

IN THE SUPREME COURT OF GEORGIA APR 28 PM 2:16

DEVELOPMENT AUTHORITY)
OF DEKALB COUNTY, and)
DEKALB COUNTY, GEORGIA,)
Appellants,)

v.)

STATE OF GEORGIA,)
and MICHAEL J. JACOBS,)
Appellees.)

THOMAS B. JONES
CLERK

CASE NO. S09A0636

BRIEF OF APPELLEE MICHAEL J. JACOBS

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Pro Se Appellee

I. INTRODUCTION

This is a direct appeal from the Superior Court of DeKalb County's final Order entered on November 10, 2008, in State of Georgia v. Development Authority of DeKalb County, Civil Action File No. 08-CV-7076, denying validation of certain revenue bonds. (R. 356-67). Appellee Michael J. Jacobs ("Appellee"), a member of the Georgia House of Representatives and resident of DeKalb County, intervened in that proceeding as a matter of right pursuant to O.C.G.A. §§ 9-11-24(a)(1) and 36-82-77(a) for purposes of making an objection based upon the failure of DeKalb County (the "County") and the Development Authority of DeKalb County (the "Authority," and together with the County, "Appellants") to comply with the public referendum requirement provided in O.C.G.A. § 36-75-11(c). (R. 177, 182-83). Appellants consented to Appellee's intervention in the proceedings below. (R. 213 n.2). Appellee concurs with Appellants that this case is within this Court's exclusive appellate jurisdiction because the constitutionality of O.C.G.A. § 36-75-11 has been drawn into question. Ga. Const. art. VI, § VI, ¶ II(1); see also Appellants' Br. at 1.

Appellee respectfully requests that this Court affirm the trial court's Order on the following grounds: (1) the referendum requirement of O.C.G.A. § 36-75-11 satisfies all applicable uniformity requirements set forth in the Georgia Constitution, specifically Art. IX, Sec. VI, Par. III, and Art. III, Sec. VI, Par. IV(a)

(see Appellants' Enumerations of Error Nos. 1 and 2); (2) there is a singular purpose in the applicability of the referendum requirement of O.C.G.A. § 36-75-11 to a particular type of bond transaction, and therefore it does not violate the "multiple subject matter" rule of Art. III, Sec. V, Par. III of the Constitution (see Appellants' Enumeration of Error No. 3); and (3) the performing arts center that would be funded with the proceeds of the proposed bond issue is outside the permissible functions of the Authority provided in Art. IX, Sec. VI, Par. III of the Constitution, and thus the trial court's Order is right for any reason.

II. STATEMENT OF FACTS

A. "Backdoor G.O." Bond Transaction for a Performing Arts Center

The bond transaction at issue in this case involves the issuance of approximately \$4.3 million in revenue bonds by the Authority to fund the construction of a performing arts center (the "Arts Center").¹ (R. 7, 211-12). To effectuate this bond transaction, the Authority has entered or will enter a lease agreement with the County pursuant to which the County will indirectly repay the principal and interest on the revenue bonds by making rental payments to the

¹ This is the second of two revenue bond issues by the DeKalb Development Authority to fund construction of the Arts Center. (R. 7, 211-12). In a separate 2006 proceeding, the trial court validated a prior issuance of revenue bonds for the Arts Center. (R. 7, 211-12). This prior bond validation occurred before the May 24, 2007 effective date of House Bill 181. (R. 198, 200).

Authority using County tax funds. (R. 8). The County will then occupy and use the Arts Center. (R. 7). This transaction was approved by resolution of the DeKalb County Board of Commissioners on June 17, 2008. (R. 8).

The structure of this bond transaction plays a central role in this case. Yet, Appellants did not address the transaction or its structure anywhere in their brief. It is the same type of transaction which this Court previously found did not violate the debt limitations and referendum requirement of Art. IX, Sec. V, Par. I(a):

The City now proposes to acquire the project property and convey it to the DDA. The City will lease the property back from the DDA and sublease it to a private developer which will sublease it to the commercial tenants.² The DDA will issue \$ 85,000,000 in bonds, paying the City for the conveyance of property and constructing the project from the bond proceeds. The City will pay rent to the DDA in an amount equal to the debt service on the bonds issued. The DDA will assign these rents to the trustee to be deposited in the Revenue Fund from which the principal and interest due on the bonds will be retired. . . .

Article IX, Section V, Paragraph I(a) of the 1983 Georgia Constitution sets certain debt limitations for municipalities, and provides that a city may not incur a "new debt" without the consent of a majority of the qualified voters. . . . It is clear a municipality may enter into a contract authorized by the intergovernmental contracts clause for the future expenditure of funds without violating the debt clause of Art. IX, Sec. V, Par. I (a).

Nations v. Downtown Dev. Auth., 256 Ga. 158, 159-60 (1986).

² Unlike the Arts Center transaction, the Nations transaction fits squarely within the constitutional limits on the projects of a development authority that such projects must foster "[t]he development of trade, commerce, industry, and employment opportunities." Ga. Const. art. IX, § VI, ¶ III.

