

**SUPREME COURT
STATE OF LOUISIANA**

NO. 2021-CA-00858

WILLIAM MELLOR, *ET AL*

Class Plaintiffs/Appellees

VERSUS

THE PARISH OF JEFFERSON, *ET AL*

Defendants/Appellants

APPEAL OF JEFFERSON PARISH SCHOOL BOARD, JEFFERSON PARISH SHERIFF
JOSEPH P. LOPINTO, III, and the PARISH OF JEFFERSON FROM THE RULING OF THE
24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON, CASE NO. 712-496,
DIVISION A, THE HONORABLE RAYMOND S. STEIB, JR., JUDGE

ORIGINAL BRIEF ON MERITS ON BEHALF OF WILLIAM MELLOR, *ET AL*

CIVIL MATTER

Respectfully submitted,

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STATEMENT OF THE CASE

1. Facts

In approximately October of 2009, public enforcement began of the Parish of Jefferson's Code of Ordinances Chapter 36 – Traffic and Motor Vehicles, Article XII – School Bus Safety Enforcement Program for Detecting Violations of “Overtaking and Passing School Buses,” § 36-320 *et seq.* (hereinafter “SBSEP”). In a nutshell, the SBSEP uses cameras affixed to school buses that activate when the school bus “Stop” sign activates, then captures images of any vehicles that fail to obey the school bus’ “Stop” sign. [1 ROA.160]. The owner of an offending vehicle is then mailed a camera ticket showing his vehicle violating the school bus “Stop” sign, and the notification of violation that includes the fine to be paid by the vehicle owner. [1 ROA.161-62].

The plain wording of SBSEP § 36-324(a) mandates that the Jefferson Parish School Board (“JPSB”), or its agent, is “responsible for the administration of the system and for notification of the violation.” [1 ROA.161]. This fact is not in dispute. The JPSB, through a contract with its agent ONGO Live, Inc., (“ONGO”) [2 ROA.400-427] administered the SBSEP and issued notifications of violations of the ordinance since SBSEP tickets began issuing to motorists in 2009, until recently.

2. Pertinent Procedural History

In 2011, Appellees, as recipients of SBSEP tickets, filed this class action lawsuit in the 24th Judicial District Court for the Parish of Jefferson, asserting that the SBSEP violated parts of the Louisiana Constitution, Louisiana's Revised Statutes including the Louisiana Highway Regulatory Act and other aspects of Louisiana law. [1 ROA.8-18]. As is required with lawsuits challenging the constitutionality of a statute or ordinance, the Attorney General for the State of Louisiana was served with a copy of the petition. [1 ROA.18].

In the following years, Appellees filed four subsequent amending petitions, adding party defendants and additional legal claims against the SBSEP.

In 2013, the trial court granted class certification to Appellees.

In July of 2016, the Parish of Jefferson (“the Parish”), filed a motion for summary judgment, arguing that it simply enacted the SBSEP, and was not responsible for any of Appellees' legal claims against the SBSEP, as the SBSEP was entirely administered and enforced by the remaining defendants, *i.e.*, JPSO, JPSB, and ONGO, the three of whom collected and shared all of the SBSEP fees and fines, with the Parish receiving no money from those fees and fines. [1 ROA.207]. The

trial court, over Appellees' objections, granted summary judgment in favor of the Parish, dismissing it from the case, but not under La.C.C.P. art. 1915.

In November of 2019, Appellees moved for summary judgment against the JPSB, JPSO and ONGO, alleging that the SBSEP was illegal insofar as the SBSEP mandates that the JPSB administer the school bus ordinance, when the Parish, as a Home Rule Charter entity, has no authority to mandate that the JPSB, a state-created entity, take on any affirmative duties or actions. [1 ROA.146-219].

At the first hearing on Appellees' motion for summary judgment on March 4, 2020, the trial court, *sua sponte*, raised the issue that La.C.C.P. 1880 required the presence of the Parish in the case to defend the validity of its ordinance. After discussion regarding the trial court's prior dismissal without prejudice of the Parish from the case, it was decided that the summary judgment hearing would be continued so Appellees could file a fifth supplemental and amending petition to re-add the Parish as a party for the purpose of defending the SBSEP. [1 ROA.6].

On July 7, 2020, Appellees filed their *Fifth Supplemental and Amending Petition*, re-adding the Parish as a defendant, asserting new legal claims against the SBSEP, and once again serving the Parish and the Attorney General. [2 ROA.347-49].

On November 12, 2020, Appellees moved to reset their *Motion for Summary Judgment*, serving the defendants and the Attorney General. [2 ROA.378-79].

On February 1, 2021, the trial court heard argument on Appellees' *Motion for Summary Judgment*. [3 ROA.513-56].

On February 25, 2021, the trial court issued its Judgment granting the Appellees' *Motion for Summary Judgment* in part,¹ finding the SBSEP unconstitutional [2 ROA.477], providing an eight-page written Reasons for Judgment. [2 ROA.478-85].

This appeal by the Parish, the JPSB, and the JPSO followed.

¹ The trial court's Judgment of February 25, 2021, was silent as to Appellees' request for immediate reimbursement of all fees and fines collected under the illegal SBSEP, although that issue was raised on summary judgment.

