

3431

STATE OF ALABAMA, ON RELATION
OF JOHN CALLOWAY, A CITIZEN,
VOTER AND TAXPAYER OF BALDWIN
COUNTY, ALABAMA,

Complainant,

v.

EARL M. McGOWIN, AS DIRECTOR
OF THE DEPARTMENT OF CONSERVA-
TION OF THE STATE OF ALABAMA,

Respondent.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY - NO. 3431

A N S W E R

Comes now EARL M. McGOWIN, respondent in the above styled proceeding, and for answer to the complaint in the above styled cause, says:

1. Answering the First paragraph of the bill, the respondent admits that he is over the age of twenty-one (21) years, is Director of the Department of Conservation of the State of Alabama, with his official place of residence in Montgomery, Montgomery County, Alabama; the respondent denies that the complainant has a right to bring this suit under the laws of the State of Alabama, and the respondent does not have sufficient information to admit or deny that the complainant is a citizen, voter and taxpayer of Baldwin County, Alabama, nor does he have sufficient information to admit or deny the age of the complainant.

2. For answer to paragraph Second, the respondent denies that he is preparing to, or proposes to, or that he will unless enjoined by this Court, illegally, unlawfully or contrary to the best interests of the State of Alabama, enter into a contract on behalf of the Department of Conservation of the State of Alabama for the construction of certain buildings as alleged in paragraph Second of the complaint; the respondent denies that the entering into such contract for such buildings and

appurtenances and well water supply would be illegal, unlawful and contrary to the best interests of the State of Alabama; the respondent denies that the Department of Conservation is not authorized, under the laws of the State of Alabama, to construct the buildings and appurtenances and well water supply referred to in said complaint and in the advertisements or notices attached to the complaint as Exhibits A and B; the respondent admits that there appeared in the Baldwin Times, the Mobile Press and the Mobile Register, newspapers published in Bay Minette, in Baldwin County, and in Mobile, in Mobile County, all of which are newspapers of general circulation in Baldwin County, an advertisement in words and figures as shown by Exhibit A to said complaint, and an advertisement in words and figures as shown by Exhibit B to said complaint; the respondent denies that said advertisements are void and denies that valid and legal contracts on behalf of the Department of Conservation ought not and could not lawfully be entered into thereunder; the respondent denies that such notices must be signed by him or from aught that appears therein, said notices or advertisements are not the acts of the Director of Conservation, and denies that said notices are insufficient to apprise prospective bidders and the public of what is to be constructed thereunder, or that the structures or appurtenances proposed to be constructed are not described as required by law, and denies that the word "marina" is not a word known to the English language. Further answering paragraph Second of the complaint, the respondent says that acting pursuant to the laws of the State of Alabama, he caused to be advertised in the Baldwin Times, the Mobile Press and the Mobile Register, newspapers published in Bay Minette, in Baldwin County, and in Mobile, in Mobile County, all of which are newspapers of general circulation in Baldwin County, notices calling for bids for the construction of certain buildings, appurtenances and water supply system, as appears from Exhibits A and B attached to the complaint, and that said notices were duly advertised and published in accordance with and as required by the laws of the State of Alabama, and that

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PAGE 284

REC'D 016 MAR 28 1935

the said advertisements are wholly sufficient to inform and apprise prospective bidders and the public of the subject matter upon which bids may be tendered and will be received.

Further answering paragraph Second of the bill, the respondent says that he is not required to obtain the approval or authorization of the Governor before advertising for bids, but that he is required to by law and will obtain the approval and authorization of the Governor before letting any contract for any of the construction called for in his advertisement and before making any disbursement for any such construction.

Further answering paragraph Second of the bill, the respondent says that payment for said buildings and appurtenances and well water supply need not be made out of the State Park Fund, and respondent denies that he proposes, without authority and unlawfully, to use for the payment of construction of said buildings and improvements and well water supply, monies in the State Treasury to the credit of the Seafood Fund, or any other fund, and respondent says that he is authorized to, and with the approval of the Governor may, lawfully use monies to the credit of the Seafood Fund to pay for the construction called for in his said advertisements.