The transaction is sometimes called a “Backdoor General Obligation” or “Backdoor G.O.” transaction because it obligates tax revenues of a county or municipality, but escapes the debt limitations and referendum requirement set forth in Art. IX, Sec. V, Par. I(a).³ The transaction involves an authority issuing revenue bonds under the Revenue Bond Law, O.C.G.A. § 36-82-60, et seq., rather than a county or municipality issuing general obligation bonds. The “revenue” which repays the principal and interest on the authority’s revenue bonds is county or city tax revenues pledged to the authority through an intergovernmental agreement.

B. House Bill 181 and O.C.G.A. § 36-75-11

O.C.G.A. § 36-75-11 was passed as part of House Bill 181 during the 2007 regular session of the General Assembly. (R. 199-200). It amends the War on Terrorism Local Assistance Act, O.C.G.A. § 36-75-1, et seq. (“WTLA”), which was enacted in 2003 to permit counties and municipalities that “at the time . . .

³ A quick *Google* search reveals policy concerns from across the country about “Backdoor G.O.” bond transactions. For example:

State authorities have also become a means for New York politicians to go into debt, circumventing voters’ rejection of large bond issues to pay for costly projects. Because authority debt is technically not state debt, voter approval is not required. Yet these “back door” borrowings are often paid off with taxpayer funds appropriated by the Legislature.

Edwin S. Rubinstein, “Cranking the Debt Machine,” City Journal (Winter 1992), at <http://www.city-journal.org/article01.php?aid=1559>.

impos[e] a sales tax levied for the purposes of a metropolitan area system of public transportation” to activate a public safety and judicial facilities (“PSJF”) authority or a joint PSJF authority which may float up to \$50 million in revenue bonds for the construction of new public safety, detention, and judicial facility projects. O.C.G.A. §§ 36-75-4 & 36-75-7. WTLA authorizes a PSJF authority to enter into lease agreements to effectuate “Backdoor G.O.” bond transactions with the county or municipality which activated the PSJF authority. O.C.G.A. § 36-75-7(5).

Appellants misstate the current applicability of WTLA when they argue: “Only DeKalb County, Fulton County, and the City of Atlanta – the three primary jurisdictions MARTA serves – impose a MARTA tax. Accordingly, only these three jurisdictions have ever been eligible to activate a *PSJF Authority*.” Appellants’ Br. at 6 (emphasis in original). Only Fulton and DeKalb Counties, and not any cities (including the City of Atlanta), at this time impose “a sales tax levied for the purpose of a metropolitan area system of public transportation,” O.C.G.A. § 36-75-4(a), and are eligible to activate a PSJF authority pursuant to the WTLA.⁴

Appellee was the primary sponsor of H.B. 181. (R. 198). Although it amended WTLA, H.B. 181 addresses not only the “Backdoor G.O.” bond transactions of a PSJF authority, but also the “Backdoor G.O.” transactions of any

⁴ This is one reason that limiting the O.C.G.A. § 36-75-11 referendum requirement to counties, without including municipalities in its sweep, is reasonable. For another reason, see Section III.B.4 of this brief, infra.

other authority in a county that activates a PSJF authority. It requires such transactions, including the Arts Center transaction for which the County and the Authority sought validation and confirmation in the trial court, to be approved by (1) resolution of the governing authority of the County and (2) a referendum of the electors of the County. The relevant subsection of H.B. 181 provides:

Any authority other than the type of authority defined in paragraph (1) of Code Section 36-75-3:

(1) Which is authorized by general or local Act to operate and incur bonded indebtedness in a single county that has activated or that activates a public safety and judicial facilities authority pursuant to this chapter; and

(2) Which constructs or operates buildings or facilities for use by any department, agency, division, or commission of any county that has activated or that activates a public safety and judicial facilities authority pursuant to this chapter

shall obtain approval by resolution and referendum as provided in this Code section prior to issuing bonds for any new buildings or facilities or improvements to existing buildings or facilities.

O.C.G.A. § 36-75-11(c).

The County, the Authority, and their proposed bond transaction satisfy all of the conditions precedent to trigger the new resolution and referendum requirement:

(1) the Authority is an “authority other than the type of authority defined in paragraph (1) of Code Section 36-75-3;”⁵ (2) the Authority is “authorized by

⁵ The “type of authority” defined in O.C.G.A. § 36-75-3(1) is a PSJF authority or a joint PSJF authority. Thus, O.C.G.A. § 36-75-11(c) is applicable to

general or local Act to operate and incur bonded indebtedness in a single county;” (3) the County “has activated . . . a public safety and judicial facilities authority pursuant to [WTLA];” and (4) the Arts Center is being constructed “for use by any department, agency, division, or commission of [the County].” Id.

Consequently, the County and the Authority must “obtain approval by resolution and referendum as provided in [O.C.G.A. § 36-75-11] prior to issuing bonds for any new buildings or facilities or improvements to existing buildings or facilities” such as the Arts Center. O.C.G.A. § 36-75-11(c). This has not occurred. Since the County and the Authority have not sought the public’s approval in a referendum as required by O.C.G.A. § 36-75-11, which is made applicable to the Authority by subsection (c) of that Code section, they have not satisfied all of the legal requirements for confirming, validating, and issuing the Arts Center bonds.

