

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 10-2019-CA-806
DIVISION: F

SCHOOL BOARD OF CLAY
COUNTY, FLORIDA,
Petitioner,

vs.

CLAY COUNTY, by and through its
BOARD OF COUNTY COMMISSIONERS,
Respondent.

_____ /

ORDER

This matter is before the Court upon Petitioner's, School Board of Clay County, Florida ("SBCC") Emergency Petition for Writ of Mandamus (the "Petition"), filed July 19, 2019. The question presented in this lawsuit can be briefly stated: does §212.055(6), Fla. Stat., contain within it a clear and unambiguous legal duty for the Board of County Commissioners (the "Board") to place a sales surtax referendum on the ballot, on an election date chosen solely by the SBCC. The question can also be restated as follows: does §212.055(6), Fla. Stat., contain within in it a clear and unambiguous grant of authority to the SBCC, and to it alone, to select the type and date of an election for its sales surtax referendum, including selecting a date when no election is scheduled to occur. For the reasons contained in the analysis below, the Court must answer both questions in the negative; therefore, mandamus does not lie and the petition must fail.

The Court has carefully reviewed the Petition, the Board's written response and the SBCC's written reply. A hearing was conducted on August 9, 2019, and the Court heard argument from counsel, and received into evidence certain exhibits the parties had jointly

stipulated to. The pertinent facts necessary to address the Petition are not in dispute. On June 27, 2019, the SBCC adopted a resolution, which it amended on July 8, 2019, (the “Resolution”) to levy a one-half cent sales surtax in Clay County for thirty years beginning January 1, 2020. The Resolution was addressed at a county commission meeting on July 9, 2019. After discussion among the commissioners, and after hearing comments from citizens who were present, the Board voted unanimously to decline approval of the Resolution and instead to return it to the SBCC “to refine [it] and put a date for the November 2020 general election.” The Petition followed ten days later on July 19, 2019.

The Legal Standard for a Writ of Mandamus

Mandamus lies to compel a clear legal right when a respondent has failed to perform a clear legal duty, and there are no other available legal remedies. Adams v. State, 560 So.2d 321, 322 (Fla. 1st DCA 1990). “Mandamus may be used only to enforce a clear and certain right; it may not be used to establish such a right, but only to enforce a right already clearly and certainly established in the law.” Milanick v. Town of Beverly Beach, 820 So.2d 317, 320 (Fla. 5th DCA 2001). “Mandamus may be granted only if there is a clear legal obligation to perform a duty in a prescribed manner.” Id. Specifically, the act in question must be ministerial. Town of Manalapan v. Rechler, 674 So.2d 789, 790 (Fla. 4th DCA 1996). “A duty or act is defined as ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.” Rhea v. District Board of Trustees of Santa Fe College, 109 So.3d 851, 855 (Fla. 1st DCA 2013). If a respondent must exercise some discretion in carrying out a legal duty, the use of mandamus is precluded. Miami Beach v. Mr. Samuel’s Inc., 351 So.2d 719, 720 (Fla. 1977).

The Statute

The statute at issue provides in relevant part as follows:

(6) School capital outlay surtax.

(a) The school board in each county may levy, pursuant to resolution conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent.

(b) The resolution shall include a statement that provides a brief and general description of the school capital outlay projects to be funded by the surtax. The statement shall conform to the requirements of s. 101.161 and shall be placed on the ballot by the governing body of the county.

Section 212.055(6)(a)(b), Fla. Stat.

Legal Analysis

(a) A Clear Legal Right

The SBCC contends the above statutory language grants to it a clear legal right to select the type and date of an election, at its sole discretion, for the purpose of submitting its Resolution to the electors. To determine whether or not this is so, the Court must look to the language of the statute. “One of the most fundamental tenets of statutory construction requires that we give statutory language its plain and ordinary meaning, unless the words are defined in the statute or by the clear intent of the legislature.” Green v. State, 604 So.2d 471, 473 (Fla. 1992); Holly v. Auld, 450 So.2d 277, 219 (Fla. 1984).

