

Just Say No!

Ned Sloan's answer to creative government financing schemes

BY JAMES SHANNON

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Name the single individual who has had the greatest impact on local government policy in recent years. Greenville County Council Chairman Dozier Brooks? Maybe. Greenville Mayor Knox White? Probably not. House Speaker David Wilkins? Perhaps. But serious consideration has to be given to 72-year-old retired paving contractor E. D. Sloan, Jr., who has waged a one-man campaign to force state and local government to comply with the law. Or at least, the law as Ned Sloan sees it.

The lawsuit he filed against the Greenville County School District in August of last year is a perfect example of where Sloan parts company with the way local governmental entities interpret the law. The district created a non-profit organization called BEST to sell bonds that would finance a \$763 million school construction program. So what's the problem? State law imposes a debt limit on the district of \$105 million. Sloan argues that BEST was created solely to get around that legally imposed debt limit, and that BEST is an "alter ego" of the district. Indeed, the board of the non-profit corporation is dominated by ex-school board members, and both sides concede that the corporation was created to carry out the district's agenda.

Judge John Few issued an order granting a summary judgment to the district that effectively dismissed the lawsuit. Sloan is appealing the ruling, a move that could delay the school construction program for months. So the children of Greenville County continue to attend classes in substandard buildings because progress is thwarted by one stubborn man. Right? Well, it depends on your point of view.

"Mr. Sloan believes that local government should follow the law when they spend the taxpayers' money," says James G. Carpenter, a Greenville attorney who represents Sloan in many of his cases. This idea of a government body setting up an "independent" corporation to do what government cannot legally do is not a new one. Back in 1988, the Greenville Hospital System set up a similar outside corporation to fund their own construction projects. That same year, the state Supreme Court ruled that the corporation was not the alter ego of the hospital. The school district has said they relied on this court decision when they set up BEST. Clearly these entities are creatures of the agency that created them, but the courts have often smiled on what can only be described as the legal fiction that they are independent.

Why is this question of whether the outside corporation is an alter ego of the government body important? Besides the debt limit, when the government spends money, it must do so under the guidelines imposed by state procurement laws that mandate competitive bidding and the posting of performance bonds. In addition, government actions are subject to public disclosure under the Freedom of Information Act (FOIA). That which is never disclosed does not have to be explained, Sloan argues that public business conducted in secret violates both the spirit and the letter of the law.

He used this principle to challenge not only the school board, but also the Greenville County Area Development

Corporation (GADC), set up by county council when they pulled the plug on the Greenville Chamber of Commerce's economic development section, and also sued the agencies created around the formerly sunken Confederate submarine Hunley. Sloan sued to enforce procurement law in numerous Greenville County paving contracts, library

construction, renovation of the forensic laboratory, a work detention center and the Governor's School for the Arts. Earlier, he had targeted a slush fund that gave council members money that was used in ways Sloan felt were questionable. New rules were imposed in the wake of that lawsuit that regulated how the funds could be spent. Sloan doesn't always win, but often a defeat at the local level is reversed in the appellate courts. There is a string of checks from various government agencies hanging on his office wall in testament to these legal victories.

Ned Sloan didn't just wake up one day and decide to go after government bureaucrats. A protracted struggle some years ago with state environmental regulators left a bitter taste in his mouth. His ownership of the Inman Quarry off I-26 triggered a demand from DHEC to conduct a massive excavation on his land. "They claimed I had barrels of Agent Orange buried there," says Sloan, who

successfully resisted what he saw as unwarranted government attempts to impose their will on him. Somehow, through this encounter a seed was planted and city, county and state governments have lived to rue the day when his passions were aroused.

These battles have been played out mostly in courtrooms, accompanied by newspaper headlines with breathless radio and television stories that have made Sloan a figure of no small controversy. Lost amid the hoopla is any sense of just who Ned Sloan really is and what motivates his solo quest. Is he a social reformer, a Don Quixote figure tilting at government windmills, or just some cranky old coot laying down in the path of progress? The answers to this question is complicated by the fact that despite the high-profile nature of the lawsuits he files, Sloan is a private, almost reclusive figure who eschews almost all media requests for interviews.

