Two Recent SC Supreme Court Decisions and Their Impact on Counties
Course #: 218175ADO
Thursday, July 9, 2021
Agenda

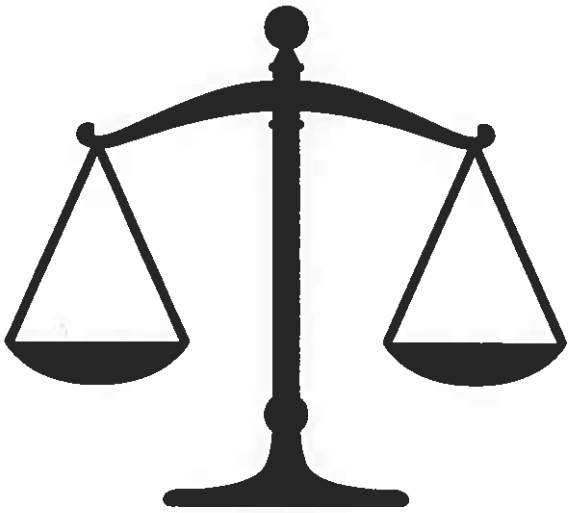
1:55 Welcome

2:00 **Mercury Funding , LLC v. Kimberly Chesney**
James Mikell "Mike" Burns v. Greenville County
Joshua C. Rhodes, Deputy Executive Director and General Counsel
South Carolina Association of Counties
John K. DeLoache, Senior Staff Attorney
South Carolina Association of Counties

3:00 Adjourn

Two Recent S.C. Supreme Court Decisions and Their Impact on Counties

Joshua C. Rhodes and
John K. DeLoache



SOUTH CAROLINA
ASSOCIATION OF COUNTIES

Thursday, July 9, 2021

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Mercury Funding, LLC, Petitioner,

v.

Kimberly Chesney, in her official capacity as Tax Collector of Beaufort County, Respondent,

And Jason P. Phillips, in his official capacity as the Anderson County Treasurer and Delinquent Tax Collector; Jill Catoe, in her official capacity as Kershaw County Treasurer and Delinquent Tax Collector; David A. Adams, in his official capacity as Richland County Treasurer and Delinquent Tax Collector; and Jennifer Page, in her official capacity as Lancaster County Delinquent Tax Collector, Intervenors-Respondents.

Appellate Case No. 2020-001572

ORIGINAL JURISDICTION

Opinion No. 28040
Heard May 6, 2021 – Filed June 30, 2021

DECLARATORY JUDGMENT ISSUED

Steve A. Matthews, A. Parker Barnes III, Costa M. Pleicones, Haynsworth Sinkler Boyd, PA, of Columbia; Sarah P. Spruill, Haynsworth Sinkler Boyd, PA, of Greenville, all for Petitioner.

Mary Bass Lohr, Howell Gibson & Hughes, PA, of Beaufort, for Respondent.

Jonathan M. Robinson, Shanon N. Peake, and Austin T. Reed, Smith Robinson Holler DuBose Morgan, LLC, of Columbia; G. Murrell Smith Jr., Smith Robinson Holler DuBose Morgan, LLC, of Sumter, all for Intervenors-Respondents.

PER CURIAM: We accepted this petition in our original jurisdiction to determine whether Act 174 of 2020 violates the constitutional requirement that "Every Act . . . shall relate to but one subject . . . ." S.C. Const. art. III, § 17. We hold Act 174 is unconstitutional.

The South Carolina House of Representatives adopted House Bill 3755 on March 19, 2019, and sent it to the South Carolina Senate. The Senate amended the bill on second reading, but then deleted the amendments on third reading. The Senate adopted the bill on September 15, 2020, and returned it to the House of Representatives. At that time, the bill comprised two sections relating exclusively to the law of automobile insurance. On September 22, 2020, the House of Representatives amended the bill by adding Section 3, which provided "if real property was sold at a delinquent tax sale in 2019 and the twelve-month redemption period has not expired . . . , then the redemption period for the real property is extended for twelve additional months." Act No. 174, 2020 S.C. Acts 1422, 1423-24; *see* S.C. Code Ann. § 12-51-90 (2014) ("The defaulting taxpayer . . . may within twelve months from the date of the delinquent tax sale redeem each item of real estate . . . ."). Section 3 also included other details related to the implementation of the extension. The Senate adopted the amended bill on September 23, 2020, and the Governor signed it as Act 174 on September 30, 2020.

