IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2010-CA-00955

PASCAGOULA SCHOOL DISTRICT,
THE CITY OF PASCAGOULA, MISSISSIPPI,
DANIEL J. MARKS, SR., INDIVIDUALLY and
KATHERINE LAIRD MITCHELL, a Minor,
by and through her father and natural guardian,
Randall L. Mitchell — PLAINTIFFS-APPELLANTS

VS.

JOE TUCKER, IN HIS OFFICIAL CAPACITY AS
TAX COLLECTOR OF JACKSON COUNTY,
MISSISSIPPI, and BENNY GOFF, IN HIS OFFICIAL
CAPACITY AS TAX ASSESSOR OF JACKSON
COUNTY, MISSISSIPPI, and BOARD OF
SUPERVISORS OF JACKSON COUNTY,
MISSISSIPPI, and THE STATE OF MISSISSIPPI — DEFENDANTS-APPELLEES
and
JACKSON COUNTY SCHOOL DISTRICT,
MOSS POINT SCHOOL DISTRICT, and
OCEAN SPRINGS SCHOOL DISTRICT — INTERVENOR-DEFENDANTS-APPELLEES

JOINT SUPPLEMENTAL BRIEF OF ALL APPELLEES

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ARGUMENT

Pursuant to the Joint Motion of All Appellees, Appendix Tab "F", and the Court's Order of June 30, 2011, Appendix Tab "G", all Appellees jointly submit this Supplemental Brief directed to the question of whether Miss. Code Ann. §19-9-171 (2007) is unconstitutional "beyond all reasonable doubt" because of Section 206 of the Constitution. As pointed out in the Joint Motion, it remains the unqualified position of all Appellees that any consideration of §206 is barred under the most fundamental rule of appeals courts--that a lower court will not be put in error based on new theories raised on appeal that were not timely raised on the merits in that court--that no good cause for this default has ever been articulated, and that the policies behind the rule will not be served by the unprecedented opening of a Pandora's box for future appeals. "De novo" review of questions of law does not mean, and has never meant, that a losing party simply starts over again at the appellate level.

The text of Miss. Code Ann. §19-9-171 and of the old and modern versions of Miss. Const. §§201 and 206 are set forth in Appendices "A", "B", and "C", respectively.

The proportional allocation and distribution of new and additional revenues to all school districts in a county derived from the collection of taxes generated from defined, post-2007, new or improved energy-related projects,[1] as directed by §19-7-171, and §37-57-1 as amended, may not be prohibited unless unconstitutionality is demonstrated "beyond all reasonable doubt." *In Re TLC*, 566 So. 2d 691, 696 (Miss. 1990); *Miller v. State*, 130 Miss. 564, 94 So. 706, 709 (1923).

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[1]These new energy-related projects and improvements have been placed in Tax Parcel 3059 and are appraised and are assessed on the same basis as all other similar Class II industrial, personal and real property. *See* affidavits of Bob Lehn and Nicholas Elmore, attached as Appendix Tab "D". The post-collection revenues generated from this parcel are distributed to all districts in a proportional manner in Jackson County based on the average daily attendance formula set forth in §19-9-171.

It is respectfully submitted that this heavy burden--"beyond all reasonable doubt"--is not and cannot be met by distorting the operation of this 2007 revenue allocation provision, nor, as plaintiffs would have it, by purging the text of §206--to omit the phrase "as prescribed by general law"--and by viewing this provision in isolation and out of the context provided by unbroken Court precedent defining the role of the legislature to act by general law vis-a-vis all political subdivisions with regard to public revenues.

Similarly, this burden cannot be met by ignoring the plain roadmap provided by *Miller v. State*, which specifically holds, contrary to plaintiffs' position, that §206 cannot be given a narrow, purportedly "literal" interpretation so as to invalidate legislative statutes directed to the support of public schools. Instead, §206 must be construed in light of Constitution Section 201. In its current, modern form, §201 expressly grants the Legislature plenary authority to act by general law for the "maintenance and support" of public schools "upon such conditions and limitations as the Legislature may prescribe." Section 19-9-171 is unmistakably such a general law, and plaintiffs effectively seek to have this Court construe §206 to conflict with §201.

