

SUPERIOR COURT OF DEKALB COUNTY  
STATE OF GEORGIA

DeKalb County Public School System and  
The DeKalb Board of Education,

Plaintiffs,

09 CU7529-1

Vs.

The DeKalb County Development Authority, and  
Eugene Walker,

Defendants

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COMPLAINT

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NOW COMES the DeKalb County Public School System and the Board of Education for DeKalb County, by and through counsel, and file this, their Complaint, and show the Court as follows:

1.

The DeKalb County Public School System is the public school system for DeKalb County, Georgia.

2.

The DeKalb County Board of Education is the official policymaking body for the DeKalb County School System.

3.

The DeKalb County Development Authority (the "Development Authority") is a quasi-government entity created pursuant to Georgia Statute with the capacity to sue and to be sued in its own name, is subject to the jurisdiction and venue of this Court, and may

be served by delivery of the summons and complaint to Gregory Worthy, counsel for the Development Authority.

4.

The Sembler Company, a developer, is in the process of developing a mixed use project on real property located entirely in DeKalb County near Oglethorpe University, and in the process of that development, has entered into an agreement with the DeKalb County Development Authority to achieve a partial tax abatement on the development ("the Project").

5.

In December of 2008, the Superior Court of DeKalb County validated a proposed bond structure for the Project which allowed a partial tax abatement for the property being developed:

6.

Eugene Walker was elected to the Dekalb County Board of Education in a run-off election in December of 2008.

7.

Eugene Walker received campaign contributions in the amount of \$18,000 from individuals affiliated with Sembler as part of his campaign for a seat on the Board of Education.

8.

The \$18,000 in campaign contributions received by Eugene Walker represented approximately one third of the total contributions received by Walker's campaign, and

exceeded all of the total campaign contributions received by one of Walker's competitors in the initial election, who received 17% of the vote to Walker's his 23%.

9.

Walker's campaign was able to afford a large volume of mailings to promote his candidacy in the run-off election, which other candidates were not able to afford.

10.

Walker won the run-off election by a substantial majority.

11.

Sembler has advised the Authority that it will require an amendment to the validated bond structure to create a 100% tax abatement for twenty years on the property being developed, otherwise Sembler will be financially unable to complete the development of the Project.

12.

At the time Walker received the campaign contributions described hereinabove, it was reasonably foreseeable that Sembler Construction would petition the Development Authority for additional tax abatement on the Project.

13.

The DeKalb Development Authority intends to vote tomorrow, June 18, 2009, on a proposed amendment to the validated bond structure, which if approved will result in an increased tax abatement for the Project, and will divert away from the School System future tax revenues in the amount of approximately \$1,300,000 per year over the next twenty years, which otherwise would have been collected and used for the benefit of the students.

14.

Eugene Walker has publically stated he intends to participate in the Development Authority vote on June 18, 2009.

15.

On June 17, 2009, a majority of the Board of Education voted to retain the law Firm of Federal & Hasson to seek a restraining order to prevent the DeKalb Development Authority from proceeding to vote on the proposed amendment to the bond structure on June 18, 2009.

16.

As an elected member of the School Board, Walker is obligated to act in the best interests of the DeKalb Public School System and its students, which includes acting to increase (or at least not decrease) the public funds available for use by the Board of Education and the School System to achieve its educational purposes.

17.

As Chairman of the Development Authority, Walker is obligated to act in the interests of economic development for the County as a whole, not necessarily for the educational system, and is being presented with an opportunity to vote on a project which might promote economic development for the county as a whole, but would divert taxes away from the School System.

18.

There appears to be an inherent conflict of interest between Eugene Walker's obligations to the School Board and his obligations to the Development Authority, such

that his participation in a vote by the Development Authority on this project would create an objectively reasonable probability of bias in violation of due process.

COUNT 1  
DECLARATORY JUDGMENT  
19.

The proposed amendment to the validated bond structure will divert tax revenue away from the DeKalb Public School System in violation of the Georgia Constitution, and Plaintiffs seek a declaration by the Courts as to the constitutionality of the proposed amended bond structure.

20.

The Dekalb Public School System and the Board of Education are uncertain as to whether the amended bond structure proposed by the Development Authority can be implemented without their consent, and request a declaration by the Court as to their rights and obligations under O.C.G.A. 36-80-16.1.

21.

The Board of Education is uncertain as to whether Eugene Walker should be permitted to participate in Board discussions of, and votes affecting, the project, and seek a declaration by the Court as to the rights and duties of the parties with respect to the same.

MOTION FOR TEMPORARY RESTRAINING ORDER

22.

Plaintiff realleges the allegations contained hereinabove as if fully set forth herein.

23.

There appears to be an inherent conflict of interest between Eugene Walker's obligations to the School Board and his obligations to the Development Authority, such that he should not be allowed to participate in any vote by either body with respect to the Project, and the vote should be enjoined until the rights and obligations of the parties can be determined.

24.

The campaign contributions by individuals affiliated with Sembler, which stands to gain from the vote by the Development Authority, appear to create an objectively reasonable probability of actual bias, such that due process requires that Eugene Walker not participate in any Development Authority vote on the Project, and the vote should be enjoined until the rights and duties of the parties can be determined.

25.

The Development Authority should be restrained from voting to approve amendments to the validated bond structure without the approval of the County Commission and the Board of Education pursuant O.C.G.A. 36-80-16.1, the Pilot Restriction Act.

26.

The Development Authority should be restrained from voting to approve and/or implementing amendments to the validated bond structure without seeking validation of the amended bond structure as required by law.

27.

Plaintiff requests the Court enter an order enjoining the Development Authority's vote on the proposed amendment to the validated bond structure until such time as the declaratory relief sought can be addressed.

28.

The equities strongly favor granting the relief requested.

29.

Plaintiff will suffer irreparable harm if the restraining order is not granted, as the vote will proceed without the declaratory relief sought.

30.

In support of said Motion, Plaintiffs rely on its verified Complaint.

31.

Undersigned counsel certifies that he has provided a copy of this verified Complaint and Motion for Restraining Order to Gregory Worthy, counsel for the Development Authority, and that counsel has notified Mr. Worthy that counsel intends to seek relief on the requested restraining order on June 17, 2009, and invited Mr. Worthy to appear and represent the interests of his client.

WHEREFORE, Plaintiff demands:

- (a) That Defendant be served with the Summons and Complaint in this matter as provided by law;
- (b) A declaration of the rights and obligations of the parties as requested herein;
- (c) That the requested Restraining Order be granted;
- (d) Reasonable attorneys' fees and all costs of this litigation; and

(e) Such other and further relief as the Court deems appropriate.

This, the 17<sup>th</sup> day of June, 2009.

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CLERK OF SUPERIOR CRT  
DEKALB COUNTY GEORGIA

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