

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

SCHOOL BOARD OF
INDIAN RIVER COUNTY,
FLORIDA,

CASE NO: 312020CA000330

Plaintiff,

v.

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY, FLORIDA,

Defendant.

ORDER GRANTING COMPLAINT FOR WRIT OF MANDAMUS

THIS MATTER is before the Court on the Plaintiff's Emergency Complaint for Writ of Mandamus, filed on May 20, 2020, pursuant to Rule 1.630, Florida Rules of Civil Procedure. The Court having read the Complaint and the responsive pleadings, and having heard argument on June 3, 2020, and being otherwise duly advised on the premises, finds as follows:

In August 2016, Indian River County voters approved via ballot referendum an Essential Operating Needs school district ad valorem millage of 0.50 mills for four years, which will expire at the end of fiscal year 2020-2021.

On April 28, 2020, the School Board met and approved Resolution 2020-09, which indicated that the Board had determined that it was in the best interest of the students of Indian River County to submit to the voters the question of continuing the ad valorem millage of a .050 mill for four years for essential operating needs, to provide high quality educational opportunities for all students, recruit and retain high-quality educators, create technology-rich classrooms, and expand supports for school safety and mental health. The resolution directed the Board of County Commissioners of Indian River County to call an election in conjunction with the August 18, 2020 primary, at which electors within the school district may vote on the continuation of an ad valorem millage of 0.50 mill for four years, as authorized in § 1011.73(2), Florida Statutes (2019).¹

On May 12, 2020, the Board of County Commissioners met and voted to place the matter on the ballot, but for the November 3 general election, rather than the August 18 primary election, citing greater voter turnout as the reason.

On May 13, the School Board wrote a letter to the Board of County Commissioners, asking them to reconsider the decision, and citing various reasons why it is important that the millage extension referendum be on the August ballot. Although the current millage is in place

¹ See Exhibit A to Complaint.

until June 2021, the School Board argued that it needs to know as soon as possible whether it can depend on the approximately \$9-10 million dollars per year that would result if voters approve the 4- year extension. The Board of County Commissioners met again on May 19, 2020, and declined to change the date of the election. The School Board filed this mandamus complaint on May 20.

School boards have authority under Article VII, Section 9 of the Florida Constitution to levy ad valorem taxes. There are five categories of school millage rates. The one involved in this case is “voted district school operating millage,” the millage rate set by the district school board for school operating purposes as authorized by the electors pursuant to s. 9(b), Art. VII of the State Constitution. §200.01(3)(c), Florida Statutes (2019).

Section 1011.73(2), Florida Statutes, provides:

(2) Millage authorized not to exceed 4 years.--The district school board, pursuant to resolution adopted at a regular meeting, **shall direct the county commissioners to call an election at which the electors within the school district may approve an ad valorem tax millage** as authorized under s. 1011.71(9). **Such election may be held at any time, except that not more than one such election shall be held during any 12-month period.** Any millage so authorized shall be levied for a period not in excess of 4 years or until changed by another millage election, whichever is earlier. If any such election is invalidated by a court of competent jurisdiction, such invalidated election shall be considered not to have been held.

§ 1011.73(2), Florida Statutes (2019)(emphasis supplied).

Section 1011.71(9), Florida Statutes, provides:

(9) In addition to the maximum millage levied under this section and the General Appropriations Act, **a school district may levy, by local referendum or in a general election, additional millage for school operational purposes up to an amount that, when combined with nonvoted millage levied under this section, does not exceed the 10-mill limit established in s. 9(b), Art. VII of the State Constitution.** Any such levy shall be for a maximum of 4 years and shall be counted as part of the 10-mill limit established in s. 9(b), Art. VII of the State Constitution. Millage elections conducted under the authority granted pursuant to this section **are subject to s. 1011.73.**

§ 1011.71(9), Florida Statutes (2019)(emphasis supplied).

The School Board argues that this is a clear case of statutory interpretation, and argues that under §1011.73(2), Florida Statutes, once the school board “directs” the Board of County Commissioners to call an election for a certain date, the commissioners have no discretion to choose a different date, but must perform the ministerial act of calling for an election as directed by the School Board, including the date requested.