Moreover, the text of §206 does not contain express, unequivocal terms of prohibition directed to the Legislature, and in its current, modern form, §206 was never intended as a limitation on legislative authority. Instead modern §206 serves as a recognition of the paramount authority of the Legislature to prescribe tax policy by general law, and it is intended to limit and confine school districts and levying authorities to the levy procedures "prescribed by general law." Furthermore, the facts on the ground reveal that Pascagoula School District continues to "maintain" "its" schools with massive budget expenditures, and §19-9-171 cannot be blamed for imaginary problems that do not exist.

I. Facts and Background

The background facts regarding the adoption of §19-9-171 in 2007 and the text, scope, and exact operation of the statute are set forth in the Brief of the Appellee Intervenors at pp. 6-12 and pp. 17-19, and in the Brief of the Jackson County Appellees at pp. 4-7, are applicable to the new theory regarding §206, and are incorporated here by reference. It should be noted, as discussed in Section IV below, that, contrary to representations made at oral argument, 71% of the budget of Pascagoula School District is not diverted to other districts because of §19-9-171. This is not true. For 2010, the total revenues generated by the new post-2007 energy projects and improvements, placed in Parcel 3059, was only $3.0 million, which was proportionally allocated and distributed 28.5% to PSD, 37% to JCSD, 12.5% to Moss Point District, and 22% to Ocean Springs District. The total revenue of $3.0 million distributed pursuant to §19-9-171 is only a small fraction of the massive budget of PSD, one of the largest in the state, at roughly $84 million. Accordingly, the idea that 71% of PSD's budget was somehow lost to other districts is untrue. The Pascagoula District continues to receive 100% of the revenues generated by the historical Chevron refinery, which amounts to approximately $14 million a year to that district alone, and which are not within the purview of §19-9-171 at all.

II. Under the Principles of *Miller v. State*, a Narrow and Restrictive Interpretation of §206 Cannot Be Utilized to Limit Legislative Authority, in Light of §201 and the Court's Duty to Afford Statutes a Saving Construction.

In *Miller v. State*, 130 Miss. 564, 94 So. 706 (1923), the Court explicitly held that a narrow or restrictive interpretation of §206, in isolation, could not be utilized to strike down a statute-which literally did not comply with the text of §206--in light of the policies set forth in §201 of the Constitution and the principle that statutes must be given a saving construction. *See also, St. Louis*

S. F. Ry. Co. v. Benton County, 132 Miss. 325, 96 So. 689 (1923)(following *Miller*).

At the time *Miller* was decided, the text of §206 literally provided, *inter alia*, that the state portion of school funding "should be distributed among the several counties and separate school districts in proportion to the number of educable children in each . . ." that is, on a "per capita" basis. 94 So. at 708. However, by statute, the Legislature also directed discretionary appropriations for expenditures by the State Board of Education "in such a manner as to equalize public school terms" across the state based on various conditions--that is, on a discretionary basis and not per capita as literally stated by §206. 94 So. at 707. The appellant claimed that the statute was void because it did not provide for a distribution of the state funds on a per capita basis as set forth in §206. 94 So. at 728.

The Court in *Miller* agreed that the appellant's argument was "not without merit" and was a "reasonable construction," but upheld the statute, in that §206 must be construed "in the light reflected" by Constitution §201, *id.* at 708, and therefore could not be given a "narrow" or "exclusive" construction, *id.* at 709. The purpose of §201 (as then worded) was to place the duty on the Legislature to promote public education by "all suitable means" and, read in light of §201, the Court concluded that it was not intended that the per capita distribution limitation set forth in §206 should apply to prohibit the discretionary equalization funds provided by the statute at issue.

