STATE OF SOUTH CAROLINA COUNTY OF JASPER JASPER COUNTY, Plaintiff, v. ALVIN ADKINS and THE BOARD OF VOTER REGISTRATION AND ELECTION OF JASPER COUNTY, Defendants.	IN THE COURT OF COMMON PLEAS THE FOURTEENTH JUDICIAL CIRCUIT Civil Action No.: 2022-CP-27-00082 **ORDER**

A one-day bench trial was held before me on Monday, November 13, 2023 in Beaufort County. James K. Gilliam and Michael R. Burchstead appeared on behalf of the Plaintiff Jasper County. Joseph O. Thickens, Margie Bright Matthews, and Skyler B. Hutto appeared on behalf of Defendant Alvin Adkins. Charles L.A. Terreni appeared on behalf of Defendant The Board of Voter Registration and Election of Jasper County.[1]

Summary

The overarching issue in this case is whether Adkins is qualified to serve on Jasper County Council. Adkins ran for the Pocotaligo Township District Seat on County Council. Adkins received the most votes and was sworn-in on January 2, 2021. Almost one year later, the County discovered that Adkins did not reside in the Pocotaligo District but in the Coosawhatchie District. After this discovery, County Council voted 4-0 (with Adkins not participating) to authorize the filing of this declaratory judgment lawsuit. Shortly thereafter, County Council passed a Redistricting Ordinance (Ordinance 2022-01) on February 22, 2022 by a 3-2 margin, with Adkins voting in the

[1] At trial, The Board of Voter Registration and Election of Jasper County did not examine any witnesses, present evidence, or make any arguments.

majority. The Redistricting Ordinance changed the boundaries of the Pocotaligo and Coosawhatchie Districts, such that Adkins' residence now falls within the Pocotaligo District.

Although the Parties called witnesses and presented evidence during the bench trial, there are no genuine issues of material fact in dispute. The only material facts are the location of Adkins' residence and the office for which Adkins ran and was elected. The Parties do not dispute these facts. Adkins ran for the Pocotaligo Township District Seat on County Council and was elected to this position. Adkins did not reside in the Pocotaligo District at the time of the primary election on June 9, 2020, the general election on November 3, 2020, his swearing-in on January 2, 2021, and at all times thereafter prior to the passage of the Redistricting Ordinance on February 22, 2022. The Redistricting Ordinance went into effect on February 22, 2022, and from that point forward, Adkins resided in the Pocotaligo District. Adkins remains on County Council to this day. The dispute here does not concern facts; rather, the dispute concerns application of law to undisputed facts. Nonetheless, for purposes of thoroughness, the facts are set forth below.

Statement of Facts

Jasper County is a political subdivision of the State of South Carolina, governed by a five member County Council. Jasper County is divided into four township districts. The four township districts are Coosawhatchie (District 1), Hardeeville (District 2), Pocotaligo (District 3), and Robertville (District 4).

Since at least 1970, Jasper County has elected County Councilmembers pursuant to an "at large with a residency requirement" method of election. Under this method of election, all qualified electors in the County vote for all five seats on County Council. There is a district residency requirement for four Council seats. These four seats must be filled by a resident from each of the

four township districts. The fifth Council seat (referred to as the At Large Seat) has no district residency requirement.

Prior to the enactment of Home Rule, the South Carolina General Assembly originally prescribed for the method of electing Jasper County Councilmembers. The General Assembly did so in Act 982 of 1968. Act 982 established the at large with a district residency requirement method of election for Jasper County Councilmembers. Act 982 states:

> There is hereby created in Jasper County a county council which shall constitute the governing body of the county. The council shall be composed of five members elected at large from the county for terms of four years and until their successors are elected and qualified; *provided*, that beginning in 1970 and at all times thereafter there shall be at least one member of the council who is a resident of each of the four townships of the county.

(emphasis in original).

