

## 2018 Local Government Case Law Update

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### Cnty of Florence v. West Florence Fire District

422 S.C. 316, 811 S.E.2d 770 (2018)

- Issue:
  - Does Act 183 creating the West Florence Fire District violate the prohibition in article VIII, § 7 of the S.C. Constitution against special legislation for a single county?



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### Cnty of Florence v. West Florence Fire District

422 S.C. 316, 811 S.E.2d 770 (2018)

- Facts:
  - County consolidated several fire taxing districts into one. Residents in W Florence experienced millage increase.
  - As a result, General Assembly passed Act 183 to create the W Florence Fire District.
    - 99% encompassed Western portion of Florence County
    - 1% encompassed Darlington County
  - Florence County argued Act creating District violated article VIII, § 7 and circuit court agreed.



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### Cnty of Florence v. West Florence Fire District

422 S.C. 316, 811 S.E.2d 770 (2018)

- Conclusion:
  - S.C. Supreme Court affirmed.
  - Art. VIII, § 7 prohibits special legislation relating to a specific county that involves the powers, duties, and functions set aside for counties.
  - To determine the constitutionality of legislatively created special purpose districts, must consider district’s 1) physical boundaries *and* 2) function.




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### Cnty of Florence v. West Florence Fire District

422 S.C. 316, 811 S.E.2d 770 (2018)

- Conclusion (cont’d):
  - District’s function?
    - Fire services are part of county government’s enumerated powers.
    - “Where the legislation’s function is local and within a county, home rule mandates the county is the property body to address the matter.”
  - District’s physical boundaries?
    - While technically “multi-county” only 1% is in Darlington.
    - “[T]he district is *not truly* a multicounty district. To hold that three parcels—totaling one-tenth of a square mile—is sufficient to remove the legislation from the purview of § 7 would eviscerate home rule.”




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### Cnty of Florence v. West Florence Fire District

422 S.C. 316, 811 S.E.2d 770 (2018)

- Rule clarified:
  - Legislation affecting a special purpose district is unconstitutional if:
    - The function is a local concern, rather than regional or
    - Not “truly multi-county”
      - Apparently more emphasis on boundaries
- Uncertainties:
  - No bright-line rule for what is “truly multi-county”
    - Somewhere between 1% and 40%?
  - Determining if function is state or local concern:
    - Airport district is a state concern
    - Fire service is local




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**Olds V. City of Goose Creek**  
424 S.C. 240, 815 S.E.2d 5 (2018)

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- Issue:
  - What is the definition of “gross income” under the City’s business license ordinance?






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**Olds V. City of Goose Creek**  
424 S.C. 240, 815 S.E.2d 5 (2018)

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- Facts:
  - S.C. law authorizes counties and cities to impose a business license tax calculated on the business’ gross income (“GI”).
    - Because GI is not defined by statute for business license purposes, GI defined by ordinance.
  - Taxpayer is a real estate flipper who reported net gains on application to renew license based on his reading of ordinance’ s definition of GI.
  - City argues GI is total revenue received (total sales price of house) under the ordinance. Lower courts agree.




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**Olds V. City of Goose Creek**  
424 S.C. 240, 815 S.E.2d 5 (2018)

**Language from city ordinance**

City’s Position	Taxpayer’s position
<p><b>GROSS INCOME</b> is The total revenue of a business, received or accrued...</p>	<p><b>GROSS INCOME</b> for business license purposes shall conform to the gross income reported to SCDOR.</p> <p><b>GROSS INCOME</b> for business license purposes may be verified by inspection of returns filed with the IRS and SCDOR.</p>



For income tax purposes, GI is defined as net gain received from real estate sales.




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### Olds V. City of Goose Creek

424 S.C. 240, 815 S.E.2d 5 (2018)

- Conclusion:
  - Court reverses.
  - While city defined gross income as all revenue received (sales price of home), it further narrowly defined the term by referencing income tax code.
  - For purposes of federal and state income tax, GI is the gains derived from the sale of real estate (what goes in your pocket).
  - By including the "conformity language," the city mandated that the taxpayer use his net gains for business license purposes.



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### Olds V. City of Goose Creek

424 S.C. 240, 815 S.E.2d 5 (2018)

- Considerations:
  - If your ordinance includes similar language, consider amending.
  - Possibility of claims for tax refunds.



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### Forfeited Land Comm'n of Bamberg Cnty v. Beard

424 S.C. 137, 817 S.E.2d 801 (Ct. App. 2018)

- Issue:
  - Did the tax office conduct a tax sale in accordance with the statutory requirements?
  - Did the two-year statute of limitations for challenging a tax sale expire?



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### Forfeited Land Comm'n of Bamberg Cnty v. Beard

424 S.C. 137, 817 S.E.2d 801 (Ct. App. 2018)

- Facts:
  - 2007 : County mailed delinquent tax notices to owner that were returned undelivered.
    - Unclear if tax sale notice was posted on property.
  - 2007: Unbeknownst to owner, individual purchased property at tax sale.
  - 2009: Unaware of the sale, owner paid portion of property tax.
  - 2010: Owner learns of tax sale and challenges it.




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### Forfeited Land Comm'n of Bamberg Cnty v. Beard

424 S.C. 137, 817 S.E.2d 801 (Ct. App. 2018)

- Conclusion:
  - County failed to comply with the *strict requirements* of a successful tax sale.
    - Tax collector did mail 2 notices.
    - However, tax collector did not prove that notice of tax levy was posted in a conspicuous place on the property - witness signatures of the posting were not signed.
  - Because notice was not properly posted, the tax sale is void, thus, the two-year statute of limitations for challenging a tax sale is not applicable.




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### Donevant v. Town of Surfside Beach

422 S.C. 264, 811 S.E.2d 744 (2018)

- Issue:
  - Does a building code official have wrongful termination claim when fired for enforcing the building code?
- Facts:
  - Upon returning from sick leave, Donevant discovered an unpermitted construction project and issued a stop work order.
  - As a result, town administrator, fired her for insubordination.
  - Donevant brings suit for wrongful discharge and lower court agrees.
  - Town argues at-will employment doctrine allowed firing.




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### Donevant v. Town of Surfside Beach

422 S.C. 264, 811 S.E.2d 744 (2018)

- Conclusion:
  - Supreme Court affirms.
  - While SC is an at-will employment state, however, the public policy exception provides an at-will employee a “cause of action in tort for wrongful termination where there is a retaliatory termination of the employee in violation of a clear mandate of public policy.”
  - State law requires local governments to enforce the state building code.
    - “Building code official...*shall* enforce compliance with the code.”



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### Donevant v. Town of Surfside Beach

422 S.C. 264, 811 S.E.2d 744 (2018)

- Conclusion (cont'd):
  - Code requires permit for construction.
  - Further, “The public policy of South Carolina is to maintain reasonable standards of construction in buildings and other structures in the State consistent with the public health, safety, and welfare of its citizens”
  - “Firing Donevant for carrying out her mandatory responsibility to enforce the building to enforce the building code violates public policy.”



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