> This construction of section 206 is reasonable, and, while the opposite construction put upon it by the appellant may also be reasonable, yet it is our plain duty to adopt the construction upholding the statute where there are two reasonable constructions, one of which upholds the statute and the other invalidates it. Furthermore, we should follow the rule that this court will not declare a legislative act void unless it appears to us beyond a reasonable doubt that it conflicts with the Constitution. We do not think beyond a reasonable doubt that section 2 of chapter 21, Laws 1922, contravenes the Constitution.

Miller, 94 So. at 709. The policy set by §201 is controlling and a saving construction given to §206 even if a purported "literal" and narrow construction is "reasonable."

Similarly, in *St. Louis & S. F. Ry. Co. v. Benton County*, 132 Miss. 325, 96 So. 689 (1923), the Court again rejected a narrow "literal" reading of §206 in the context of local school support and upheld a legislative statute which permitted a two mil tax for local school support above and beyond the poll tax designated in §206 as the sole source of local support. Again, the Court relied on §201 as the dispositive policy and held that its decision in *Miller* was controlling. The Court stated that:

> [i]n order to determine the meaning of the Constitution upon the subject, it is necessary to construe all the provisions of the Constitution together, and to deduce from them as a whole the policy and purpose of the constitutional convention.

St. Louis, 96 So. at 690.

The principles set forth in *Miller* and *St. Louis and S. F. Ry.*, both decided expressly in the context of Constitution §§206 and 201, apply to demonstrate that §19-9-171 cannot be declared unconstitutional "beyond all reasonable doubt."

A. Plaintiffs' Interpretation of §206 as Prohibiting the Legislature's Allocation of New Revenues in §19-9-171 Conflicts with the Plenary Power Granted the Legislature in Modern §201.

In its modern version, §201 is even more explicit as to the authority and power of the Legislature to act by statute with regard to all aspects of public education, including specifically the maintenance and support of the schools, than the generalized duty held dispositive in *Miller* and *St. Louis*. As approved in 1987, HCR No. 9, Laws of 1987, ch. 671, Section201 now explicitly provides:

> The Legislature shall, by general law, provide for the establishment, maintenance, and support of free public schools, upon such conditions and limitations as the Legislature may prescribe. (emphasis supplied)

A broader or more express direct grant of authority to the Legislature to act by general law cannot be imagined. While a revenue statute dealing with political subdivisions, such as §19-9-171 is authorized by the general legislative power recognized by §33 of the Constitution, and more specifically by Article 4 §88 (which mandates that the Legislature shall pass general laws under which local interests "shall be provided for and protected,"), it cannot be questioned that §19-9-171 is also a general law authorized by §201 and directed to the "support" and "maintenance" of public schools, and/or a prescribed "condition" or "limitation" regarding such support.

Although a harmonious construction of §201 and §206 together exists, as discussed below, the plaintiffs' theory that §206 should be read to prohibit a general law like §19-9-171 directly conflicts with the language and intent of §201. Under *Miller* and *St. Louis*, a narrow interpretation of §206 must yield to the policy of §201 and one cannot reasonably say that the Legislature shall provide by general law for the maintenance and support of schools "upon such conditions and limitations as the Legislature may prescribe"--which §19-9-171 plainly does--and then give §206 a purported literal and narrow reading to effectively void §201 and take away the legislative authority the Constitution has specifically granted. The Constitution cannot be construed to conflict with itself, and where, as here, §201 (as well as other Constitutional sections and Court decisions) explicitly authorize the Legislature to enact a general law for the support of schools on the conditions it prescribes, and here providing for the allocation of certain new public revenues, like §19-9-171, such statute cannot be said to be unconstitutional "beyond all reasonable doubt."

B. The Text of Modern §206 Does Not Contain Express Language of Prohibition, Nor Was the Modern Provision Intended to Serve as a Limitation on the Legislature's Authority to Allocate Revenues of Political Subdivisions.