"I generally decline interviews with television and radio people because I think their product is fifteen second [sound bite], and the things I have to say can't be handled that way," he says.

Recently, *Creative Loafing* sat down with Ned Sloan in his cluttered Eastside office in a search for what Paul Harvey calls "the rest of the story."

Mr. Sloan, what is the thinking behind these lawsuits you file?

My primary interest is government. There is a state procurement law that municipal and school districts have to comply with to one extent or another. The application of it is very complex, and these alter ego entities such as BEST and the Greenville Public Facilities Corporation are all guised as non-profit corporations. Ordinarily they are not subject to FOIA or procurement law. One of my goals is to get courts to declare they are subject to procurement law.

Based on the theory that they are in fact the government, not some independent do-gooders?

They are totally dominated by government and have no role other than to satisfy government. It's a circumvention of those laws that let's government do things government could not do under the law. The whole area, to my thinking, is too complex to be covered by newspapers. Somebody should write a book about it, but I think it's too complex to be covered by a reasonable length newspaper article. The public will never understand it even if it's well explained, and the general public is not interested enough to look into it.

What about your philosophy of government? Do you believe the government governs best that governs least?

Yes.

Are you a Libertarian?

I have no Libertarian credentials. I am somewhere between a Libertarian and a Republican, I guess.

How do your friends in the Republican party react to you? I think a lot of these officeholders you are going after are Republicans.

I don't know that there is a Republican Party that is identifiable here. In Greenville County, the party apparatus is dominated by the Bob Jones crowd and has been for years. I don't see any signs of that changing. Most Republican officeholders are Rhinos and have switched parties purely as a device to promote their reelection.

That's what they call a Democrat who turns Republican, a Rhino?

Republican In Name Only.

What do you think has been the impact of the Bob Jones crowd on government here?

I think in some ways it's been constructive. Not in all ways. And they've been successful. They deserve it. They put a lot of effort into it.

Are they fiscal conservatives?

Oh, I don't know, I can't tell you that. I'm right across the street from them. I don't know how many of them think for themselves, and how many of them parrot what they are told to say. I think generally they are honest people. I have heard merchants say they like to hire Bob Jones people for employees. They don't steal, they don't drink coffee and they try to do a good day's work.

Your attorney Jim Carpenter says, "Mr. Sloan believes the government is holding the taxpayer's money in trust...."

I'm not even saying that. I'm saying there are laws that these government agencies should comply with, and they're not. What their motives are is beyond my interest. And I'm not a taxpayer fanatic. No new taxes and minimum taxes and all that is not part of my agenda. But Freedom of Information Act and procurement law is part of my agenda. My interest in procurement law is not necessarily to save the public money. The law is on the books, and it ought to be enforced. A lot of it is bad law. Bad law ought to be enforced. What better way to get a bad law changed than to enforce it?

Have you seen any move to change the law, or do they think it's easier just to do battle with you?

The people involved in government procurement, both on the vendor side and the bureaucrat side, most of them prefer weak law and want it emasculated because it's to most of their advantage to take advantage of the loopholes and screw the public.

Are we talking about corruption here?

Oh, of course.

Have you managed to root out any actual corruption? Is there anybody sitting up in prison?

I haven't tried. That's for the solicitor. He should be doing what I'm doing. I don't doubt there are scandals out there, but they haven't surfaced. But I think South Carolina is generally cleaner than North Carolina or Georgia or Alabama, but it's cyclical. A hundred year ago, it was one situation. Then fifty years ago it was another situation. Then ten years ago it was another situation.

Let me ask you about some lawsuits you filed concerning road paving contracts in Greenville County. Your attorney told me that in one suit, the RFP (request for proposal) said the evaluation would be based on nine criteria, but then they actually used 25 criteria to award the contract. What do you think when you see something like that?