On June 25, 1976, Jasper County Council enacted Ordinance 2-31, which continued the at large with a residency requirement method of election for County Councilmembers originally prescribed by Act 982. Ordinance 2-31 has never been repealed and has been in effect since June 25, 1976. Ordinance 2-31 states in pertinent part:

> NOW THEREFORE BE IT ENACTED: That the County Council of Jasper County shall consist of five (5) members elected at-large; provided, that at least one member of the council shall be a resident of each of the four townships of the county and one member having no residency requirement.

Jasper County holds staggered elections for its Councilmembers. In 2020, the County held elections for the Hardeeville Seat, the Pocotaligo Seat, and the At Large Seat. Alvin Adkins, a first-time candidate, declared his candidacy for the Democratic nomination for the Pocotaligo Seat. Adkins did so by completing and filing a Statement of Intention of Candidacy and Party Pledge Form ("SIC Form") with the Jasper County Board of Voter Registration and Elections ("Jasper

BVRE").[2] The SIC Form contained a number of blank spaces for Adkins to fill-in. Next to the word "Office," Adkins wrote "County Council," and next to the word "District," he wrote "Pocotaligo." The Party Pledge and Candidate's Oath sections preceded Adkins' signature on the SIC Form. The first sentence of the Party Pledge required Adkins to identify the nomination he sought in the upcoming primary election. Adkins wrote "County Council Pocotaligo." The Candidates' Oath directly above Adkins' signature read, "I hereby affirm that I meet, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office sought."[3]

Adkins listed his address on the SIC Form as 67 Bolden Lane, Yemassee, South Carolina, 29945. At the time Adkins completed the SIC Form, 67 Bolden Lane in Yemassee was not within the boundaries of the Pocotaligo Township District, but the Coosawatchie Township District. Adkins resided at this address from the year 2000 to the present date.

Pursuant to section 7-13-40 of the South Carolina Code, the political party (here, the South Carolina Democratic Party) is required by twelve o'clock noon on April 5 to "verify the qualifications of [ ] candidates prior to certification" and certify only those candidates who "meet, or will meet by the time of the general election, or as otherwise required by law, the qualifications for office, which s/he has filed." On April 3, 2020, Trav Robertson, Jr., the Chair of the South Carolina Democratic Party, certified to the Jasper BVRE that Adkins met or will meet by the time of the general election the qualifications for office.

[2] "[A]ll candidates seeking nomination by political party primary or political party convention must file a statement of intention of candidacy and party pledge . . . ." S.C. Code § 7-11-15(A).

[3] The SIC Form must contain an affirmation that the candidate meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office sought. S.C. Code § 7-11-15(C)).

In the June 9, 2020 Democratic primary, Adkins challenged longtime incumbent, Henry Etheridge, for the Pocotaligo Seat. Adkins defeated Etheridge in the Democratic primary, and then, Adkins won the general election on November 3, 2020. Meanwhile, John Kemp prevailed in the general election for the At Large Seat, and Barbara Clark won the general election for the Hardeeville Seat. Adkins was sworn-in as a Jasper County Councilmember on January 2, 2021.

On October 28, 2021, Jasper County asked the South Carolina Revenue and Fiscal Affairs Office ("RFA")[4] to provide technical assistance to the County in navigating through the once-a-decade process of redistricting.[5] In order to assist in the redistricting process, the RFA requested the names and addresses of all current Councilmembers. On November 19, 2021, Jasper County provided this information to the RFA. In pertinent part, the County's response reflected that Adkins resided at 67 Bolden Lane in Yemassee, South Carolina and represented the Pocotaligo District on Council.

On or about December 2, 2021, the RFA prepared a Benchmark map, showing the then-current election districts with the physical addresses of the Councilmembers marked on the map. The Benchmark map showed no Councilmembers residing in the Pocotaligo District and three Councilmembers residing in the Coosawhatchie District. The three Councilmembers shown in the

[4] The RFA is a non-partisan agency of the State of South Carolina that provides mapping and statistical data to local government entities to assist with redistricting. The RFA maintains the official precinct maps for the entire State of South Carolina.