Further answering said paragraph Second, the respondent denies that the construction of said buildings and improvements and well water supply at the place the same are proposed to be constructed would be an unwarranted abuse of the discretion with which he, as Director of the Department of Conservation, is clothed under the laws of the State of Alabama, and expressly denies that the depth of the water and the condition of the water adjacent to the land on which the bath houses and other buildings and appurtenances are to be constructed are wholly unsuited for bathing purposes, and denies that such buildings

REC'D 016 MAR 28 1933

and appurtenances would be any more subject to storm tides than any other land upon the coastal waters of Alabama, and denies that the land on which such buildings and appurtenances would be erected would be any more subject to settling than any other land on the coastal waters of Alabama, and denies that the construction of the said proposed buildings and improvements and well water supply would be a gross and profligate and unwarranted waste of public funds; and on the contrary, the respondent says that the water near which the said proposed bath house would be built has been tested and found suitable for bathing purposes, that the construction of the said proposed buildings and improvements and well water supply is authorized by the laws of the State of Alabama, and that the construction of the same would be in the public interest and of material benefit to the public.

Further answering paragraph Second of the bill, the respondent denies that the construction of said buildings and well and water supply system, or the letting of the contract therefor, would be illegal or unlawful, and denies that such construction or the letting of such contract is not authorized under the budget set up under the Constitution and State Budget Control Act of the State of Alabama for the fiscal year in which the contract would be made.

Further answering paragraph Second of the bill, the respondent denies that the said buildings and appurtenances and well water supply as proposed are inadequate and unsuited for the purposes for which the same are to be constructed at the location at which the same would be constructed, and denies that said buildings and appurtenances and well water supply are so grossly inadequate that the construction of the same would be a gross abuse of the discretion vested in the respondent as Director of the Department of Conservation of the State of Alabama, or would constitute a profligate waste of public funds.

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3. Further answering the said bill of complaint, the respondent denies each and every affirmative allegation thereof not herein expressly admitted.

And having fully answered, this respondent prays that it may go hence with its costs in this behalf expended.

Earl M. McGowin
AS DIRECTOR OF THE DEPARTMENT OF CONSERVATION OF THE STATE OF ALABAMA.

SI Garrett
SI GARRETT, Attorney General

A. J. Harris
A. J. HARRIS, Asst. Attorney General

SOLICITORS FOR RESPONDENT.

STATE OF ALABAMA
COUNTY OF

Personally appeared before me, the undersigned authority in and for said State and County, EARL M. McGOWIN, who being by me first duly sworn, deposes and says that he is Director of the Department of Conservation of the State of Alabama and the respondent in the above captioned proceeding, and that he has read the foregoing Answer to the Bill of Complaint heretofore filed herein, and the facts alleged therein are true.

Earl M. McGowin

SWORN TO and subscribed before me on this 6th day of January, 1955.

Rebecca F. Light
Notary Public, Montgomery County, Ala.

FILED

1-7-55

ALICE A. DUCK, Register

STATE OF ALABAMA, on relation
of John Calloway, a Citizen,
Voter and Taxpayer of Baldwin
County, Alabama,

IN THE CIRCUIT COURT OF

Complainant

BALDWIN COUNTY, ALABAMA,

vs

EARL M. McGOWIN, as Director
of the Department of Conserva-
tion of the State of Alabama,

IN EQUITY

Defendant

TO: Earl M. McGowin, as Director of the Department of Conservation;

WHEREAS, the State of Alabama, acting through and by John Calloway, a citizen, voter and taxpayer of Baldwin County, Alabama, having on the 27 day of December, 1954, filed its bill of complaint in the Circuit Court of Baldwin County, Alabama, in equity, against Earl M. McGowin, as Director of the Department of Conservation of the State of Alabama, praying among other things that the said Earl M. McGowin, as Director of the Department of Conservation of the State of Alabama, be restrained and enjoined from receiving and opening bids and entering into contract as Director of the Department of Conservation of the State of Alabama for the construction of bathhouse building, Marina building and appurtenances on Mobile Bay, Baldwin County, Alabama at the West end of Blakeley River Bridge, and Well Water Supply for Meaher Park, Baldwin County, Alabama; and