I think it's a violation of the law.

What's their excuse?

I don't think they ever really offered an excuse. They just mumbled, and said, "Oh, it's equivalent to the same thing. All these criteria are not intended to be discrete and precise. It's generalities." And the 25 criteria in general satisfied the nine or 13 criteria they were supposed to use. They overlapped and "Your Honor, there's just nothing to it."

Is that the arrogance of power or is it too complicated or what?

Part of it is that county bureaucrats don't understand the law they're working with, and their own lawyers mislead them and fail to educate them. They are accustomed to doing anything they want to, thinking nobody will blow the whistle on them. And even when I blow the whistle on them, they keep repeating the same errors.

In another road paving lawsuit filed against Greenville County, you said they had failed to get a sufficient performance bond.

Well, the law is very precise about performance bonds and payment bonds

for public works construction. In more than two instances, Greenville County has ignored that and failed to comply with the law.

What's their motivation? Are these contracts left to the discretion of the people down there?

Yes, generally. Their motive is that the contractors tell them, "If you don't make me furnish the bonds required, my premium will be less and it will save me money. Be a good old boy and let me not buy the required bond." A more flagrant case of that is the DOT (South Carolina Department of Transportation) let them procure a \$200 million job in Horry County and got no bonds at all.

Is this dereliction of duty or is there corruption here? What's behind this?

I think it's contractors persuading the bureaucrats that they don't have to comply with the law, that they just need to be reasonable and do it our way.

When you were a paving contractor, did you have much success with the good old boy method?

I never did try. I didn't think it was worth the trouble. I haven't heard of anybody else doing it successfully, or I probably would have tried it.

A few years ago, you went after what was called a slush fund set up for members of Greenville County Council. It was really a discretionary fund for council members, was it not?

Yes, but the discretion is limited to certain things. It still exists, but as far as I know they have stopped using it unlawfully. Before I came along, they were spending it outside those certain things. I don't remember the rule, but generally it was limited to infrastructure, meaning streets, drainage, permanent public works. They were using it to make cash contributions to neighborhood associations... it was really street money. Each member of council had \$12,000 a year to pass as he saw fit. They would use it for street money, to help them get reelected. I can't explain it. They are totally illogical.

So if some neighborhood association is backing Councilman So-and-so, they might get some money?

Sugar Creek, that big subdivision out here? They wanted a neighborhood private policeman, and they asked county council to give them money [for a car] for the private guard to ride around in. The check was never cut, but that was the kind of thing they did with that slush fund.

You also went after the Friends of the Hunley submarine. I thought it was a little unseemly that they would call a press conference every time they found a button, but you've got a lawsuit against them down in Richland County that says they should be subject to the Freedom of Information Act and state procurement law.

The Friends of the Hunley has a liability of \$2 million that they borrowed from some bank or banks. They have no collateral. I am amazed that any bank would loan \$2 million to an outfit that has no collateral.

Well, I guess they have the Hunley, don't they?

No, because the Hunley does not belong to the Friends of the Hunley. It belongs to the Hunley Commission. But there is some kind of incestuous relationship between the Hunley Commission, which is a state agency that keeps no books, but millions of dollars have passed through their hands and the Friends of the Hunley which is a non-profit corporation. I think Friends is an alter ego of the Commission, and that is what the suit is about.

That lawsuit is in the discovery stage. Do you expect information to come out about just what that relationship is?

Yes, but it won't come out until a lot of time passes. I am not opposed to the work the Hunley Commission is doing, but I'm curious about things the Freedom of Information Act would disclose. The Comptroller General is aware that the Hunley Commission keeps no books. Therefore, it can have no audit. And as far as I know, he's doing nothing about it.

Isn't state Sen. Glenn McConnell part of that whole effort? Is he the point man there?

