

**IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT
JERSEY COUNTY, ILLINOIS**

Jeffrey D. Ferguson, Ron Floyd, Woody Goforth,)	
Harold Kallal, Gary Krueger, Robert Ruland,)	
Leland Snyders and Marilyn J. Woolsey,)	
individually and as taxpayers of Jersey and)	
Greene Counties, State of Illinois)	Cause No.
)	
Plaintiffs,)	
)	
v.)	
)	
Linda J. Crotchett and Deborah Banghart, in their)	
official capacity as the duly elected and acting)	
County Clerks of Jersey and Greene Counties,)	
State of Illinois, and the Community Unit School)	
District #100, a School District in Jersey and)	
Greene Counties, State of Illinois,)	
)	
Defendants.)	

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiffs, Jeffrey D. Ferguson, Ron Floyd, Woody Goforth, Harold Kallal, Gary Krueger, Robert Ruland, Leland Snyders and Marilyn J. Woolsey, individually and as taxpayers of Jersey County, Illinois, Plaintiffs herein, by and through their attorneys, for their Complaint for Permanent Injunction, complain of Linda J. Crotchett and Deborah Banghart, in their official capacity as the duly elected and acting County Clerks of Jersey and Greene Counties, and the Community Unit School District #100, Defendants herein, and state that:

1. Plaintiff, Jeffrey D. Ferguson is a citizen of the State of Illinois and a resident of Jersey County, residing at 15809 Bunse Way, Jerseyville, Illinois 62052 and a taxpayer in

the Community Unit School District #100. Plaintiff Ferguson did not vote on the referendum referred to herein.

2. Plaintiff, Ron Floyd is a citizen of the State of Illinois and a resident of Jersey County, residing at 26431 Main Street, Dow, Illinois 62022 and a taxpayer in the Community Unit School District #100. Plaintiff Floyd voted against the referendum referred to herein.

3. Plaintiff, Woody Goforth is a citizen of the State of Illinois and a resident of Jersey County, residing at 24554 Witt Mill Road, Jerseyville, Illinois 62052 and a taxpayer in the Community Unit School District #100. Plaintiff Goforth voted against the referendum referred to herein.

4. Plaintiff, Harold Kallal is a citizen of the State of Illinois and a resident of Jersey County, residing at 810 N. State Street, Jerseyville, Illinois 62052 and a taxpayer in the Community Unit School District #100. Plaintiff Kallal voted against the referendum referred to herein.

5. Plaintiff, Gary Krueger is a citizen of the State of Illinois and a resident of Jersey County, residing at 26571 McClusky Road, Dow, Illinois 62022 and a taxpayer in the Community Unit School District #100. Plaintiff Krueger voted against the referendum referred to herein.

6. Plaintiff, Robert Ruland is a citizen of the State of Illinois and a resident of Jersey County, residing at 718 Cross Avenue, Jerseyville, Illinois 62052 and a taxpayer in the Community Unit School District #100. Plaintiff Ruland voted against the referendum referred to herein.

7. Plaintiff, Leland Snyders is a citizen of the State of Illinois and a resident of Jersey County, residing at 717 Cross Avenue, Jerseyville, Illinois 62052 and a taxpayer in the Community Unit School District #100. Plaintiff Snyders voted against the referendum referred to herein.

8. Plaintiff, Marilyn J. Woolsey, is a citizen of the State of Illinois and a resident of Greene County, residing at R.R. 1 Box 137, Kane, Illinois 62054 and a taxpayer in the Community Unit School District #100. Plaintiff Woolsey voted against the referendum referred to herein.

9. Defendants Linda J. Crotchett and Deborah Banghart are the duly elected and acting County Clerks of Jersey and Greene Counties, Illinois and are named herein in their official capacities only in that they are responsible for extending school tax levies in these counties.

10. At all times relevant herein, and, presently, Defendant Community Unit School District #100, hereafter sometimes “the school district”, has been a school district organized and existing under the laws of the State of Illinois, with its district boundaries located in Jersey County, Illinois and Greene County, Illinois.

11. On April 13, 1999, the school district submitted the following proposition to the voters of the Community Unit School District 100, in Jersey and Greene Counties, pursuant to the provisions of 105 ILCS 5/10-22.36:

COMMUNITY UNIT SCHOOL DISTRICT #100

PROPOSITION TO ISSUE \$21,000,000
SCHOOL BUILDING BONDS

SHALL THE BOARD OF EDUCATION OF COMMUNITY UNIT SCHOOL DISTRICT NUMBER 100, JERSEY AND GREENE COUNTIES, ILLINOIS, PURCHASE A SITE FOR AND BUILD AND EQUIP A NEW HIGH SCHOOL; AND ISSUE FOR BONDS FOR SAID SCHOOL DISTRICT IN THE AMOUNT OF \$21,000,000 FOR SAID PURPOSE?