Moreover, modern §206 (HCR No. 9, Laws of 1989, ch. 589), as ratified in 1989, similarly

reflects the recognition set forth in modern §201 that all matters and details of public school financial support should be and must be directed to the Legislature for consideration and enactment by general law. As noted above, in December 1987, §201 was amended to make explicit that the conditions of school support were to be as prescribed by general law. In accord with the delegation to the Legislature in modern §201, under modern §206 the local tax effort was expressly limited to that "as prescribed by general law." "Any county or separate school district may levy an additional tax, as prescribed by general law, to maintain its schools." Plaintiffs parse the language of this provision to effectively omit the phrase "as prescribed by general law" and to create an inherent right that taxes may be levied by a school district "only" in support of "its" schools--except that "only" is not actually contained in the text.

In addition to the fact that it is authorized by §201, Section 19-9-171 is on its face a post-tax, post-collection, revenue distribution statute, and not a tax-levy statute. This distinction has been recognized in numerous cases. However, even if it were a "levy" statute, four points should be made.

First, modern §206 does not contain the express language of prohibition that would explicitly trump the provisions of §201 or that clearly and unequivocally would mandate and signal that new revenues generated from new energy projects could not be allocated and distributed among all school districts in a county. It does not expressly state, for example, that "The Legislature shall never by statute or otherwise direct the allocation of revenues from taxes generated by property situated in a district to any other district." It does not state, for example, that "a school district shall have the sole and inherent right to all revenues from collected upon taxable property, which may not be altered by general law." It does not even state that taxes collected in a school district may "only" be distributed

to that district.[2] Absent such explicit and unequivocal language, statutes must be given a saving construction, and not struck down.

Second, it should be noted that, on the contrary, language that appeared in the early versions of §206, which directed that the taxes of the local county school funds "shall be retained in the counties where the same is collected,"[3] has been deleted and not brought forward in modern §206. Given that this limitation was removed from §206, it is illogical to now read a similar provision back into this section.

Third, under the terms of modern §206, the entire authority and power of a local school district to levy a tax at all for local support is entirely dependant on what is "prescribed by general law." Pursuant to the delegation and terms of modern §206 the Legislature could by general law, and amendments to existing law, completely alter or even abolish local taxation and local finance for the local schools. In this regard, the principle "*omne majus in se continet minus*"--that the "grant of a greater power includes the grant of a lesser power"--is directly relevant. *See Yow v. Tishimingo Co. Sch. Bd.*, 171 Miss. 821, 172 So. 303 (1937)(with respect to the constitutional power of the Legislature, "the greater power includes the lesser"); *Posadas de Puerto Rico Assocs. v. Tourism*

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[2]In their brief, plaintiffs purport to quote from *State Board of Education v. Pridgen*, 106 Miss. 219, 63 So. 416 (1913) to argue that §206 provides for the manner of distribution of the "maintenance fund." *See* Appellants' Brief at p. 14. However, neither *Pridgen* nor §206 address the manner of distribution of the "maintenance fund." Only the distribution of the state common fund was provided for in §206 and *Pridgen*. *Id.* In fact, in *Miller v. State*, the Court distinguished *Pridgen* and specifically stated that the *Pridgen* case did not decide the question of the manner of distribution for any school funds other than the four-month common fund. 94 So. at 709.

[3]See the pre-*Miller* decision in *State Board of Education v. Pridgen*, 106 Miss. 219, 63 So. 416 (1913)(text of early §206). In *City of Jackson v. Hinds Co.*, 104 Miss. 199, 61 So. 175 (1913), the Court rejected the City of Jackson's claim that all new revenues generated from poll taxes collected from its residents belonged to the City for local school support, instead holding that all revenues must be distributed to all schools in the county on a per capita basis under the applicable statute.

Co., 478 U.S. 328, 345, 106 S. Ct. 2968 (1986)(power to ban casino gaming entirely included lesser power to prohibit casino advertising); *United States v. O'Neil*, 11 F. 3d 292, 296 (1st Cir. 1993)("the principle that the grant of a greater power includes the grant of a lesser power is a bit of common sense that has been recognized in virtually every legal code from time memorial. It has formed modern expression primarily in the realm of constitutional law"). If, as permitted by the delegation and terms of §206, the Legislature has the power to abolish local taxation and local finance altogether (for example, to go to an exclusively state method of taxation and funding of schools), then the Legislature unquestionably possesses the far lesser power of simply allocating new revenues from defined new energy projects among all school districts in a county on a proportional basis. The fact that §206 itself grants the Legislature such a far broad power than that exercised in enacting §19-9-171 means that the Legislature's authority cannot be invalidated "beyond all reasonable doubt."