C. Applying O.C.G.A. § 36-75-11(c) to Development Authorities

As applied to a development authority, H.B. 181’s referendum requirement is aimed only at revenue bond issues for which such an authority is seeking to build or operate “buildings or facilities *for use by any department, agency, division, or commission of any county* that has activated or that activates a [PSJF]

any authority other than a PSJF authority or a joint PSJF authority. O.C.G.A. § 36-75-11(c) makes the same resolution and referendum requirements that are made applicable to a PSJF authority or a joint PSJF authority through subsections (a) and (b) of O.C.G.A. § 36-75-11 applicable to all other authorities in a county that has activated a PSJF authority or a joint PSJF authority pursuant to WTLA.

authority pursuant to this chapter.” O.C.G.A. § 36-75-11(c)(2) (emphasis added). It does not affect every bond issue which a development authority might undertake. The Authority, for example, generally engages in the issuance of revenue bonds for projects by private entities, not the County, to foster “trade, commerce, industry, and employment opportunities.” Ga. Const. art. IX, § VI, ¶ III. Such a bond issue would not be subject to the referendum requirement contained in H.B. 181.

Also, with respect to any conflict between the subsequently enacted H.B. 181 and the prior enactment of the Development Authorities Law, O.C.G.A. § 36-62-1, *et seq.*, it is worth noting that H.B. 181 contained a general repealer clause that “[a]ll laws and parts of laws in conflict with this Act are repealed.” (R. 200).

D. Legislative Proceedings on House Bill 181

In Section IV of their “Statement of Facts,” Appellants string together excerpts from the legislative committee and floor proceedings on H.B. 181 to paint a picture for this Court of a “legislative history” which allegedly “demonstrates that the legislators who worked to pass H.B. 181 consistently described it as *only* being an amendment to the WTLA [governing PSJF authorities] and as having very narrow application.” Appellants’ Br. at 12 (emphasis in original).

The excerpts selected by Appellants, however, do not paint a complete picture for the Court. In addition to addressing the bill’s impact of PSJF authorities, the legislative proponents of H.B. 181 presented subsection (c) of

O.C.G.A. § 36-75-11 as being aimed at giving electors the right to vote on the “Backdoor G.O.” bond transactions of other types of authorities. Consider, for example, the following remarks of Appellee that were truncated by Appellants:

We were presented with a piece of local legislation that will authorize the creation of the DeKalb County Public Facilities Authority. It is not limited to public safety and judicial facilities, it is any County facility. It will operate exactly the same way this type of authority [i.e., PSJF Authority] operates, and the other thing about this piece of legislation, the local legislation that is likely to come through, is that there is no bonding cap. . . .

Appellants’ Br. at 8 (ellipsis in original). After this portion of his statement, Appellee – but not Appellants in their quoted excerpt – continues:

So, it’s an unlimited amount of bonds, of revenue bonds, that this authority can float to fund any local government facility under the sun. ***They build the facility, they operate the facility, they lease it to the County, the County pays for the facility using the general funds of the County.*** This is arguably one of the most fiscally irresponsible pieces of legislation I have seen in my short three years here in the General Assembly.

Meeting of the House Governmental Affairs Committee (Feb. 22, 2007), <http://media.legis.ga.gov/hav/gaff22207.wmv> at 20:12 (emphasis added). After this omitted portion, in which Appellee describes a “Backdoor G.O.” transaction, Appellants continue their truncated quotation with Appellee’s next words: “Subsection (c) speaks to that” Appellants’ Br. at 8.

It is dangerous to ascribe to the otherwise plain words of a statute whatever meaning Appellants have selected in the form of excerpted quotations from the

legislative proceedings which led to passage of the Act. As discussed in Section III.D.4 of this brief, infra, such quotations cannot be used for this purpose.

E. Bond Validation Proceeding and Trial Court's Order

The instant bond validation case was filed in DeKalb County Superior Court on June 25, 2008. (R. 13). Appellee intervened in the case at the trial court's bond validation hearing held on July 15, 2008, pursuant to the statutory right to intervene "at or before the time set for the hearing" conferred by O.C.G.A. § 36-82-77(a). (R. 182-83, 212-13). Appellee argued at the hearing that the Arts Center bond transaction is subject to the public referendum requirement of O.C.G.A. § 36-75-11(c), and that validation and confirmation of the proposed issuance of revenue bonds should be denied for failure to comply with this requirement. (R. 212-13).

After full briefing of Appellants' challenges on constitutional and statutory interpretation grounds to Appellee's requested application of O.C.G.A. § 36-75-11(c) to the bond sale, the trial court entered its final Order on November 10, 2008, concluding that "[t]he referendum requirement in subsection (c) is constitutional as applied to the Development Authority."⁶ (R. 367). In its Order, the trial court found a rational relationship between the overarching policy objective of H.B. 181 and the application of O.C.G.A. § 36-75-11(c) to the Authority:

⁶ Appellants note that the trial court issued its final Order "without further hearing or argument" after the parties' briefs were received. Appellants' Br. at 3. However, no party requested any such hearing or argument.

It appears that the legislature intended to protect against the accumulation of excessive bonded indebtedness in counties that have activated [PSJF] authorities. The imposition of a referendum requirement on [PSJF] authorities as well as other authorities that operate in counties that have activated [PSJF] authorities serves the stated purpose of H.B. 181. There is a reasonable relationship between the classification of authorities in subsection (c) and the subject matter of H.B. 181.

