

Agustin J. Barrera, Chairman

SUBJECT: THAT THE SCHOOL BOARD AUTHORIZE THE RETENTION OF OUTSIDE COUNSEL AND THE TAKING OF APPROPRIATE LEGAL ACTION ON BEHALF OF THE SCHOOL BOARD IN CONNECTION WITH THE FLORIDA SUPREME COURT CASE KNOWN AS DR. GREGORY L. STRAND v. ESCAMBIA COUNTY, FLORIDA, et al., CASE NO. SC06-1894.

On September 6, 2007, the Florida Supreme Court issued its opinion in the case of *Dr. Gregory L. Strand v. Escambia County, Florida, et al.*, Case No. SC06-1894. In its opinion the Court receded from its prior opinions interpreting the application of Article VII, Section 12 of the Florida Constitution. The opinion resulted from an appeal of a final judgment validating tax increment financed bonds. The Florida Supreme Court reversed the lower court's final judgment and found that Escambia County was without authority to issue tax increment bonds without first obtaining approval from the electorate by referendum in accordance with Article VII, section 12 of the Florida Constitution.

The Supreme Court's opinion in *Strand* actually concerned a County government's use of tax increment financing without following the procedures outlined in the Community Redevelopment Act, and whether such financing was subject to voter approval by local referendum. While the facts of the case did not involve school districts, nor did it involve school district financing, it has caused a great deal of alarm and consternation in connection with the Board's primary financing program involving the issuance of Certificates of Participation (commonly known as "COPs"). This is a common financing method used by many school districts, and has been used extensively by the Board. There are currently \$13 billion of Florida School Board COP's outstanding.

The Supreme Court in the *Strand* case asserted that the County's tax increment financing scheme was an indirect pledge of ad valorem taxation without referendum in

¹ Article VII, section 12 of the Florida Constitution provides that:

Counties, **school districts**, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:

(a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation; or

(b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate. (Emphasis added.)

violation of the State's Constitution, Article VII, Section 12. In its ruling in favor of the Appellant, the Supreme Court's opinion makes several troubling references to another important case, *State v. School Board of Sarasota County, Florida*, 561 So.2d 549 (Fla. 1990). The School Board of Sarasota case is the definitive case in Florida with respect to transactions involving Florida COPs. In its decision, the Supreme Court specifically receded from certain portions of its prior decisions and case law upon which school boards had based their financing structure and authority to issue COPs, although it is unclear to what extent the Court receded from the School Board of Sarasota decision. Without further clarification from the Court, this decision could have a tremendous impact on school construction financing. A memorandum providing a more detailed explanation of the Strand decision, authored by our Bond Counsel, Robert Gang, Esquire, a shareholder of the law firm, Greenberg Traurig, LLP, was provided by the School Board Attorney to the Board under separate cover. Former Florida Supreme Court Chief Justice Arthur J. England, Jr, also a shareholder of Greenberg Traurig, has prepared a motion for leave to file an *Amicus Curiae* ("friend of the Court") Brief on behalf of several individual school districts., and will be filing the motion and Brief with the Florida Supreme Court on Monday, September 17, 2007

In order to ensure the stability of COPs based financing, we are recommending that the Board approve the recognition of its participation as *Amicus Curiae* in the Brief and agree to share in the costs on a pro rata basis with other participating districts. It is expected that a number of other amicus briefs will be filed, including one by the Florida School Boards Association jointly with the Florida School District Superintendents Association[check for correct name], along with Escambia County's Motion for Rehearing. The participants in the Amicus brief will urge the Court to remove school districts from the effect of the decision entirely, or if not entirely, to issue a clarification as to the specific impact on outstanding and proposed school district financing of its decision in *Strand*.

Since this Special Board meeting will not take place before the filing of the Amicus Brief, the School Board is not listed as an Amicus participant in the brief, but it is mentioned that the School Board will join in when Board approval of this item has been obtained. Mr. Gang and Mr. England have already been retained by a number of other school districts within the state to file the Amicus Brief on their behalf.

This item is submitted for the Board's approval to authorize and confirm the School Board's recognition of its participation as *Amicus Curiae* in the Strand case and in the Amicus Brief that will be filed in the subject case before the Florida Supreme Court. In addition, we are requesting the retention of our Bond Counsel to represent the Board in this matter and to take any other appropriate legal action that may be necessary to protect the Board's interests as it relates to the Board's Master Lease/ COPs financing program.

ACTION PROPOSED BY

CHAIRMAN AGUSTIN J. BARRERA:

That The School Board of Miami-Dade County, Florida direct the Board Attorney to retain Robert Gang, Esq., and Arthur England, Jr., Esq., from the firm of Greenberg Traurig, LLP., at a cost not to exceed \$15,000, to represent the Board in the matter known as *Dr. Gregory L. Strand v. Escambia County, Florida, et al.*, Case No. SC06-1894; and confirm its authorization for the Board to be named as a participant as Amicus Curiae in the aforementioned case and in the filing of an Amicus Curiae brief; and further authorize the taking of any other appropriate legal action that may be necessary to protect the Board's interest in this matter.