[5] Every decade, counties in South Carolina must undertake the process of redrawing election district lines, pursuant to *inter alia*, the Equal Protection Clause of the 14th Amendment to U.S. Constitution, the Voting Rights Act, and S.C. Code § 4-9-90 (requiring county councils to reapportion by population "[a]ll [council] districts . . . within a reasonable time prior to the next scheduled general election which follows the adoption by the State of each federal decennial census."). The redistricting mandated by section 4-9-90 required the passage of an ordinance with three readings and a map and/or description of the new election districts.

Coosawhatchie District were Martin Sauls (the Coosawhatchie District Councilmember), John Kemp (the At Large Councilmember), and Adkins (the Pocotaligo District Councilmember).

On January 13, 2022, the RFA staff presented a draft redistricting map to the Jasper County Council at a public meeting. During the RFA's presentation, Councilman Kemp asked why no Councilmembers resided in the Pocotaligo District and three Councilmembers resided in the Coosawhatchie District. Subsequently, the County asked the RFA to verify the Councilmembers' addresses and the districts of their residency. On January 18, 2022, the RFA verified that Adkins' residence was located in the Coosawhatchie District, not the Pocotaligo District. Upon learning that Councilman Adkins did not reside in the Pocotaligo District, Jasper County promptly brought this declaratory judgment action on February 15, 2022.

Legal Analysis

Understanding that Adkins did not reside in the Pocotaligo District when he was elected and sworn-in, the County primarily seeks a declaration on whether Adkins is qualified to hold office. Adkins asserts two arguments as to why he is qualified. *First,* Adkins argues that Ordinance 2-31 does not impose any district residency requirement on him to serve on County Council. *Second,* Adkins argues that Ordinance 2-31 violates State law and is therefore invalid.

As set forth below, the Court disagrees with the arguments raised by Adkins and finds that Adkins is not qualified to hold office. The remaining issues upon which the County seeks declaratory relief are easily determined after making this declaration and are addressed below.

I. Ordinance 2-31

A. This Court lacks the power to change Jasper County's method of electing Councilmembers, as the General Assembly has expressly determined that only the people of the County can change the method of election.

Jasper County has elected County Councilmembers the same way for the past fifty-three years. In 1970, Act 982 prescribed the method for electing Councilmembers, and then, on June 25, 1976, Jasper County Council continued with this same method of electing Councilmembers by enacting Ordinance 2-31. Ordinance 2-31 mirrors the district residency requirements originally created by Act 982. Ordinance 2-31 imposes a district residency requirement for four Council seats, requiring one Councilmember from each township district. Ordinance 2-31 does not impose a district residency requirement on the fifth Council seat, meaning this Councilmember can reside anywhere in the County.

Adkins argues for an interpretation of Ordinance 2-31 never recognized by Jasper County in the past fifty-three years. Adkins argues that Ordinance 2-31 does not impose a district residency requirement on him to serve on County Council; rather, Adkins argues the Ordinance requires him only to reside in the County. Putting aside Adkins' interpretation of Ordinance 2-31 for the time being (which amounts to nothing more than a half-reading of the Ordinance), Adkins' argument asks this Court to change Jasper County's method of electing Councilmembers. This Court finds that Adkins' argument presents a non-justiciable political question based on the statutory scheme of section 4-9-10 of the South Carolina Code of Laws, which grants the exclusive right to county citizens to determine their method of election. *See S.C. Pub. Interest Found. v. Judicial Merit Selection Comm'n*, 369 S.C. 139, 142-43, 632 S.E.2d 278, 278 (2006) ("The fundamental characteristic of a non-justiciable political question is that its adjudication would place a court in conflict with a coequal branch of government.").

Section 4-9-10(a) (part of the Home Rule Act) gave each county in the State the option to conduct a referendum to determine its method of election. Section 4-9-10(a) gave the counties until July 1, 1976 to hold a referendum to change their method of election. If a successful

referendum was not held prior to this date, the counties default back to the method of election most nearly corresponding to the method in effect prior to July 1, 1976. Section 4-9-10(c) requires that the method of election selected (either through successful referendum or default) must remain in place for two years, and thereafter, it can be changed "**only** as a result of a referendum." (emphasis added).