Fourth, in addition to the fact that modern §206 does not contain express language of prohibition, modern §206, fairly read, is not intended as a limitation on the Legislature's authority under §201 to set taxation and revenue policy and parameters for school districts or other political subdivisions. Again, this is demonstrated by the fact that under modern §206, for local support a school district may only levy a tax "as prescribed by general law."[4] This important phrase negates the idea that §206 is a limitation on the Legislature. Where the very existence of a tax or permission to levy a tax at all is expressly dependent upon the Legislature's enactment of general laws, it cannot reasonably be viewed as intended to curtail Legislative prerogatives.[5]

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[4]Black's Law Dictionary defines "prescribe" as "[t]o dictate, ordain, or direct; to establish authoritatively (as a rule or guideline)." *Black's Law Dictionary* 1220 (8th ed. 1999).

[5]This is not to suggest that the Legislature's power is unlimited. There is always the general requirement that Legislative action not be manifestly arbitrary and unreasonable. *See, e.g., State ex rel. Rice v. Evans-Terry Co.*, 173 Miss. 526, 159 So. 658 (1935)(legislature has "wide discretion"

Instead, modern §206 is intended as a concrete acknowledgment that the elected state Legislature, acting through general laws, is also the ultimate authority with regard to matters of local school finance. At the same time, modern §206 is intended as a limitation--not on the Legislature--but on the budgeting and taxing authority of school districts, whose taxation and levy policies can only be "as prescribed by general law," and cannot be outside the parameters of that general law.

Every material aspect of public school taxation and finance is prescribed by general law, in accord with the well-known principle that "[t]he authority of political subdivisions to levy taxes of political subdivisions to levy taxes is conferred and delegated by the Legislature, in which the exclusive power to tax rests." *Morco Ind., Inc. v. City of Long Beach*, 530 So. 2d 141, 144 (Miss. 1988); *City of Jackson v. Pittman*, 484 So. 2d 998, 999 (Miss. 1986).

Section 19-9-171 is a general law that has been integrated into and made a part that detailed statutory scheme prescribing all aspects of school budgets, taxation, collection, and revenue. *See* Miss. Code Ann. §37-57-1. As amended in 2007, Section 37-57-1 cross references §19-9-171 and that statute is made a part of the overall scheme.

Pursuant to *Miller* and *St. Louis R.R.*, a constitutional prohibition of §19-9-171 by §206 must be demonstrated "beyond all reasonable doubt." Section 206 cannot be viewed in isolation. The narrow and parsed interpretation of modern §206 argued for by plaintiffs conflicts with modern §201. Section 19-9-171 fits within the legislative authority confirmed by modern §201 and cannot be deemed unconstitutional "beyond all reasonable doubt." Both modern §201 and §206 reflect the principle that public school finance shall be "as prescribed by general law"--of which §19-9-171 and §37-57-1, as amended, is an integrated part. In its modern version, §206 does not contain express

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in classification for taxation, and tax statutes will be upheld unless "manifestly arbitrary and unreasonable").

and unequivocal words of prohibitions and it is not intended as a limitation of the Legislature's authority to act by general law--instead it is intended as a limitation on school districts' ability to act outside the general law.

III. Moreover, Plaintiff's Narrow and Parsed Interpretation of §206 to Bar §19-9-171 Also Conflicts with Unbroken Precedent Which Defines the Authority of the Legislature vis-a-vis All Political Subdivisions.

