

IN THE SUPERIOR COURT OF WHITFIELD COUNTY
STATE OF GEORGIA

Concerned Citizens of Prater's Mill and
Whitfield County, Georgia,
A community association; and
Dr. Conrad Easley, Chairman,
Plaintiffs

v.

Whitfield County School District;
Whitfield County Board of Education;
Jerry Nealey, Tim Trew, Thomas
Barton, Bary Brock, and John Thomas,
in their official capacities as Chairman
and Members of the Whitfield County
Board of Education; and Dr. Katie
Brochu in her official capacity as School
Superintendent
Defendants

Civil Action
File No. 09-CI-149-B

FILED & RECORDED
WHITFIELD COUNTY, GA
2009 JUN -4 PM 1:39
Clerk of Superior Court
Stephanie K. [Signature]

**ORDER DISMISSING WHITFIELD COUNTY BOARD OF EDUCATION AND
DENYING PLAINTIFFS' PETITION FOR DECLARATORY JUDGMENT,
WRIT OF MANDAMUS, AND PERMANENT INJUNCTIVE RELIEF**

On January 16, 2009, Plaintiffs, the Concerned Citizens of Prater's Mill, et al., filed a six-count complaint against Whitfield County School District, et al. In counts I-IV of their complaint, Plaintiffs ask this court to enter a declaratory judgment that the use of school funds for a portion of the costs of constructing a public sewer for the new school violates Georgia constitutional and statutory provisions. In counts V and VI Plaintiffs seek a writ of mandamus and injunctive relief to prevent the use of school funds for this purpose.

The parties have stipulated the facts of this case. The court adopts the facts stipulated by the parties and incorporates those written stipulations into this judgment as Exhibit A.



DISCUSSION

Although both parties have voiced their opinion either for or against the location of the new school, both parties have also agreed that the school's location is a decision to be made by the school district through the elected members of the board of education. The court agrees that this is not a matter for the court to decide. Instead, the decision in this case turns upon whether contributing towards a sewer system is an appropriate use of the Whitfield County School District's funds, and an examination of Georgia caselaw indicates that it is.

In *Norton Realty Loan Company, Inc.*, the court held that an expansion of school facilities created a necessity for new sewage facilities. *Norton Realty Loan Company, Inc. v. Board of Education of Hall County*, 129 Ga. App. 668 (1973). In that case, the court held that the fact that others would benefit from the sewer extension "does not affect the fact that the sewer easement furthered school purposes..." *Id.* at 670. *Norton* involved a construction of what is now O.C.G.A. §20-2-521 permitting condemnation "for public school purposes, either for public school building sites, playgrounds, athletic fields, or other purposes in connection with the public elementary or high schools..." *Id.* Although *Norton* is admittedly a case dealing with condemnation rather than an intergovernmental agreement, the case specifically holds that expanding sewer systems does further school purposes.

In this case, the City of Dalton's Board of Water Light and Sinking Fund Commissions and the Whitfield County School District entered into an intergovernmental agreement for Dalton Utilities to expand sewer services to the area where the new school is to be built. The agreement calls for the school district to pay part of the costs of that expansion. This agreement would provide sewer services for the school without which it could not open. Because the sewer expansion is necessary for the new school, as held in *Norton*, the expenditure of school funds for this purpose does not violate the Georgia Constitution. In fact, Articles VIII, § VI, ¶1 (b) and IX, § III, ¶ (a) of the Georgia

constitution authorize the intergovernmental agreement between the Whitfield County School District and Dalton Utilities.

In *DeKalb County School District v. DeKalb County*, the improvements in question were not *necessary* for the opening or operation of the school and DeKalb county was therefore statutorily required to bear the cost of road improvements. *DeKalb County School District v. DeKalb County*, 2613 Ga. 879 (1994). However, unlike *DeKalb*, the construction of the sewer in this case is required for the school to open. Without the intergovernmental agreement the sewer would not be built in time to serve the school because Dalton Utilities is not required to construct sewers outside the Dalton city limits unless its governing board deems it to be in the city's best interest to do so.

The court concludes that the expenditure of funds by the Whitfield County School District is necessary for the construction, support and maintenance of the proposed new school. Such use is not prohibited by any statute cited by plaintiffs. The court further finds that the intergovernmental agreement between the Whitfield County School District and Dalton Utilities is permitted under the constitution of this state.

On a final note, the Georgia Supreme Court in *Cook v. Colquitt County Bd. of Educ.* held "[i]n a long line of cases, we, and the Court of Appeals, have held that a county board of education, unlike the school district which it manages, is not a body corporate and does not have the capacity to sue or be sued." *Cook v. Colquitt County Bd. of Educ.*, 261 Ga. 841 (1992). The court therefore must dismiss the Whitfield County Board of Education as a defendant in this case.

It is therefore the Judgment of this Court that Plaintiff's complaint against the Whitfield County School Board is dismissed, and, Plaintiffs complaint against other defendants be Denied and Judgment be entered in favor of the remaining Defendants.

This the 4th day of June, 2009.

William T. Boyett
J.S.C.C.C.