WHEREAS, the said bill of complaint having been exhibited to the Honorable Hubert M. Hall, Judge of the Circuit Court of Baldwin County, Alabama, in equity sitting, on the 27 day of December, 1954, he did order that upon complainant's entering into bond with sufficient surety approved by this register in the sum of ONE THOUSAND (\$1,000.00) DOLLARS, payable and conditioned according to law, a temporary writ of injunction issue out of this Court according to the prayer of the said bill of complaint, and bond having been given as required by law and the said order;

NOW THEREFORE, we command and strictly enjoin you, Earl M. McGowin, as Director of the Department of Conservation of the State of Alabama, not to receive and open bids and not to enter into contract as Director of the Department of Conservation of the State of Alabama for the construction of bathhouse building, Marina building and appurtenances on Mobile Bay, Baldwin County, Alabama, at the West end of Blakeley River Bridge, and Well Water Supply for Meaher Park, Baldwin County, Alabama, and in this you will in no wise omit under penalty of law, unless and until this injunction shall be dissolved by order of this Court.

WITNESS, Alice J. Duck, Register, Circuit Court, Baldwin County, Alabama, this the 27 day of December, 1954.

Alice J. Duck
Register

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to execute this writ, and return the same with your endorsement thereon, to this Court, with all convenient speed.

Witness my hand, this the 27 day of December, 1954.

FILED

Alice J. Duck
Register

12-27-54

ALICE J. DUCK, Register

15-1-54

1954

1954

1954

No. 3431
State of Alabama
By Ref John Callaway
W. G.
Earl M. McGowan

1685
Received in Sheriff's Office
this 27 day of Dec, 1954
TAYLOR WILKINS, Sheriff

Temporary Justice

EXECUTED BY SERVING A
COPY OF THE WITHIN
on Earl M. McGowan
as Director of
Conservation

Dec 29 - 1954

G. C. Mosley
Sheriff Montgomery County
By R. T. Alford
Deputy Sheriff

Filed Dec 7 7/1954
A. J. French
Register

STATE OF ALABAMA, ON RELATION
OF JOHN CALLOWAY, A CITIZEN,
VOTER AND TAXPAYER OF BALDWIN
COUNTY, ALABAMA,

Complainant,

v.

EARL M. McGOWIN, AS DIRECTOR
OF THE DEPARTMENT OF CONSERVA-
TION OF THE STATE OF ALABAMA,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY - NO. 3431

TO THE HONORABLE JUDGE OF SAID COURT, SITTING IN EQUITY:

Comes EARL M. McGOWIN, respondent in the above styled cause,
and shows unto this Honorable Court as follows:

1. That upon the 27th day of December, 1954, the Complainant in this cause was ordered to enter into a bond, with sufficient surety, in the sum of One Thousand Dollars (\$1,000.00).
2. That the Register of this Honorable Court certified that said bond as required by said order has been given.
3. That Complainant's bill seeks to enjoin and by the temporary injunction issued in this cause has enjoined, the construction of a bath house building, a marina and a water supply system estimated to cost approximately Seventy-Five Thousand Dollars (\$75,000.00).
4. That the Respondent has negotiated a contract contingent upon the construction of the bath house, marina and water supply system, which said contract guarantees the investment by private capital of the construction of a restaurant building and other permanent structures at a cost of not less than Fifty Thousand Dollars (\$50,000.00), which structures upon their completion will be and become the property of the State of Alabama.
5. That because of the temporary injunction, the construction of the restaurant building and other permanent structures by this

said private contractor has been halted and may be lost to the State of Alabama if the injunction issued by this Court is not dissolved immediately.

6. That the total amount of the construction halted by the Complainant's injunction is One Hundred Twenty-Five Thousand Dollars (\$125,000.00).

7. That the bond given by Complainant in this cause is grossly inadequate to protect the Respondent and the State of Alabama.

THEREFORE, Respondent moves this Honorable Court to require Complainant immediately to increase said bond commensurate to the value of the construction which Complainant has caused to be halted by this injunction and to dissolve the injunction issued in this cause upon Complainant's failure so to increase said bond.

Si Garrett
SI GARRETT, Attorney General

FILED

1-7-55

LICE J. DOCK, Register

A. J. Harris
A. J. HARRIS, Asst. Attorney General.

ATTORNEYS FOR RESPONDENT.