Section 4-9-10(c) manifests the unmistakable legislative intent for a referendum to be the sole option to change a county's method of election. Section 4-9-10(c) states, "[n]o change to an alternate form of government, different number of council members, or method of election of council including the chairman as a result of a referendum shall become effective unless such proposed form receives a favorable vote of a majority of those persons voting in a referendum." *See Infinger v. Edwards*, 268 S.C. 375, 382, 234 S.E.2d 214, 217 (1977) (noting that county form of government, which includes method of election, may only be changed by referendum).

Jasper County did not conduct a referendum prior to July 1, 1976 to change its form of government or its method of election. Therefore, section 4-9-10(b) mandates that the preexisting form of government and preexisting method of election (prior to July 1, 1976) must continue. Jasper County's preexisting method of election prior to July 1, 1976 was the same as it is now—the at large with a residency requirement method of election. Prior to the July 1, 1976 deadline contemplated by section 4-9-10(a), Jasper County passed both a Resolution and an Ordinance (Ordinance 2-31) adopting the County's already-existing at large with a residency requirement method of election.

Any change in Jasper's method of election can ***only*** be accomplished by a referendum in compliance with section 4-9-10.[6] This Court is not empowered to change Jasper County's method of election, as the General Assembly expressly reserved that power for the citizens of Jasper County. If the Court were to ignore this statutory mandate, it would place the Court in conflict with the legislative branch of government which passed section 4-9-10 and with the executive branch of government which signed it into law. This Court cannot ignore this clear and express statutory reservation of power for the citizens of Jasper County, and furthermore, this Court cannot engage in the political analysis associated with selecting a method of election for Jasper County Councilmembers in the future. This Court not only lacks the power to make such decisions, but also this Court is not equipped to make political decisions for local governing bodies, such as deciding their method of election. The argument that this Court could do so runs afoul of Home Rule and the separation of powers doctrine. *See Infinger*, 268 S.C. at 382, 234 S.E.2d at 217 ("The uniformity contemplated by the Home Rule Act is the realization of complete local autonomy.").

Accordingly, the Court finds that it does not have the power to interpret Ordinance 2-31 in the manner argued for by Adkins because if the Court did so, the Court would change Jasper County's method of electing County Councilmembers, which would violate section 4-9-10.

B. <u>Ordinance 2-31 imposes a district residency requirement on four County Council Seats and imposes no district residency requirement on the one remaining Council Seat.</u>

Adkins argues for an interpretation of Ordinance 2-31 based on a partial reading of the Ordinance. Adkins contends that he need only reside in of one of the four districts in order to be eligible to serve on County Council. Adkins makes his argument from the following language in

[6] As recently as the 2012 statewide general election, a local question referendum was on the ballot in Jasper County to change its method of electing members of Council, and 65.26% of those participating elected to retain the current method of election.

Ordinance 2-31, "provided, that each member of the council shall be a resident from one of the four townships of the county . . . ." Adkins ignores the remaining portion of Ordinance 2-31, which reads, "and one member shall have no residency requirement." Adkins offers no argument as to what this remaining portion of Ordinance 2-31 means, and Adkins makes no attempt to read these two parts of the same sentence together. In full, Ordinance 2-31 provides:

> The county council shall consist of five members elected at-large; provided, that each member of the council shall be a resident from one of the four townships of the county and one member shall have no residency requirement.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012). "[C]ourts are bound to give effect to the expressed intent of the legislature." *Id*. Courts "must follow the plain and unambiguous language in a statute and have no right to impose another meaning." *Id*. at 535-36, 725 S.E.2d at 695. In interpreting a statute or ordinance, "the Court should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless." *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012).