Petitioner filed this action in our original jurisdiction on December 1, 2020, asking that this Court "[g]rant the relief requested in the Complaint, which is to declare that Act 174 with Section 3 included violates S.C. Const. art. III, § 17's 'one subject rule' and that either . . . Section 3 or all of Act 174 is void." Neither Respondent nor Intervenors-Respondents take any position as to the constitutionality of Act 174.

Both the original petition and the Intervenors-Respondents' petition to intervene were served on the Attorney General of South Carolina as required by Rule 24(c) of the South Carolina Rules of Civil Procedure. *See also* S.C. Code Ann. § 1-7-40 (2005) (providing the Attorney General "shall appear for the State in the Supreme Court . . . in the trial and argument of all causes . . . in which the State is a party or interested"). The Attorney General did not ask to intervene. After oral argument, at the request of the Justices, the Clerk of this Court offered the Attorney General the opportunity to file a brief addressing the merits of the constitutional challenge. The Attorney General declined in writing. No person on behalf of the State appeared in favor of the constitutionality of Act 174.

We find Act 174 relates to two subjects: (1) automobile insurance and (2) the redemption period to follow a tax sale of real property. Therefore, Act 174 is unconstitutional.

The parties requested we consider other issues related to the question for which we accepted original jurisdiction. We decline to do so because we find the other issues should be vetted initially by a trial court. It appears the parties have resolved most of these other issues, but we are concerned those issues might affect the rights of parties not before the Court at this time. Accordingly, we respectfully decline to address any issue other than the constitutionality of Act 174.

DECLARATORY JUDGMENT ISSUED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

James Mikell "Mike" Burns, Garry R. Smith and Dwight A. Loftis, Appellants,

v.

Greenville County Council and Greenville County, Respondents.

Appellate Case No. 2018-002255

Appeal from Greenville County
Charles B. Simmons Jr., Circuit Court Judge

Opinion No. 28041
Heard August 20, 2020 – Filed June 30, 2021

REVERSED

Robert Clyde Childs III, Childs Law Firm; J. Falkner Wilkes, both of Greenville for Appellants.

Sarah P. Spruill and Boyd Benjamin Nicholson Jr., Haynsworth Sinkler Boyd, PA, both of Greenville for Respondents.

JUSTICE FEW: Greenville County Council implemented what it called a "road maintenance fee" to raise funds for road maintenance and a "telecommunications fee" to upgrade public safety telecommunication services. The plaintiffs—three members of the South Carolina General Assembly—claim the two charges are taxes

and, therefore, violate section 6-1-310 of the South Carolina Code (2004). We agree. We declare the road maintenance and telecommunications taxes are invalid under South Carolina law.

I. Facts and Procedural History

Greenville County Council enacted the two ordinances at issue in 2017. Ordinance 4906 was enacted "to change the road maintenance fee to . . . $25." Ordinance 4906 amended Ordinance 2474—enacted in 1993—which required the owner of every vehicle registered in Greenville County[1] to pay $15 a year to the Greenville County Tax Collector. County Council stated in Ordinance 4906 it increased the charge because "the current fee is insufficient to keep up with increased costs of maintenance."

Ordinance 4907 was enacted "for . . . the lease, purchase, . . . or maintenance of County-wide public safety telecommunications network infrastructure and network components" and related costs. This ordinance requires the owner of every parcel of real property in Greenville County to pay $14.95 a year for ten years to the Greenville County Tax Collector. County Council stated in Ordinance 4907 it imposed the charge to "mov[e] all County-wide public safety telecommunications to a single network platform" to "promote the safety of life and property in Greenville County by providing much needed modernization of current public safety telecommunications infrastructure."

The plaintiffs filed this lawsuit to challenge the validity of the ordinances on several grounds, including their claim the ordinances impose a tax and not a permissible fee. The parties consented to an order referring the case to the master in equity for trial pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure. The master found the ordinances did not violate the law. Because one of the grounds on which the plaintiffs brought the challenge was the Equal Protection Clause, they filed their notice of appeal with this Court pursuant to Rule 203(d)(1)(A)(ii) of the South Carolina Appellate Court Rules and subsection 14-8-200(b)(3) of the South Carolina

[1] Section 56-3-110 of the South Carolina Code (2018) requires every motor vehicle in the State to be registered and licensed, and subsection 56-3-195(A) of the South Carolina Code (2018) assigns the registration process to each county for vehicles owned by residents of the county.