There is nothing in the above-cited text, or in any other portion of the statute, that expressly grants to a school board the authority the SBCC claims it possesses. Such express language simply does not exist in the statute. Counsel for the SBCC acknowledged this fact at

the hearing. The SBCC argues instead that the authority (or the “legal right” to use the mandamus standard) to select the type and date of the election is implied. SBCC’s argument is that because it is granted a clear legal right to levy a sales surtax, it necessarily follows that it has the right to determine the amount of the tax, the duration of the tax, and the effective date of the tax. Because the SBCC chose, in its sole policy-making authority that a sales surtax was necessary, and chose an effective date of January 1, 2020, it necessarily follows that an election must occur before that date. Therefore, the SBCC argues, it has an implied legal right to call for a fall 2019 special election.

The SBCC is correct in that, generally, an authorization of an act also authorizes any necessary predicate acts to accomplish the act authorized. This legal principle is of ancient vintage. In 1789, Sir Henry Finch wrote that “[w]here the king is to have mines, the law giveth him the power to dig in the land.”¹ The concept is also old and enduring in Florida law. In 1888, the Florida Supreme Court recognized that “[w]henver a power is given by statute, everything necessary to the effectual execution of the power is given by implication.” State ex rel. Smith et al. v. Burbridge et al, 24 Fla. 112, 126 (Fla. 1888). In 2009, the Second District similarly held that “[a] statutory grant of power or right carries with it by implication everything necessary to carry out the power or right and make it effectual and complete.” Brock v. Board of County Com’rs of Collier County, 21 So.3d 844, 847 (Fla. 2d DCA 2009) *citing* Deltona Corp. v. Fla. Pub. Serv. Comm’n, 220 So.2d 905, 907 (Fla. 1969).

To determine whether a school board has the implied authority to compel that a special election be held on a particular date, solely to meet its chosen effective date, the Court must

¹ Reading Law: The Interpretation of Legal Texts, Antonin Scalia & Bryan Garner, p. 192 (2012).

examine the overall purpose of the statute. Coca-Cola Co., Food Division, Polk County v. State of Florida, Department of Citrus, 406 So.2d 1079,1082 (Fla. 1982)(finding that in order to determine whether the commission had the implied authority to require declarations of origin on citrus, an examination of the relevant code was necessary to determine its purpose and the duties it placed on the commission). The purpose of § 212.055(6), Fla. Stat. can be easily gleaned from simply reading it. The Florida Legislature granted to the local school boards the authority to levy a discretionary sales surtax for fixed capital expenditures or fixed capital costs associated with the construction, reconstruction, or improvement of school facilities and any land acquisitions, land improvement, design and engineering costs related thereto. In order for this surtax to go into effect, the school board must draft a resolution, in conformity with § 101.161, Fla. Stat., and have it placed before the electors, for approval, in a referendum. The governing body of the county (in this case the Board), not the school board, is tasked with placing the resolution on the referendum ballot.

The Court finds that it is not necessary or essential for the effectual execution of the power granted by the statute that a school board have unilateral control over the type and date of the election. While a school board may want complete control over when the resolution goes onto a ballot, it is not necessary or essential for them to have that control in order for them to complete the task of levying a sales surtax. Certainly the purpose behind the statute is not defeated by understanding the statute in this way. In fact, the statute is completely silent on the question of when or what type of an election should occur. In a fair and reasonable reading of paragraph 6(a) of the statute, where the authority to levy the surtax is granted, all that the words convey is *how* the tax goes into effect, not *when* the tax goes into effect. No language in the

statute addresses the timing of an election or even the type of an election. This Court should not “fill in the gaps” in an attempt to determine what the Legislature would have wanted or even what it should have wanted when it drafted the legislation. See Villanueva v. State, 700 So. 3d 47, 52 (Fla. 2016)(citing the well-established rule that courts are not at liberty to add to a statute words that the legislature did not use in drafting the statute, the principle known as *casus omissus pro omissis habendus est* or “nothing is to be added to what the text states or reasonably implies.”). “In other words, a matter that is not covered by a statute is to be treated as intentionally not covered.” Id.