SUMMARY OF THE ARGUMENT

The District Court, in granting summary judgment, correctly held that the Parish of Jefferson's Code of Ordinances Chapter 36 – Traffic and Motor Vehicles, Article XII – School Bus Safety Enforcement Program for Detecting Violations of “Overtaking and Passing School Buses,” § 36-320, *et seq.* (hereinafter “SBSEP”) was unconstitutional, finding the parish ordinance unconstitutionally infringed upon the independence of the JPSB by mandating that the JPSB administer the SBSEP parish ordinance concerning the use of school bus cameras to capture images of vehicles that fail to stop for the school buses. Specifically, the Parish of Jefferson's SBSEP § 36-324(a) mandates that the JPSB administer the traffic camera enforcement ordinance and notify motorists by issuing school bus camera ticket violations. The District Court rightly determined that this mandate was unconstitutional, as the Louisiana Constitution of 1974, Article 6, § 5(G), prohibits any Home Rule Charter government, including that of the Parish of Jefferson, from enacting any parish ordinance that infringes upon the independence of the JPSB. In its Reasons for Judgment, the District Court held:

Nevertheless, that does not alter the fact that Jefferson Parish Ordinance §36-324, SBSEP, unconstitutionally charged the administration of the SBSEP Ordinance to an independent arm of the State over which Jefferson Parish had no control pursuant to its Home Rule Charter. Therefore, the Court finds that SBSEP is unconstitutional insofar as it violates LSA-Const. art. 6, Sec. 5(G), and grants Plaintiffs' Motion for Summary Judgment. [2 ROA.484-85]

LAW AND ARGUMENT

I. Standard of Review

This Honorable Court reviews summary judgments *de novo* under the same criteria that govern the district court's consideration of whether summary judgment is appropriate. *Reynolds v. Select Properties, Ltd.*, 93-1480 (La. 1994), 634 So.2d 1180, 1183.

II. The SBSEP is an Unconstitutional Ordinance

A. Louisiana Constitution of 1974 Article 6, § 5(G)

In granting summary judgment, the trial court found the mandate within SBSEP § 36-324(a), directing the JPSB to administer the SBSEP school bus camera ticketing system, unconstitutionally violated Article 6, § 5(G) of the Louisiana Constitution of 1974 [2 ROA.477], which provides:

(G) Parish Officials and School Boards Not Affected. **No home rule charter or plan of government shall contain any provision affecting a school board** or the offices of district attorney, sheriff, assessor, clerk of a district court, or coroner, **which is inconsistent with this constitution or law.** [Emphasis added]

B. Statutory Construction and the Plain Meaning of Words in SBSEP

This Honorable Court's jurisprudential analysis concerning the constitutionality of an ordinance cannot save the SBSEP.

"The interpretation of any statutory provision starts with the language of the statute itself." *Oubre v. Louisiana Citizens Fair Plan*, 11-0097 (La. 2011), 79 So.3d 987, 997. "When the provision is clear and unambiguous and its application does not lead to absurd consequences, its language must be given effect, and its provisions must be construed so as to give effect to the purpose indicated by a fair interpretation of the language used." *State v. Oliphant*, 12-11176 (La. 2013), 113 So.3d 165, 168 (citing La.C.C. art. 9; LSA-R.S. § 1:4; and *In re Clegg*, 10-0323 (La. 2010), 41 So.3d 1141, 1154). "Unequivocal provisions are not subject to judicial construction and should be applied by giving words their generally understood meaning." *Oliphant*, 113 So.3d at 168 (citing La.C.C. art. 11; LSA-R.S. § 1:3). "Words and phrases must be read with their context and construed according to the common and approved usage of the language." *Oliphant*, 113 So.3d at 168 (citing LSA-R.S. § 1:3). "[W]hen interpreting a statute, the court should give it the meaning intended by the legislature." *Caldwell Parish School Board v. Louisiana Machinery Company, L.L.C.*, 12-1383 (La. 2013), 110 So.3d 993, 996-97. "[E]very word, sentence or

provision in a law is presumed to be intended for some useful purpose, that some effect is given to each such provision, and that no unnecessary words or provisions were employed." *Id.* at p. 6, 113 So.3d at 997.

Turning to the issue of the constitutionality of an ordinance, this Honorable Court in *Randolph v. Alexandria Civil Service Com'n*, 04-1620 (La. 2005), 899 So.2d 857, 861, stated:

An ordinance and a legislative act are presumed to be constitutional. *Theriot v. Terrebonne Parish Police Jury*, 436 So.2d 515 (La.1983). The party attacking the constitutionality of a statute or ordinance has the burden of proving that the statute or ordinance is unconstitutional. *City of Lafayette v. Butcher Air Conditioning Co. Inc.*, 392 So.2d 757 (La.App. 3 Cir.1980). It is well settled that the burden of proving the unconstitutionality of an act or ordinance is by clear and convincing evidence. *Theriot*, 436 So.2d 515; *Bolzoni v. Theriot*, 95-1233 (La.App. 3 Cir. 3/6/96), 670 So.2d 783, *writ denied*, 96-0718 (La.4/26/96), 672 So.2d 908; *West Central Louisiana Entertainment, Inc. v. City of Leesville*, 594 So.2d 973 (La.App. 3 Cir.1992). Municipal acts are to be interpreted to sustain validity if susceptible to reasonable interpretation having legal effect. *Gurst v. City of Natchitoches*, 428 So.2d 502 (La.App. 3 Cir.1983).

With these precepts in mind, the trial court, beginning on Page 4 of its written Reasons for Judgment, addressed precisely why the SBSEP was unconstitutional. [2 ROA.481]. The trial court, noting this Honorable Court's decision in *Francis v. Morial*, 84-0159 (La. 1984), 455 So.2d 1158, explained that while Home Rule Charter governments like the Parish enjoy a certain level of autonomy from State intervention concerning local laws, provisions within the Louisiana Constitution of 1974 like Article 6, § 5 and Article 9 protect the State from infringement upon the State's police power and other inherent powers. [2 ROA.481-82]. Article 6, § 5(G) provides:

(G) Parish Officials and School Boards Not Affected. **No home rule charter or plan of government shall contain any provision affecting a school board** or the offices of district attorney, sheriff, assessor, clerk of a district court, or coroner, **which is inconsistent with this constitution or law.** [Emphasis added]

