

IN THE  
APPELLATE COURT OF ILLINOIS  
FOURTH DISTRICT

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Jeffrey D. Ferguson, Ron Floyd, Woody Goforth,	)	
Harold Kallal, Gary Krueger, Robert Ruland,	)	Appeal from the Circuit
Leland Snyders and Marilyn J. Woolsey,	)	Court of Jersey County
individually and as taxpayers of Jersey and Greene	)	No: 06-CH-52
Counties, State of Illinois	)	
	)	Honorable Lois A. Bell
Plaintiffs-Appellants	)	Circuit Judge
	)	
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-Appellees	)	

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**PETITION FOR REHEARING**

Pursuant to Rule 367 of the Illinois Supreme Court Rules, all of the Taxpayer-Plaintiffs present this Petition for a Rehearing of the Opinion and decision of this Court filed on May 23, 2007, and, in support thereof, respectfully state:

I. IN HOLDING THE PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF WAS BARRED BY LACHES, THE COURT OVERLOOKED THEIR ARGUMENT THAT THE BONDS WERE ISSUED WITHOUT AUTHORITY UNDER 105 ILCS 5/17-2.11 OF THE ILLINOIS SCHOOL CODE AND THE DOCTRINE OF LACHES IS INAPPLICABLE BECAUSE THE PLAINTIFFS DID NOT RECEIVE ADEQUATE NOTICE OF THE BOND ISSUE.

It is the position of the taxpayers, hereafter sometimes, "plaintiffs", that the school district did not have authority nor did it follow the provisions of 105 ILCS 5/17-2.11 in the issuance of the bonds and, therefore, the payment of these bonds over the next seventeen years should be enjoined. Plaintiffs have argued that the costs to repair the high school and grade school were less than the replacement costs and that the new buildings were not equivalent in size.

Under the provisions of 105 ILCS 5/17-2.11, the Illinois School Code provides in part:

\* \* \*

For purposes of this Section 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. Such replacement may only be done upon the **order** of the regional superintendent of schools and the approval of the State Superintendent of Education.

(Emphasis added).

\* \* \*

In its Slip Opinion at page 25, this Court declined to directly address the validity or invalidity of the bond issuance. This Court determined that the doctrine of laches bars this action because the plaintiffs unreasonably delayed the filing of this suit, but the Court's Opinion fails to discuss or to determine when the plaintiffs were required to institute this suit.

In response to this issue, the plaintiffs have stated, and apparently the Court finds, that the notice for the bond sale was incomplete and ambiguous for failing to advise them where the public hearing would take place and failing to state specifically that the buildings would be replaced. Immediately after the public meeting on January 28, 2003, the bond resolutions were adopted and the bonds sold privately to Harris Trust and Savings Bank. Plaintiffs acknowledge that these notice defects would not necessarily void the bond issues, but these facts alone should certainly relieve the plaintiffs of any perceived duty to immediately file suit for injunctive relief. Because the notice was defective and ambiguous, any perceived delay in filing suit should not prejudice the plaintiffs or trigger the application of the laches doctrine.

Furthermore, evidence of the alleged statutory defects in the school district's actions was arguably available, at the earliest, in December 2003 and July 2004 when the building permits were filed and which disclosed the proposed size of the new buildings. In this case, plaintiffs brought this suit within thirty months of this actual or constructive notice.

In *Green v. Mail*, 362 Ill. 518, 525, 200 N.E. 604 (1936), the Supreme Court of Illinois held that taxpayers suing to enjoin collection of taxes to pay school bonds were not barred by laches where suit was filed within two years after taxpayers' first

knowledge of judgments against the school district. In *Bates v. Board of Education, Allendale Community Consolidated School District No. 17*, 136 Ill.2d 260, 262, 555 N.E. 1 (1990), the taxpayers brought suit seeking declaratory relief with respect to the correct school bond interest rate under 105 ILCS 5/17 2.11. The bonds were issued on November 1, 1984. Over eighteen months later, the taxpayers filed suit. Of interest to this suit, the defense of laches was not even raised, and the Supreme Court of Illinois made appropriate rulings of law that resolved that case.

Here, the plaintiffs brought suit within thirty months of their first constructive notice of the violation of the law. This delay was not unreasonable and should not bar this action for declaratory relief.

In any case, the Opinion of this Court overlooks the issue of the validity of the bonds which is certainly presented by plaintiffs' briefs. We ask the Court to review its decision and rule on this question.

**II. IN HOLDING THE PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF IS BARRED BY LACHES, THE COURT, WHILE IMPLICITLY ACKNOWLEDGING THAT THIS DEFENSE IS INAPPLICABLE IF THE BONDS WERE ISSUED IN VIOLATION OF 105 ILCS 5/17-2.17, MISINTERPRETS THE LAWS IN ITS SUGGESTION THAT THE BOND SALES WERE MERELY VOIDABLE AND NOT VOID.**

It is the position of the plaintiffs that the health and safety bonds, issued by the school board pursuant to 105 ILCS 5/17-2.11, are void because the statute did not authorize such bonds in the facts of this case. This Court apparently agrees that if the bond sales were indeed void, then laches would not apply.

However, this Court, at page 24 of its Opinion, misinterprets the law in its holding that the school district's actions would be at most voidable because the district had authority to issue bonds under section 5/17-2.11 of the School Code. Moreover, this

Court misstates plaintiffs' position that they merely complain that the school district did not follow the correct statutory procedures. Plaintiffs agree that the procedures (i.e. public hearing, notice, bond resolutions, etc.) were substantially followed, but contend that the bond sales were not authorized by law and are therefore void.

Plaintiffs call this Court's attention to the following:

\* \* \*

"Under the law merchant and the Negotiable Instruments Law, even negotiable bonds, where issued ultra vires by a public body, are **absolutely void**; and there can be no bona fide holder of bonds which are void from their inception for want of power and authority to issue them or **want of compliance with a statute**.

Purchasers of public bonds, before purchasing them, must inform themselves at their peril in respect to the power of the public body to issue them, for they are chargeable with knowledge of any absence of such power. In such case, **no principle of estoppel, generally or by virtue of recitals, can be made applicable**.

*Liabilities on securities issued without power, 64 Am.Jur.2d §87*

(emphasis added).

\* \* \*

Under the Illinois Constitution, bond obligations may only be imposed upon the taxpayers by a vote of the people unless otherwise authorized by law. In the instant case, the taxpayers overwhelmingly rejected the 1999 referendum to approve the sale of bonds. Therefore, it was incumbent on the school district to strictly comply with the provisions of section 17-2.11 of the School Code. Accepting plaintiffs' allegations, the school

district failed to comply with the provisions. It is not a question of procedural irregularity, but the authority to issue bonds for a limited purpose—health, fire, and safety—and not replacement of the school buildings at the discretion and desire of the school board, contrary to the will of the people.

Because this issue has been overlooked and misinterpreted and because this Court has failed to resolve this issue, we ask the Court to review its decision and rule on this question.

WHEREFORE, upon the foregoing grounds, it is respectfully urged that this Petition for a Rehearing be granted and that upon further consideration the dismissal of the Complaint by the Circuit Court of Jersey County be reversed and remanded.

Respectfully submitted,

ANDERSON & GILBERT

DATE: June 12, 2007

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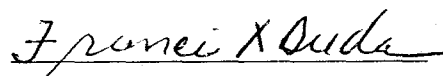
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**Certificate of Compliance**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the appendix, is 7 pages.

Dated: June 12, 2007

  
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