



AlaFile E-Notice

01-CV-2018-900762.00

Judge: ROBERT S. VANCE

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NOTICE OF COURT ACTION

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

JAY CAMPBELL V. CITY OF GARDENDALE, ALABAMA ET AL
01-CV-2018-900762.00

A court action was entered in the above case on 5/16/2019 11:15:07 AM

ORDER

[Filer:]

Disposition: DENIED
Judge: RSV
Notice Date: 5/16/2019 11:15:07 AM

JACQUELINE ANDERSON SMITH
CIRCUIT COURT CLERK
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**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION**

CAMPBELL JAY,)	
Plaintiff,)	
)	
V.)	Case No.: CV-2018-900762.00
)	
CITY OF GARDENDALE, ALABAMA,)	
JEFFERSON COUNTY, ALABAMA,)	
J.T. SMALLWOOD, COLLECTOR,)	
Defendants.)	

FINAL ORDER

Beginning with the October 1, 2013 tax year, the City of Gardendale has levied two separate five-mill *ad valorem* taxes on all taxable property within the city, which combine to form the “Gardendale School Taxes”:

1. A five-mill tax imposed by the City Council under Ordinance 2013-11, pursuant to authority granted under *Ala. Code* §11-51-1 and Ala. Const. Art. IX, Sec. 216; and
2. A second five-mill tax imposed by the City Council following a public referendum vote under *Ala. Code* §11-51-1 and Ala. Const. Art. IX, Sec. 216.04.

At all material times, all taxable property in Gardendale has also been subject to the levy of Jefferson County’s 8.8-mill *ad valorem* tax (the “County School Tax”) pursuant to Ala. Const. Jeff.Co. Amend. 14 (“Local Amendment 14”), currently set at a rate over 5 mills pursuant to Ala. Const. Art. IX, Sec. 217(e).

Gardendale’s schoolchildren have historically attended JeffCo BOE schools. Gardendale began imposing the Gardendale School Taxes in 2013 to finance an anticipated municipal school system separate from the Jefferson County School System. Gardendale’s efforts, however, were ultimately for naught as the U. S. Court of Appeals for the Eleventh Circuit denied its request to establish a municipal school district. *Stout v. Jefferson County Board of Education*, 882 F.3d 988 (11th

Cir. 2018).

The plaintiff class here, certified by order of January 15, 2019, has asserted two claims:

1. Plaintiffs assert what they refer to as a facial challenge to all 10 mills of the Gardendale School Taxes, arguing that the sole purpose of the taxes – the financing of public schools to be operated by a Gardendale School District – has been declared illegal under *Stout*; and
2. Plaintiffs alternatively contend that the Gardendale School Taxes consist of “special or additional” local school taxes that cannot, under Local Amendment 14, be imposed alongside the 8.8-mill County School Tax.

Prior to class certification, the defendants filed motions to dismiss/alternative motions for summary judgment, which this court denied. Now pending is a motion for judgment on the pleadings, or in the alternative motion for summary judgment, filed by the plaintiff class. The defendants oppose this motion.

This order comes after review of the filings in support of, and in opposition to, the pending motion. Before turning to legal conclusions, the court finds that the material facts are undisputed.

The plaintiffs’ first claim may be swiftly cast aside. Notwithstanding the ruling in *Stout*, the Eleventh Circuit did not address any issue pertaining to the imposition of the Gardendale School Taxes. Plaintiffs cite no authority supporting the contention that the *Stout* decision invalidates the Gardendale School Taxes, and this court can find nothing that would buttress this claim.

The court thus turns to the plaintiffs’ second claim, concluding as follows:

Nothing in Local Amendment 14 prevents the City of Gardendale from levying a municipal *ad valorem* tax. Plaintiffs really do not make this contention, instead arguing that Gardendale’s decision to levy the 10-mill ad valorem taxes earmarked for public educational purposes may not operate alongside Jefferson County’s levy of the 8.8 mill district tax.

The court agrees with the defendants that the restriction on special or additional municipal school tax, as found in Local Amendment 14, pertains to any such taxes

levied by Jefferson County for the benefit of a school district found therein. Local Amendment 14 does not address municipal *ad valorem* taxes levied pursuant to Ala. Const. Art. XI, Sections 216, *et seq.* Rather, Local Amendment 14 serves to limit a municipal public school district from benefiting from a Jefferson County levy within the district of more than 8.8 mills (absent some other grant of authority within the Alabama Constitution).

Because Gardendale's municipal *ad valorem* levy is not a "special or additional tax" for municipal public school purposes within the meaning of Local Amendment 14, such taxes are here declared to be lawfully levied and collected. Further, the court declares that Jefferson County's school district tax of 8.8 mills is also being lawfully levied and collected in the Gardendale municipal limits.

Plaintiffs' Motion for Judgment on the Pleadings or for Summary Judgment (Doc. 52) is accordingly denied. Further, the court *sua sponte* reconsiders its prior order that had denied the defendants' motions to dismiss or in the alternative for summary judgment (Doc. 43). That order is vacated, and the court now grants summary judgment in favor of the defendants on all claims of the plaintiffs, for the reasons discussed above.

This is the final order in this action, with costs taxed as paid.

DONE this 16th day of May, 2019.

/s/ ROBERT S. VANCE
CIRCUIT JUDGE