(R. 363). This appeal followed on December 2, 2008. (R. 1-2).

III. ARGUMENT AND CITATION OF AUTHORITY

A. Standard of Review

Issues of statutory interpretation or concerning the constitutionality of a statute are subject to *de novo* review on appeal. Jenkins v. State, 284 Ga. 642, 645 (2008); Rhodes v. State, 283 Ga. 361, 362 (2008).

B. O.C.G.A. § 36-75-11(c) Is Consistent With Both the “Uniform Terms and Conditions” Requirement of Art. IX, Sec. VI, Par. III and the “Uniform Operation” Requirement of Art. III, Sec. VI, Par. IV of the Constitution [Appellants’ Enumerations of Error Nos. 1 and 2].

1. Constitutional Uniformity Requirements

Appellants argue that O.C.G.A. § 36-75-11(c) and the referendum requirement it contains are constitutionally infirm because O.C.G.A. § 36-75-11(c) presently only applies generally to authorities and specifically to the Development Authority within and part of a single county, DeKalb.

There are two constitutional uniformity requirements that apply in this case. First, Art. III, Sec. VI, Par. IV(a) is the general uniformity requirement and prohibition against special laws:

Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law

Ga. Const. art. III, § VI, ¶ IV(a). In addition, Art. IX, Sec. VI, Par. III includes a “uniform terms and conditions” requirement for laws deemed necessary by the General Assembly to govern development authorities:

The development of trade, commerce, industry, and employment opportunities being a public purpose vital to the welfare of the people of this state, the General Assembly may create development authorities to promote and further such purposes or may authorize the creation of such an authority by any county or municipality or combination thereof *under such uniform terms and conditions as it may deem necessary.*

Ga. Const. art. IX, § VI, ¶ III (emphasis added).

2. O.C.G.A. § 36-75-11 is not arbitrary or unreasonable.

O.C.G.A. § 36-75-11 does not draw an arbitrary or unreasonable distinction among counties. The General Assembly may make classifications among counties or municipalities if the classification bears a reasonable relationship to the subject-matter of the statute and there is a legitimate ground for differentiation:

The legislature may make classifications for the purpose of legislation. It may classify cities. The classification must have some reasonable relation to the subject-matter of the statute. There must be

a legitimate ground for differentiation. Arbitrary or capricious discriminations are not permissible under the constitution.

Cooper v. Rollins, 152 Ga. 588, 593-95 (1922).

The classification provided in O.C.G.A. § 36-75-11(c) applies to any county which has activated a PSJF authority under WTLA and which uses its PSJF authority and other types of authorities – including its development authority – to operate, construct, or improve buildings for use by any department, agency, division, or commission of the county. O.C.G.A. § 36-75-11(c). It is a reasonable public policy determination for the General Assembly to opt to protect against the accumulation of excessive bonded indebtedness in such a county by requiring that the amount of bonds the county’s authorities may issue for the operation, construction, and improvement of public buildings be limited to that amount which has been approved by the county governing authority and ratified by its citizens.

3. The applicability of the referendum requirement of O.C.G.A. § 36-75-11 is not restricted to DeKalb County and the Authority.

As this Court has explained repeatedly, “uniformity” only means that the law operates alike on all persons or entities which fall within the sweep of its provisions, it does not mean universality:

Our state Constitution only requires a law to have uniform operation; and that means that it shall apply to all persons, matters, or things which it is intended to affect. *If it operates alike on all who come within the scope of its provisions, constitutional uniformity is secured. Uniformity does not mean universality.* This constitutional

provision is complied with when the law operates uniformly upon all persons who are brought within the relations and circumstances provided by it. . . . A law which *operates uniformly upon all persons of a designated class* is a general law within the meaning of the Constitution, provided that the classification thus made is not arbitrary or unreasonable.

C&S Nat'l Bank v. Mann, 234 Ga. 884, 889 (1975) (emphasis added); see also State v. Martin, 266 Ga. 244, 246 (1996) (citing and applying Mann).

WTLA permits counties and municipalities “imposing a sales tax levied for the purposes of a metropolitan area system of public transportation” to create a PSJF authority or a joint PSJF authority pursuant to the terms and conditions of that chapter of the Code. O.C.G.A. § 36-75-4(a). For counties which create a PSJF authority or a joint PSJF authority, one of those terms and conditions is that the “Backdoor G.O.” bond transactions of the PSJF authority, joint PSJF authority, and any other authority of the county be subject to referendum. O.C.G.A. § 36-75-11. This referendum requirement operates uniformly upon any county which (1) imposes a sales tax levied for the purposes of a metropolitan area system of public transportation and (2) has activated a PSJF authority or a joint PSJF authority. Furthermore, it only applies to authorities, including a development authority, when such authorities construct buildings or facilities for the county government’s direct use and benefit. See O.C.G.A. § 36-75-11(c)(2).

Currently, DeKalb is the only county in Georgia which satisfies both of these conditions. However, it simply is not the case that DeKalb County is the

only county that could ever fall into the class of counties to which O.C.G.A. § 36-75-11 applies. Fulton County, which already levies a sales tax for the purposes of a metropolitan area system of public transportation, easily could become subject to the provisions of O.C.G.A. § 36-75-11 simply by activating a PSJF authority or a joint PSJF authority pursuant to WTLA.

