

IN THE CIRCUIT COURT OF THE 2ND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

SCHOOL BOARD OF PALM BEACH
COUNTY,

Case No.

Plaintiff,

v.

FLORIDA STATE BOARD OF EDUCATION;
FLORIDA DEPARTMENT OF EDUCATION;
and PAM STEWART, in her official capacity as
Florida Commissioner of Education and member
of the State Board of Education.

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is a lawsuit for declaratory and injunctive relief, in which Plaintiff challenges the constitutionality of § 1013.62(1), (3) and § 1011.71(2), Fla. Stat. (“Charter School Millage Provisions”). Under these provisions, Florida school districts are required to distribute to charter schools within their districts a portion of the discretionary ad valorem tax revenues authorized under § 1011.71(2), which are set aside for capital expenses (“Capital Outlay Millage”). The amount of Capital Outlay Millage revenues that districts must provide to charter schools is determined by Defendant, Florida Department of Education, based on a statutorily mandated methodology. Pursuant to § 1013.62(3)(e), districts must distribute the funds to charter schools no later than February 1, 2018, for the 2017-2018 fiscal year.

2. The Charter School Millage Provisions violate three sections of the Florida Constitution: (a) Article IX, § 4(b), which provides that “[t]he school board shall operate, control and supervise all free public schools within the school district and determine the rate of

school district taxes”; (b) Article VII, § 9(a), which provides that “[c]ounties, school districts, and municipalities shall...be authorized by law to levy ad valorem taxes...for their respective taxes; and (c) Article VII, § 1(a), which prohibits the levy state ad valorem taxes upon “real estate or tangible personal property.”

JURISDICTION AND VENUE

3. This Court has jurisdiction over this lawsuit pursuant to Article V, § 20(c)(3), of the Florida Constitution, and § 26.012(2)(c), (3) and § 86.011, Fla. Stat.

4. Venue lies in this Court because Defendants maintain their principal places of business in Leon County.

PARTIES

5. Plaintiff School Board of Palm Beach County (“School Board”) is the governing body for the School District of Palm Beach County (“District”), the fifth largest in the State of Florida with 185 schools, serving more than 194,300 students.

6. Defendant Florida Department of Education (“FDOE”) is the administrative agency that is responsible for implementing Florida’s education policies and programs, including § 1013.62 and § 1011.71(2), Fla. Stat. Specifically, FDOE is charged with using the methodology specified in § 1013.62(3) to determine the amount of Capital Outlay Millage Revenue that the District must distribute to charter schools.

7. Defendant State Board of Education (“SBE”) is responsible for overseeing the FDOE.

8. Defendant Pam Stewart is Florida Commissioner of Education and a member of SBE. As Commissioner of Education, Stewart oversees the operation of FDOE, which is charged with determining the amount of Capital Outlay Millage revenue that the District must distribute to charter schools. Stewart is sued in her official capacity.

FACTUAL BACKGROUND

9. On June 15, 2016, House Bill 7069 (“HB 7069”), “An act relating to education,” was signed into law by Governor Rick Scott. The 278-page bill amends and creates a variety of statutes concerning education within the state of Florida.

10. Among the statutes amended by HB 7069 were § 1011.71(2) and § 1013.62, Fla. Stat. As amended, these statutes mandate that school districts distribute a portion of their Capital Outlay Millage revenues to eligible charter schools.

11. Under Article VII, § 9 of the Florida Constitution, school districts “shall be authorized by law to levy ad valorem taxes” not to exceed ten mills “for all schools purposes.” Pursuant to Article VII, § 9, § 1011.71(2), Fla. Stat., authorizes school boards to levy an ad valorem tax of no more than 1.5 mills against the taxable property value for capital expenses, including new construction and remodeling projects; maintenance, renovation, and repair of existing school facilities or leased facilities to correct deficiencies; the purchase, lease-purchase or lease of school buses and new or replacement technology; and several other purposes set forth under the statute. § 1011.71(2)(a)-(k), Fla. Stat.

12. Prior to the passage of HB 7069, school boards had the ability to use their discretion regarding whether to distribute a portion of their Capital Outlay Millage revenues to charter schools. As amended, § 1011.71(2) now mandates that the Capital Outlay Millage revenues be used for “school purposes for charter schools,” in addition to district schools. It provides that:

In addition to the maximum millage levy as provided in subsection (1), each school board may levy not more than 1.5 mills against the taxable value **for school purposes for charter schools pursuant to s. 1013.62(3)** and for district schools to fund [capital projects and other items specified in subsections (a)-(k)].