The trial court determined that the prohibition within § 5(G), specifically proscribes any home rule charter government, including the Parish, from containing provisions that affect a school board like the JPSB. In light of this constitutional prohibition, the trial court compared the offending provision, SBSEP § 36-324(a), against Article 6, § 5(G). The offending SBSEP § 36-324(a) provides:

The Jefferson Parish School Board, or its agent, is responsible for the administration of the system and for notification of the violation. The Jefferson Parish Sheriff's Office shall be responsible

for the collection of the initial fines paid by the vehicle owner. [1 ROA.161].² [Emphasis added]

The trial court, applying the plain meaning of the words within the SBSEP, could reach no other conclusion than the Parish intentionally passed an ordinance mandating that an independent state office created by the Louisiana Legislature, *i.e.*, the JPSB, would administer the SBSEP “system” and issue notices of violations to motorists. This mandate by a home rule charter government to a school board is clearly in direct contravention to Article 6, § 5(G), as SBSEP § 36-324(a) is both “inconsistent with this constitution” and “inconsistent with...law.” The Parish’s attempt to affect the JPSB with the mandate present within SBSEP § 36-324(a) is inconsistent with Article 8, § 10(A) of the Louisiana Constitution of 1974, which provides:

Section 10.(A) Recognition. Parish and city school board systems in existence on the effective date of this constitution are recognized, subject to control and supervision by the State Board of Elementary and Secondary Education and the power of the legislature to enact laws affecting them. [Emphasis added]

Article 8, § 10(A) clearly establishes that only the Louisiana Legislature holds the power to enact laws affecting parish school boards like the JPSB. The Parish’s attempt to mandate the JPSB with administrative oversight of the SBSEP is therefore inconsistent with the Louisiana Constitution of 1974, Article 8, § 10(A). As shown below in Part IV, the mandate to the JPSB within SBSEP § 36-324(a) is likewise inconsistent with Louisiana law.

C. Orleans Parish School Board v. Quatrevaux Supports Trial Court Decision

To buttress its opinion of the unconstitutionality of the SBSEP, the trial court cited the analogous case of *Orleans Parish Sch. Bd. v. Quatrevaux*, 13-1653 (La.App. 4 Cir. 2014), 154 So.3d 612. [2 ROA.482-83]. In *Quatrevaux*, the Louisiana Fourth Circuit Court of Appeal considered whether New Orleans, under its Home Rule Charter powers had authority, through its Office of Inspector General (“OIG”), to issue a *subpoena duces tecum* to the Orleans Parish School Board (“OPSB”). The Fourth Circuit, relying upon a prior opinion of the Louisiana Attorney General, held that the New Orleans’ OIG had no such authority over the OPSB, as the

² SBSEP § 36-324(b) sets forth additional duties that the JPSB must exercise in conjunction with administering the ordinance and issuing the Notices of Violations, such as providing the timetable when a Notice of Violation shall be mailed to a vehicle owner, while the remaining paragraphs of SBSEP § 36-324(b)(1) through (b)(9) set forth the information the Notice of Violation must contain, including but not limited to: (1) the time, date and location of the alleged violation, (2) the name and address of the vehicle owner, (3) evidence that the vehicle violated the ordinance, and (4) the amount of the traffic fine. [1 ROA.161-62].

OPSB was an independent political subdivision of the State of Louisiana, beyond the control of New Orleans' Home Rule Charter:

Specifically, the Attorney General Opinion, No. 10–0165, 2011 WL 1455960, March 2, 2011, page 3 states, in pertinent part:

The Louisiana Constitution states that ‘no home rule charter or plan of government shall contain any provision affecting a school board or the offices of district attorney, sheriff, assessor, clerk of a district court, or coroner which is inconsistent with the constitution or law.’ La. Const. Art. VI, Sec. 5(G) (emphasis in original). Citing this provision, among other things, the Louisiana Supreme Court has held that an independent office, such as a district attorney, assessor, clerk of court, school board or sheriff, “exercises a portion of the sovereign power of the state within the district of his office.... His office, duties, and powers are governed by the constitution and the legislature, and are not subject to local control.... His office, therefore, is an office of the state, not local government....”² **Thus, as offices established by the Constitution and legislation, the operations and independent discretion of the School Board, Sheriff, Clerk of Court, Coroner, Assessor, and District Attorney are beyond the general control of the Charter**, which is the blueprint for parish governance. As a consequence, the powers granted to a parish OIG under La. R.S. 33:9613, as well as any charter provisions adopted pursuant thereto, may not infringe upon the constitutionally-protected independence of these entities.

We find nothing in the ordinance set forth in Article XIII, Section 2–1120 of the City Code that authorizes the OIG to serve an administrative subpoena duces tecum on the OPSB; rather, the OIG's enumerated powers are in fact limited to matters involving city government. Because the OPSB is not a part of city government and because the local ordinance creating the OIG does not grant upon it the authority to audit the OPSB, an independent political subdivision of the State of Louisiana, we find the district court erred in holding that the OIG's administrative subpoena duces tecum was authorized by local ordinance. [*Orleans Parish Sch. Bd. v. Quatrevaux*, 154 So.3d at 618-19][Emphasis added]

The Fourth Circuit held in *Orleans Parish Sch. Bd. v. Quatrevaux*, *supra*, that independent offices of the State of Louisiana, including school boards like the JPSB, are beyond the control of Home Rule Charter governments like the Parish. *Id.* Importantly, the footnote from the Attorney General opinion relied upon in *Quatrevaux* (placing the state-created offices such as District Attorney and School Board beyond the control of local home rule governments) cites to this Honorable Court's opinion of *Diaz v. Allstate Ins. Co.*, 82-2846 (La. 1983), 433 So.2d 699. In *Diaz*, this Honorable Court analyzed whether two Louisiana statutes were in conflict concerning a state employee's tort immunity/hold harmless privileges. Germane to the case at bar is the *Diaz* Court's description of the office of the district attorney at issue:

[The district attorney's] office, duties, and powers are governed by the constitution and the legislature, and are not subject to local control. La. Const. art. VI §§ 5(G) and 7(B). His office, therefore, is an office of state, not local government. [Footnote omitted][*Diaz*, 433 So.2d at 701.]