Adkins' argument seeks to rewrite Ordinance 2-31 and to nullify the language stating, "and one member shall have no residency requirement." The language, "and one member shall have no residency requirement," clearly means that for one Council Seat, the Councilmember holding this Seat can reside anywhere in the County—"no residency requirement." The fact that this portion of Ordinance 2-31 specifically imposes "no residency requirement" for one Council Seat helps give meaning to the contested portion of Ordinance 2-31, reading, "provided, that each member of the

council shall be a resident from one of the four townships of the county . . . ." This portion of the Ordinance imposes a residency requirement on the other four Council Seats—one Councilmember from each township district. Thus, there must be one Councilmember from Coosawhatchie, one from Hardeeville, one from Pocotaligo, and one from Robertville in order to satisfy the residency requirements for the remaining four Council Seats. There is no other way to read Ordinance 2-31 and give effect to all of the provisions in the Ordinance.

Accordingly, this Court finds that Ordinance 2-31 imposes a district residency requirement on four Council Seats and imposes no district residency requirement on the one remaining Council Seat. The district residency requirement in Ordinance 2-31 ensures that one resident from each of the four districts shall sit on County Council. That is clearly the intent of the language in Ordinance 2-31, and this Court is required to give effect to this intent.

II. Ordinance 2-31 Does Not Violate State Law.

Next, Adkins advances numerous arguments as to how Ordinance 2-31 allegedly violates State law, if it in fact imposes a district residency requirement. As set forth below, the Court finds Ordinance 2-31 does not violate State law and is valid.

A two-step process is used to determine whether a local ordinance is valid. *Foothills Brewing Concern, Inc. v. City of Greenville*, 377 S.C. 355, 361, 660 S.E.2d 264, 267 (2008); *Bugsy's v. City of Myrtle Beach*, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000). First, the Court must consider whether the county had the power to enact the ordinance. *Bugsy's*, 340 S.C. at 93, 530 S.E.2d at 893. If the county had the power to adopt the ordinance, the second step is to determine whether the ordinance is consistent with the Constitution and the general law of the State. *Id*. "A local government ordinance conflicts with a State law when its conditions, express or implied, are inconsistent and

irreconcilable with the State law." *Hosp. Ass'n of S.C., Inc. v. Cnty. of Charleston*, 320 S.C. 219, 228, 464 S.E.2d 113, 119 (1995).

In section 4-9-25 of the South Carolina Code of Laws, the General Assembly granted broad powers to counties in adopting ordinances. Pursuant to section 4-9-25, "[a]ll counties of the State . . . have the authority to enact regulations, resolutions, and ordinances . . . respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them." This broad grant of power "is limited only by the requirement that the regulation, resolution, or ordnance be consistent with the Constitution and general law of this State." *Hosp. Ass'n of S.C.*, 320 S.C. at 226, 464 S.E.2d at 118.

"Ordinances are presumed constitutional and their unconstitutionality must be proven beyond a reasonable doubt." *Peoples Program for Endangered Species v. Sexton*, 323 S.C. 526, 532, 476 S.E.2d 477, 481 (1996). "The party challenging a local ordinance bears the burden of proving its invalidity." *Sandlands C & D, LLC v. Cnty. of Horry*, 394 S.C. 451, 460, 716 S.E.2d 280, 284 (2011). "It is mandated in "'[t]his State's constitution . . . that the powers of local governments should be liberally construed.'" *Id.* (citing S.C. Const. art. VIII § 17). An ordinance "will not be declared unconstitutional if by any reasonable construction, it can be harmonized with the State and Federal Constitutions . . . ." *City of Darlington v. Stanley*, 239 S.C. 139, 145, 122 S.E.2d 207, 209-10 (1961).

A. The Supreme Court has already determined Jasper County's method of electing Councilmembers—at large with a residency requirement—is lawful.

Here, Adkins makes no argument that Jasper County lacked the authority to enact Ordinance 2-31. Instead, Adkins argues that by imposing a district residency requirement on four County Council Seats, Ordinance 2-31 violates State law. Adkins makes this argument even though our Supreme Court has already considered this exact issue in *Infinger v. Edwards*, 268 S.C. 375, 234

S.E.2d 214 (1977) and determined that Jasper County's method of electing Councilmembers is lawful.

