2018 CASE LAW AFFECTING LOCAL GOVERNMENT
FROM NOVEMBER 15, 2017 TO OCTOBER 24, 2018

SOUTH CAROLINA SUPREME COURT AND COURT OF APPEALS CASES

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2018 CASE LAW AFFECTING LOCAL GOVERNMENT
CASES IN THE SOUTH CAROLINA SUPREME COURT AND COURT OF APPEALS
FROM NOVEMBER 15, 2017 TO OCTOBER 24, 2018

Advance Sheet No. 9 - February 28, 2018
Donevant v. Town of Surfside Beach, 422 S.C. 264, 811 S.E.2d 744 (2018).

Donevant served as the Town of Surfside Beach's ("Town") building official. State law requires all local jurisdictions to enforce state building codes while state regulation provides that the local building official shall enforce the building codes. When Donevant discovered unpermitted construction work in violation of the building code, she issued a stop work order. Donevant was fired as a result of the order; the reason for termination was not in dispute. Generally, the at-will employment doctrine allows an employer to fire an employee for any or no reason. However the "public policy exception" provides an at-will employee a wrongful termination action where there is a retaliatory firing of the employee in violation of a clear mandate of public policy. The Court affirmed the Court of appeals' holding that firing a building official for enforcing the building code is a violation of a clear mandate of public policy. Subsection 6-9-5(A) of the code provides "the public policy of South Carolina is to maintain reasonable standards of construction in buildings… consistent with the public health, safety, and welfare of its citizens." Further, the Legislature imposed the legal duty upon Donevant to enforce compliance with the building code.

Advance Sheet No. 10 – March 7, 2018
Richland Cnty. v. S.C. Dept. of Revenue , 422 S.C. 292, 811 S.E.2d 754 (2018).

The County imposed a penny tax pursuant to the Optional Methods for Financing Transportation Facilities Act ("Transportation Act"). The Transportation Act, among other things, requires the penny tax's enacting ordinance to specify the estimated capital cost of the projects to be funded from the tax. Pursuant to its statutory authority, DOR conducted an audit to determine the county's compliance with the Transportation Act which revealed improper expenditures of the penny tax funds. Because the Transportation Act is not clear on what costs are eligible to be used from generated revenue, DOR issued the County guidelines for determining whether costs were eligible under the act. When the County refused to implement these guidelines, DOR withheld the penny tax revenue from the County and the County brought action seeking relief.

The Court agreed with the trial court that because DOR is the agency statutorily tasked with administering the penny tax program, it has standing to assert defenses and counterclaims. Though DOR has broad investigative and enforcement powers and the authority to conduct audits of the tax programs it administers, it must remit revenue generated from the penny tax because this is a ministerial duty imposed on it by law. The Court held that while DOR may not

withhold the penny tax revenue from the county, DOR's request for an injunction against the county prohibiting further penny tax expenditures until the County adopts DOR's guidelines is proper.

Advance Sheet No. 10 – March 7, 2018
Cnty. of Florence v. West Florence Fire Dist., 422 S.C. 316, 811 S.E.2d 770 (2018)

Act No. 183 of 2014 created the West Florence Fire District ("District") which encompassed part of the County – mainly West Florence – and a negligible portion of Darlington County. The County challenged the validity of the District, arguing that it conflicts with the state's constitutional provisions concerning special legislation and home rule and *Wagener v. Smith*. The circuit court held in favor of the County on all three grounds and the District appealed. In a unanimous decision, the S.C. Supreme Court held the Act violates home rule principles of the S.C. Const. art. VIII § 7, which prohibits legislation that only affects a single county. Two factors must be considered to determine whether the Act violates home rule: the District's 1) physical boundaries *and* 2) function. A special purpose district limited to one county violates home rule, but one that spans into multiple counties is permissible. It found that the District "is not a truly a multi-county district. To hold that three parcels [in Darlington] – totaling one-tenth of a square mile – is sufficient to remove the legislation from the purview of § 7 would eviscerate home rule." For the second factor, the Court found that the function of the fire services is a local one and not a state interest, thus, the County is the proper body to address the matter.