§ 1011.71(2), Fla. Stat. (emphasis added).

13. Prior to the passage of HB 7069, § 1013.62 governed the allocation and use of charter school capital outlay funds appropriated by the state. HB 7069 amended subsection (1) and added a new subsection (3), which together mandate that school districts annually distribute a portion of the Capital Outlay Millage revenues to eligible charter schools, in an amount calculated and determined by FDOE.

14. Section 1013.62 states that:

(1) **Charter school capital outlay funding shall consist of revenue resulting from the discretionary millage authorized in s. 1011.71(2)** and state funds when such funds are appropriated in the General Appropriations Act.

...

(3) If the school board levies the discretionary millage authorized in s. 1011.71(2), the department shall use the [methodology specified in subsections (a)-(e)] to determine the amount of revenue that **a school district must distribute to each eligible charter school**[.]

§ 1013.62, Fla. Stat. (emphasis added).

15. The statute directs FDOE to determine the amount of Capital Outlay Millage revenues that school districts must distribute to charter schools based on a methodology set forth under § 1013.62(3). Districts are bound by FDOE’s final determination of the capital outlay allocation for each charter school and school boards are precluded from exercising any control or discretion to determine the most appropriate uses of these funds. Moreover, the statute does not provide any avenue for school districts to challenge FDOE’s application and interpretation of the statutorily prescribed methodology.

16. First, under the methodology set forth, FDOE reduces the district’s “total discretionary millage revenue by the school district’s annual debt service incurred as of March 1, 2017[.]” § 1013.62(3)(a), Fla. Stat. For districts subject to a “participation requirement”

pursuant to § 1013.64(2)(a)(8), FDOE also reduces the total discretionary millage revenue by the amount of the participation requirement “that is being satisfied by revenues raised by the discretionary millage.” *Id.*¹

17. FDOE then calculates the share of revenues that the district must distribute to charter schools from the adjusted discretionary millage amount based on a full-time equivalent (“FTE”) student basis. Specifically, § 1013.62(3) directs FDOE to:

(b) Divide the school district's adjusted discretionary millage revenue by the district's total capital outlay full-time equivalent membership and the total number of unweighted full time equivalent students of each eligible charter school to determine a capital outlay allocation per full-time equivalent student.

(c) Multiply the capital outlay allocation per full-time equivalent student by the total number of full-time equivalent students of each eligible charter school to determine the capital outlay allocation for each charter school.

§ 10136.62(3), Fla. Stat.

18. Finally, if applicable, the statute directs FDOE to “reduce the capital outlay allocation identified in [§1013.62(3)(c)] by the total amount of state funds allocated to each eligible charter school in [§ 1013.62(2)] to determine the maximum calculated outlay allocation.”

§ 1013.62(3)(d), Fla. Stat.

19. The statutory formula set forth under § 1013.62(3) is illustrated in Figure 1 below:

¹ Section 1013.64(2)(a)(8) requires districts that seek funding from FDOE’s Special Facility Construction Account to budget a portion of their discretionary millage revenues to the project for which funding is sought in order to meet a district’s “participation requirement.” The District does not receive funding from FDOE’s Special Facility Construction Account and therefore does not use millage revenues to satisfy a participation requirement.

FIGURE 1

<p><u>Abbreviations</u> MR = Millage Revenue COA = Capital Outlay Allocation FTE = Full-time Equivalent Student ECS = Eligible Charter School</p>	
Adjusted Discretionary MR	= Total Discretionary MR – (Debt Service as of Mar. 1, 2017 Satisfied by MR + Participation Requirement Satisfied by MR, if applicable)
COA per FTE	= $\frac{\text{Adjusted Discretionary MR}}{(\text{District Total CO FTE membership} + \text{Total Unweighted FTE for all ECS})}$
COA per CS	= COA per FTE x Total FTE for each CS
<i>If applicable:</i> Max. COA	= COA per CS – Total State Funds Allocated to CS

20. School districts must begin distributing “capital outlay funds to charter schools no later than February 1 of each year, beginning on February 1, 2018, for the 2017-2018 fiscal year.” § 1013.62(3)(e), Fla. Stat.