In *Infinger*, our Supreme Court considered consolidated cases for a single determination. *Id.* at 378, 234 S.E.2d at 215. The focus of this Court's analysis is on the second of the consolidated cases—captioned *Dodds v. Stuckey*. *Id*. at 380, 234 S.E.2d at 216. The challenge in *Dodds* was to Charleston County's method of electing Councilmembers, which at the time was at large with a residency requirement (the same method currently utilized by Jasper County). Like Jasper and a number of other counties, Charleston elected Councilmembers by this method prior to July 1, 1976. Like Jasper, Charleston did not conduct a referendum prior to July 1, 1976. Thus, Charleston, like Jasper, returned to the method of election most nearly corresponding to the form in effect prior to July 1, 1976 as required by section 4-9-10(b). That form was at large with a residency requirement.

In *Dodds*, the plaintiff specifically challenged the district residency requirement in Charleston County's method of election. The plaintiff argued that the Home Rule Act abrogated district residency requirements. The Supreme Court disagreed and noted that Charleston failed to hold a referendum to change its method of election prior to July 1, 1976. As a result, Charleston was required by section 4-9-10(b)[7] to default back to the method of election in place before July 1, 1976, which was at large with a residency requirement. 268 S.C. 381-82 234 S.E.2d at 217. The Supreme Court further held that the Home Rule Act did not make district residency requirements unlawful. *Id*. By contrast, the Supreme Court recognized that Home Rule was intended to promote "flexibility and individuality." *Id*. The Supreme Court stated specifically that "[d]istrict residency requirements in no way ameliorate the intended uniformity of the Home Rule Act." *Id*.

[7] At the time *Infinger/Dodds* was decided, section 4-9-10(b) was codified as section 14-3701(b). 268 S.C. at 381, 234 S.E.2d at 217.

As *Dodds* makes clear, there is nothing unlawful about Jasper County's method of election, and the only way Jasper's method of election can change is through the will of its people in a referendum. The express terms of section 4-9-10(c) require that Jasper County's preexisting method of election must continue unless and until a successful referendum is held. *See* S.C. Code § 4-9-10(c) ("After the initial form of government and the number and method of election of county council . . . has been adopted and selected, the adopted form, number, and method of election shall not be changed for a period of two years from the date such form becomes effective **and then only as a result of a referendum as hereinafter provided for**.") (emphasis added).

Adkins offers no argument to differentiate Jasper County's method of electing Councilmembers from Charleston County at the time *Infinger/Dodds* was decided. Based on the Court's view, there is no distinction between the methods of election between Jasper County at present and Charleston County when *Infinger/Dodds* was decided. Accordingly, based on Supreme Court precedent, this Court finds that Jasper County's method of electing Councilmembers as prescribed by Ordinance 2-31 complies with State law.

B. Jasper County's method of electing Councilmembers under Ordinance 2-31 complies with S.C. Code §§ 4-9-10 and 4-9-90.

Adkins argues that the method of election called for in Ordinance 2-31 conflicts with section 4-9-90 of the South Carolina Code of Laws. Section 4-9-90 provides, "[c]ouncil members must be elected from defined single-member election districts unless otherwise determined under the provisions of subsection (a), (b), or (c) of Section 4-9-10 . . . ." Adkins constructs his argument solely from the first part of the sentence preceding the word "unless." Adkins argues that section 4-9-90 requires County Council elections to be conducted from defined single-member election districts. Adkins argues that Jasper's method of election as prescribed by Ordinance 2-31 violates

this statutory provision because under Ordinance 2-31, Jasper elects its Councilmembers on an at large basis with a residency requirement.

The obvious problem with Adkins' argument is that it ignores the portion of section 4-9-90 following the word "unless," and therefore, it is an argument based on an incomplete reading of the statute. In full, section 4-9-90 says that County Councilmembers must be elected from defined single-member districts "unless otherwise determined under the provisions of subsection (a), (b), or (c) of Section 4-9-10." Jasper County's method of election as set forth in Ordinance 2-31 fully complies with the "otherwise determined" exception in section 4-9-10(b).