Furthermore, this Court is resolving the issue pursuant to a petition for a writ of mandamus. To be entitled to mandamus relief, the petitioner must demonstrate it has a “clear legal right to the performance of the particular action sought ...” Adams, supra, at 322. “Clear” is defined as “obvious; beyond a reasonable doubt; perspicuous; plain.” Black’s Law Dictionary, Abridged Fifth Edition (1983). It is certainly not obvious that the SBCC, by implication, was granted this legal right. Therefore, the SBCC is not entitled to mandamus relief.

(b) A Clear Legal Duty

The parties spent much of their argument, in both the pleadings and at the hearing, on whether the Board had a clear legal duty to place the resolution on the ballot at a special election this year. Their focus was on paragraph 6(b) of the statute and in particular the language: “... and shall be placed on the ballot by the governing body of the county.” While the case can be resolved for the reasons set forth above, in an abundance of caution, the Court will address this issue as well. Counsel for the Board correctly acknowledged at the hearing that the word “shall” must be given its customary and ordinary meaning in interpreting the statute. Thus, “shall”

means mandatory and not discretionary. The Board does have a clear legal duty to place the Resolution on the ballot; a local governing body cannot simply ignore a school board's request and refuse to place a resolution on the ballot. Two questions arise: what election, and does the Board have any discretion in selecting the date of that election.

In answering these questions, the Court must again consider that principle of statutory construction which provides that when a grant of authority is given by the Legislature all that is necessary to carry out that authority is implied. In 1998, the Attorney General issued an advisory opinion that directly addressed the question at issue here. The Attorney General answered the question succinctly:

As the Legislature has imposed on the board of county commissioners the responsibility of placing the issue on the ballot, it appears that the county commission would set the date of the referendum. The county, however, should work together with the school board to determine a date that is amendable to both governmental entities.

...

[s]ection 212.055(7), Florida Statutes, merely provides that the governing body of the county is responsible for placing the resolution on the ballot. It is a responsibility that cannot be avoided. However, the statute is silent regarding which election must include the referendum question, but rather imposes on the board of county commissioners, as the governing body of the county, the duty and responsibility of placing the issue on the ballot.

Op. Att'y Gen. Fla. 98-29 (1998).

The Court recognizes that an Attorney General opinion is not law and is not binding on the Court. However, Attorney General opinions are entitled to great weight in construing the law of Florida. Browning v. Fla. Prosecuting Attys. Ass'n, 56 So.3d 873 (Fla. 1st DCA 2011); Beverly v. Division of Beverage of Department of Business Regulation, 282 So.2d 657 (Fla. 1st

DCA 1973). This Court does find that the Attorney General’s 1998 opinion is persuasive, and that the Attorney General correctly interpreted the statute at issue.

It is also noteworthy that in other statutes involving district school boards, the Legislature has granted to them the authority to directly place referendums on the ballot or to select the election it wants. In § 1001.34, Fla. Stat., a statute involving membership on the school board, the statute provides in relevant part: “[i]f the resolution is adopted, the district school board shall submit to the electors for approval at a referendum held at the next primary or general election the question” Similarly, in § 1001.362, Fla. Stat., the relevant portion provides [t]he district school board may adopt a formal resolution directing an election to be held to place the proposition on the ballot.” Finally, in § 1001.461 (2), Fla. Stat., the statute at issue when the parties were last before the Court², the Legislature expressly gave to a school board the authority to select the election: “[t]o submit the proposition to the electors, the district school board by formal resolution shall request an election that shall be at a general election or statewide primary or special election.” The corresponding legal duty assigned to the county commissioners was likewise clearly expressed: “[t]he board of county commissioners, upon such timely request from the district school board, shall cause to be placed on the ballot *at such election* the proposition to make the office of district school superintendent appointive.”