Moreover, WTLA is not limited to jurisdictions which levy “the MARTA tax,” as Appellants claim. Appellants’ Br. at 18 n.18. Any populous county inside or outside of Metro Atlanta in the future could impose a “sales tax levied for the purpose of a metropolitan area system of public transportation,” O.C.G.A. § 36-75-4(a), regardless of where MARTA operates. This includes counties such as Cobb, Gwinnett, Clayton, Bibb, Chatham, Richmond, and Muscogee. Such a county then would become eligible to activate a PSJF authority under WTLA.

The restrictions on the applicability of O.C.G.A. § 36-75-11(c) therefore function like the minimum population threshold that passed constitutional muster in Barge v. Camp, “by express terms being open to let in any county or city which by any future census might have the stipulated population.” 209 Ga. 38, 44 (1952). The class of counties and authorities to which the public referendum requirement applies is open-ended. New counties and their authorities could become subject to this requirement in the future. What should not be permitted, however, is for a county to accept the benefits of activating a PSJF authority pursuant to WTLA

without accepting whatever safeguards the General Assembly chooses as a matter of public policy to place on those counties which accept this benefit.

O.C.G.A. § 36-75-11(c) indeed “operates uniformly throughout the state upon the subject or class of subjects with which it proposes to deal.” Lasseter v. Georgia Pub. Serv. Comm’n, 253 Ga. 227, 229 (1984). The trial court did not err when it found that “even though the DeKalb Development Authority is presently the only development authority subject to the referendum requirement in subsection (c), the terms of the statute are sufficiently general to operate uniformly throughout the State upon the entire class of authorities.” (R. 365).

4. There is a reasonable policy-based explanation for excluding municipalities from the operation of O.C.G.A. § 36-75-11.

Appellants strenuously argue that O.C.G.A. § 36-75-11 is unreasonable and non-uniform because cities are carved out of its operation. Appellants’ Br. at 18-20. They punctuate this argument with the factually incorrect statement that “neither the trial court nor Intervenor explains why it is reasonable under O.C.G.A. § 36-75-11(c) . . . to impose a referendum requirement on development authorities in *counties* that have activated a *PSJF Authority* but not in *municipalities* that have activated a *PSJF Authority*.” Id. at 19-20 (emphasis in original). Appellee’s argument to the trial court on this point can be found in the record at pages 274-75.

With the possible exception of the City of Atlanta, municipalities have smaller budgets, smaller populations, and comparatively smaller debt burdens than large counties. Removing them from the operation of H.B. 181 was a rational and reasonable policy decision the General Assembly could have opted to make. The need “to protect against the accumulation of excessive bonded indebtedness” (R. 363) arguably is not as great for municipalities as a class of local governments as it is for large metropolitan counties that have greater bonding capacity.

5. A new, more stringent “uniformity” rule applicable only to development authorities would be untenable.

Appellants quote the trial court’s inability to locate “any law construing the phrase ‘uniform terms and conditions’” (R. 362) as used in Art. IX, Sec. VI, Par. III of the Constitution,⁷ and charge that the trial court erred by conflating this provision with the general uniformity clause in Art. III, Sec. VI, Par. IV(a). Appellants’ Br. at 16. Then, without citing any authority of their own, Appellants invite this Court to inflexibly require that exactly the same “terms and conditions” must apply to all development authorities everywhere in the State. Id. at 16-17.

Such a rule would allow no basis for differentiation between development authorities in counties and municipalities; urban, suburban, and rural areas; larger counties and smaller counties; and larger cities and smaller cities; nor between

⁷ The trial court also noted in its Order that Appellants did not cite any such law. (R. 362).

joint development authorities and single-county or single-city development authorities, or between downtown development authorities and other development authorities. In fact, development authorities and downtown development authorities owe their existence to the same set of constitutional provisions. Compare Haney v. Dev. Auth. of Bremen, 271 Ga. 407, 406 (1999) (applying Ga. Const. art. IX, § VI, ¶ III to development authority's bond transaction), with Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 252 (1983) (applying Ga. Const. art. IX, § VI, ¶ III to downtown development authority's bond transaction). Yet, the enabling law for development authorities is distinct from and contains different "terms and conditions" than the enabling law for downtown development authorities. Compare Development Authorities Law, O.C.G.A. § 36-62-1, et seq., with Downtown Development Authorities Law, O.C.G.A. § 36-42-1, et seq.

It is for precisely this reason that "uniformity does not mean universality" whenever the term "uniformity" is used in the Georgia Constitution. See C&S Nat'l Bank, 234 Ga. at 889. Appellants' suggested interpretation of the Constitution's "uniform terms and conditions" clause is highly impractical and fails to recognize that differing laws already govern different classes of development authorities.