The *Diaz* Court, citing Article 6, § 5(G) of the Louisiana Constitution of 1974, placed the office of the district attorney, an office of the state, beyond the control of local government. *Id.* The Attorney General opinion relied upon by the *Quatrevaux* Court, based on *Diaz*, simply reiterated that Article 6, § 5(G) also placed the school board, another office of the state, beyond the control of local government. *Quatrevaux, supra.* These decisions unmistakably stand for the proposition that home rule governments, like the Parish at bar and Orleans in *Quatrevaux*, cannot pass ordinances that infringe upon state-created offices like the JPSB, per Article 6, § 5(G) of the Louisiana Constitution of 1974. Appellants relegate the trial court's reliance upon the *Quatrevaux* decision to a footnote on Page 5 of their brief that misses the point; regardless of whether the JPSB "volunteered" or was mandated to administer the SBSEP, Article 6, § 5(G) prohibits the Parish from passing any ordinance that mandates the involvement of the JPSB.

III. Offending Provision Cannot be Severed from SBSEP

A. The SBSEP has no Severability Provision

In *State v. Brown*, 67236, 67738 (La. 1980), 389 So.2d 48, 51, this Honorable Court, in its analysis of whether LSA-R.S. § 40:969(C) was unconstitutional, reiterated:

It is a rule of law that the presence of a severability provision in a law is an admonition to the court of the intention that all valid provisions be retained in full effect, even though some provisions thereof be held invalid, and hence creates a presumption of severability in fact. *State v. City of Baton Rouge*, 215 La. 315, 40 So.2d 477 (1949).

The SBSEP contains no severability provision. [1 ROA.160-62].

B. The Entire SBSEP is Void

This Honorable Court addressed in *Cobb v. Louisiana Bd. of Institutions*, 43632 (La. 1958), 237 La. 315, 327, 111 So. 126, 130, the progression for analyzing an ordinance found to be unconstitutional, if in part:

We are also aware of the fact that a statute may be valid in part and invalid in part if the two parts are not so intimately connected as to raise a presumption that the legislature would not have enacted the one without the other. *State v. Cognevich*, 124 La. 414, 50 So. 439; 26 A. & E. Enc. 595; *City of Alexandria v. Hall*, 171 La. 595, 131 So. 722; *Ricks v. Department of State Civil Service*, La. 341, 8 So.2d 49; *Conley v. City of Shreveport*, 216 La. 78, 43 So.2d 223. **If the unconstitutional portions of an act are so interrelated and connected with the**

constitutional parts that they cannot be separated without destroying the intention manifested by the legislature in passing the act, the entire act is void. *Stewart v. Stanley*, 199 La. 146, 5 So.2d 531; *Ricks v. Close*, 201 La. 242, 9 So.2d 534; *Womack v. Varnado*, 204 La. 1019, 16 So.2d 825. [Emphasis added]

The *Cobb* Court cited to its prior holding of *Womack v. Varnado*, 204 La. 1019, 1028-29, 16 So.2d 825, 828-29 (La. 1943), wherein it held:

Where an unconstitutional portion of a statute is inseparable from the remaining provisions, the entire law is invalid. *Stewart v. Stanley*, 199 La. 146, 5 So.2d 531; *Ricks v. Close*, 201 La. 242, 9 So.2d 534. But if the constitutional parts of a statute are independent of the invalid portion, the former will be permitted to stand. *City of Alexandria v. Hall*, 171 La. 595, 131 So. 722; *State v. Bonner*, 193 La. 402, 190 So. 626; *Ricks v. Department of State Civil Service*, 200 La. 341, 8 So.2d 49. [Emphasis added]

In the case at bar, the SBSEP § 36-324(a) specifically mandates that the JPSB, and only the JPSB, would administer the SBSEP system and issue the notices of violations:

The Jefferson Parish School Board, or its agent, is responsible for the administration of the system and for notification of the violation. The Jefferson Parish Sheriff's Office shall be responsible for the collection of the initial fines paid by the vehicle owner. [1 ROA.161]. [Emphasis added]

Because this mandate from the Parish to the JPSB violates Article 6, § 5(G) of the Louisiana Constitution of 1974, this Honorable Court, per *Cobb* and *Womack, supra*, may attempt to sever the offending provision within § 36-324(a) in order to determine whether the rest of the SBSEP can stand on its own. *Id.* In the case of the SBSEP, this is not possible. Stripping out the first sentence of § 36-324(a), *i.e.*, the unconstitutional mandate to the JPSB, leaves simply “The Jefferson Parish Sheriff's Office shall be responsible for the collection of the initial fines paid by the vehicle owner.” **But there will be no initial fines for the JPSO to collect from vehicle owners without the JPSB administering the SBSEP camera ticketing system and issuing notices of violations to motorists.** Once the JPSB administration/notification of violations is excised from § 36-324(a), the entire SBSEP becomes inert, as no violations would ever issue to motorists. Pursuant, to *Cobb, supra*, the unconstitutional portion of the SBSEP § 36-324(a) concerning the JPSB is so interrelated and connected with the remaining parts of the SBSEP that they cannot be separated without destroying the intention manifested by the Parish in passing the SBSEP, thus the entire SBSEP is void. *Id.*

Additionally, it is not this Honorable Court's responsibility to rewrite the SBSEP in a manner that might save the flawed ordinance; instead this Honorable Court's obligation is to confine its considerations to determining the constitutionality of the SBSEP as written. *Kel-Kan Inv. Corp. v. Village of Greenwood*, 428 So.2d 401, 405 (La. 1983). As this Honorable Court observed in *Fransen v. City of New Orleans*, 08-0076, 08-0087 (La. 2008), 988 So.2d 225, 241:

Initially we must observe that in the court's role of interpreting legislation, we must be ever mindful of the separation of powers and the deference owed to legislative bodies. Thus, we cannot impose our will upon the people and declare that the ordinance enacted by the legislative body for a collection penalty is in actuality an attorney's fee.

