

447 F.2d 960  
United States Court of Appeals, Fourth Circuit.

Harvey H. ALLEN and Simona A. Allen,  
Appellants,  
v.  
STATE BOARD OF EDUCATION OF NORTH  
CAROLINA et al., Appellees.

No. 71-1563.  
|  
Argued Aug. 26, 1971.  
|  
Decided Sept. 9, 1971.

### Synopsis

Suit to restrain issuance and sale of school bonds. The United States District Court for the Middle District of North Carolina at Greensboro, Eugene A. Gordon, J., granted partial summary judgment and plaintiffs appealed. The Court of Appeals held that in order to remove cloud created on sale and issuance of school bonds by pendency of action to restrain issuance and sale of the bonds on ground that proceeds might be spent in way to encourage segregated school system, District Court properly entered final order holding that controversy over expenditure of proceeds did not affect validity of bonds or the right of county to issue them or its obligation to pay principal and interest as they became due.

Affirmed.

West Headnotes (2)

[1] **Federal Civil Procedure**  
🔑 Partial summary judgment

In order to remove cloud created on sale and issuance of school bonds by pendency of action to restrain issuance and sale of the bonds on ground that proceeds might be spent in way to encourage segregated school system, district court properly granted partial summary judgment and entered final order holding that controversy over expenditure of proceeds did not affect validity of bonds or the right of county to issue them or its obligation to pay principal

and interest as they became due.

1 Cases that cite this headnote

[2] **Federal Civil Procedure**  
🔑 Consolidation of actions

Change of position of plaintiffs so as to favor a consolidation of suit to restrain issuance of school bonds with school desegregation case involving some of the same issues would warrant reconsideration of matter of consolidation in the district court.

3 Cases that cite this headnote

### Attorneys and Law Firms

\*961 Norman B. Smith, Greensboro, N.C. (Smith & Patterson, Greensboro, N.C., on the brief), for appellants.

Paul Eugene Price, Jr., County Atty. for Forsyth County (Robert K. Leonard, Atty. for Board of County Commissioners of Forsyth County, on brief) and William F. Womble, (Womble, Carlyle, Sandridge & Rice, and John L. W. Garrow, Winston-Salem, N.C., on the brief), for appellees.

Before HAYNSWORTH, Chief Judge, and WINTER and RUSSELL, Circuit judges.

### Opinion

PER CURIAM:

In this school case the plaintiffs, among other relief, sought to restrain the issuance and sale of school bonds. They raised no question concerning the validity of the bond referendum or the authorization of the bond issue. The relief sought stems entirely from an expression of concern that the proceeds of the bond issue might be spent in such a way as to encourage a segregated school system.

The District Court granted a partial summary judgment, entering a final order in which it was held that any present or future controversy which may exist over the

expenditure of the proceeds of the school bond issue does not affect their validity, the right of the county to issue them, or its obligation to pay the principal and interest as they become due. The District Court retained jurisdiction over the remainder of the case, and issuance and sale of the bonds will in no way impair its jurisdiction to pass upon the appropriateness of the School Board's construction plans when they are developed.

[<sup>1</sup>] The District Court was entirely correct in acting as it did to remove the cloud which the pendency of this claim created on the sale and issuance of the school bonds.

This same school district is involved in another school desegregation case which was recently before this court. *Scott v. Winston-Salem/Forsyth County Board of Education*, 4 Cir., 444 F.2d 99 (1971). That case was remanded to the District Court for further proceedings for the final achievement of a unitary system. The Scott case involves some of the issues remaining in this case.

[<sup>2</sup>] When this case was here before,<sup>1</sup> we suggested a

#### Footnotes

1        *Atkins v. State Board of Education*, 4 Cir., 418 F.2d 874.

consolidation of this case with the Scott case. We are \*962 informed that the School Board moved for a consolidation of the two cases, but the plaintiffs in each of the cases objected. The plaintiffs' counsel in this case inform us, however, that they now would favor a consolidation. Such a step would seem appropriate if the interest of the plaintiffs in the Scott case would not be adversely affected by it. The change in position of the plaintiffs in this case would seem to warrant reconsideration of the matter of consolidation in the District Court.

Affirmed.

#### All Citations

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