C. H.B. 181 Does Not Violate the Constitution's "Multiple Subject Matter" Rule [Appellants' Enumeration of Error No. 3].

1. **Authorities, including PSJF authorities, development authorities, and any other types of authorities, are the instrumentalities which carry out the central purpose of H.B. 181.**

Appellants misconstrue the Constitution's "multiple subject matter" rule, which is designed to prohibit the General Assembly from legislating in two wholly separate areas through a single legislative Act. If the Act effectuates a single objective, then it satisfies Art. III, Sec. V, Par. III, the multiple subject matter rule, which provides: "No bill shall pass which refers to more than one subject matter or contains matter different from what is expressed in the title thereof." This Court has explained the multiple subject matter rule as follows:

When it is plain by the act a certain thing is to be done, *any instrumentality* authorized by the act in aid of, to conduce to, to assist, the *one great purpose* of the act is not a different subject-matter, but is part of the main subject-matter; it is part of the 'substantial unity in the statutable object,' and is *not unconstitutional*.

Mayes v. Daniel, 186 Ga. 345, 353 (1938) (emphasis added).

In effectuating the "one great purpose" of H.B. 181 to subject the issuance of revenue bonds for the construction of public buildings to be used by a county government (i.e., "Backdoor G.O." bond transactions) to a public referendum requirement, it does not violate the multiple subject matter rule for the General Assembly to decide that a PSJF authority, development authority, and any other type of authority should be subject to this requirement. H.B. 181's referendum

requirement and other restrictions on such bond transactions constitute the “subject matter” of the Act. The various authorities that engage in these transactions would be the “instrumentalities” which carry out the central purpose of the Act.

2. H.B. 181 does not contain two or more dissimilar and discordant subjects having no logical connection or relationship.

Appellants fall far short of meeting the high bar established in the case they quoted, Crews v. Cook, 220 Ga. 479, 481 (1964), for finding violations of the Constitution’s multiple subject matter rule. Appellants’ Br. at 25. Applying the same referendum requirement to the “Backdoor G.O.” transactions of all types of authorities in which the same county government is a party to and the beneficiary of all such transactions cannot be said to constitute “two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any logical connection with or relation to each other.” Crews, 220 Ga. at 481.

3. The county is the common thread in any “Backdoor G.O.” bond transactions with its various authorities.

The purpose of the Constitution’s multiple subject matter rule is “to protect the people against covert and surprise legislation.”⁸ Green v. Bryson, 223 Ga. 862, 864 (1968). There can be nothing “covert and surprise” about the applicability of O.C.G.A. § 36-75-11(c) to a development authority because there is a common

⁸ It is an ironic argument that the people need protection from their own right to vote on how public funds are expended and public debt accumulated.

thread connecting the “Backdoor G.O.” bond transactions of a county’s PSJF authority to those of its development authority, namely the county itself. The county is a party to any “Backdoor G.O.” transaction with its PSJF authority. The county also is a party to any “Backdoor G.O.” transaction with its development authority. Pursuant to O.C.G.A. § 36-75-11, the Code section which sets forth the referendum requirement at issue in this case, the county governing authority also must pass a resolution giving its blessing to all such “Backdoor G.O.” transactions.

4. Codification in WTLA does not render O.C.G.A. § 36-75-11(c) inapplicable to development authorities.

Nothing in the constitutional authorization for the creation of development authorities requires the General Assembly to codify statutes governing development authorities within the four corners of the Development Authorities Law, O.C.G.A. § 36-62-1, et seq. See Ga. Const. art. IX, § VI, ¶ III. Appellants assert that “it is . . . unreasonable to expect that even a skilled legal researcher would consult the WTLA, which pertains to *PSJF Authorities*, rather than rely upon the unqualified language of the DAL, which governs *development authorities*, in reviewing the bond procedures applicable to *development authorities.*” Appellants’ Br. at 26-27 (emphasis in original).

If codification of the referendum requirement in WTLA were as “unreasonable” as Appellants claim, it would not have been possible for

Appellee's referendum argument to have been anticipated and addressed in the Petition and Complaint for Validation of Bonds that initiated this case. (R. 9). Furthermore, there are many statutes outside the Development Authorities Law which govern development authorities and procedures for their bond transactions, including, but not limited to: O.C.G.A. § 36-62A-20, et seq., governing training of members of development authorities; O.C.G.A. § 36-82-60, et seq., the Revenue Bond Law; O.C.G.A. § 50-18-70, et seq., the Open Records Act; and O.C.G.A. § 50-14-1, et seq., the Open Meetings Act. It is nonsense that a development authority and its bond transactions should not be governed by a statute like O.C.G.A. § 36-75-11 that is codified outside the Development Authorities Law.

5. The title of H.B. 181 states all matters embraced within the Act.

H.B. 181 also does not violate the Constitution due to any omission in the title of the bill. Art. III, Sec. V, Par. III further provides that “[n]o bill shall pass which . . . contains matter different from what is expressed in the title thereof.” In their brief, Appellants selectively quote one clause of H.B. 181’s caption,⁹ and then argue that H.B. 181’s referendum requirement should be construed to apply only to those authorities covered by WTLA, namely PSJF Authorities. Appellants’ Br. at 26-29. However, the same caption also expresses that H.B. 181 provides that “certain authorities located in counties that have activated or activate public safety

⁹ “To amend Chapter 75 of Title 36 of the Official Code of Georgia Annotated, relating to war on terrorism local assistance” (R. 199).

and judicial facilities authorities shall obtain approval by resolution and referendum prior to issuing bonds.” (R. 199). The title of H.B. 181 clearly expresses that the Act applies the same referendum requirement to other types of authorities that it applies to PSJF authorities.

