



## **SOUTH CAROLINA ASSOCIATION OF COUNTIES**

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### **REGULATION AND CASE LAW UPDATE**

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

Beginning January 2021, SCAC legal staff will be sending a monthly combined update of proposed regulations and appellate court opinions impacting county government operations. CAOs/Attorneys are encouraged to forward this update to impacted county departments.

### **REGULATIONS**

**None**

### **COURT UPDATE**

#### **SOUTH CAROLINA SUPREME COURT**

**SC Public Interest Foundation v. Calhoun County**, Appellate Case No. 2019-001016  
February 10, 2021

Areas of Law: Capital Project Sales Tax; Statute of Limitations

This case involves an attack by the SC Public Interest Foundation (Foundation) against the successful voter referendum in Calhoun County to impose a Capital Project Sales Tax (CPST) to fund numerous capital projects in the county. The county certified the referendum by resolution on November 26, 2018. More than four months later, on April 3, 2019 the Foundation filed suit to stop the appropriation of funds on four projects listed in the referendum. They argued that the projects were invalid as they did not meet the requirements in the CPST statute. SC Code 4-10-330(F) requires anyone challenging the referendum to file their challenge within 30-days of the certification. In this case, a timely challenge would have to be filed before December 30, 2019. The CPST collections began on May 1, 2019. The circuit court granted the county summary judgement on the basis that the Foundation missed the 30-day statute of limitations provided in SC Code section 4-10-330(F). The court did not consider the merits of the case.

The Supreme Court agreed that the statute of limitations provided in 4-10-330(F) did not contain any express language limiting the statute of limitations to the procedural aspects of the referendum. The court held that the limitations period applied not only to voting procedures, but also addressed which projects were authorized to receive CPST funds. Therefore, any action challenging the result of a CPST referendum must be filed within 30-days of the certification of the results.

A copy of the court's decision can be found here:

<https://www.sccourts.org/opinions/HTMLFiles/SC/28008.pdf>

## **SOUTH CAROLINA COURT OF APPEALS**

**Desa Ballard v. Newberry County**, Appellate Case No. 2017-002429  
January 31, 2021

Areas of Law: Public Records Act; FOIA

This case involves two separate chapters in Title 30 of the SC Code, Chapter 1, the Public Records Act; and Chapter 4, The Freedom of Information Act (FOIA). Attorney Desa Ballard represented a former part-time county magistrate. Ballard filed a FOIA request with the county requesting communications to and from the county administrator pertaining to magistrate positions. Due to prior computer system failures, some email records were not retained by the county, and subsequently Ballard claimed that the county violated FOIA because they did not retain "public records." The circuit court held that the lack of county policies on retaining and storage of electronic records was a violation of FOIA. The court also held that the Public Records Act did not authorize a private right of action.

The Court of Appeals affirmed the circuit court's decision that there is no private cause of action for violations of the Public Records Act. However, the court held that the circuit court erred in finding that public bodies violate FOIA if it fails to retain public records. The Court of Appeals was careful to distinguish the fact that FOIA granted the public access to all public records, while the Public Records Act established a procedure for the manner of recording and retaining certain public records. The court further pointed to the potential criminal penalties against officials who violated the Public Records Act. Finally, the court pointed to the fact that nothing in FOIA allowed for the enforcement of separate Acts.

The parties have the option to appeal this case to the state Supreme Court for review. The case opinion can be found here:

<https://www.sccourts.org/opinions/HTMLFiles/COA/5787.pdf>