As noted above, under *Miller* and *St. Louis & S.F. Ry.*, constitutional provisions such as §206 cannot be viewed narrowly or in isolation, and the context provided by other sections of the Constitution must be considered. In addition to running squarely afoul of §201, plaintiffs interpretation of §206 so to prohibit a revenue allocation and distribution statute like §19-9-171 also conflicts with fundamental principles set forth by this Court in over a hundred years of precedent regarding the authority of the Legislature to act by general law where political subdivisions are concerned. These fundamental, or "first," principles include:

- The Legislature has the authority to determine by general law the allocation and distribution of public revenues. *Culley v. Pearl River Ind. Comm.*, 234 Miss. 788, 108 So. 2d 390, 398-399 (1959)[6]; *City of Belmont v. Mississippi Tax Comm.*, 860 So. 2d 289, 307 (Miss. 2003)(Legislature has the prerogative to allocate public revenues, "to determine the source from which the public revenues shall be derived and the object upon which they shall be expended"). This fundamental principle directly applies to §19-9-171, is dispositive here, and cannot be "trumped" by a narrow and parsed reading of §206.

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[6]In *Culley*, the Legislature by statute allocated two mils of revenue from Hinds and other counties and distributed these revenues to the newly-created Pearl River District. In upholding the statute, the Court expressly distinguished between the "levy of taxes"--subject to constitutional requirements concerning taxation--and the plenary power of the Legislature to allocate and distribute revenues, 108 So. 2d at 399. As pointed out in the main briefs of the Appellees, the allocation and distribution of revenues is commonplace where political subdivisions are concerned and has been repeatedly upheld by the Court. *See also, Gully v. Williams Bros.*, 182 Miss. 119, 180 So. 400, 407 (1938)(statute requiring county to pay a portion of collected ad valorem taxes to port commission to fund port projects discussed with approval); *State ex rel. Knox v. Grenada County*, 141 Miss. 701, 105 So. 541, 548 (1925)("when it comes to paying out the county funds after they are collected," constitutional section on taxation "would certainly not apply").

- The Legislature has the unquestioned "creator" power to act by general law with regard to all aspects of the tax, finance, and revenue circumstances of political subdivisions like school districts, municipalities, and counties. *City of Belmont*, 860 So. 2d at 306; *State v. Hinds County Bd. of Supervisors*, 635 So. 2d 839, 843 (Miss. 1994). The City of Pascagoula and Pascagoula School District are political subdivisions, subject to the "creator" power.

- The revenues of a political subdivision are not the property of the subdivision "in the sense in which the revenue of a private person or corporation is regarded." Such revenues "are subject to the control of the Legislature." *Jackson County v. Neville*, 131 Miss. 599, 95 So. 626, 629 (1923). Plaintiffs do not address and cast aside this principle. Their interpretation of §206 runs directly contrary to *Neville*.

- The Legislature's determination by general law regarding the allocated sharing of revenues among political subdivisions on a rational formula basis may not be second guessed. *Mississippi Mun. Ass'n., Inc. v. State*, 390 So. 2d 986, 989 (Miss. 1980)("the legislature is the authority on the disposition of public funds," and a court "may not nullify the formulas for distribution therein contained").

Under *Miller* and *St. Louis*, §206 must be construed in a manner so as to harmonize with the forgoing fundamental principles articulated by this Court in numerous cases, which affirmatively establish and confirm the validity of §19-9-171. Plaintiffs' reading of §206 to prohibit §19-9-171 is not only at odds with §201 and not directly supported by the modern text and intent of the provision, it is also in complete disharmony with established case law.

IV. The "Levy" Prescribed by General Law for Pascagoula School District Continues to Maintain "Its" Schools.

Statutes may not be struck down based on hypotheticals, *Culley, supra*, nor can they be invalidated based on a distortion of the actual facts on the ground. At oral argument, it was incorrectly represented that 71% of the school budget of the Pascagoula District was lost due to the operation of §19-9-171 and directed to other districts.