He is the godfather of both the Hunley Commission and the Friends of the Hunley, and there is little doubt he uses his political influence to accomplish whatever he wants to accomplish. [At that point, Sloan lays a thick document down on the desk. It is the most recently published financial audit of South Carolina government issued by Comptroller General James A. Lander.]

Lander is a political crony of McConnell, and he publishes an elaborate report every year. That is supposed to be a comprehensive report of the financial affairs of the state. Millions of dollars of state money has gone into the Hunley project, and the report is silent about it.

The Hunley Commission does not exist in this comprehensive annual report?

Not that I can find. The Department of Defense has given them several million dollars, and there is a state appropriation of several millions dollars. Then there are donations from other sources, and there is other kinds of support. All of their security is provided by the Capitol Police, and the cost of that protection is not in any of these audit reports. A lot of other state employees are involved, but they are paid by these other agencies, not by Friends. Friends [of the Hunley] has no payroll. They spend millions of dollars, and there is nothing in the audit report about workman comp insurance or social security insurance or any kind of payroll tax. I think truthfully they have no employees, but they get a lot of services somehow or another. But until the court says they are subject to the Freedom of Information Act, I won't know.

Without talking about the merits of the school lawsuit specifically, tell me something about your philosophy of education. You're not one of these people who don't support universal public education, that believe once your kids are out of school you shouldn't have to pay school taxes. You don't believe that, do you?

No, and people who say that, I don't understand them. I don't take them seriously. I don't think they know what they are talking about. The analogy they like to draw is, "I don't have a car. I don't buy gasoline. I'm not helping to fund the public road system." They want to apply that to public education. But I have run into very few like that. Most of the ones I have seen are just knee-jerk, no tax increase for any reason.

Again, not talking specifically about your lawsuit, how can we get something going on education here? We've got 60,000 kids attending classes in shacks in this district right now. Is that okay?

I don't think it's a Greenville County problem exclusively or a South Carolina problem. It's a nationwide problem that public primary and secondary education has all gone downhill and the reasons are not going away. I think the ultimate solution is what has been labeled "school choice," which covers a lot of ground. It covers so-called vouchers, which nobody understands. But the ultimate solution, I think, is a proliferation of private schools. Not eliminating public schools, but having a choice in existence to provide competition for all of them.

But you're not trying to bring that about with your lawsuit. Do you think the idea of universal public education is in trouble?

No, not at all. There's no doubt that it is good basic public policy. Effectively, there were no public schools in this state until after 1900. Everybody talks about the great tradition of public education, but until after the twenties, there wasn't any real public education. Each town maybe had one high school and three grammar schools.

Do you think this history is one of the reasons we lag behind other states?

No, I think the problem involves constituencies that are interested in the welfare of the teachers more than the educational product.

You're not giving me the old teachers union line again, are you?

Yes. I think public schools in most places are run for the benefit of the staff, and the employees and not for the benefit of the students. And that's more true up North than it is here. You hear people scream, "Raise the teachers' pay. They are not being paid enough." But none of them know how much money the teachers are making or what the averages are. They just beat the drum to raise the teacher's pay because everybody has an old aunt or a sister or a sister-in-law who is a public school teacher and it's a very popular thing to be a booster for raising teachers' pay.

I don't know if they're overpaid or not. I know it's impossible to fire an incompetent one — and there are some incompetent ones. You get teachers off in a corner by themselves and they can tell you all kinds of war stories about their colleagues who are incompetent and read the newspaper in class and put a guard at the door to blow the whistle if the principal is coming, and all that kind of stuff. This is perhaps true, and it is a symptom of a problem. And that kind of thing generally does not happen in private schools, at least not to the extent that it does in public schools.

Mr. Sloan, some would say it's people like you that are overloading the court system with all this litigation.