BOOK 016 PAGE 280

STATE OF ALABAMA
BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, that the State of Alabama, suing by and through John Calloway, a citizen, voter and taxpayer of Baldwin County, Alabama, and John Calloway, individually, and UNITED STATES FIDELITY and GUARANTY COMPANY are held and firmly bound unto UNITED STATES FIDELITY and GUARANTY COMPANY and Director of the Department of Conservation of the State of Alabama, in the sum of ONE THOUSAND (\$1,000.00) DOLLARS, for the payment of which the said named parties bind themselves, their heirs, assigns and administrators jointly and severally by these presents.

The condition of this bond is: That Whereas, the above bound State of Alabama, acting through and by John Calloway, a citizen, voter and taxpayer of Baldwin County, Alabama, in a bill of complaint filed in this cause against Earl M. McGowin, as Director of the Department of Conservation of the State of Alabama, prayed for and obtained a writ of temporary injunction out of the Circuit Court of Baldwin County, Alabama, in equity, upon the approval of this bond, restraining and enjoining the said Earl M. McGowin, as Director of the Department of Conservation of the State of Alabama, from receiving, opening of bids and the letting of contracts for the construction of bathhouse building, Marina building and appurtenances on Mobile Bay, Baldwin County, Alabama, at the West end of Blakeley River Bridge, and Well Water Supply for Meaher Park, Baldwin County, Alabama, dated December __, 1954.

Now Therefore, if on the dissolution of such injunction the said State of Alabama acting through and by John Calloway, John Calloway, individually, and UNITED STATES FIDELITY and GUARANTY COMPANY, shall pay to the said Earl M. McGowin, as Director of the Department of Conservation of the State of Alabama, such damages and costs as may be sustained by him, as such Director of the Department of Conservation of the State of Alabama, by virtue of the issuance of such writ of injunction, then this bond shall be null and void; otherwise, to remain in full force and effect.

Witness our hands and seals this the 27 day of DECEMBER, 1954.

STATE OF ALABAMA

BY John Callaway

John Callaway (SEAL)
Individually
UNITED STATES FIDELITY and GUARANTY COMPANY

BPM (SEAL)

FILED

12-27-54

W. I. DUCK, Register

Taken and approved this the 27 day of Dec, 1954.

W. I. Duck
Register

STATE OF ALABAMA, ON RELATION	:	
OF JOHN CALLOWAY, A CITIZEN,	:	
VOTER AND TAXPAYER OF BALDWIN	:	IN THE CIRCUIT COURT OF
COUNTY, ALABAMA,	:	
	:	
Complainant,	:	BALDWIN COUNTY, ALABAMA
	:	
v.	:	
	:	IN EQUITY - NO. <u>3431</u>
EARL M. McGOWIN, AS DIRECTOR	:	
OF THE DEPARTMENT OF CONSERVA-	:	
TION OF THE STATE OF ALABAMA,	:	
	:	
Respondent.	:	

D E M U R R E R

Comes now EARL M. McGOWIN, respondent in the above styled proceeding, and demurs to the Bill of Complaint and the several aspects of said bill, filed in this proceeding, and assigns as grounds of demurrer, separately and severally, the following separate and several grounds:

1. The complaint shows on its face that the respondent's residence is in Montgomery, Montgomery County, Alabama, and that real estate is not the subject matter of this suit, and that the bill has been filed in the wrong county.

2. The complaint shows on its face that this is a suit brought against the State of Alabama in contravention of Section 14 of the Constitution of Alabama.

3. The complaint shows on its face that this is a suit brought against Earl M. McGowin in his capacity as Director of the Department of Conservation of the State of Alabama and is, therefore, a suit against the State of Alabama in which the complainant seeks and has obtained an injunction enjoining respondent in his official capacity as an officer or agent of the State of Alabama from performing a governmental function of the State of Alabama.

4. There is no equity in the bill.

5. The complainant has a full, complete and adequate remedy at law.

6. The allegations of the complaint consist of many conclusions by the complainant but fail to set out facts on which these conclusions are based.

