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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2020-000080

Herman Perry Holcomb..... Respondent,

v.

City of North Augusta and Mayor and
City Council of North Augusta..... Appellants.

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to Rules 240 and 213 of the South Carolina Appellate Court Rules, the Municipal Association of South Carolina (the “Association”) respectfully requests the permission of this Court to file and serve an *amicus curiae* brief in the above-captioned matter, currently pending before this honorable Court. As allowed by Rule 213, SCACR, the Association also conditionally files its brief with this Motion for Leave to File.

I. Interest of *Amicus Curiae*

The Association is a nonpartisan, nonprofit association of South Carolina’s incorporated cities and towns. All 271 municipalities in South Carolina are members

of the Association. The Association provides services and programs directly to its member municipalities and represents the collective interests of municipalities throughout the State. The Association offers regular training to municipal elected officials and prepares written resources for use by municipalities, including content on conducting meetings of council and complying with the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.* (“SC FOIA”).

As provided by Rule 213, SCACR, the Municipal Association’s interest in this case is to provide the Court with a broader perspective on the rights and duties of South Carolina municipalities under SC FOIA, in particular the ability of public bodies to amend a document provided to council in the agenda packet materials.

II. Desirability of Brief of *Amicus Curiae*

In 2015, the General Assembly amended SC FOIA to provide the procedure by which “items may be added to the agenda” after the agenda is posted. *See* 2015 Act No. 70, § 1, *codified at* S.C. Code Ann. § 30-4-80(A). In this case, the City of North Augusta timely posted an agenda for its regular council meeting of May 7, 2018. Item number 6 on the agenda was “A Resolution Identifying North Augusta Projects for the Aiken County Capital Projects Sales Tax IV.” In the agenda packet, the City Clerk included a copy of the proposed capital project sales tax resolution (the “Resolution”). The Resolution contained an exhibit listing proposed projects. At the meeting, the Mayor moved to amend the Resolution to add a project to the exhibit. The city council seconded and approved the motion to amend, and then approved the Resolution as amended.

With scant analysis, the court below concluded that the Resolution's exhibit was part of the "agenda," that the proposed project was an "item," and that the City had therefore violated SC FOIA by amending the Resolution to include the project. The Association disagrees with this result.

First, this result is legal error. The Resolution is not part of the "agenda" and the proposed project is not an "item" within the meaning of SC FOIA. Second, this result would place South Carolina local governments in a dilemma. On one hand, public bodies might provide the statutory minimum public notice required by law without any supporting documentation. This solution, while legal, would frustrate the purposes of SC FOIA. On the other hand, public bodies might continue to provide supporting documentation for agendas. If they do so, however, the result below would leave public bodies in constant uncertainty about permissible actions. Any change to a supporting document might well be an "adding an item" under the Order's reading. Endless litigation and intractable council inefficiency would result.

The Association therefore moves to brief this Court on the correct reading of the terms "agenda" and "item" as they appear in SC FOIA. In the Association's view, the correct reading supports the public purposes of SC FOIA while allowing local governments to conduct efficient and effective public meetings.

WHEREFORE, the Association respectfully requests that the Court grant leave for the Association to file and serve an *amicus curiae* brief and, further, to accept for filing the Association's conditionally filed brief.

Respectfully submitted,

/s/ Bryan Eric Shytle

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