D. The Trial Court Correctly Decided That H.B. 181 Partially Repealed the Prohibition on Referenda for Development Authority Bonds.

1. H.B. 181 the last expression of legislative will and contains a general repealer clause.

Codified in the Development Authorities Law, O.C.G.A. § 36-62-11 provides that the bond transactions of a development authority shall not be subject to referendum and further provides that “insofar as this chapter may be inconsistent with the provisions of any other law, including the charter of any municipal corporation, this chapter shall be controlling.” O.C.G.A. § 36-62-11. The trial court correctly ruled that this statute is partially and impliedly repealed by O.C.G.A. § 36-75-11(c), as the two statutes “contradict each other and cannot be reconciled.” (R. 361). It is a black-letter rule of statutory construction that “[w]here there is a conflict between legislative acts, the later in time will control as it is presumed to be the last expression of legislative will.” Patrick v. Head, 262 Ga. 654, 655 (1993); see also M. Wayne Robinson Builder-Developer v. City of

Rome, 255 Ga. App. 114, 116-17 (2002) (citing and applying Patrick). In the instant case, O.C.G.A. § 36-75-11 is the last expression of legislative will.

H.B. 181 contains a general repealer clause, which declares: “All laws and parts of laws in conflict with this Act are repealed.” (R. 200). In this case, “as in all others, the intention of the legislature is the cardinal rule to be applied by the court; and therefore, in the absence of an express repeal, if it be apparent that the legislature intended, in a given case, that the later general statute should supplant the particular one, the courts will construe the subsequently enacted general law as having that effect.” Jones v. Stokes, 145 Ga. 745, 749 (1916) (quoted and cited in Johnson v. Caldwell, 229 Ga. 548, 551 (1972)) (emphasis added). In H.B. 181, as in the later in time of the two statutes considered by the Supreme Court in Johnson v. Caldwell, the intention of the legislature is clarified by the presence of a general repealer provision. See Johnson, 229 Ga. at 550-51 (“That Act contained in § 13 thereof a general repealer of all laws and parts of laws in conflict therewith.”); see also Simmons v. State, 148 Ga. App. 317, 318 (1978) (“Section 2 implements the repealer of ‘All laws and parts of laws in conflict with this Act . . .’”).

2. Subsection (c) of O.C.G.A. § 36-75-11 must be given effect and cannot be rendered meaningless.

When O.C.G.A. § 36-75-11 is construed per the rules of construction to “give ‘sensible and intelligent effect’ to all of its provisions” and “refrain . . . from

construing the statute in a way that renders any part of it meaningless,” Sikes v. State, 268 Ga. at 19, 21 (1997), it is clear that subsection (c) of the statute must apply to any authority other than a PSJF authority. O.C.G.A. § 36-75-11 contains three main subsections. Subsections (a) and (b) require a PSJF authority to obtain approval by resolution of the county governing authority and referendum of county electors before incurring any new bonded indebtedness for any new projects, and to prioritize such projects in the order in which they will be funded when multiple projects are proposed. Consequently, O.C.G.A. § 36-75-11, exclusive of subsection (c), already contains a referendum requirement for a PSJF authority.

In subsection (c), the words “[a]ny authority other than the type of authority defined in paragraph (1) of Code Section 36-75-3” plainly mean “any authority other than [a PSJF authority].” O.C.G.A. § 36-75-11(c). The only way to give meaning to subsection (c) would be to read these words in this way.

3. Senate Floor Amendment Two reflects that the General Assembly considered what it meant when it used the words “any authority.”

Only if this Court finds that the language used in O.C.G.A. § 36-75-11(c) is “doubtful” may it review the legislative history behind the enactment of this subsection. See Sikes, 268 Ga. at 21 (“Fourth, in attempting to ascertain the legislative intent of a doubtful statute, a court may look to the caption of the act and its legislative history.”). It is difficult to see how any doubt about the

authorities to which this subsection is intended to apply could remain after the General Assembly adopted Senate Floor Amendment Two to H.B. 181 (“Amendment Two”). (R. 324-25). Amendment Two added the words “other than the type of authority defined in paragraph (1) of Code Section 36-75-3” after the words “any authority” in the first clause of subsection (c) of O.C.G.A. § 36-75-11. Id. It passed the Senate and was incorporated into the final version of H.B. 181.

Amendment Two clarified that the words “any authority” in O.C.G.A. § 36-75-11(c) do not mean a [PSJF] authority, which is the definition contained in O.C.G.A. § 36-75-3(1), but instead mean any other type of authority. In adopting Amendment Two, the General Assembly took the extra step of clarifying the language in subsection (c) of O.C.G.A. § 36-75-11 prior to final passage of H.B. 181. In light of the adoption of this Amendment Two, it is evident that the General Assembly gave careful consideration to the language “any authority” in particular. Therefore, the General Assembly cannot be said to have intended to enact anything other than the plain meaning of “any authority” when it said “any authority.”

Most of the statements of individual legislators quoted and cited by Appellants in their brief were made before the adoption of Amendment Two on April 19, 2007, the next-to-last (39th out of 40) day of the 2007 legislative session, see Appellants’ Br. at 7-13, and cannot serve to make less clear what the General Assembly already clarified via Amendment Two.