Si Garrett

SI GARRETT, Attorney General

A. J. Harris

A. J. HARRIS, Assistant Attorney General

Attorneys for Respondent.

*Received copy of forgoing documents
and wrapping service
this January 5, 1954*

*Brebe & Smaruga
Ray W. Brebe*

FILED

Jan 6 1955

ALICE I. BUCK, Clerk

STATE OF ALABAMA, on relation
of JOHN CALLOWAY, a Citizen,
Voter and Taxpayer of Baldwin
County, Alabama,

Complainant,

VS

EARL M. McGOWIN, as Director of
the Department of Conservation
of the State of Alabama.

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

NO. 3431.

This cause coming on to be heard was submitted upon the original verified complaint, the verified answer, and testimony of witnesses by affidavits, depositions and taken ore tenus.

There is much evidence in the form of affidavits, depositions and testimony taken ore tenus. However, the Court does not deem it advisable to discuss the evidence, for the reason that the Court is of the opinion that the Complainant is entitled to the relief prayed for on technical grounds.

The Complainant has based his contention upon two grounds, namely: That the notice was not properly given and that the act on the part of the Director of Conservation constituted an attempted diversion of funds from the source for which they were appropriated.

The property upon which the developments were to be constructed lie within the County of Baldwin, State of Alabama. The notices of publication were in the Mobile Press, a newspaper published in Mobile County, Alabama, in its issues of December 10th., December 17th., and December 24th., 1954, and in the Baldwin Times, a newspaper published in Bay Minette, Baldwin County, Ala., in its issues of December 16th., December 23rd., and December 30th., 1954, that the bids would be opened on December 30, 1954.

The Act relating to and regulating contracts for public work, being Act No. 492, appearing at page 338 of the General Acts of Alabama, 1947:

Before entering into any contract for a public improvement, the awarding authority shall advertise for sealed bids once each week for three consecutive weeks in a newspaper of general circulation in the County or Counties in which the improvement or undertaking, or some part thereof, is to be made ; the awarding authority may also advertise in such other publications as it may deem advisable".

The Court is of the opinion that it was clearly the intention of the Legislature that the publication should be for three consecutive weeks in a newspaper in the County in which the development was to be promoted, with the stipulation that the authority "may at its discretion, advertise in such other papers as it saw fit". The publication in the Baldwin Times was for a period of only fourteen days, and therefore, not a compliance with the law, and for that reason such publication was not sufficient.

The Legislature of the State of Alabama, Act No. 522, appearing at page 687 of the Acts of Alabama, Regular Session, 1953, made certain appropriations to the Department of Conservation, itemizing them as : (a) Game and Fish Division; (b) Seafood Division; (c) State Forestry Division. The Court is of the opinion that this Act of the Legislature authorized the respective subdivisions of the Department of Conservation to allocate such monies as it saw fit for additions and betterments of the said sub-division of the Department of Conservation; however, it did not give the Director of the Department of Conservation the right to transfer funds from one sub-division to another sub-division, for purposes not in line with the direct promotion of said sub-division.

The Court is, therefore, to the conclusion, that the Director of Conservation did not fulfill the requirements of law as to the publication and was without authority to transfer funds from one sub-division of the Department to another, and that, therefore, the Complainant is entitled to the relief prayed for.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the temporary writ of injunction heretofore issued in this case be, and the same is hereby made perpetual.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Respondent pay the costs herein accrued, for which execution may issue.

Dated at Bay Minette, Alabama, this 18th day of January, 1955.

Hubert M. Hall /s/
Judge of the 28th Judicial Circuit
of Alabama.

STATE OF ALABAMA, ON RELATION
OF JOHN GALLOWAY, A CITIZEN,
VOTER AND TAXPAYER OF BALDWIN
COUNTY, ALABAMA,

Complainant,

VS.