Advance Sheet No. 13 – March 28, 2018
Boehm v. Town of Sullivan's Island Board of Zoning Appeals , 423 S.C. 169, 813 S.E.2d 874 (Ct. App. 2018).

Please refer to the handout for the Eminent Domain, Land Use, and Zoning update for a summary of this case.

Advance Sheet No. 13 – March 28, 2018
Hock RH, LLC v. S.C. Dept. of Revenue , 423 S.C. 208, 813 S.E.2d 540 (Ct. App. 2018) .

York Preparatory Academy ("YPA"), a charter school, leased property from Hock RH, LLC. In 2013, YPA sought a property tax exemption for its campus from the Department of Revenue ("DOR") pursuant to S.C. Code § 12-37-220(A)(2). DOR denied the application on the grounds that the exemption for charter schools did not apply to leased property. In 2014, the General Assembly passed Act No. 208 to "clarify" that property a charter school leases is exempt from property tax. YPA then filed for a refund of the 2013 taxes that DOR denied. The Administrative Law Court

granted DOR's motion for summary judgement because it found the 2014 amendment for the exemption of leased property was not retroactive. The Court of Appeals reversed finding that the intent of the legislature in enacting the 2014 amendment was to clarify that the exemption for property tax applied to property leased by a charter school. The title of the Act itself indicated the amendment was a clarification of, rather than a change, to the law.

Advance Sheet No. 18 – May 16, 2018
Comm'rs of Public Works of Laurens v. City of Fountain Inn, 423 S.C. 461, 815 S.E.2d 21 (Ct. App. 2018).

Laurens Commission of Public Works (CPW) was established by the City of Laurens to provide utility services, including natural gas. The City of Fountain Inn also provides natural gas. Both entities sell natural gas to customers inside their corporate limits as well as to customers outside those limits. In 1992, the cities agreed to territorial boundaries to prevent multiple gas lines in an area which was depicted by a map. The map, however, was never formally ratified by CPW or the Fountain Inn Council but the boundary lines were observed by both entities for two decades until a boundary dispute arose. The disputed area was outside the corporate limits of both entities. The Court of Appeals affirmed the circuit court's holding that Fountain Inn could not provide gas service in the disputed area unless CPW consented. S.C. Code § 5-7-60 provides that any municipality may provide its services outside its corporate limits *except* within a "designated service area" of another entity. Because CPW had provided gas service to the disputed area prior to Fountain inn, the area is considered a designated service area of CPW, thus, Fountain Inn may only service the area with CPW's permission.

Advance Sheet No. 21 – May 23, 2018
DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce,
423 S.C. 295, 815 S.E.2d 295 (Ct. App. 2018).

Hilton Head, Bluffton, and Beaufort County ("Localities)" utilized the Hilton Head Island-Bluffton Chamber of Commerce (Chamber) to manage the expenditure of their Accommodations Tax ("A-Tax") funds as allowed by the A-Tax statute. Pursuant to the A-Tax statute, the Chamber received these funds and then managed the expenditure of the funds for the advertising and promotion of tourism for the localities. The localities maintained accountability of these funds. The Chamber denied DomainsNewMedia.com, LLC's ("Domains") Freedom of Information Act ("FOIA") request for information related and A-Tax expenditures claiming it was not a "public body" for FOIA purposes. The trial court held that because the Chamber expends public funds, it is a public body and subject to FOIA requirement. Even though the FOIA provides that an organization that is expending public funds is a public body, The S.C.

Supreme Court reversed and held that as a matter of discerning legislative intent, the General Assembly did not intend for the Chamber to be considered a public body for FOIA. The Court relied on the A-Tax statute, which was enacted subsequent to FOIA. The Court found that the A-Tax statute mandates a legislatively sanctioned process of oversight, transparency, and accountability to provide necessary safeguards over the expenditure of the A-Tax funds. The Court found that the General Assembly intended for the accountability and transparency measures created in the A-Tax to govern over the measures found in FOIA, thus, the Chamber is not subject to FOIA.

Advance Sheet No. 22 – May 30, 2018
Gantt v. Selph, 423 S.C. 333, 814 S.E.2d 523 (2018).