This is incorrect and patently false. The budget expenditures of PSD roughly 84 million dollars, but the total revenue generated from the new energy-related projects and improvements

subject to §19-9-171 in parcel 3059 from the 2010 tax year was $3.0 million--a fraction of PSD's massive budget. The $3.0 million in revenue was distributed as per §19-9-171 based on the average daily attendance formula, of 28.5% to Pascagoula ($870,000); 37% to JCSD ($1.1 million); 12.5% to Moss Point School District ($360,000); and 22% to Ocean Springs School District ($650,000).

The Pascagoula District receives and continues to receive 100% of the value-added tax revenue generated by the base Chevron refinery--which in recent years has provided approximately $14 million in revenues to PSD--and §19-9-171 does not apply to and has nothing to do with these revenues. The claim that 71% of PSD's budget has been diverted to other districts is untrue.

In §206 terms, PSD has, pursuant to tax levy as prescribed by general law, in fact "maintained" "its" schools through tax revenues for its massive budget, one of the largest in the state. Nothing in §206 requires anything more, more than the "maintenance" of "its" schools, and the proportional revenue allocation and distribution by §19-9-171 cannot be legitimately blamed for causing an imaginary problem that does not exist. *See* Notice of Proposed Ad Valorem Tax Effort, Miss. Press-Herald news paper, 6/27/2011, Appendix Tab "E." In spite of PSD's claims that they will be "losing" money as a result of §19-9-171, for the fiscal year 2011-2012, PSD will receive nearly $2 million additional dollars from ad valorem tax revenue without raising the millage rate on the property within the district, and according to the Notice, there will be "No Tax Increase" for the Pascagoula District. Although PSD would indeed be "better off" with a windfall of 100% of <u>all</u> new revenues from the new energy projects and improvements--rather than just a proportionate share--a virtually unanimous Legislature and the Governor have deemed the equitable and proportional distribution of these particular new energy-related revenues among all school districts in the county to be proper and fair, and that determination of policy is entitled to deference, may not be second guessed, and is not unconstitutional "beyond all reasonable doubt."

V. CONCLUSION

By a belated (and not well founded) reliance on §206 to prohibit §19-9-171, plaintiffs seek to achieve what *Miller* says they cannot:

> Restriction by implication of the sovereign power to enact legislation for the public good is not favored, and where the inhibition is not clear and certain the inherent power of the sovereign as represented by the Legislature may be exercised without limit.

It is respectfully submitted that §19-9-171 cannot be proven to be unconstitutional "beyond all reasonable doubt" because of §206, where, *inter alia*: (1) §206 cannot be read narrowly or in isolation from §201, and must be given a "saving" construction; (2) modern §201 explicitly grants the Legislature the plenary authority to act for the support and maintenance of all public schools upon such "conditions and limitations as the legislature may prescribe"--plaintiffs' theory conflicts with §201; (3) modern §206 is itself entirely dependent on general laws and does not contain unequivocal language clearly prohibiting the allocation of new revenues; (4) the Legislature has the power to abolish local taxation and local finance altogether, and therefore unquestionably possesses the far lesser power of simply allocating new revenues; (5) modern §206, based on its new text, is clearly not intended as a limitation on the Legislature, but instead reflects a delegation to the Legislature and serves as a limitation on school districts from acting outside the parameters of the general law on matters of school taxation; (6) §19-9-171 has been incorporated as a part of the general law of school finance; (7) the position of plaintiffs is contrary to and in disharmony with a hundred years of Court precedent, and (8) PSD with its massive budget is in fact maintaining "its" schools, notwithstanding imaginary problems created by §19-9-171. The heavy burden of demonstrating unconstitutionality "beyond all reasonable doubt" is not met.

RESPECTFULLY SUBMITTED, this the 11th day of July, 2011.

JOE TUCKER, IN HIS OFFICIAL CAPACITY AS TAX COLLECTOR OF JACKSON COUNTY, BENNY GOFF, IN HIS CAPACITY AS TAX ASSESSOR OF JACKSON COUNTY, MISSISSIPPI, AND BOARD OF SUPERVISORS OF JACKSON COUNTY, MISSISSIPPI

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