUPREME COURT OF FLORIDA

LAWTON CHILES, as a
Citizen and Taxpayer and
as Governor of Florida,

Petitioner,

v. Case No.: 85,870

ROBERT MILLIGAN, as Comptroller, and
SANDRA MORTHAM, as Secretary of State,

Respondents.
_____/

BRIEF OF AMICUS CURIAE

FLORIDA SCHOOL BOARDS ASSOCIATION, INC.,
FLORIDA ASSOCIATION OF DISTRICT
SCHOOL SUPERINTENDENT'S, INC.
and FLORIDA ASSOCIATION OF
SCHOOL ADMINISTRATOR'S, INC.
on behalf of
LAWTON CHILES, as a Citizen and
Taxpayer and as Governor of Florida

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PRELIMINARY STATEMENT

The Florida School Boards Association, Inc., is a corporate body representing the interests of school boards in the State of Florida. The Florida Association of District School Superintendents, Inc., is a corporate body representing the interests of all district school superintendents in the State of Florida. These Associations appears as amicus curiae in this action to represent the interests of school boards and superintendents who are responsible for collective bargaining negotiation and for the preparation and implementation of budgets for each school district in the State of Florida. The Florida Association of School Administrators, Inc. is a corporate body representing the interests of school administrators in the State of Florida. This Association appears as amicus curiae in this action to represent the interests of principals and administrators who are responsible for the day to day administrative duties in the schools and whose salaries are negatively impacted.

This brief is submitted in support of the position of Petitioner, LAWTON CHILES, as a citizen and taxpayer and as Governor of Florida.

In this brief the Petitioner, LAWTON CHILES, shall be referred to as Governor Chiles. The Respondent, ROBERT MILLIGAN, shall be referred to as Comptroller Milligan, and Respondent, SANDRA MORTHAM, shall be referred to as Secretary Mortham.

STATEMENT OF THE CASE AND FACTS

Amicus Curiae adopts the statement of the Case and Facts presented in the brief by Petitioner, LAWTON CHILES, as a citizen and taxpayer and as Governor of Florida.

SUMMARY OF ARGUMENT

The legislative authority to append qualifications and restrictions to specific appropriations it makes is not without limitation. The proviso language must pass the following test: (1) the proviso must not change or amend existing law on subjects other than appropriations; and (2) the proviso must directly and rationally relate to the purpose of the appropriation. The proviso language found in the General Appropriations Act at Section 2 - Education (all other funds), under Line Item 150, paragraphs 33 and 34, fails to pass the test.

The proviso language redistributes funds designated for distribution contrary to the statutory funding formula. The proviso language redistributes funds designated for distribution after school board budgets are fixed and millage rates are established in accordance with law. The proviso language creates a classification of individuals contrary to the statutory definition of instructional personnel. The proviso language redistribution of funds based solely on a specific classification of personnel directly interferes with the collective bargaining process and the rights of other employees.

The proviso language creates a specific class of individuals that are to receive a certain level of pay. This classification of individuals is without a rational basis and does not directly or rationally relate to the purpose of the appropriation. The proviso language directly infringes upon the constitutional and statutory authority of School Boards to set salaries, determine class size, and operate and control the school districts.

POINTS ON APPEAL

THE PROVISO LANGUAGE IN THE GENERAL APPROPRIATIONS ACT, SECTION 2 - EDUCATION (ALL OTHER FUNDS), UNDER LINE ITEM 150, PARAGRAPHS 33 & 34, IS AN INVALID EXERCISE OF LEGISLATIVE AUTHORITY.

ARGUMENT

THE PROVISO LANGUAGE IN THE GENERAL APPROPRIATIONS ACT, SECTION 2 - EDUCATION (ALL OTHER FUNDS), UNDER LINE ITEM 150, PARAGRAPHS 33 & 34, IS AN INVALID EXERCISE OF LEGISLATIVE AUTHORITY.

The Florida Legislature enacted the General Appropriation Act for 1995-96 that contains proviso language for a classroom enhancement incentive. Line Item 150, Section 2 - Education (All other Funds), of the General Appropriations Act. The proviso language creates a formula to penalize some counties and reward others by altering the amount of state monies to be distributed based upon the proportion of actual classroom salaries to trial salaries.

This Court has set forth a two part test to determine the validity of proviso language. In Brown v. Firestone, 382 So.2d 654 (Fla 1980) this Court announced the test as follows: (1) whether the proviso changes or amends existing law on subjects other than appropriations; or (2) whether the proviso directly and rationally relates to the purpose of the appropriation. In this instance the proviso language fails both parts of the test.

The classroom enhancement incentive requires school districts to compute salaries by category as follows:

(a) Classroom salaries - the total of salaries paid to full time regular or temporary teachers and full time classroom aides.

(b) Total staff salaries - the amount paid to all district employees.

(c) Non-classroom salaries - the difference between total staff salaries and classroom salaries.

The proviso language then provides a system for financial penalty and reward as follows:

> If the district's 1995-96 proportion of actual classroom to total salaries is less than the proportion calculated in Step 4, an amount necessary to achieve the Step 4 proportion shall be calculated and that amount shall be deducted from the district's total FEFP entitlement and shall be reallocated among districts that did achieve the proportion of classroom to total salaries calculated in Step 4.