In *Radiofone, Inc. v. City of New Orleans*, 92-1523 (La. 1993), 616 So.2d 1243, this Honorable Court examined the constitutionality of Orleans' § 52-202 of Ordinance 14211, known as the Municipal Telecommunications Subscriber Charge. This Honorable Court in *Radiofone* affirmed the trial court's determination that § 52-202 was unconstitutional because it created a tax, but that Orleans failed to submit the proposed tax to the public for approval during an election for that purpose pursuant to Article 6, § 29(A) of the Louisiana Constitution of 1974. In so doing, this Honorable Court rejected Orleans' request for the Court to rewrite § 52-202 in manner that brought the ordinance within constitutional compliance:

In the alternative, the City has argued that in the event this court concludes that Section 52-202 of Ordinance 14211 is unconstitutional, the court should sever the unconstitutional aspects of that section from the pre-existing 1968 ordinance and allow the balance to stand. **In effect, the City would have this court carve out or reshape Section 52-202** to mirror the 1968 municipal subscriber charge and uphold what remains as a constitutional exercise of the City's taxing authority.

* * *

In the present case, severability is not possible despite the severability clause contained in Section 52-208. **Severing the unconstitutional aspects of the Section 52-202** of the 1990 Ordinance and preserving the remainder **would require this court to rewrite entirely not only Section 52-202 but also other sections of the Ordinance** to single out South Central Bell as the only telecommunications service provider subject to the Ordinance. Redefining "telecommunications services" subject to the tax would also be required. **Because this would produce a result counter to the intent of the City** to tax equally and without discrimination the broadest possible array of telecommunications services and providers, Section 52-202 of **the Ordinance must fail in its entirety**. *Radiofone*, 616 So.2d at 1248-49 [Emphasis added]

In the case at bar, the Parish, like Orleans in *Radiofone*, had a specific intent in mind as to the SBSEP, and that was that the JPSB would administer the SBSEP system and issue the notices of violations under the ordinance, and in return share in the profits derived from the camera tickets, as SBSEP § 36-322 provides in the third paragraph:

All penalties and fees collected from the imposition of civil liability under this article shall be first expended to defray all costs associated with the operation and enforcement of the school bus safety enforcement program in the following manner: twelve (12) percent to the Jefferson Parish Sheriff's Office and eighty-eight (88) percent to the Jefferson Parish Public School District. [1 ROA.161, 2 ROA.428][Emphasis added].

But like § 52-202 in *Radiofone*, the SBSEP § 36-324(a) is unconstitutional insofar as the mandate to the JPSB is concerned. And, as in *Radiofone*, this Honorable Court cannot rewrite SBSEP § 36-324(a) because to do so would produce a result counter to the intent of the Parish.

IV. LSA-R.S. §§ 17:81, 17:158 and 32:81 Cannot be Invoked on Behalf of JPSB

The Parish, pursuant to the prohibitions within Article 6, § 5(G) of the Louisiana Constitution of 1974, and decisions like *Diaz* and *Quatrevaux, supra*, cannot “empower” the JPSB to administer a parish school bus traffic camera ticketing enforcement system, and Louisiana statutes that address school buses, such as LSA-R.S. § 32:80 and LSA-R.S. § 17:158, do not magically expand the enumerated and implied powers held by the JPSB.

For instance, LSA-R.S. § 32:80, entitled “Overtaking and Passing School Buses,” is the criminal traffic statute within the Louisiana Highway Regulatory Act that prohibits the overtaking of a school bus that has stopped to take on or offload children. Pursuant to § 32:80(A)(1), motorists must stop behind a school bus that has its stop signals activated to receive or discharge school children. *Id.* If a motorist fails to stop at the distance required, § 32:80(A)(2) authorizes **the school bus driver** to make a written complaint to the appropriate law enforcement agency with 24 hours:

(2) The driver of any school bus is authorized to notify the appropriate law enforcement authority of any violation of this Subsection within twenty-four hours of the violation. This notification shall be in writing on a form provided to the bus driver by the school board, shall be signed by the school bus driver, under penalty of criminal prosecution, in the presence of two witnesses, and it shall include the license plate number and color of the vehicle. The notice may be sent to the appropriate law enforcement agency by mail, fax, or electronically. If mailed, the notice shall be deemed timely if postmarked the day after the violation. *Id.*

A school board's **sole duty** under LSA-R.S. § 32:80(A)(2) is to provide the school bus driver with a form for the written complaint. *Id.* In fact, other than providing a form for the school bus driver under § 32:80(A)(2), the term "school board" is never again mentioned **within the entirety** of LSA-R.S. § 32:80. The duty to provide a "form" for a school bus driver's criminal complaint under the Highway Act cannot be interpreted as the Louisiana Legislature granting the JPSB authority to administer the entirety of the Parish's "civil" school bus traffic camera ordinance ticketing system, which, ironically, does not involve the school bus drivers at all. [1 ROA.160-62].