21. Charter schools which meet the criteria set forth in § 1013.62(1)(a) are eligible to receive a proportionate share of the school district’s Capital Outlay Millage funds each year, regardless of the charter school’s actual need. Some of the eligibility criteria are tied to the length of time that the charter school has been in operation or the length of time that the school’s governing board has been established in the state. For example, under § 1013.62(1)(a)(1), a charter school is eligible to receive capital outlay funds if it has “been in operation for 2 or more

years,” provided that it meets the other criteria set forth under subparagraphs 2-5.² Thus, the number of eligible charter schools will grow each year as additional charter schools become eligible for funding based on the length of time that they have been in operation.

22. The Charter School Millage Provisions have resulted and will continue to result in an unlawful infringement on the Board’s constitutionally granted authority to operate, control and supervise all free public schools within the District and determine the rate of school district taxes, and to levy ad valorem taxes for school district purposes. Moreover, these statutory provisions are in effect an unconstitutional ad valorem tax levied by the State.

23. Currently, there are 33 charter schools within the District that are eligible to receive Capital Outlay Millage revenues under section 1013.62.³ As a result of the Charter School Millage Provisions, the Board estimates that for the fiscal year 2017-2018, it will be

² The complete list of criteria, as set forth under § 1013.62(1)(a), Fla. Stat., is as follows:

- (a) To be eligible to receive capital outlay funds, a charter school must:
 1.
 - a. Have been in operation for 2 or more years;
 - b. Be governed by a governing board established in the state for 2 or more years which operates both charter schools and conversion charter schools within the state;
 - c. Be an expanded feeder chain of a charter school within the same school district that is currently receiving charter school capital outlay funds;
 - d. Have been accredited by a regional accrediting association as defined by State Board of Education rule; or
 - e. Serve students in facilities that are provided by a business partner for a charter school-in-the-workplace pursuant to s. 1002.33(15)(b).
 2. Have an annual audit that does not reveal any of the financial emergency conditions provided in s. 218.503(1) for the most recent fiscal year for which such audit results are available.
 3. Have satisfactory student achievement based on state accountability standards applicable to the charter school.
 4. Have received final approval from its sponsor pursuant to s. 1002.33 for operation during that fiscal year.
 5. Serve students in facilities that are not provided by the charter school’s sponsor.

³ This number could change during the fiscal year.

required by the Legislature to divert to these charter schools approximately \$8 million in Capital Outlay Millage revenues. These funds were previously earmarked for capital projects at traditional public schools within the District. For this reason, an analysis released by Moody's Investors Service on June 21, 2017 stated that the Charter School Millage mandate is credit negative for large school districts like Palm Beach County (*i.e.*, the district's credit rating will decline which will make future loans more costly and difficult to obtain), which have significant charter school enrollment.

24. The number of charter schools within the District eligible to receive Capital Outlay Millage revenues – and thus the amount of funds that the District must distribute to charter schools – is expected to grow each year. Even if the number of charter schools within the District eligible to receive Capital Outlay revenues were to remain the same, the Board estimates that it would be required by the Legislature to distribute over three-hundred million dollars of locally generated ad valorem tax revenues to charter schools over the next 10 years. Given the expected growth of charter schools, this number is likely to be much higher. However, the District is unable to reliably predict the total impact of the Charter School Millage Provisions because it does not know what the level of charter school growth will be over the next 10 years.

25. Once the Capital Outlay Millage funds are distributed to charter schools, the charter schools have broad discretion concerning the use of these funds and the Board's role is limited to ensuring that charter schools use the funds for one of the general purposes specified under § 1013.62(4). The Board has no authority to otherwise supervise or control the use of the funds or to ensure that the funds are used in an efficient manner and for necessary purposes. Since the Board lacks meaningful control over the discretionary ad valorem tax revenues

distributed to charter schools, there are no means for the residents of Palm Beach County, who elect the Board, to hold charter schools accountable for the use of their tax dollars.