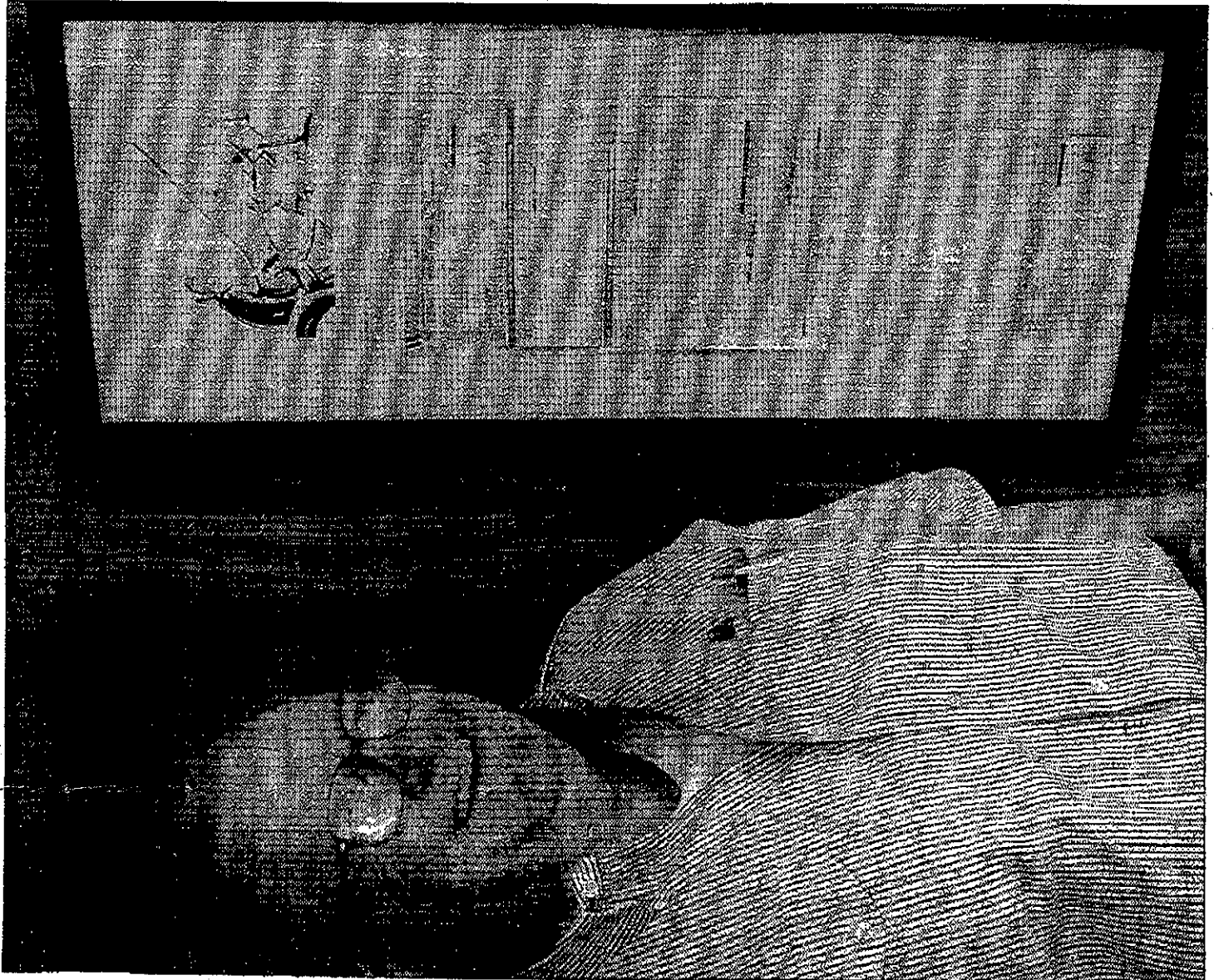
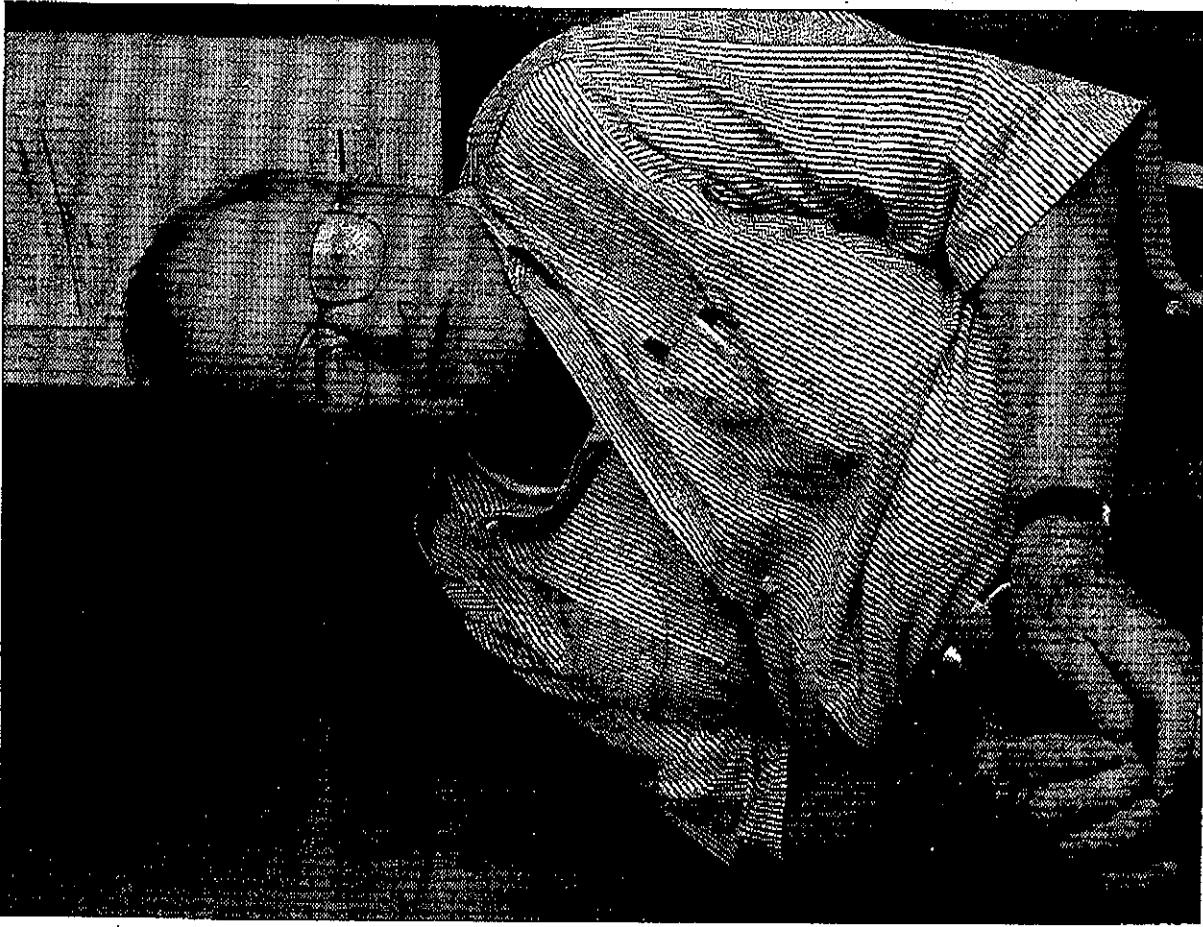
I am not ashamed of that. That's what court are for — to settle disputes and enforce the law.

You don't think you are seeing dispute where none may exist?

I created the disputes — deliberately. I'm trying to make government obey the law. You would think they would be embarrassed to be writing checks, but I don't see any signs of it. You would think they wouldn't repeat their same errors.

Tell me about your personal life. What are hobbies? What do you do for fun?

Sue the county.



CHECKMATE: Ned Sloan has sued Greenville County and the state of South Carolina on numerous occasions for improperly spending taxpayers' money, and he has the checks to prove his victories.