Code (2017). Though we find the Equal Protection Clause question is not a significant issue, we elect not to transfer the case to the court of appeals. *See* Rule 203(d)(1)(A)(ii), SCACR (providing "where the Supreme Court finds that the constitutional issue raised is not a significant one, the Supreme Court may transfer the case"); § 14-8-200(b)(3) (same).

II. Analysis

South Carolina law permits counties "to . . . levy ad valorem[2] property taxes and uniform service charges." S.C. Code Ann. § 4-9-30(5)(a) (2021); *see also* S.C. Code Ann. § 6-1-330(A) (2004) ("A local governing body . . . is authorized to charge and collect a service or user fee."); S.C. Code Ann. § 6-1-300(6) (2004) ("'Service or user fee' also includes 'uniform service charges'."). Except for value-based property taxes, a county "may not impose a new tax . . . unless specifically authorized by the General Assembly." § 6-1-310.

Neither ordinance imposes a value-based property tax, and the General Assembly has not authorized Greenville County to impose any other new taxes. Therefore, unless the charges in the ordinances are "uniform service charges" under subsection 4-9-30(5)(a) or a "service or user fee" under subsection 6-1-330(A), the charges imposed pursuant to the ordinances are invalid under State law.

In 1992, this Court addressed the question of what is a "uniform service charge authorized under [section] 4-9-30," and in particular, whether a "road maintenance fee" imposed by Horry County was "a service charge or a tax." *Brown v. Cty. of Horry*, 308 S.C. 180, 181, 182, 417 S.E.2d 565, 566 (1992). We later explained, summarizing our extensive analysis in *Brown*,

> Under *Brown,* a fee is valid as a uniform service charge if (1) the revenue generated is used to the benefit of the payers, even if the general public also benefits (2) the revenue generated is used only for the specific improvement contemplated (3) the revenue generated by

[2] "Ad valorem" is a Latin term sometimes used to mean "value-based." *See Ad Valorem*, BLACK'S LAW DICTIONARY (11th ed. 2019) (stating "ad valorem" means "proportional to the value of the thing taxed").

> the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all the payers.

C.R. Campbell Const. Co., Inc. v. City of Charleston, 325 S.C. 235, 237, 481 S.E.2d 437, 438 (1997) (citing *Brown*, 308 S.C. at 184-86, 417 S.E.2d at 567-68).

In 1997, the General Assembly enacted subsection 6-1-300(6), which defines "service or user fee"—including "uniform service charges"—as "a charge required to be paid in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee." After 1997, therefore, when a local government imposes a charge it contends is not a tax, the charge arguably must meet the requirements we set forth in *Brown* but certainly must meet the requirements the General Assembly set forth in subsection 6-1-300(6).

Our analysis of the two ordinances at issue in this case begins and ends with subsection 6-1-300(6). In its brief, Greenville County argues Ordinance 4906 meets the subsection 6-1-300(6) requirement of a "government service or program . . . that benefits the payer in some manner different from the members of the general public" because "the funds collected are 'specifically allocated for road maintenance,'" as this Court approved in *Brown*. The argument conveniently ignores the fact subsection 6-1-300(6) was enacted in 1997, five years after *Brown* and four years after Greenville County enacted its original road maintenance fee in Ordinance 2474. The fact the funds are allocated for road maintenance says nothing of any benefit peculiar to the payer of the fee. In fact, every driver on any road in Greenville County—whether their vehicles are registered in Greenville County, Spartanburg County, or in some other state—benefits from the fact the funds are "specifically allocated for road maintenance."

At oral argument, Greenville County made the additional argument Ordinance 4906 satisfies subsection 6-1-300(6) because the property owners who pay the charge are the drivers who "most use the roads" maintained by the funds collected. We do not agree this satisfies subsection 6-1-300(6). While Greenville County residents who use the roads every day may derive more benefit from having the roads maintained in good condition, it is still the same benefit every driver gets, no matter where their car is registered.