26. In contrast, the Board's use of the Capital Outlay Millage funds is subject to statutory requirements designed to ensure public accountability. Each year, the Board must "adopt a capital outlay budget for the ensuing year in order that the capital outlay needs of the board for the entire year may be well understood by the public." §§ 1011.012 and 1013.61, Fla. Stat. The capital outlay budget must "be based upon and in harmony with the" comprehensive educational plant and ancillary facilities plan that the Board is required to prepare and adopt each year. *See* §1013.35, Fla. Stat.; *see also* § 1013.31(1), Fla. Stat. (requiring school boards to arrange for an educational plant survey at least every 5 years, which must be reviewed and validated by Defendant SBE). Additionally, pursuant to the Florida Truth in Millage ("TRIM") Act, § 200.065, Fla. Stat., the Board is required to hold public hearings before adopting a capital outlay budget and to advertise its intent to adopt the capital outlay millage rate and capital outlay budget in a newspaper of general circulation. § 200.065(2), Fla. Stat. Collectively, these statutory requirements ensure that the Board's use of Capital Outlay Millage revenues is transparent to the public and based upon careful consideration and well-reasoned planning.

27. Although the Board is required to inform the public that the capital outlay budget will include charter school outlay projects, the public notice does not include details regarding the charter schools' intended use of these funds and charter school representatives are not required to attend the public hearings. Thus, while the Board may respond to public input and revise the budget based on that input for expenditures in public schools from the discretionary millage funds, budgetary expenditures by charter schools from discretionary millage are not subject to any modification at all, regardless of public input.

28. As a result of the loss of capital outlay revenues to charter schools, the Board has been and will continue to be forced to eliminate and delay projects included in its annual capital outlay budget, which the Board has determined to be necessary and appropriate. These projects include, but are not limited to, maintenance of existing facilities which is needed to correct years of deferred maintenance, technology upgrades and improvements, and the replacement of school buses and support vehicles.

29. There is a *bona fide* dispute between the parties as to the constitutionality of § 1011.71(2) and § 1013.62(1) and (3), Fla. Stat., as to which they have actual, present, adverse, and antagonistic interests.

FIRST CAUSE OF ACTION

(Violation of Article IX, § 4(b) of the Florida Constitution)

30. The allegations in Paragraphs 1-29 are re-alleged and incorporated herein by reference.

31. Article IX, § 4(b) of the Florida Constitution provides that “[t]he school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes.”

32. By mandating that school boards divert a portion of their discretionary millage to charter schools and specifying the methodology for doing so, the Charter School Millage Provisions unconstitutionally preclude the Board from exercising its authority under Article IX, § 4(b) to control and supervise the use of locally generated funds to support the public schools within the District.

SECOND CAUSE OF ACTION

(Violation of Article VII, § 9(a) of the Florida Constitution)

33. The allegations in Paragraphs 1-29 are re-alleged and incorporated herein by reference.

34. Article VII, § 9(a) of the Florida Constitution provides, in relevant part, that: “Counties, school districts, and municipalities shall ... be authorized by law to levy ad valorem taxes and ... for their respective purposes...”

35. By diverting a portion of school districts’ ad valorem taxes to a purpose mandated by the Legislature, the Charter School Millage Provisions place an unconstitutional constraint on the Board’s authority to levy ad valorem tax revenue for its purposes.

THIRD CAUSE OF ACTION

(Violation of Article VII, § 1(a) of the Florida Constitution)

36. The allegations in Paragraphs 1-29 are re-alleged and incorporated herein by reference.

37. Article VII, § 1(a) of the Florida Constitution provides, in relevant part, that “[n]o state ad valorem taxes shall be levied upon real estate or tangible personal property.”

38. The Charter School Millage Provisions constitute a state mandate directing the use of locally generated ad valorem tax revenues. As such, these provisions are in effect an ad valorem tax levied by the state in violation of § 1(a) of article VII of the Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court:

- (1) Declare the provisions of § 1013.62(1) and (3) and § 1011.71(2), Fla. Stat., which require districts to distribute to charter schools a portion of their discretionary capital outlay ad valorem tax revenues unconstitutional under (a) Article IX, § 4(b) of the Florida

Constitution; (b) Article VII, § 9(a) of the Florida Constitution; and (c) Article VII, § 1(a) of the Florida Constitution.

(2) Enjoin defendants, and all persons acting under their direction or acting in concert with them, from taking any measures to implement the requirement under § 1013.62(1) and

(3) and § 1011.71(2), Fla. Stat., that districts distribute to charter schools a portion of their discretionary capital outlay ad valorem tax revenues.

(3) Award to Plaintiff the attorneys' fees, expenses, and costs that are incurred in prosecuting this lawsuit; and

(4) Order such other and further relief as this Court may deem appropriate.

Dated: September 28, 2017

Respectfully submitted,

BOIES SCHILLER FLEXNER LLP

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