Murphy filed to run for a Richland County seat on the school board and the Richland County Election Board accepted and approved her application as a Richland County Resident. After Murphy was elected, a routine screening of voter precinct assignments revealed that Murphy's residence was in fact in Lexington County. Not meeting the residency requirement, the School Board removed from her board seat. In 2016, when Murphy filed to run against Gantt for the School Board seat Murphy previously held, Gantt challenged the Richland Election Board's decision that Murphy was a *voter* in Richland County. The trial court ruled in Gantt's favor and held that Murphy resides in Lexington County and is not qualified for the Richland Board seat. Murphy appealed, claiming the trial court lacked subject matter jurisdiction and erroneously concluded she resided in Lexington. The Court affirmed. While S.C. Code §7-5-230 gives the Richland Election Board authority to be the judge of the legal qualifications to *vote*, the statute, nor any other law, gives the Board the authority to determine the qualifications of a candidate for election to the School Board, the Court found. Except or Richland county's tax map, all county and state maps showed Murphy's residence to be in Lexington. Thus, Murphy is not qualified to be a candidate for the seat on the School Board.

Advance Sheet No. 22 – May 30, 2018
Horton v. Jasper Cnty. School Dist., 423 S.C. 325, 815 S.E.2d 442 (2018).

Horton brought an action against the Jasper County School District after the District failed for over thirteen months to respond to a Freedom of Information Act (FOIA) request by Horton. In the FOIA request, Horton asked for itemized credit card statements for District –issued credit cards, a list of bonus check given by the District, and information regarding the funding sources for those expenses. The trial court found in favor of Horton and awarded attorneys' fees. However, while the trial court made some general findings regarding some, but not all, of the six factors used in exercising its discretion to award reasonable attorneys' fees, the Supreme Court found that the trial court abused its discretion by reducing the rate to $100 per hour without

basing its decision on any evidence and reversed the award to reflect the hourly rates submitted in Horton's attorney affidavit (The lead attorney for Horton submitted an affidavit to the trial court specifying the amount of time that she and her co-counsel worked on the case along with an hourly rate of $250 and $295 respectively) .

Advance Sheet No. 31 – August 1, 2018
Christ Cent. Ministries v. City of Columbia Bd. of Zoning App., 815 S.E.2d 442 (Ct. App. 2018).

Please refer to the handout for the Eminent Domain, Land Use, and Zoning update for a summary of this case.

Advance Sheet No. 31 – August 1, 2018
Bluestein v. Town of Sullivan's Island, 424 S.C. 362 (Ct. App. 2018).

Please refer to the handout for the Eminent Domain, Land Use, and Zoning update for a summary of this case.

Advance Sheet No. 32 – August 8, 2018
S.C. Dept. of Transp. v. Powell, 424 S.C. 206, 818 S.E.2d 433 (Ct. App. 2018).

Please refer to the handout for the Eminent Domain, Land Use, and Zoning update for a summary of this case.

Advance Sheet No. 32 – August 8, 2018
Olds v. City of Goose Creek, 423 S.C. 325, 815 S.E.2d 442 (2018).

Olds was a real estate flipper who did business in the City of Goose Creek ("City"). In 2011, the City discovered what it considered to be a discrepancy in the business license fee amount that Old's had previously paid for the year. Old's paid in protest what the City believed to be the proper amount and appealed the City's calculation. The City business license ordinance ("ordinance") computed the business license fee amount based upon the business' previous year's "gross income." The ordinance provided that gross income is the "*total revenue* of a business, received or accrued . . ." The city argued that gross income would be the total sales price of any property Old sold. However, the ordinance also provided that gross income for the purpose of a business license *had to conform* to the gross income reported to the IRS and

SCDOR. Because for state and federal tax purposes, gross income is “gains derived from dealings in property, Old’s argued that only his net gain on the sale of flipped property was subject to the business license fee. The trial court and court of appeals agreed with the City. However, the S.C. Supreme Court reversed and ruled in favor of Olds. The Court noted that the City attorney had previously admitted the City’s definition was in conformity to federal tax code. The Court found that because the City had narrowed the definition of gross income to that of the federal and state tax code in multiple sections of its ordinance, the City had intended for gross income to mean net gains from property sold.