12. The purpose of the issuance of the school bonds as stated in the proposition was to secure funds needed to purchase a site to build a new high school. A copy of the proposition is

attached hereto, by reference made a part hereof and marked as “**Exhibit 1**”.

13. At the time the proposition was submitted to the voters, on April 13, 1999, the school district had applied for additional funds needed to build a new high school from the Illinois Capital Development Board. (ICDB)

14. The estimated cost of the new site and the new high school was approximately \$29 million. (i.e. \$21 million from the bond issue and approximately \$8 million from grants from the ICDB)

15. In Jersey County, the proposition received 1402 “yes” votes (29%) and 3414 “no” votes (71%) while in Greene County the proposition received 426 “yes” votes (36.4%) and 743 “no” votes (63.5%).

16. Each of the named plaintiffs, except Ferguson who was not a resident at the time, cast “no” votes on this proposition.

17. Calvin E. Morris, of AAIC, Inc. was employed by the school district and produced plans for the proposed new high school.

18. Despite the defeat of the proposition, the school district sought to raise the funds needed for a new high school and elementary school from a different source.

19. The new source of funds would be through the issuance of fire prevention and safety fund bonds pursuant to the provisions of 105 ILCS 5/17-2.11.

20. The issuance of fire prevention and safety fund bonds pursuant to the provisions of 105 ILCS 5/17-2.11 does not require voter approval.

21. 105 ILCS 5/17-2.11 requires, in part, as follows:

... a school district may replace a school building or build additions to replace portions of a building when it is determined that the effectuation of the recommendations for the existing building **will cost more than the replacement costs. Such determination shall be based on a comparison of estimated costs made by an architect or engineer licensed in the State of Illinois. The new building or addition shall be equivalent in area (square feet) and comparable in purpose and grades served and may be on the same site or another site.**

(Emphasis ours.)

22. 105 ILCS 5/17-2.11 further provides, in part, as follows:

... such district may, by proper resolution, levy a tax for the purpose of making such alteration or reconstruction...
If the proceeds from the tax levy authorized by this Section are insufficient to complete the work approved under this Section, the school board is authorized to sell bonds without referendum under the provisions of this Section in an amount that, when added to the proceeds of the tax levy authorized by this Section, will allow completion of the approved work.

(Emphasis ours.)

23. At the school district's request, Calvin E. Morris, of AAIC, Inc., on or about October 2, 2000, surveyed the school district's existing high school.

24. Calvin E. Morris's survey identified health and safety improvements necessary to bring the school district's schools into full compliance under 23 ILADM 175, 180 and 185.

25. The total estimated cost by Calvin E. Morris to remedy all code violations and/or necessary correction of health and safety issues for the Jersey Community high school was \$742,590.42.

26. Repair estimates from the Health and Life Safety Survey Report for Jersey Community High School and Grafton Elementary School, hereafter sometimes, the "survey", are attached hereto, by reference made a part hereof and marked as "**Exhibit 2**".

27. Thereafter, a revised survey for the high school, in the amount of \$580,514.60 and an Application For Approval were forwarded by the school district for approval to the Regional Office of Education, Regional Superintendent.

28. A copy of the Application For Approval of Ten Year Safety Survey Report (Form ISBE 35-86) is attached hereto, by reference made a part hereof and marked “**Exhibit 3**”.

29. The Regional Superintendent, on or about December 1, 2000, approved a revised survey in the amount of \$531,167 for the high school.

30. The Regional Superintendent also approved a survey in the amount of \$204,303 for the Grafton Elementary School which reduced the original estimate to repair or improve the grade school which was estimated to cost \$476,082.75.

31. The Certification of Need for Fire Prevention and Safety Funds was signed by the president and secretary of the school district’s board of education.

32. Copies of the Certificates of Need for Fire Prevention and Safety Funds signed by the president and secretary of the school district’s board of education, dated on or about December 7, 2000, and submitted to the State Board of Education are attached hereto, by reference made a part hereof, and marked as “**Exhibit 4 and 5**”.

33. Copies of the State Superintendent’s Certificate of Approval for Expenditure of Fire Prevention and Safety Funds, dated May 10, 2001, for Jersey Community High School and Grafton Elementary School are attached hereto, by reference made part hereof, and marked as “**Exhibits 6 and 7**”.

34. After submission and approval of the revised surveys by the Illinois State Board of Education on May 10, 2001, the then school district Superintendent discharged AAIC, Inc. and cancelled the approved surveys but left the school district’s applications for state funds pending.

35. At the school district's request, David D. Pool of DAI, Inc. then surveyed the high school and the Grafton Elementary School on or about November 13, 2001 and December 6, 2001, respectively.

36. David D. Pool's surveys also determined that there were several improvements needed for the high school and the Grafton Elementary School for compliance with the Health/Life Safety Code for Public Schools.