² School Board of Clay County, Florida v. Clay County, by and through its Board of County Commissioners, Case No. 2014-CA-983 (Fla. 4th Cir. Ct. 2014). In this case, the Court issued a writ of mandamus because the clear and unambiguous language in § 1001.461 entitled Petitioner to that relief.

The clear conclusion from the above examples is that when the Legislature wants to grant to the district school boards the authority to directly place a resolution on the ballot, it says so. When the Legislature wants to grant to the district school boards the authority to select the type of election for its resolution, it says so. And when the Legislature wants to grant to some other governmental entity the duty of placing a school board resolution on the ballot, it says so. In the statute at issue here, for whatever reason, the Legislature did not say the district school boards have the authority to either select an election, or to place one directly on a ballot. What the Legislature did say is that the county commissioners have the duty of placing the resolution on the ballot. See Moonlight Apartments, Inc. v. Cauley, 666 So.2d 898, 900 (Fla. 1996) (citing to the principle of statutory construction, *expressio unius est exclusio alterius*, the expression of one thing implies the exclusion of others.).

The Board, thus, has some discretion in selecting the date of an election. The presence of discretion in fulfilling a legal duty is dispositive to a petition for mandamus relief. See Miami Beach v. Mr. Samuels, Inc., supra, at 722 (holding that because the representatives of the city had some discretion in determining whether or not to grant a conditional use application, mandamus did not lie). Accordingly, for this additional reason, the SBCC is not entitled to relief.

While the issue has been resolved, the Court would address a concern raised by the SBCC. The SBCC's counsel argued at the hearing that to grant to the Board any discretion to select an election date, such discretion would soon lead the parties sliding down the proverbial slippery slope, with county commissioners delaying for years placing a resolution on a ballot. This would not be permitted. The discretion the county commissioners possess must be

understood in the context of the entire statute. The local district school boards have the sole authority to levy the sales surtax. This grant of authority ultimately derives from the authority granted by Article IX, Section 4(b) of the Constitution of the State of Florida, which directs that “district school boards shall operate, control, and supervise all free public schools in their respective districts” With this policy-making authority, comes the discretion to decide whether to levy a sales surtax. Any attempt by a county commission to undermine or usurp that authority, through unnecessary delay in setting a resolution on a ballot, would constitute an abuse of its discretion.

Where to draw the line, the crossing of which a county commission would abuse its discretion, the Court need not decide. In this case, the Board has stated, through its individual commissioners at the July 9, 2019, public meeting, and through its counsel at the hearing, that it intends to place the Resolution on the ballot at the next general election, in November 2020. The Board’s stated reasons for doing so are not unreasonable, and therefore do not constitute an abuse of discretion.

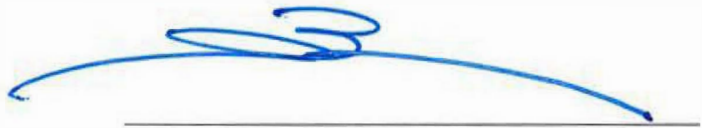
Lastly, in addition to the Board’s position that it has discretion to select the date of the election, it points to purported infirmities in the Resolution and that such flaws preclude the SBCC from the issuance of a writ. Specifically, the Board contends that a resolution which fails to comply with the mandates of § 212.055(6) should not be placed on the ballot, and that the Board should not be required to place such a resolution on the ballot. In light of the Court’s finding that mandamus does not lie, the Court declines to address this additional argument.

In view of the above, it is **ORDERED AND ADJUDGED**:

1. The Emergency Petition for Writ of Mandamus is **DENIED**.
2. Petitioner's request for an award of attorney's fees is **DENIED**.

DONE AND ORDERED in Chambers at Green Cove Springs, Clay County, Florida this

15 day of August, 2019.



STEVEN B. WHITTINGTON
Circuit Judge

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