EARL M. MCGOWIN, AS DIRECTOR OF THE
DEPARTMENT OF CONSERVATION OF THE
STATE OF ALABAMA,

Respondent

IN THE

CIRCUIT COURT OF BALDWIN COUNTY

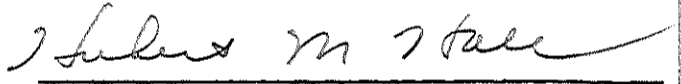
ALABAMA. IN EQUITY

NO. 3431

This cause coming on to be heard is submitted upon the original bill of complaint and the temporary injunction and the motion of the Respondent to discharge the temporary injunction issued on the 27th day of December, 1954, and the Court, after considering the matter is of the opinion that the motion is not well taken and should be over-ruled and denied.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the motion of the Respondent to discharge the temporary injunction heretofore granted in this cause be and the same is hereby overruled and denied.

This 7th day of January, 1955.



Judge

FILED

JAN 14 1955

ALISE J. DUCK, Register

STATE OF ALABAMA, on relation
of JOHN CALLOWAY, a Citizen,
Voter and Taxpayer of Baldwin
County, Alabama,

Complainant,

VS.

EARL M. McGOWIN, as Director of
the Department of Conservation
of the State of Alabama.

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY.

NO. 3431.

This cause coming on to be heard was submitted upon the original verified complaint, the verified answer, and testimony of witnesses by affidavits, depositions and taken ore tenus.

There is much evidence in the form of affidavits, depositions and testimony taken ore tenus. However, the Court does not deem it advisable to discuss the evidence, for the reason that the Court is of the opinion that the Complainant is entitled to the relief prayed for on technical grounds.

The Complainant has based his contention upon two grounds, namely: That the notice was not properly given and that the act on the part of the Director of Conservation constituted an attempted diversion of funds from the source for which they were appropriated.

The property upon which the developments were to be constructed lie within the County of Baldwin, State of Alabama. The notices of publication were in the Mobile Press, a newspaper published in Mobile County, Alabama, in its issues of December 10th., December 17th., and December 24th., 1954, and in the Baldwin Times, a newspaper published in Bay Minette, Baldwin County, Alabama, in its issues of December 16th., December 23rd., and December 30th., 1954, that the bids would be opened on December 30, 1954.

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Before entering into any contract for a public improvement, the awarding authority shall advertise for sealed bids once each week for three consecutive weeks in a newspaper of general circulation in the County or Counties in which the improvement or undertaking, or some part thereof, is to be made; the awarding authority may also advertise in such other publications as it may deem advisable".

The Court is of the opinion that it was clearly the intention of the Legislature that the publication should be for three consecutive weeks in a newspaper in the County in which the development was to be promoted, with the stipulation that the authority "may at its discretion, advertise in such other papers as it saw fit". The publication in the Baldwin Times was for a period of only fourteen days, and therefore, not a compliance with the law, and for that reason such publication was not sufficient.

The Legislature of the State of Alabama, Act No. 522, appearing at page 687 of the Acts of Alabama, Regular Session, 1953, made certain appropriations to the Department of Conservation, itemizing them as: (a) Game and Fish Division; (b) Seafood Division; (c) State Forestry Division. The Court is of the opinion that this Act of the Legislature authorized the respective sub-divisions of the Department of Conservation to allocate such monies as it saw fit for additions and betterments of the said sub-division of the Department of Conservation; however, it did not give the Director of the Department of Conservation the right to transfer funds from one sub-division to another sub-division, for purposes not in line with the direct promotion of said sub-division.


The Court is, therefore, to the conclusion, that the Director of Conservation did not fulfill the requirements of law as to the publication and was without authority to transfer funds from one sub-division of the Department to another, and

that, therefore, the Complainant is entitled to the relief prayed for.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the temporary writ of injunction heretofore issued in this case be, and the same is hereby made perpetual.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Respondent pay the costs herein accrued, for which execution may issue.

Dated at Bay Minette, Alabama, this 18th day of January, 1955.


Judge of the 28th Judicial
Circuit of Alabama.

STATE OF ALABAMA, ON RELATION OF
JOHN CALLOWAY, A CITIZEN, VETERAN
TAX PAYER OF BALDWIN COUNTY, ALABAMA,

Complainant,

VS.

EARL M. MCGOWIN, AS DIRECTOR OF THE
DEPARTMENT OF CONSERVATION OF THE
STATE OF ALABAMA,

Respondent.

