



SOUTH CAROLINA ASSOCIATION OF COUNTIES

Johnnie Wright Sr., President
Orangeburg County

Timothy C. Winslow
Executive Director

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REGULATION AND CASE LAW UPDATE - SUPPLEMENT

To: Chief Administrative Officer; County Attorney
From: SCAC Legal Staff

This case law update is a supplement to the June 29th regular monthly regulations and case law update. On June 30th the S.C. Supreme Court issued two opinions with direct impact on county government operations.

CASE LAW UPDATE

South Carolina Supreme Court

Burns, et al. v. Greenville County, Appellate Case No. 2018-002255. June 30, 2021

Areas of Law: Uniform service/user fee

In this case the Court invalidated two service/user fees enacted by Greenville County for “road maintenance” and “telecommunications infrastructure”. Counties are prohibited from imposing any new tax unless specifically allowed by the General Assembly. At the same time the General Assembly allowed counties to impose uniform service/user fees. Pursuant to Section 6-1-300(6) a service fee must 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.”

The court held that the two county ordinances in this case did not appear to provide the payers of the fee any particular benefit that was greater than the general public. The road maintenance fee was paid by all vehicle owners in the county. However, the court held that any person using the county’s roads benefited from the road improvements whether they were fee payers or not. In regard to the telecommunications fee the court found that there was no evidence in the record of a particular benefit to the fee payers beyond testimony that the improvements “could” enhance property values in the county. The court held that that alone was not enough to satisfy the requirements of Section 6-1-300(6).

The Court was clear that the 1997 enactment of Section 6-1-300(6) in effect overruled its 1992 decision in *Brown v. Horry County*. In that case the court held a fee would be valid if the revenue is used to benefit the payers, even if the public also benefits; the revenue is used only for the specific improvement contemplated; does not exceed the actual costs of the improvements; and the fee is uniformly imposed on all the payers. The court, in future cases, will examine uniform county service fee cases with closer scrutiny considering Section 6-1-300(6).

SCAC legal staff is aware that this decision may potentially impact several service fees imposed by counties. When evaluating the imposition of any new service/user fee the county should be careful to adequately address the particular benefits provided to fee payers, as opposed to the general public.

It is important to note that Section 6-1-330(A), which was enacted in the same Act enacting Section 6-1-300, provides that any service/user fee imposed by a county prior to December 31, 1996, remains in force until repealed by the governing body. Counties should consult with their county attorneys before amending or replacing any fee ordinance passed prior to December 31, 1996.

A link to the full opinion can be found here:

<https://www.sccourts.org/opinions/HTMLFiles/SC/28041.pdf>

Mercury Funding, LLC v. Beaufort County et. al., Appellate Case No. 2020-001572. June 30, 2021

Areas of Law: Tax sale, Redemption of property.

The S.C. Supreme Court heard this case in its original jurisdiction. On September 30, 2020 Act 174 was signed by the Governor. The Act originally concerned automobile insurance but was amended by the House of Representatives to include a provision that extended the unexpired redemption period for property tax sales occurring in 2019 for an additional 12-months. The Court held that because Act 174 related to two distinct subjects; automobile insurance, and tax sales the Act was unconstitutional.

The Court did not address the underlying issues of this case saying those should be vetted first by the circuit court. Counties should consult their county attorneys to determine the effect this opinion will have on tax sales held by the county in 2019.

A link to the full opinion can be found here:

<https://www.sccourts.org/opinions/HTMLFiles/SC/28040.pdf>