Appellants' reliance upon LSA-R.S. § 17:158 fails no better, as § 17:158, entitled "School buses for transportation of students; employment of bus operators; alternative means of transportation; improvement of school bus turnarounds; loading and unloading students," is the Louisiana statute that outlines the duties of school boards to provide free busing for students, hire school bus drivers or common carriers, provide travel reimbursement expenses to parents when no buses are provided, fund school bus turnarounds, provide fiscal justifications for eliminating busing, and provide certain prohibitions in transportation service agreements. Although not exhaustive, this list provides the general gist of the school bus services under LSA-R.S. § 17:158, and no fair reading of that statute in any way authorizes the JPSB to administer the entirety of the Parish's "civil" school bus traffic camera ordinance ticketing system.

Appellants also invoke LSA-R.S. § 17:81, entitled "General powers of local public school boards," as a catch-all that somehow authorizes the JPSB to administer the Parish's school bus traffic camera ordinance ticketing system. Yet the entirety of LSA-R.S. § 17:81, which has subparagraphs A through Z, plus AA, is the enabling legislation for school boards to govern the public elementary and secondary schools within their jurisdictions. No part of LSA-R.S. § 17:81 can be interpreted as the Louisiana Legislature authorizing the JPSB to take on the administration of a local traffic camera ticketing system simply because school buses are involved.

Appellants' attempt to rationalize an unauthorized expansion of the JPSB's enumerated and implied powers was specifically rejected by the Louisiana Supreme Court in *Louisiana Associated General Contractors, Inc. v. Calcasieu Parish School Bd.*, 91-0106, 91-0109 (La. 1991), 586 So.2d 1354. In *Louisiana Associated General Contractors, Inc.*, the Louisiana Supreme Court recognized that although school boards have the power to engage in public construction projects, school boards

are limited in their enumerated and implied powers, and do not possess the police power to require payment of a prevailing wage on those public construction projects:

A municipal corporation, such as a school board, has no inherent power to enact police regulations. Municipal corporations are subordinate branches of state government established by the legislature for the purpose of administering local affairs of government, and as such, possess only such powers as are conferred upon or delegated to them by the state. *Bradford v. City of Shreveport*, 305 So.2d 487 (La.1974); *Simmons v. City of Shreveport*, 221 La. 902, 60 So.2d 867 (1952); *State v. Jordan*, 207 La. 78, 20 So.2d 543 (1944). Thus, **in order for a school board to have the authority to prescribe the rate of wages to be paid to employees of those who contract for the construction of public works, the authority to do so must be delegated to the school board from the state.** [*La. Assoc. Gen. Contractors, Inc. v. Calcasieu Parish School Bd.*, 586 So.2d at 1366-67][Footnote omitted][Emphasis added]

In the case at bar, the JPSB's enumerated and implied powers include providing students with a safe learning environment and transportation to and from school, but simply do not include the power to administer a parish school bus traffic camera ordinance on behalf of the Parish, even in a "voluntary" capacity. The trial court correctly ruled that the SBSEP was unconstitutional because only the Louisiana Legislature, and not the Parish, can delegate authority to the JPSB in a manner that expands the JPSB's enumerated and implied powers. Therefore, the Parish's attempt to "empower" the JPSB to administer the SBSEP, in the absence of any state legislation, was a violation of Article 6, § 5(G) of the Louisiana Constitution of 1974.

V. Issues Foreclosed on Appeal

The general rule is that appellate courts will not consider issues raised for the first time on appeal that were not raised in the pleadings or motion for summary. *See Segura v. Frank*, 93-1271, 93-1401 (La. 1994), 630 So.2d 714, 725; *see also Burke v. Occidental Life Ins. Co. of California*, 82-2000 (La. 1983), 427 So.2d 1165, 1167 (*citing Lusk v. Aetna Cas. & Sur. Co.*, 4506 (La.App. 3 Cir. 1974), 295 So.2d 238).

In Part II of their brief, Appellants argue for the first time that the SBSEP is "consistent" with Louisiana Constitution of 1974 Article VII, entitled "Revenue and Finance," § 14, entitled "Donation, Loan, or Pledge of Public Credit," and with LSA-R.S. § 33:9020, entitled "Cooperative Economic Development Law." This issue was not raised by Appellants in briefs [2 ROA.247-321, 2 ROA.340-43, 2 ROA.385-467] nor during oral argument or through the submission of relevant evidence to the trial court at the hearing on summary judgment. [3 ROA.513-56].

Similarly, in Part III of their brief, Appellants argue for the first time on appeal that the SBSEP is “consistent” with LSA-R.S. § 33:1324 of the “Local Services Law.” LSA-R.S. §§ 33:1321-1339. This issue was not raised by Appellants in briefs [2 ROA.247-321, 2 ROA.340-43, 2 ROA.385-467] nor during oral argument or through the submission of relevant evidence to the trial court at the hearing on summary judgment. [3 ROA.513-56]. Appellants have forfeited these issues.

The case of *Lusk v. Aetna Cas. & Sur. Co.*, 4506 (La.App. 3 Cir. 1974), 295 So.2d 238, dealt with a similar attempt by appellants to impermissibly introduce legal issues for the first time on appeal. In *Lusk*, the Louisiana Third Circuit Court of Appeal upheld a motion for summary judgment granted in favor of Aetna in an auto-accident case involving “student risk” exclusions within Aetna’s policy of automobile insurance. In so doing, the Third Circuit refused to entertain appellants’ new legal issue, raised for the first time on appeal, alleging material facts existed as to the validity of the student risk endorsements that required approval by Louisiana’s Commissioner of Insurance:

Appellant further contends, however, that the motion for a summary judgment should not have been granted because there is a material issue of fact concerning the validity of the student risk endorsement. Cited are LSA-R.S. 22:620 and 22:623 for the proposition that the Commissioner of Insurance must approve this type of endorsement prior to its placement in a policy, which was allegedly not done in this case. **Since this issue was not raised in either the pleadings or the motion for a summary judgment**, nor in the counteraffidavits, **appellant is precluded from raising the issue on appeal**. See: LSA-C.C.P. Art. 967; *State ex rel. Langlois v. Lancaster*, 53 So.2d 270 (La.App., 1st Cir., 1951). [*Lusk*, 295 So.2d at 241][Emphasis added].

