

IN RE: ADVISORY OPINION
TO THE ATTORNEY GENERAL
RE: REFERENDA REQUIRED FOR
ADOPTION AND AMENDMENT OF
LOCAL GOVERNMENT COMPREHENSIVE
LAND USE PLANS

CASE NO. SC06-161

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SPONSOR'S RESPONSE TO
MOTION FOR REHEARING

The Sponsor of the Initiative, Florida Hometown Democracy, Inc., pursuant to Rule 9.330, Florida Rules of Appellate Procedure, hereby responds in opposition to the Motion for Rehearing (Motion) filed by the Florida School Boards Association and states:

1. On June 22, 2006, the Court issued an advisory opinion in this cause.

2. On July 7, 2006, the Florida School Boards Association served the Motion by mail.

3. The Motion argues two points. First, the Motion argues that the Court misapprehended its prior opinion in In re: Advisory Op. to Atty. Gen re: Florida's Amendment to Reduce Class Size, 816 So.2d 580 (2002) ("Class Size Amendment"). Second, the Motion argues that the Court misapprehended and "overlooked the purpose of Section 163.3167(12), Florida Statutes, to preempt county and municipal home rule power to require voter approval of certain land use changes." Neither point has merit and the Motion should be denied.

4. As to the Class Size Amendment argument, the Motion confuses the Court's interpretation of Florida

Constitutional provisions pertaining to provision of public schools in Article IX, sections 1 and 4, Florida Constitution, with 2005 statutory amendments pertaining to the Local Government Comprehensive Planning and Land Development Regulation Act. See, Chapter 163, Part II, Florida Statutes (2005); Ch. 2005-290, Laws of Florida.

5. The Court's June 22, 2006, opinion did not base its consideration of Article IX, sections 1 and 4, Florida Constitution solely on the Class Size Amendment. The plain meaning of Article IX, sections 1 and 4, Florida Constitution simply do not establish a constitutional mandate for the construction of new public schools. The words "construct," "build" or "develop" are not set forth in these Constitutional provisions. The 2005 legislation did not amend these Constitutional provisions.

6. Article IX, section 1(a) provides "in relevant part":

The education of children is a fundamental value to the people of the State of Florida. It is therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education.

7. Article IX, section 4(b), adopted in 1998,

provides:

The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

8. Moreover, there is no showing that the Sponsor's 2005 Proposed Amendment would violate the single subject requirement vis a vis Article IX, section 4(b) of the Florida Constitution. Implicitly, the Motion asserts that: (1) comprehensive land use plan amendments are needed in order to construct new public schools to comply with the Constitutional requirements; (2) local planning agencies and local governing bodies will propose the adoption of such prospective comprehensive land use plan amendments; and (3) the majority of local government voters will vote against the adoption of such prospective comprehensive land use plan amendments; and (4) there are no alternative ways for School Boards to comply with the Constitutional requirements, such as year-round schools, double sessions, or expansion of existing public school facilities. Such speculation is not the basis to find a single subject violation.

9. As to the Motion's second argument, the Court applied the plain meaning of Section 163.3167(12), Florida Statutes (2005) in both the June 22, 2006,

opinion and in Adv. Op. to Atty. Gen. Re: Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, 902 So.2d 763, 765 (Fla. 2005) ("FHD Opinion"). The "legislative purpose" of the statute was never raised as an issue in either case and it is improper to assert that the Court "overlooked the legislative purpose" of the statute.

10. A determination of statutory ambiguity is a prerequisite to a judicial inquiry into legislative intent, or "legislative purpose." See, Bellsouth Telecommunications, Inc. v. Meeks, 863 So.2d 287 (Fla. 2003); Holly v. Auld, 450 So.2d 217, 219 (Fla. 1984). Since the statute was clear to the Court, no judicial inquiry into legislative intent was made in the FHD Opinion or in the Court's June 22, 2006, opinion.

11. Moreover, even if such an inquiry were appropriate, the Motion posits an absurd and wholly unsubstantiated legislative intent for Section 163.3167(12), Florida Statutes (2005). The Motion provides in part (at page 7, citing Florida Land Co. v. City of Winter Springs, 427 So.2d 170 (Fla. 1983)):

In face of this decision, section 163.3167(12), Florida Statutes, is a preemption of county and municipal home rule power to institute an initiative or referendum process for land use changes affecting "five or fewer parcels of land."

12. The Motion does not address the Legislature's

placement of Section 163.3167(12), Florida Statutes (2005) in the "scope of act" section of the Local Government Comprehensive Planning and Land Development Regulation Act. If the Legislature had intended the preemption of home rule powers, presumably it would have done so in Chapter 125, Part II, Florida Statutes ("self government") for counties and in Section 166.021(3), Florida Statutes ("powers") for municipalities, respectively.

13. In any case, the Court did not state that Section 163.3167(12), Florida Statutes (2005) was essential as to its holding that the Sponsor's 2005 Proposed Amendment complied with the single subject requirement. The Court was merely stating the obvious - that the 2005 Proposed Amendment was an incremental change to an already-established process.

WHEREFORE, the Court is respectfully requested to deny the Motion for Rehearing and to grant such other relief as is just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the following persons this ___ day of July, 2006.

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I HEREBY CERTIFY that the foregoing was word-processed using Courier New, 12-point font in compliance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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