IN THE

CIRCUIT COURT OF BALDWIN COUNTY,

ALABAMA. IN EQUITY

No. 3431

This cause coming on to be heard is submitted upon the original bill of complaint, and demurrer thereto, and the Court, after considering the pleadings, is of the opinion that the demurrer is not well taken and should be overruled -

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the demurrer filed by the Respondent to the original bill of complaint on behalf of the Respondent is overruled.

This 7th day of January, 1955.

Robert M. Hall

JUDGE

FILED

JAN 14 1955

ALICE I. DUCK, Register

STATE OF ALABAMA, ON RELATION
OF JOHN CALLOWAY, A CITIZEN,
VOTER AND TAXPAYER OF BALDWIN
COUNTY, ALABAMA,

Complainant,

v.

EARL M. MCGOWIN, AS DIRECTOR
OF THE DEPARTMENT OF CONSERVA-
TION OF THE STATE OF ALABAMA,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY - NO. 3431

I

Comes now the respondent in the above styled cause and moves this Court to discharge the temporary injunction issued on the 27th day of December, 1954, and in support of said motion, assigns the following separate and several grounds for discharge, viz:

1. The complaint shows on its face that this is a suit brought against the State of Alabama in contravention of Section 14 of the Constitution of the State of Alabama.
2. The complaint shows on its face that this is a suit brought against Earl M. McGowin in his capacity as Director of the Department of Conservation of the State of Alabama and is, therefore, a suit against the State of Alabama in which the complainant seeks and has obtained an injunction enjoining respondent in his official capacity as an officer or agent of the State of Alabama from performing a governmental function of the State of Alabama.
3. The complainant could not lawfully obtain and had no right to obtain said injunction from this Court.
4. It affirmatively appears from the averments of the complaint that the residence of the respondent is in Montgomery, Montgomery County, Alabama, and that real estate is not the subject matter of the suit, and that this suit has been brought in the wrong county.

And EARL M. McGOWIN, respondent in the above styled cause, without waiving the foregoing motion to discharge or decision thereon, further moves this Court to dissolve the temporary injunction issued herein on December 27, 1954, and in support of this motion, assigns the following separate and several grounds for dissolution, viz:

1. The complaint shows on its face that this is a suit brought against the State of Alabama in contravention of Section 14 of the Constitution of the State of Alabama.
2. The complaint shows on its face that this is a suit brought against Earl M. McGowin in his capacity as Director of the Department of Conservation of the State of Alabama and is, therefore, a suit against the State of Alabama in which the complainant seeks and has obtained an injunction enjoining respondent in his official capacity as an officer or agent of the State of Alabama from performing a governmental function of the State of Alabama.
3. The complainant could not lawfully obtain and had no right to obtain said injunction from this Court.
4. It affirmatively appears from the averments of the complaint that the residence of the respondent is in Montgomery, Montgomery County, Alabama, and that real estate is not the subject matter of the suit, and that this suit has been brought in the wrong county.
5. There is no equity in the bill.
6. The complainant has a full, complete and adequate remedy at law.
7. That unless the injunction is dissolved, the public will suffer serious inconvenience or loss and, if the injunction is granted,

it will be without corresponding advantage to the complainant.

8. The allegations of the complaint consist of many conclusions by the pleader but fail to set out facts on which the conclusions are based.

9. The complaint fails to aver facts sufficient to show that irreparable loss or injury would result to the complainant if the respondent is permitted to do those things which this Court has enjoined him from doing by said temporary injunction.

FILED

1-7-55

WALTER J. BERRY, Registrar

SI Garrett
SI GARRETT, Attorney General

A. J. Harris
A. J. HARRIS, Assistant Attorney General

SOLICITORS FOR RESPONDENT.

Extra for court

January 8, 1955

Mr. A. J. Harris
Assistant Attorney General
Department of Conservation
Montgomery, Alabama

Dear Mr. Harris:

I enclose herewith two carbons of interrogatories, which we have today filed in the pending case of the State of Alabama, on relation of John Callaway, against Earl M. McGowin, as Director of the Department of Conservation. I would appreciate your acknowledging receipt of copy of the interrogatory waiving further service and return the same to me. This can be done on the back of the enclosed copy.