37. The total estimated cost by David D. Pool on November 13, 2001 to remedy and to implement improvements for the high school were \$12,657,158, \$13,872,519 and \$13,988,124 and for the Grafton Grade School on December 6, 2001 in the amounts of \$2,926,216, 3,417,396 and \$3,445,872.

38. Copies of these surveys are attached hereto, by reference made a part hereof and marked as "**Exhibits 8, 9, 10, 11, 12 and 13**".

39. The surveys were then forwarded by the school district to the Regional Office of the Illinois State Board of Education along with Certificates of Need for Fire Prevention and Safety Funds in the amount of \$13,988,124 for the high school and \$3,445,872 for the grade school.

40. The Certificates of Need for Fire Prevention and Safety Funds were signed by the president and secretary of the school district's board of education.

41. Copies of the Certificates of Need for Fire Prevention and Safety Funds signed by the president and secretary of the school district's board of education and submitted to the Regional Office of Education and then to State Board of Education are attached hereto, by reference made a part hereof and marked as "**Exhibit 14 and 15**".

42. On November 27, 2002, Larry Pfeiffer, the Regional Superintendent of Schools for the school district, issued an order to make repairs or alterations as necessary to effect full

compliance with the applicable provisions of the Health/Life Safety Code for Public Schools, or complete the work itemized in the surveys but did not issue certificates of condemnation for the high school or grade school.

43. A copy of the Order to Effect Compliance with the Health/Life Safety Code for Public Schools signed by Larry Pfeiffer is attached hereto, by reference made a part hereof and marked as “**Exhibit 16**”.

44. On February 11, 2003, the Illinois State Board of Education approved the defendant district’s expenditure of \$11, 354,034 in fire prevention and safety funds for the high school and \$2,796,984 for the grade school.

45. Copies of the Certificates of Approval for the Expenditure of Fire Prevention and Safety Funds, dated February 11, 2003, and issued by the Illinois State Board of Education are attached hereto, by reference made a part hereof and marked as “**Exhibits 17 and 18**”.

46. Copies of the replacement cost estimates for Jersey High School (\$12,684,893) and Grafton Elementary School (\$3,071,609) dated May 13, 2002 are attached hereto by reference made a part hereof and marked “**Exhibits 19 and 20**”.

47. Despite the failure to obtain condemnation orders, the school district’s board of education, on or about April 17, 2002, adopted a resolution to issue fire prevention and safety fund bonds in the amount of \$14,151,018 to secure funding necessary to build a new high school and elementary school with anticipated funds from the Illinois Capital Development Board for these new schools in the amount of \$20,528,288.

48. The Illinois Capital Development Board, in September, 2003, confirmed that the school district would receive the additional funds when the next round of funds were released.

49. Thereafter, following a public hearing, the school district's board of education voted 6-1 to issue the fire prevention and safety fund bonds to defray the school district's share of the cost of a new high school and elementary school.

50. The bond sales took place as follows: \$10,998,429.80 on or about March 1, 2003 and \$3,721,570.65 on or about September 14, 2004.

51. Copies of the cover pages for the bond prospectuses are attached and incorporated herein by reference as "**Exhibits 21 and 22**".

52. In order to pay for the bonds, the County Clerks of Jersey and Greene Counties, unless enjoined, intend to continue to levy property taxes to pay for the interest and principal of the bonds and to extend tax levies and taxes, annually, until the bonds are paid.

53. Pursuant to 105 ILCS 5/17-2.11, a school board has power to levy a tax or to borrow money and issue bonds for fire prevention, safety, energy conservation, disabled accessibility, school security and specified repair purposes, but, in order to issue bonds for the construction of a new school, a district must first be required to reconstruct a school building by an agency having authority to enforce the school building code.

54. Under the provisions of the Illinois School Code, school districts such as the Community Unit School District #100 are authorized to borrow money and to issue general obligation bonds after a referendum. ILL. REV. STAT. ch. 122 § 20-2 (1977)

55. As alleged herein, the voters of Jersey and Greene Counties overwhelmingly rejected the proposition to issue bonds to construct a new high school.

56. Ignoring the will of the voters and taxpayers, the school district issued fire prevention and safety bonds, commonly referred to as life safety bonds, which are normally used

to finance repairs and alterations to school buildings necessary to meet fire prevention and safety standards. ILL. REV. STAT. ch. 122, § 17-2.11a (1977).

57. Before enacting a life safety resolution, a school district board must have received a survey by a licensed architect or engineer, indicating the school facilities need of repairs or alterations to meet fire prevention and safety standards.

58. Repairs may be commenced only after an agency having authority to enforce laws or regulations on fire and safety issues an order requiring a school district to alter or to reconstruct any building or equipment to conform with the fire and safety regulations.

