



## AlaFile E-Notice

03-CV-2019-000477.00

Judge: JAMES H ANDERSON

To: THOMAS JOHN TYLER  
John.thomas@alaedu.org

---

# NOTICE OF ELECTRONIC FILING

---

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DR. DANNA JONES, ET AL V. VERNON BARNETT, ET AL  
03-CV-2019-000477.00

The following matter was FILED on 3/3/2020 4:05:00 PM

Notice Date: 3/3/2020 4:05:00 PM

GINA J. ISHMAN  
CIRCUIT COURT CLERK  
MONTGOMERY COUNTY, ALABAMA  
251 S. LAWRENCE STREET  
MONTGOMERY, AL, 36104

334-832-1260



**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA**

JONES DANNA DR., INDIV. AND IN HER OFF. CAPACITY,	)	
JONES VENITA, IND. AND IN HER OFF. CAPACITY AS,	)	
GLADDEN DANA, IND. AND IN HER OFF. CAPACITY AS PRE,	)	
HARTSELLE CITY EDUCATION ASSOCIATION ET AL,	)	
Plaintiffs,	)	
	)	
V.	)	Case No.: CV-2019-000477.00
	)	
BARNETT VERNON COMMISSIONER, ALA. DEPT OF REVENUE,	)	
LONG RAY, MORGAN CO. COMMISSION,	)	
CLARK JEFF, COMMISSIONER- MORGAN CO. COMMISSION,	)	
VEST RANDY, MORGAN CO. COMMISSIONER ET AL,	)	
Defendants.	)	

**ORDER**

This case came before the Court on a hearing for final judgment. No question of jurisdiction has been raised, and the Court finds that it has jurisdiction in all respects.

This case involves the constitutionality of Act 2019-272 (the "Local Act") under Section 105 of the Alabama Constitution. The Local Act directs how the "proceeds of the simplified seller use tax [SSUT] distributed to Morgan County pursuant to Section 40-23-197 of the Code of Alabama 1975, shall be allocated by the county commission ... and distributed ...."

The Local Act was enacted in advance of the fiscal year beginning October 1, 2019, and gave the Morgan County Commission constitutionally-sufficient notice so that it could budget without reliance on the SSUT funds that are the subject of the Local Act. Even without those SSUT funds, Morgan County has sufficient funds to comply with any and all other laws that dictate how it shall spend money in its general fund. This fact is not disputed.

The County Commissioners contend that the Local Act is unconstitutional because it violates Section 105 of the Alabama Constitution. Specifically, the County

[1] This amount is equal to (A) the 95% remaining after Morgan County's portion is withheld times (B) the volunteer fire departments' apportioned share of 1.5%.

Commissioners contend that the subject matter of the Local Act is subsumed by two general laws: the general SSUT law, Ala. Code § 40-23-197, and Alabama's Budget Control Act, Ala. Code § 11-8-1, *et seq.*

While the result in this case is not determined by any presumption, the Local Act is presumptively constitutional, and the County Commissioners, as the party claiming the law to be unconstitutional, have a heavy burden. *Westfall v. Northcutt*, 187 So. 3d 684, 690–91 (Ala. 2015). The Court's "duty is to sustain a legislative act unless it is clear beyond a reasonable doubt that the act violates a fundamental law." *Daphne v. Spanish Fort*, 853 So. 2d 933, 943 (Ala. 2003); *see, also, e.g., Jefferson Cty. v. Taxpayers & Citizens of Jefferson Cty.*, 232 So. 3d 845, 857 (Ala. 2017). In addition, the Legislature has the power to appropriate, or otherwise direct the allocation and distribution of, money in counties' general funds: "the Legislature's power includes the ability to designate and to control public revenues being held in county funds." *Clay Cty. Comm'n v. Clay Cty. Animal Shelter, Inc.*, 283 So. 3d 1218, 1234 (Ala. 2019). The County Commissioners concede this fact. *See* Comm'rs' Brief at 21 ("[T]he Legislature can tell county commissions what to do with the money in their general funds.").

The Legislature's plenary power is subject to Section 105, and that Section is the sole basis of the County Commissioners' argument here. Thus, the County Commissioners' bear the burden of identifying a general law that subsumes the Local Act. As noted, Section 105 provides that "[n]o special, private, or local law ... shall be enacted in any case which is provided for by a general law." Ala. Const. § 105. The phrase "provided for," as interpreted by the Alabama Supreme Court, means that the subject of the local act "is already subsumed by the general statute." *Peddycoart v. City of Birmingham*, 354 So. 2d 808, 813 (Ala. 1978). In other words, a local law is barred under Section 105 if it creates a "variance" from what is provided for in a general law. *Jefferson Cty.*, 232 So. 3d at 864–65. "It is not the broad, overall subject matter which is looked to in determining whether the local act, taken together with the general law, is violative of § 105; rather, it is whether the object of the local law is to accomplish an end not substantially provided for and effectuated by a general law." *Drummond Co. v. Eoswell*, 346 So. 2d 955, 958 (Ala. 1977).

With these principles in mind, the Court concludes that the Local Act does not create a variance from either the general SSUT law or the Budget Control Act.

