



# 2023 SC Case Law Update

A Relatively Quiet Year

# Freedom Of Information; Executive Sessions

*Nancy Miramonti v. Richland School District 1* - Ct. Appeals January 4, 2023

- School Board voted to go into Executive Session to discuss letter received from a parent.
- Executive Session was not included on the meeting agenda, no detailed reason given for going into Executive Session
- Board voted in Executive Session to allow Chair to respond to the parent



# Court Opinion

- Board violated FOIA when it voted to go into Executive Session without providing a sufficiently detailed reason for the session
- Board violated FOIA prohibition on polling, voting or decision making in Executive Session
  - Absent a vote – the Body can't "commit to a course of action" while in executive session
- Non-FOIA issues
  - Chair can't act unilaterally - Absent constitutional or legislative authority, an individual member of a public body has no authority to act.



# Legislative Acts; Member Discipline; Tort Claims Act Immunity

*Sylvia Lockaby v. City of Simpsonville, SC et. al.*

- Town Mayor and member of council got into heated exchange during a regular council meeting.
- Mayor, as presiding officer ordered the member removed as provided by council rule.
- Member filed various state & federal claims



# Court Opinion

- Removal of a member of the body is a legislative act.
  - Cements for now earlier opinion of the Attorney General
- Legislative Act immunity provided in the SC Tort Claims Act 15-78-70 is extended to the administrative actions of a legislative body when they are in furtherance of the legislative Act



# Zoning; Overlay Zoning Restrictions

## *Ani Creations, et al. v. City of Myrtle Beach SC*

- City of Myrtle Beach, SC imposed an overlay zoning district over a large portion of the traditional business district
- Restricted sales of tobacco and related items, CBD oils, and sexually oriented material deemed hostile to a “family-oriented” atmosphere.
- Provided an amortization timetable to allow sell down of prohibited items
- A group of nine impacted businesses fined for violation of sales prohibition filed suit alleging numerous constitutional allegations.



# Court Opinion

- City was authorized to create the overlay district pursuant to the Comprehensive Land Use Planning Act 6-29-100
- The overlay zone was not arbitrary and capricious. District encompassed a defined area of the central business district and served a legitimate governmental interest.
- All businesses in the district will equally restricted.
- Petition to US Supreme Ct. pending



# Inverse Condemnation; Construction; Flooding

*Marlowe & Marlowe v. SC DOT*, 2020-000614 Court of Appeals, September 27, 2023

- 2015 - DOT began widening project on US 378
- Plaintiffs owned land abutting US 378
- Roadway contained existing culvert, but DOT plan included new enlarged culvert (couldn't be installed until new bridge replacement completed)
- Plaintiffs' property heavily flooded during 2015 and 2016 rain events
- Circuit Court granted Summary Judgement to DOT



# Court of Appeals Opinion

- Upheld DOT's SJ based on design and maintenance immunity
  - No evidence that DOT was on notice existing culvert was defective prior to 2015/2016 events
  - New roadway was under construction at the time and not yet subject to maintenance requirement of Tort Claims Act
- Upheld DOT's SJ based on discretionary immunity
  - DOT drainage plan was a quasi-judicial act not subject to revision by the court
- Reversed DOT's SJ on inverse condemnation
  - Genuine dispute of material fact whether the construction of roadway was an affirmative, positive, aggressive act. (Failure to install new culvert was not)
  - Circuit court erred in basing SJ on finding that acts were “legitimate governmental actions” under *Kiriakides v. Sch. Dist. Of Greenville Cty.*
    - “would provide de facto immunity for any physical actions regularly undertaken by governmental bodies.”
- Reversed DOT's SJ based on SC Stormwater Act
  - Sec. 48-14-160 neither imposes or relieves liability for actions or failures to act
  - Error as a matter of law.
- Motion for rehearing pending – Oct. 25, 2023



# Opinion Links

*Ani Creations v. Mrytle Beach*

<https://www.sccourts.org/opinions/HTMLFiles/SC/28151.pdf>

*Miramonti v. Richland School District 1*

<https://www.sccourts.org/opinions/HTMLFiles/COA/5958.pdf>

*Lockaby v. Simpsonville*

<https://www.sccourts.org/opinions/HTMLFiles/COA/5993.pdf>

*Marlowe v. SCDOT*

<https://www.sccourts.org/opinions/HTMLFiles/COA/6028.pdf>

**www.SCcounties.org**