In the case at bar, Appellants, like appellants in *Lusk*, attempt to raise legal issues for the first time on appeal that the SBSEP is a valid ordinance pursuant to Article 7, § 14 of the Louisiana Constitution of 1974, LSA-R.S. § 33:9020 and/or LSA-R.S. § 33:1324. However, like the appellants in *Lusk*, Appellants herein did not raise these issues before the trial court in pleadings or during summary judgment. In fact, the trial court **heard no argument and took no evidence whatsoever** concerning the SBSEP’s purportedly validity under Article 7, § 14 of the Louisiana Constitution of 1974, LSA-R.S. § 33:9020 and/or LSA-R.S. § 33:1324. [3 ROA.513-56].

In *Johnson v. State*, 02-2382 (La. 2003), 851 So.2d 918, 921, this Honorable Court stated:

We cannot consider contentions raised for the first time in this court which were not pleaded in the court below and which the district court has not addressed. *Boudreaux v. State, Department of Transportation and Development*, 01-1329, p. 2 (La.2/26/02), 815 So.2d 7, 9. Because we find the State failed to adequately preserve the issue of

notice, this court cannot address the issue now raised by the defendant for the first time. *Geiger v. State, Department of Health and Hospital*, 01-2206, p. 11 (La.4/12/02), 815 So.2d 80, 86; *Boudreaux*, 815 So.2d at 9. [Emphasis added]

This Honorable Court's holding in *Johnson*, alongside decisions like the Third Circuit's in *Lusk*, foreclose Appellants' attempt to introduce issues for the first time on appeal that the trial court did not consider, and perhaps more importantly, could not review evidence on summary judgment. The trial court made no ruling on these theories because Appellants never urged them. Had Appellants done so, they would have been required to introduce several pieces of evidence to establish valid Agreements under the Local Services Law. For instance, LSA-R.S. § 33:1325 requires the following:

All arrangements concluded under the authority of R.S. 33:1324 shall be reduced to writing. For this purpose **it shall suffice for each party** to the agreement, **acting through its governing body, to accept the agreement by the passage of an ordinance or resolution setting out the terms of the agreement.** **The agreement, ordinance, or resolution shall be published in the official journal of the parish or municipality, in the same manner as are the other proceedings of the governing body.** [Emphasis added]

The first sentence of LSA-R.S. § 33:1331, entitled "Financing Agreements," mandates:

Agreements concluded under R.S. 33:1324 and all written agreements concluded under R.S. 33:1325 **shall include a statement of the financial obligations of each of the parties to the agreement.** [Emphasis added]

Given these requirements under the Local Services Law, each of the Appellants would have had to introduce multiple pieces of evidence proving (1) that each entity, acting through its governing body, properly accepted the written agreement by passing an ordinance or resolution, (2) that each entity published the ordinance or resolution in the official journal of the parish, and (3) that the written agreement(s) include a statement of the financial obligations of each party thereto.

The trial court was deprived of the opportunity to review any such necessary evidence, as the only evidence offered that *might* apply under LSA-R.S. § 33:1325 of the Local Services Law was the SBSEP and the written "Cooperative Endeavor Agreement" between the JPSB and JPSO. The contract introduced into evidence between the JPSB and ONGO is not germane under LSA-R.S. § 33:1325, as LSA-R.S. § 33:1324 only applies to governmental entities, not private actors. Likewise, the "Cooperative Endeavor Agreement" between the JPSB and JPSO contains no additional proof that either the Sheriff or the Superintendent of the JPSO passed a resolution

accepting the agreement [2 ROA.427-30], nor was any proof introduced that the “Cooperative Endeavor Agreement” was ever published in the official journal of the Parish of Jefferson, and no proof was introduced concerning the statement of financial obligations of each of the parties to the “agreement.” [3 ROA.513-56].

The obvious problem with Appellants’ attempt to raise the issues of “cooperative endeavor agreements” and Local Services Law agreements for the first time on appeal is each assertion begs questions that were never raised before, nor considered and ruled on by, the trial court. For instance, under the Local Services Law, which only applies to governmental entities, was the purported agreement under LSA-R.S. § 33:1324 between the Parish and JPSB, the JPSB and JPSO, or all three entities? If Appellants maintain that the written agreement contemplated under LSA-R.S. §§ 33:1324 and 33:1325 is between all three Appellants, there was no evidence whatsoever that the Parish published the SBSEP in the parish journal of record or provided a statement of financial obligation as mandated by LSA-R.S. § 33:1331. [2 ROA.385-467]. Another unknown factor is the timing of the purported agreement(s). If the Parish and JPSB contend they had an agreement cognizable under LSA-R.S. § 33:1324, not only was there no evidence that the JPSB followed the requirements of LSA-R.S. § 33:1325 and 33:1331 vis-à-vis an agreement with the Parish [2 ROA.247-321], but that contention also begs the question of whether the Parish can mandate the JPSB to enter an agreement under LSA-R.S. § 33:1324, for without proof otherwise, the only “agreement” reduced to writing between the Parish and JPSB is the SBSEP itself, which contains a mandate that the JPSB administer the SBSEP. [1 ROA.161]. The “Cooperative Endeavor Agreement” entered into between the JPSO and JPSB references the SBSEP in its codal form [2 ROA.427], proving the SBSEP already existed, implying the Parish had already passed an unconstitutional ordinance prior to the JPSB and JPSO’s attempt at a written “Cooperative Endeavor Agreement.” Can a party enter a cooperative endeavor agreement to administer and enforce an already-unconstitutional ordinance? Problems like these arise on appeal when a party fails to raise such evidentiary and legal issues in the trial court.