I would very much appreciate your answering these interrogatories before the date set for hearing. If you will do this it will save considerable time in examining witnesses and save our having to subpoena Mr. McGowin. If you cannot accept service and answer the interrogatories before the date set please call me Monday Morning, reversing the charges, so that I may issue subpoena to Mr. McGowin.

Yours truly,

Beebe & Swearingen

W. C. Beebe

WCB.mb

STATE OF ALABAMA, on relation
of John Calloway, a Citizen,
Voter and Taxpayer of Baldwin
County, Alabama

Complainant

vs

EARL M. MCGOWIN, as Director
of the Department of Conser-
vation of the State of Alabama,

Defendant

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY

Interrogatories propounded by W. C. Beebe, Solicitor for petitioner in the above styled cause to Earl M. McGowin, as Director of the Department of Conservation of the State of Alabama, defendant, desiring the testimony of the said Earl M. McGowin as Director of the Department of Conservation aforesaid:

1. State under what law of the State of Alabama you as Director of the Department of Conservation of the State of Alabama, are authorized to construct the buildings and appurtenances and well water supply proposed to be constructed at "Meaher Park" by advertisement appearing in the Baldwin Times for bids to be received December 30, 1954, citing the Title and Section of the Code, the book and page of the Act or Acts under which you claim such authority.

2. State whether or not the Governor of the State of Alabama has approved and authorized you as Director of the Department of Conservation of the State of Alabama to construct such proposed buildings and appurtenances and well water supply at "Meaher Park", giving the date of such authorization and whether or not the same was in writing, if in writing attach copy of such writing to your answer.

3. State what public fund or public funds or appropriation you propose to use for the payment of cost for the expenditures proposed to be made at "Meaher Park", how much money is in such public fund or public funds and the source of the same, giving

citations relating to such public fund or public funds, which in your opinion authorize the use of the same for the proposed purposes and giving the source of such public funds.

4. State whether or not the proposed expenditure is authorized in the budget set up by the Legislature for the fiscal year in which the same is proposed to be constructed, giving citations where the same appears.

BEEBE & SWEARINGEN

BY W. C. Beebe
Solicitor for complainant

RECEIVED
JAN 8 1953
STATE OF ALABAMA
BALDWIN COUNTY

STATE OF ALABAMA
BALDWIN COUNTY

Before me, the undersigned Notary Public in and for said State and County, this day personally appeared W. C. Beebe, who is known to me and who being by me duly sworn deposes and says that he is solicitor for petitioner in that certain cause pending in the Circuit Court of Baldwin County, Alabama, in equity, by the State of Alabama, on relation of John Callaway, against Earl M. McGowin, as Director of the Department of Conservation of the State of Alabama, enjoining the receiving and opening of bids and letting of contract for the construction of certain buildings and appurtenances and well water supply at "Meaher Park" in Baldwin County, Alabama, and that the answer to the foregoing interrogatories if truly made will be material testimony for him in said cause.

W. C. Beebe

Sworn to and subscribed before me this the 8 day of

January, 1953

Madeline S. Burns
Notary Public, State of Alabama at Large.



Filed Jan 6, 1953

STATE OF ALABAMA, on relation
of John Calloway, a Citizen,
Voter and Taxpayer of Baldwin
County, Alabama,

Complainant

vs

EARL M. McGOWIN, as Director
of the Department of Conser-
vation of the State of Alabama,

Defendant

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY

This cause being submitted to the Court upon application
of the complainant for temporary writ of injunction as prayed
for in the original verified bill of complaint herein, and upon
consideration thereof the Court being of the opinion that the
same should be granted:

It is therefore ordered, adjudged and decreed by the
Court that upon the complainant's entering into a good and
sufficient bond, conditioned as provided by law, in the sum of
ONE THOUSAND (\$1,000.00) DOLLARS, same to be approved by the
Register of this Court, that the Register issue a temporary writ
of injunction as prayed for in the original bill in this cause.

Done and entered, this the 27 day of December, 1954.

Hubert M. Hall
Circuit Judge, in Equity Sitting.

3431
State of Alabama
ex Rel John Callaway

vs
Earl M. C. Brown
as director of
Conservation

Order of temporary
injunction

RECORDED

Filed Dec 27, 1934

W. J. ...
Register

3431

Earl M. C. Brown

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