Greenville County argues Ordinance 4907 satisfies subsection 6-1-300(6) because the improved telecommunications system will "enhance[] real property values." We find this argument fails. When County Council enacted Ordinance 4907, it did not address the factual question of whether an improved telecommunications system will enhance property values, and Greenville County presented only speculative evidence of such an enhancement at trial. The County Administrator testified the new system "could . . . enhance property values for individual property owners." One County Council member testified his own property "stands to benefit from better coordinated, faster, first responder services." Plaintiff Mike Burns testified on cross-examination the new telecommunication system "would benefit [him] as a property owner," but he said nothing about any benefit to his property value.

The plaintiffs argue any claim of an increase in property value from the new telecommunication system is "too tenuous" to satisfy subsection 6-1-300(6). Greenville County argues this Court already approved enhanced property value as a satisfactory benefit in *C.R. Campbell Construction*. *See* 325 S.C. at 237, 481 S.E.2d at 438 (finding "the payers benefit because their real property values are enhanced"). We find *C.R. Campbell Construction* is not helpful to Greenville County. In that case, "City Council made a specific finding that parks and recreational facilities add to the value of real estate within the City." 325 S.C. at 236, 481 S.E.2d at 437. We stated, "This finding is supported by evidence in the record that property values are in fact enhanced by such amenities." *Id.* In this case, neither County Council when it adopted the ordinance nor Greenville County when it tried this case put any effort into demonstrating the new telecommunications system would meaningfully enhance property values.

Taxpayers should hope every action taken by local government is calculated to not damage property values. What governing body would attempt—and what electorate would accept—an act that is calculated to damage property value? Every action of local government, therefore, in at least some minor way, should be calculated to enhance property value. In some instances, as in *C.R. Campbell Construction*, the enhancement of property value may be significant. If the governing body actually addresses the effect on property value and deems an anticipated enhancement significant enough to differentiate the benefit to those paying the fee from the benefit everyone receives, then it is likely the courts will uphold the decision, as we did in *C.R. Campbell Construction*. In the first instance, however, the question whether an ordinance actually enhances property values must be addressed by the local governing body. In Ordinance 4907, County Council described the aged equipment

previously used in multiple networks, and it stated the new single network would improve the delivery of emergency and public safety communications in multiple ways. But the ordinance says nothing of whether property owners would see any benefits from the new network. Even if property owners will see benefits, this Court has no idea whether the impact is significant enough to affect property value. We hold that simply declaring a fee will enhance property value does not make the property owner paying the fee the beneficiary of some unique benefit, as required by subsection 6-1-300(6).

Therefore, as to both Ordinance 4906 and Ordinance 4907, we find Greenville County failed to satisfy the subsection 6-1-300(6) requirement that the "government service or program . . . benefits the payer in some manner different from the members of the general public."[3]

III. Conclusion

Greenville County Ordinances 4906 and 4907 purport to impose a "uniform service charge" on those who are required to pay it. We find the charges are taxes. State law prohibits local government from imposing taxes unless they are value-based property taxes or are specifically authorized by the General Assembly. Neither is true for these two ordinances. Therefore, the ordinances are invalid.

REVERSED.

BEATTY, C.J., KITTREDGE, HEARN and JAMES, JJ., concur. KITTREDGE, J., concurring in a separate opinion in which BEATTY, C.J., joins.

[3] The plaintiffs raised other issues we find it unnecessary to address. *See Whiteside v. Cherokee Cty. Sch. Dist. No. One*, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993) ("In view of our disposition of this issue, we need not address appellants' remaining exceptions." (citations omitted)).

JUSTICE KITTREDGE: I concur with the majority opinion. I write separately to offer two points. First, the post-*Brown*[4] enactment of section 6-1-300(6) of the South Carolina Code (2004) is the standard set by out legislature for determining what constitutes a "service or user fee." In my judgment, the *Brown* factors may inform the analysis, particularly factors (3) and (4), but section 6-1-300(6) is controlling. Second, this Court in recent years has received an increasing number of challenges to purported "service or user fees." Local governments, for obvious reasons, want to avoid calling a tax a tax. I am hopeful that today's decision will deter the politically expedient penchant for imposing taxes disguised as "service or user fees." I believe today's decision sends a clear message that the courts will not uphold taxes masquerading as "service or user fees." Going forward, courts will carefully scrutinize so-called "service or user fees" to ensure compliance with section 6-1-300(6).