The Board of County Commissioners also argues that the language of §1011.73(2) is clear and unambiguous, and that the language, “Such election may be held at any time,” as long as there is not more than one such election in any 12 month period, means that the Board of County Commissioners may choose the date of the election. Essentially, the Board of County

Commissioners argues that it is the county commissioners who decides what “any time” is, subject to the one time in twelve months limitation.

The Board of County Commissioners argues that there are three general paths a school board can take to place a measure on the ballot. It cites to *School Board of Clay County, Florida v. Clay County, by and through its Board of County Commissioners*, Case No. 10-2019-CA-806,² for the proposition 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.” *Id.* The Board of County Commissioners argues that the third process by which a school district may place a matter before the voters is the method at issue in this case. The Board of County Commissioners states that this method is the same as the one at issue in the 2019 *Clay County* case, above.

However, the *Clay County* case involves § 212.055 (6), which provides that in order to impose a school capital outlay surtax, the school board must draft a resolution that “shall be placed on the ballot by the governing body of the county.” Unlike the statute at issue in this case, §212.055 does not state that the School Board must direct the county commissioners to call an election.³ Thus, the finding that § 212.055 allows the county commissioners to set the date of an election for a capital outlay surtax is inapplicable to this case.

As counsel for the School Board noted at oral argument, Section 1011.73 is a statute that deals with the authority of the School Board, not that of the County Commissioners. There is nothing in §1011.73 requiring an election to be held in conjunction with any particular election or in conjunction with an election that would likely produce a larger turnout. The only restriction on the timing of the election is that there can only be one such election in a 12-month period. The Court believes that this means that the School Board can only direct the county commissioners to call one such election in a 12-month period.

Mandamus is a “common law remedy used to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law.” *Board of County Comm’rs Broward County, Florida v. Parrish*, 154 So. 3d 412, 417 (Fla. 4th DCA 2014). An act is ministerial if there is no room for the exercise of the respondent’s discretion and the performance being required is directed by law.” *Id.*

The Court finds that under §1011.73(2), Florida Statutes, once the School Board “directs” the Board of County Commissioners to call an election for a certain date, the

² See Exhibit E to the Complaint.

³ The Clay County case cites to Attorney General Opinion 98-29, involving s. 212.055(7), which also involves a surtax and which contains the language “shall be placed on the ballot by the governing body of the county.” The opinion specifically contrasts the language in §212.055(7), which “merely provides that the governing body of the county is responsible for placing the resolution on the ballot” with statutes that “clearly authorize a school district to call a referendum or to direct the county commission to call such an election. Op. Att’y Gen. Fla. 98-29(1998). The opinion refers to s. 236.31, Florida Statutes, a former version of s. 1011.73, Florida Statutes. See Ch. 02-387, Laws of Florida

commissioners have no discretion to choose a different date, but must perform the ministerial act of calling for an election as directed by the School Board, including the date requested.

It is therefore ORDERED AND ADJUDGED:

1. The Emergency Complaint for Writ of Mandamus is GRANTED.
2. The Defendant, the Board of County Commissioners of Indian River County, Florida, shall meet no later than June 4, 2020, for the purpose of adopting a resolution causing to be placed on the August 18, 2020 primary ballot the proposition contained within School Board of Indian River County Resolution No.: 2020-09, duly passed and approved on April 28, 2020, and as further requested by the School Board of Indian River County via correspondence to the Board of County Commissioners of Indian River County, Florida, dated May 13, 2020.
3. Immediately upon adoption of said resolution, the County Attorney of the Board of County Commissioners of Indian River County, Florida, shall cause certified copies of the resolution to be delivered to the Supervisor of Elections for Indian River County and to the School Board of Indian River County.

DONE AND ORDERED in chambers this _____ day of June, 2020, at Vero Beach in Indian River County, Florida.

06/03/2020 16:21:55

eSigned by JANET CARNEY CROOM 06/03/2020 16:21:55 TeR75v6J

JANET C. CROOM
CIRCUIT JUDGE

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