First, the Local Act does not create a variance from the general SSUT law. The ends of the SSUT law and the Local Act are entirely different. The general SSUT law requires that each county's share of the SSUT be "deposited into the general fund of the respective county commission." Ala. Code § 40-23-197(b). The Local Act assumes that this deposit is made into Morgan County's general fund because the distributions the Local Act requires are made "after Morgan County **retains** five percent of the gross proceeds...." Local Act 2019-272. And the County Commissioners have not suggested, as a factual matter, that the deposit required by the SSUT law will not occur. The Local Act picks up where the general SSUT law leaves off: Morgan County receives the SSUT proceeds as required under the general SSUT law, and then, under [1] This amount is equal to (A) the 95% remaining after Morgan County's portion is withheld times (B) the volunteer fire departments' apportioned share of 1.5%.

the Local Act, the Legislature has directed how certain of those proceeds should be distributed. Nothing in the general SSUT law restricts how SSUT proceeds must be allocated, nor does the general SSUT law bar the Legislature from using local acts to direct how the SSUT proceeds should be distributed. Accordingly, the Court finds the Local Act does not create a variance with the general SSUT law.

With respect to the Budget Control Act, the Local Act likewise does not create a variance from that general law. The Budget Control Act does not prevent the Legislature from directing how county general funds are spent. The Alabama Supreme Court has rejected the County Commissioners' reliance on the Budget Control Act to create an ostensible conflict with a Legislative mandate. See *Shelby Cty. Comm'n v. Smith*, 372 So. 2d 1092, 1096 (Ala. 1979) ("The Commission cannot . . . use [the Budget Control Act] as a shield to ward off its legal responsibilities."). Because nothing in the Budget Control Act restricts the Legislature's ability to direct how county general funds are spent, the Court finds the Local Act does not create a variance from that general law. Cf. *City of Birmingham v. City of Vestavia Hills*, 654 So. 2d 532, 538–39 (Ala. 1995) (general law providing ways a city could annex territory did not limit Legislature's power to directly annex territory under a local law).

The Court, after examining the general laws cited by the County Commissioners, finds nothing that establishes a rule that the SSUT funds distributed to counties' general funds are not subject to any further control by local laws such as the Local Act. As noted, the general rule is that county funds **belong to the State**, such that the State (including the Legislature) can direct how they are allocated, distributed, spent, or otherwise used. "It is a false idea to assume that the county is a separate entity from the state, that its revenues belong exclusively to the county, and are under its absolute control. **Such revenues belong to the state, and may be appropriated by the state.**" *Clay Cty. Comm'n.*, 283 So. 3d at 1233 (emphasis in original) (quoting *Montgomery v. State*, 153 So. 394, 398–99 (Ala. 1934)). Nothing in any of the general laws cited by the County Commissioners abandons that fundamental rule of Alabama's governmental structure, or creates a specific, different rule for SSUT proceeds. Absent a direct expression from the Legislature, the Court will not infer that the Legislature meant to change this longstanding rule when it comes to SSUT funds.

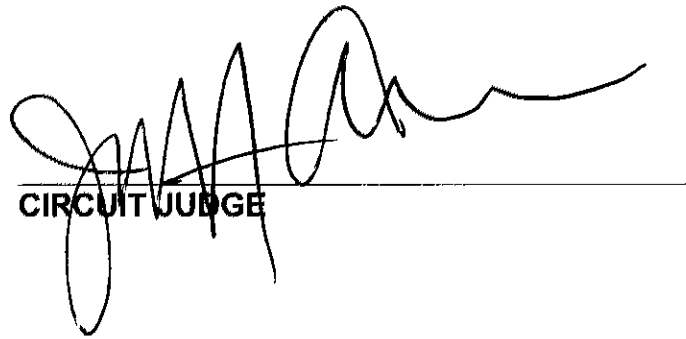
The Court concludes that the Local Act is fully within the Legislature's authority and does not violate Section 105. Therefore, the County Commissioners must do as the Local Act requires. During the pendency of this case and in lieu of preliminary injunctive relief, the SSUT moneys coming into the Morgan County general fund were transferred to the Montgomery County Circuit Clerk to be held in an interest-bearing account at ServisFirst Bank in Montgomery County, Alabama until further order of the Court. The Clerk is directed to disburse 6.425% of the money in escrow to the Morgan County General Fund: 5% for the Commission and 1.425%<sup>[1]</sup> to be distributed to the volunteer fire departments as directed by the Local Act. The school boards are directed to inform the Court by notice within three business days as to how to apportion the remaining 93.575% between the three boards of education under the Local Act. The Court further directs the County Commissioners to distribute all future SSUT

<sup>[1]</sup> This amount is equal to (A) the 95% remaining after Morgan County's portion is withheld times (B) the volunteer fire departments' apportioned share of 1.5%.

proceeds in the proportions that the Local Act directs. This Order adjudicates Plaintiffs' claims and the claims of Plaintiffs-in-Intervention in full.

For the foregoing reasons, the court DECLARES the Local Act does not violate Section 105 and hereby ORDERS the County Commissioners to pay all SSUT proceeds received after the date of the entry of this Order in accordance with the Local Act.

**DONE this 3<sup>rd</sup> day of March, 2020.**



CIRCUIT JUDGE

[1] This amount is equal to (A) the 95% remaining after Morgan County's portion is withheld times (B) the volunteer fire departments' apportioned share of 1.5%.