Section 4-9-10(b) was discussed at length in Roman numeral I, Section A above. To briefly reiterate, section 4-9-10(a) gave each county the option of conducting a referendum to determine its method of election. Section 4-9-10(a) gave the counties until July 1, 1976 to hold a referendum to change their method of election. If a successful referendum was not held prior to this date, the counties, based on the statutory scheme of section 4-9-10(b), automatically defaulted back to the method of election most nearly corresponding to that in effect prior to July 1, 1976. For Jasper County, the default back method of election contemplated by section 4-9-10(b) is the method prescribed by Ordinance 2-31—at large with a residency requirement.

Thus, Ordinance 2-31 does not conflict with section 4-9-90 because the method of election prescribed by Ordinance 2-31 is specifically contemplated by section 4-9-10(b). In other words, the method of election in Ordinance 2-31 fits squarely within the "otherwise determined" exception in section 4-9-10(b). In sum, Jasper County elects Councilmembers as it is required to under sections 4-9-10 and 4-9-90, and Ordinance 2-31 does not violate these provisions of State law.

C. Jasper County's method of electing Councilmembers under Ordinance 2-31 does not conflict with S.C. Code § 4-9-610.

Lastly, Adkins argues that Ordinance 2-31 violates section 4-9-610 of the South Carolina Code of Laws. For counties adopting the Council-administrator form of government (which includes Jasper County), section 4-9-610 provides that county council shall consist of "not less than three nor more than twelve members who are qualified electors of the county." Adkins reads the "are qualified electors of the county" language to mean that Jasper County must conduct its county council elections without any residency requirements.

As an initial matter, a plain reading of section 4-9-610 cannot support Adkins' argument. All section 4-9-610 says is that Jasper County Council must consist of between three and twelve members who are qualified electors of the county. Ordinance 2-31 does not violate either of these statutory provisions. Ordinance 2-31 sets the membership on Jasper County Council at five, and Ordinance 2-31 does not allow for unqualified electors to serve on County Council. *See* S.C. Code § 7-5-120 (defining qualified electors as those meeting the age requirements and who are a resident in the county and in the polling precinct in which the elector offers to vote). To be sure, Ordinance 2-31 imposes district residency requirements on four Councilmembers and imposes no district residency requirement on the fifth Councilmember. But, the district residency requirements in Ordinance 2-31 do not allow for unqualified electors to serve on County Council. Section 4-9-610 goes no further than requiring qualified electors to serve on County Council. Ordinance 2-31 conforms to this limitation and does not allow for those who cannot vote in the County to serve on County Council. Section 4-9-610 does not prevent Jasper County from imposing district residency requirements on its Councilmembers as Adkins suggests.

Moreover, Adkins' interpretation of section 4-9-610 would conflict with section 4-9-10. As already determined by this Court, section 4-9-10(b) ***requires*** Jasper County to elect Councilmembers in its current manner until a referendum dictates otherwise. Because Jasper County has not held a

referendum to change its method of election, it must default to that method of election in place prior to July 1, 1976, which is set forth in Ordinance 2-31 and imposes a district residency requirement on four Councilmembers. Meanwhile, Adkins argues section 4-9-610 prevents Jasper County from electing County Councilmembers based on district residency requirements as contemplated by Ordinance 2-31.

This Court must reconcile sections 4-9-610 and 4-9-10 "if possible." *See Hodges*, 341 S.C. at 88, 533 S.E.2d at 583 ("Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative."). Here, that is easily done. The requirement in section 4-9-610 that County Councilmembers shall be "qualified electors of the county" means that only those who are eligible to vote in Jasper County may serve on Jasper County Council. Section 4-9-610 does not speak to the method of electing Councilmembers. Section 4-9-10 speaks to this, and it prescribes the specific method upon which Jasper County must elect its Councilmembers. *See Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995) (As a general rule, specific statutes prevail over more general ones). Section 4-9-10(b) requires Jasper County to elect Councilmembers in that manner that it elected them prior to July 1, 1976. That method is the method contemplated by Ordinance 2-31. When the General Assembly passed section 4-9-10, it presumably knew the method of election in place in Jasper County (after all, the General Assembly originally prescribed this method of election in Act 982), and it required that method of election to continue unless a referendum dictated otherwise. This Court must give effect to the will of the General Assembly in interpreting statutes. *Rainey*, 341 S.C. at 85, 533 S.E.2d at 581.