4. Statements of individual legislators during legislative proceedings cannot alter the plain language of O.C.G.A. § 36-75-11(c).

Appellants rely heavily upon the statements of individual legislators made in the course of the legislative proceedings on H.B. 181 in an effort to convince this Court “that the legislators who worked to pass H.B. 181 consistently described it as only being an amendment to WTLA and as having very narrow application.” Appellants’ Br. at 12. Appellants’ selectively extracted statements of individual legislators cannot possibly be construed as an expression of legislative will, nor do such statements encapsulate the will of the entire legislative body. Such statements are not to be used in “arriving at the meaning of a public statute,” but rather the Court must ascertain “the legislative will as expressed in a statute.” Stewart v. Atlanta Beef Co., 93 Ga. 12, 18 (1893).

Stewart and its progeny deal with post-enactment statements of individual legislators. See, e.g., Jackson v. Delk, 257 Ga. 541, 543 (1987); Stewart, 93 Ga. at 18; Southern Ry. Co. v. A.O. Smith Corp., 134 Ga. App. 219, 221 (1975). While there is a paucity of Georgia case law dealing with statements of individual legislators that occur during legislative proceedings, the policy rationale of Stewart applies with equal force to such contemporaneous statements because individual legislators “might differ as to what an act did mean, which would only increase, rather than relieve, any difficulty a court might have in construing the law.”

Stewart, 93 Ga. at 18. Federal courts reject the use of statements of individual legislators during legislative proceedings for purposes of construing a statute:

The best evidence of that purpose is the statutory text adopted by both Houses of Congress and submitted to the President. Where that contains a phrase that is unambiguous – that has a clearly accepted meaning in both legislative and judicial practice – we do not permit it to be expanded or contracted by the statements of individual legislators or committees during the course of the enactment process.

West Virginia Univ. Hosps., Inc. v. Casey, 499 U.S. 83, 98-99 (1991).

The applicability of O.C.G.A. § 36-75-11(c) to any authority other than a PSJF authority is apparent from the plain words of the statute. It is impermissible to inject the words of individual legislators to alter this plain meaning.

E. The Performing Arts Center Is Not a Constitutionally Permissible Undertaking of a Development Authority, and Therefore the Trial Court's Order Is Right for Any Reason.

One of the constitutional provisions on which Appellants rely makes it clear that the permissible projects of a development authority are limited to “[t]he development of trade, commerce, industry, and employment opportunities.” Ga. Const. art. IX, § VI, ¶ III. This very paragraph furnished the basis for this Court to reverse a trial court and deny a bond validation for a public golf course project, holding that “the Turkey Creek Golf Course Project violates both the Georgia Constitution and the Development Authority Law because it is neither a sports facility nor for the public purpose of developing trade, commerce, and industry.”

Haney v. Dev. Auth. of Bremen, 271 Ga. 407, 408 (1999). In reaching this holding, the Court found that “the Development Authority of Bremen’s proposal to construct an 18-hole public golf course is designed to fulfill the governmental function of providing recreational facilities and services to area residents,” and that “the project is not a traditional business enterprise conducted for profit and thus does not meet the definition of a trade, industry, or commerce.” Id.

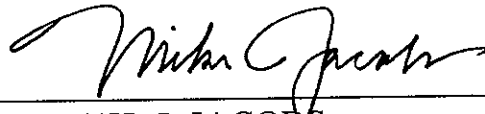
The constitutional purpose of a development authority is “to dangle the lure of revenue financing before the full range of retail and wholesale business.” Odom v. Union City Downtown Dev. Auth., 251 Ga. 248, 252 (1983). The Arts Center is so closely analogous to the golf course in Haney that the words “Arts Center” can seamlessly be inserted into this Court’s reasoning in Haney. Indeed, the Arts Center is a public facility “designed to fulfill the governmental function of providing recreational facilities and services to area residents.” Haney, 271 Ga. at 408. The Arts Center also “is not a traditional business enterprise conducted for profit and thus does not meet the definition of a trade, industry, or commerce.” Id.

This Court would have to abandon Haney in order to permit a development authority to validate revenue bonds for purposes of constructing a performing arts facility as a public building for a county government. Accordingly, the trial court’s Order is right for any reason and should be affirmed. See, e.g., Brissey v. Ellison, 272 Ga. 38, 40 (2000) (“[A] judgment right for any reason will be affirmed.”).

IV. CONCLUSION

WHEREFORE, Appellee respectfully requests that the trial court's final Order declining to validate and confirm the proposed Arts Center bond issue be affirmed because (1) the trial court did not commit error on any of the Appellants' asserted constitutional grounds in holding that the proposed bond transaction is subject to referendum as required by O.C.G.A. § 36-75-11(c), and (2) the trial court's Order is right for any reason, because the Arts Center is not a constitutionally permitted undertaking of the Authority.

Respectfully submitted, this 28th day of April, 2009.



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CERTIFICATE OF SERVICE

I hereby certify that on this day I caused a true and correct copy of the within and foregoing *Brief of Appellee Michael J. Jacobs* to be served upon counsel of record for Appellants via United States first class mail, in a properly addressed envelope with adequate postage affixed thereon, to ensure delivery to:

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