A. CHANGE OR AMENDMENT OF EXISTING LAW

The proviso language changes or amends existing law. School Boards are constitutional entitles charged with the authority to operate, control and supervise the schools in the district. Article IX, §4, Constitution of Florida, 1968; §230.03(2), F.S. The penalty/reward system established by the proviso language clearly invades the discretionary authority of school boards. School boards statutory authority to determine positions to be filled and compensation to be paid is totally undermined. Section 230.23(5)(a) and (c), F.S. The proviso language is a backdoor amendment changing and restricting the authority of school boards to determine school staffing and salaries.

The proviso language establishes a classification of employee that is arbitrary, capricious and inconsistent with existing law. Section 228.04(9), F.S. defines instructional personnel as follows:

> "INSTRUCTIONAL PERSONNEL - 'Instructional personnel' means any member of the instructional staff as defined by regulations of the state board and shall be used synonymously with the word 'teacher' and shall include teachers, librarians, and others engaged in an instructional capacity in the schools."

Section 231.141, F.S. defines teacher aides as follows:

> "Teacher aides - A school board may appoint teacher aides to assist members of the instructional staff in carrying out their duties and responsibilities. A teacher aide shall not be required to hold a teaching certificate."

The Legislature by establishing the classification for classroom salaries has failed to include part-time teachers, full-time librarians, speech therapists and counselors among others that fall within the statutory definition of teacher. The bargaining units for collective bargaining purposes are not structured in this manner so that a school boards collective bargaining is impaired. The proviso language tilts the bargaining table by mandating a level of compensation for specified employees at the expense of other employees contrary to Section 447.301, F.S. and Article 1, §6 Constitution of Florida.

The classroom enhancement incentive comes after the funding formula under §236.081, F.S. has been determined and after school boards set their millage for the year. The tax rolls are certified to school boards no later than July 1. Section 193.023(1), F.S. School Boards conduct budget hearings and must have a final budget and established level of millage assessment within 80 days. Section 200.065(2), F. 3, F.S. The reward/penalty proviso comes after budgets are fixed and rates established. The Legislature is taking funds designated for distribution and is redistributing those funds. Grindl v. Dept. of Education, 396 So.2d 1105 (Fla. 1981). The legislature's artfull attempt at by-passing this Court's decisions by the introductory language to §236.081 fails to pass constitutional muster. The legislature is simply attempting to load its logs in a different manner before it starts them rolling. Logrolling is not permissible. Brown v. Firestone, supra.

B. THE PROVISO DOES NOT DIRECTLY OR RATIONALLY RELATE TO THE PURPOSE OF THE APPROPRIATION.

The calculation is inherently flawed because it relies on salaries paid and number of positions employed. A wealthy districts ability to pay higher salaries is rewarded and a poor districts inability is punished. Taking money from one district to reward another deprives the poor district of uniformity.

The calculation is flawed because it lumps non-certificated teacher aides with teachers and excludes certificated librarians, part-time teachers, etc. The calculation is farther flawed because it relies upon actual salaries. Some districts have a larger percentage of more experienced staff and thus the salaries are higher. Some districts contract out services or use part-time teachers and thus their actual salaries would be lower simply because of the flawed classification.

The calculation allows for no consideration of issues that some districts have taken to reduce costs, e.g. contracting out services or hiring part-time teachers. The calculation totally ignores the different needs of different counties. For example:

* Most districts utilize part-time teachers and aides (thus penalized)

* Some districts are under Court order and must have certain additional services such as bus drivers, mechanics, etc. (thus penalized)

* Most districts utilize bus aides because they are necessary on buses with either disruptive students or "medically fragile" students (thus penalized)

* Most districts are required to provide services such as speech therapist, occupational therapists, physical therapists, nurses, etc. that do not fit the definition of classroom teachers (thus penalized)

* Most districts provide counselors and media specialist that do not fit the definition of classroom teachers (thus penalized)

* Substitute utilization is not allowed within the calculation

* The definition and the calculation assumes that other essential services do not contribute to the education of children

* Summer School salaries are not included in the calculation.

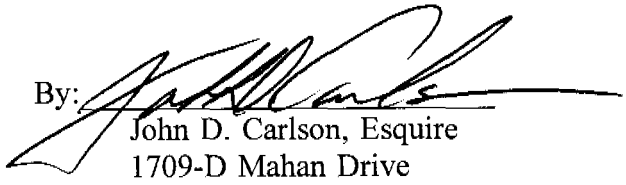
The calculation comes after the student's are counted and salaries set. Since most salaries have been established, a budgetary penalty (short fall) without the ability to adjust millege could jeopardize the ability to pay contracted salaries. In other counties there would be a surplus. The enhancement incentive has no direct or rational relationship to the purpose of appropriation. Department of Education v. Lewis, 416 So.2d 455 (Fla. 1982).

CONCLUSION

The provision in the appropriations bill providing for a classroom enhancement incentive is invalid. The provision directly infringes upon the constitutional and statutory authority of school boards. The provision directly impairs the collective bargaining process. The provision bears no reasonable or rational relationship to the purpose of the appropriation.

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to W. Dexter Douglas, General Counsel and Deborah K. Kearney, Deputy General Counsel, Attorney for Governor, Office of the Governor, 209 Capitol, Tallahassee, FL 32399-0001; Harry Hooper, Attorney for Comptroller, Department of Banking & Finance, The Capitol, Ste. 1302, Tallahassee, FL 32399; and to Don Bell, Attorney for Secretary of State, The Capitol LL 10, Tallahassee, FL 32399-0250 this 29 day of June, 1995.

GATLIN, WOODS, & CARLSON

By: 

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