Appellants blanket assertion in Part II of their brief that “the SBSEP was the codification of cooperative endeavor agreements by and between all of the parties” provides little in the way of evidentiary proof or explanation as to how the administration and enforcement of a traffic camera ordinance involving school buses falls under the Revenue and Finance articles of the Louisiana

Constitution of 1974 that concern “Donation, Loan or Pledge of Public Credit.” Moreover, Appellants’ invocation of LSA-R.S. § 33:9020, insofar as the “cooperative endeavor agreements” are concerned, is patently inapplicable to the situation at bar concerning the constitutional validity of the JPSB’s mandated administration of the SBSEP in § 36-324(a), as LSA-R.S. § 33:9022(2) provides the definition of “cooperative endeavors:”

(2) "Cooperative endeavors" means any form of economic development assistance between and among the state, its local governmental subdivisions, political corporations, public benefit corporations, the United States or its agencies, or any public or private association, corporation, or individual. The term "cooperative endeavors" shall include but not be limited to cooperative financing, cooperative development, or any other form of cooperative economic development activity.

The SBSEP is a law enforcement ordinance that uses cameras to identify vehicles that illegally overtake stopped school buses. The SBSEP is NOT a “form of economic development assistance,” “cooperative financing,” “cooperative development” or “cooperative economic development activity” contemplated by LSA-R.S. § 33:9020. In fact, as argued to this Honorable Court in page 11 of their brief, Appellants cite student and driver safety as the justification for both the initiation of the SBSEP, and for the JPSB’s involvement in the administration of the SBSEP.

Although the Appellants submitted copies of the “Cooperative Endeavor Agreement” between the JPSO and JSPB to the trial court, a review of the record proves that Appellants only ever did so to argue the differing duties under the SBSEP of the JPSB’ administration versus the JPSO’s enforcement. [2 ROA.247-321, 2 ROA.385-467]. Appellants **never** argued to the trial court that the term “Cooperative Endeavor Agreement” was meant to invoke Article 7, § 14(C) of the Louisiana Constitution of 1974 and/or LSA-R.S. § 33:9020; instead that term was only used as the title of the agreement between the JPSB and JPSO that Appellants relied upon to prove the differing duties each party had under the SBSEP. [2 ROA.250-51, 2 ROA.389]. Moreover, Appellants never argued to the trial court that the SBSEP satisfied all requirements for written agreements mandated under LSA-R.S. §§ 33:1325 and 33:1331 of the Local Services Law. Had they done so, Appellants would have been required to make evidentiary submissions for the trial court’s consideration and determination, and Appellees would have countered each such argument. This did not happen in the trial court, and it cannot be allowed now for the first time on appeal.

CONCLUSION AND PRAYER

In granting summary judgment, the trial court correctly determined that SBSEP § 36-324(a) was unconstitutional, as it violated Article 6, § 5(G) of the Louisiana Constitution of 1974, since a Home Rule Charter government like the Parish of Jefferson has no authority under Article 6, § 5(G) to issue a mandate of any kind to a state-created entity like the Jefferson Parish School Board. This Honorable Court cannot save or rewrite the flawed SBSEP, because the Parish of Jefferson clearly intended within the plain wording of the SBSEP that the Jefferson Parish School Board administer the SBSEP and issue notices of violation to motorists, and share in the profits generated by the ordinance; hence, the SBSEP is void in its entirety. Other Louisiana statutes addressing school buses and school boards simply cannot be read to expand the enumerated and implied powers of the Jefferson Parish School Board as delineated by the Louisiana Legislature, and such powers DO NOT include the power to administer a law enforcement traffic ordinance for the Parish of Jefferson. Finally, any issues raised for the first time on appeal by the Parish of Jefferson, the Jefferson Parish School Board and the Jefferson Parish Sheriff's Office must be denied. For these reasons, this Honorable Court should affirm the trial court's Judgment of February 25, 2021.

Respectfully submitted,

/s/ 

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VERIFICATION

BEFORE ME, the undersigned notary public, personally came and appeared,

ANTHONY S. MASKA

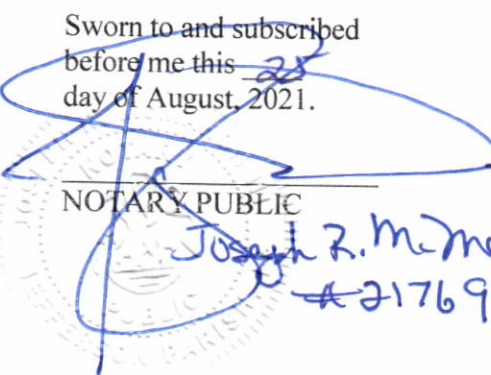
who after being duly sworn, deposed and said that he is the attorney for Class Plaintiffs/Appellants in the above Appeal; that he has read the above and that all allegations contained therein are true to the best of his information, knowledge and belief, that a copy of the above and foregoing has been served on the Honorable Raymond S. Steib, Jr., Judge, 24th Judicial District Court for the Parish of Jefferson, Division "A", 200 Derbigny Street, Gretna, LA, 70053, (504) 364-3850; E. John Litchfield, Esq., 201 St. Charles Avenue, Ste. 4204, New Orleans, LA 70170, (504) 568-0541, Daniel R. Martiny, Esq., 131 Airline Drive, Ste. 201, Metairie, LA 70001, (504) 834-7676, and Jacob K. Best, Esq., 3421 N. Causeway Boulevard, Suite 900, Metairie, LA, 70002 (504) 830-4929, a copy of same to each by e-mail, telefax or properly addressed and postage pre-paid on this 25 day of August, 2021.



ANTHONY S. MASKA

Sworn to and subscribed
before me this 25
day of August, 2021.

NOTARY PUBLIC


Joseph Z. McMahon III
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