BEATTY, C.J., concurs.

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[4] *Brown v. Cty. of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992).

ARTICLE 3

Authority of Local Governments to Assess Taxes and Fees

SECTION 6-1-300. Definitions.

As used in the article:

(1) "Consumer price index" means the consumer price index for all-urban consumers published by the U.S. Department of Labor. In the event of a revision of the consumer price index, the index that is most consistent with the consumer price index for all-urban consumers as calculated in 1996 must be used.

(2) "Intergovernmental transfer of funding responsibility" means an act, resolution, court order, administrative order, or other action by a higher level of government that requires a lower level of government to use its own funds, personnel, facilities, or equipment.

(3) "Local governing body" means the governing body of a county, municipality, or special purpose district. As used in Section 6-1-320 only, local governing body also refers to the body authorized by law to levy school taxes.

(4) "New tax" is a tax that the local governing body had not enacted as of December 31, 1996.

(5) "Positive majority" means a vote for adoption by the majority of the members of the entire governing body, whether present or not. However, if there is a vacancy in the membership of the governing body, a positive majority vote of the entire governing body as constituted on the date of the final vote on the imposition is required.

(6) "Service or user fee" means a charge required to be paid in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee. "Service or user fee" also includes "uniform service charges".

(7) "Specifically authorized by the General Assembly" means an express grant of power:

(a) in a prior act;

(b) by this act; or

(c) in a future act.

HISTORY: 1997 Act No. 138, Section 7.

SECTION 6-1-330. Local fee imposition limitations.

(A) A local governing body, by ordinance approved by a positive majority, is authorized to charge and collect a service or user fee. A local governing body must provide public notice of any new service or user fee being considered and the governing body is required to hold a public hearing on any proposed new service or user fee prior to final adoption of any new service or user fee. Public comment must be received by the governing body prior to the final reading of the ordinance to adopt a new service or user fee. A fee adopted or imposed by a local governing body prior to December 31, 1996, remains in force and effect until repealed by the enacting local governing body, notwithstanding the provisions of this section.

(B) The revenue derived from a service or user fee imposed to finance the provision of public services must be used to pay costs related to the provision of the service or program for which the fee was paid. If the revenue generated by a fee is five percent or more of the imposing entity's prior fiscal year's total budget, the proceeds of the fee must be kept in a separate and segregated fund from the general fund of the imposing governmental entity.

(C) If a governmental entity proposes to adopt a service or user fee to fund a service that was previously funded by property tax revenue, the notice required pursuant to Section 6-1-80 must include that fact in the text of the published notice.

(D) The governing body of a county may not impose a fee on agricultural lands, forestlands, or undeveloped lands for a stormwater, sediment, or erosion control program unless Chapter 14, Title 48 allows for the imposition of this fee on these lands; provided, that any county which imposes such a fee on these lands on the effective date of this subsection may continue to impose that fee under its same terms, conditions, and amounts.

HISTORY: 1997 Act No. 138, Section 7; 2009 Act No. 75, Section 2, eff June 16, 2009.

Effect of Amendment

The 2009 amendment added subsection (D) relating to imposition of stormwater, sediment, or erosion control fees on agricultural, forest, or undeveloped lands.

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Two Recent SC Supreme Court Decisions and Their Impact on Counties

		Excellent		Average		Poor
Mercury Funding, LLC v. Kimberly Chesney **James Mikell "Mike" Burns v. Greenville County**						
Joshua C. Rhodes	Materials	5	4	3	2	1
	Presentation	5	4	3	2	1
John K. DeLoache	Materials	5	4	3	2	1
	Presentation	5	4	3	2	1

Comments: _____

_____

What aspects of the program <u>should be repeated?</u>

_____

_____

What aspects of the program <u>should NOT be repeated?</u>

_____

_____

Please give us your thoughts on <u>topics</u> for the future programs.

_____

_____

Please give us your thoughts on <u>speakers</u> for future programs.

_____

_____

Other Comments:

Attendee Name: _____

Attendee Bar #: _____

CLE Course #: _____

CLE Code #: _____

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