59. The regional superintendent of schools and the state board of education must approve the estimates of repair costs for life safety work and then, only after appropriate resolutions of the school board, may the county clerk of the county or counties in which the school district is located extend the tax annually until the bonds reach maturity.

60. The foregoing requirements, paragraphs 57-59, to issue life safety bonds were not followed and, therefore, the bonds issued by the school district conflict with the Illinois Constitution of 1970, Article VII, Section 8 which provides: “[S]chool districts . . . which exercise limited governmental powers in respect to limited governmental subjects . . . shall have only powers as granted by law”.

61. Unless the school districts actions in issuing life safety bonds are declared invalid by judgment of this Court, and unless the County Clerks of Jersey and Greene Counties are restrained and enjoined from further extending levies to pay for these bonds, Plaintiffs and the other taxpayers of the State of Illinois will suffer great loss and irreparable damages.

62. In summary, defendant County Clerks should be permanently enjoined from extending any additional tax levies to pay for fire prevention and safety fund bonds for the purpose of paying for the construction of the new high school and elementary school because:

i. No order was received by the school district requiring it to construct the high school or elementary school as mandated by 105 ILCS 5/17/-2.11.

ii. The only orders that have been entered requiring the school district to do anything were the Orders to Effect Compliance with the Health/Life Safety Code for Public Schools signed by Larry Pfeiffer, Regional Superintendent of Schools, dated November 27, 2002. **See Exhibit 16.**

iii. Such order only requires the school district to “make such repairs or alterations as necessary to effect full compliance with the applicable provisions of the Health/Life Safety Code for Public Schools, or to complete the work itemized in Amendment Number 1 as approved”.

iv. 105 ILCS 5/17-2.11(b) contemplates that the estimate from the architect or engineer be initiated after the order to reconstruct and the school district received and submitted the report of the architect, David D. Pool, to the Illinois State of Board of Education before it received any order requiring it to reconstruct a new high school.

v. The effectuation of the repair recommendations for the high school and grade school do not exceed the replacement costs.

vi. The new high school and grade school are not equivalent in area and comparable in purpose and grades served as required by law.

vii. The health and life safety requirements set forth in Exhibit 2 were submitted and approved requiring the school district to proceed with the repairs and, therefore, the subsequent survey set forth in Exhibits 8-13 were void and of no legal effect.

viii. The school district sold bonds without legal authority because the approved repair costs did not exceed the estimated replacement costs nor were the new buildings comparable in size and purpose as required by law.

ix. The approval by the school district to sell fire prevention and safety fund bonds was not in compliance with 105 ILCS 5/17-2.11, was unlawful and was a mere ploy to circumvent the referendum results on the construction of a new high school.

63. If an injunction is not issued, the Plaintiffs, as residents and taxpayers of Jersey County, Illinois and Greene County, Illinois, will suffer irreparable injury as the defendant County Clerks and the Community Unit School District #100 will continue to levy taxes to pay for bonds for the construction cost of the new school buildings, the Illinois Capital Development Board will provide the remaining funding and the plaintiffs will be forced to pay the bonds to build the high school and elementary school contrary to the statute and contrary to the will of the voters of Jersey County, Illinois and Greene County, Illinois.

64. The plaintiffs have no adequate remedy at law in that the tax protest remedy would require individual suits annually for the life of the bonds, the individual tax payments are not large enough to justify such action annually; and, because no remedy, except an injunction will halt defendant County Clerks and the Community Unit School District #100 from extending tax levies to pay for fire prevention and safety bonds to pay for the construction of the high school and elementary school or prohibit them from levying taxes to pay for the bonds issued for this purpose.

65. Because the county clerks named herein have already begun to assess property taxes to pay for the bonds, no demand has been made upon them to bring suit for the relief requested herein in their names or on behalf of the taxpayers which, in any case, would be futile.

WHEREFORE, Plaintiffs, Jeffrey D. Ferguson, Ron Floyd, Woody Goforth, Harold Kallal, Gary Krueger, Robert Ruland, Leland Snyders and Marilyn J. Woolsey, on their own behalf and on behalf of all other taxpayers in and of Jersey County and Greene County and the State of Illinois, similarly situated, request:

(a) that this Court by its judgment, declare that the issuance of the life safety bonds referred to herein was and is unconstitutional and void;

(b) that James H. Whiteside, Superintendent of the Community Unit School District #100 and Defendants Linda J. Crockett, Circuit Clerk of Jersey County and Deborah Banghart, Circuit Clerk of Greene County, and the Community Unit School District #100, their agents, employees, representatives and successors be temporarily and permanently enjoined from further extending and/or levying property taxes to pay for life safety bonds issued to construct the new Jersey County high school and/or elementary school; and

(c) any other relief in the premises the Court deems equitable and proper.

Respectfully submitted,

ANDERSON & GILBERT

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