Accordingly, based on the foregoing, the method of election prescribed for by Ordinance 2-31 does not violate section 4-9-610.

III. Declaratory Relief

Having disposed of the arguments from Adkins, the Court now turns to the Declaratory Relief sought by the County.

A. Adkins is not qualified to serve on County Council.

Adkins is not qualified for the Pocotaligo Township District Seat on Council. Adkins ran for this seat, was elected to fill-it, and occupied this seat since January 2021. At all relevant times, Adkins lived at 67 Bolden Lane in Yemassee, South Carolina. At all relevant times up until February 22, 2022 when Council passed the Redistricting Ordinance, 67 Bolden Lane in Yemassee was not located within the boundaries of the Pocotaligo Township District, but the Coosawhatchie Township District.

Article XVII, Section 1 and Article VI, Section 1 of the South Carolina Constitution require that public officeholders possess the "qualifications of an elector." The qualifications for office are determined at the date of election and are deemed continuing throughout the officer's tenure. 1993 S.C. Op. Att'y Gen. 164, 1993 WL 494585. Among the qualifications of an elector set forth in S.C. Code § 7-5-120 is that the officer must be a "resident in the county and in the polling precinct in which [he] offers to vote . . . ." The final paragraph of section 4-9-90 provides that "[f]or the purpose of this section, a council member will be deemed a resident of the district he represents as long as he resides in any part of the district as constituted ***at the time of his election***." (emphasis added). Finally, Jasper County Ordinance 2-31 prescribes the qualifications of an elector for Council, that with the exception of the At Large Seat, "each member of the council shall be a resident from one of the four townships of the county…."

The Attorney General opined about similar issues for the Town of Ridgeville. *See* S.C. Op. Att'y Gen., 1997 WL 811900 (Ridgeville). This opinion is instructive here.

The Town of Ridgeville discovered that a Town councilman who had served for sixteen years resided outside the Town limits. To qualify to serve on Town Council, the councilman was required to reside in the Town's limits. The councilman proposed to resolve this issue and avoid an election to fill his position by submitting a petition for his property to be annexed into the Town. The Town's attorney wrote to the Attorney General and asked if this annexation occurred, would the Town councilman be qualified to hold office. The Attorney General answered the question in the negative.

To begin with, the Attorney General observed that "[w]here the legislature has fixed the qualifications for an office pursuant to its authority to do so, the electors may not select one not possessing the qualifications prescribed." S.C. Op. Att'y Gen., 1997 WL 811900 at *2. "One who is not eligible is not regarded as elected to office, although he may have received the highest number of votes cast and is in possession of a certificate of election." *Id*. "If a candidate is not a qualified elector at the time of election, his election is a nullity." *I*d.

With this backdrop, the Attorney General opined that the Town councilman was never qualified to hold the office to which he was elected because he did not meet the residency requirements of residing in the Town. Further, the Attorney General opined that the Town could not cure the councilman's disqualification by annexing the councilman's residence into the Town. The Attorney General stated:

> In this case, this council member is not now, nor has been for the past 16 years, a resident of the Town of Ridgeville and, therefore, may not properly serve on the town council. I believe that if a court were to address this issue, it would find that **since this council member did not possess the qualification of residency at the time of election, his election is a nullity and the office would be declared vacant. Subsequent annexation of the council member's property so as to bring his property within the town limits will not cure the fact that he was not a resident at the time of election**.

Id. (emphasis added).

Here, Adkins does not meet the residency requirements to hold the Pocotaligo Seat on County Council because he did not reside in the Pocotaligo District at the time of the primary election, the general election, when he assumed office, and all times thereafter until Council passed the Redistricting Ordinance on February 22, 2022. The enactment of the Redistricting Ordinance, which redrew the District Township lines to put Adkins' address within the Pocotaligo District, did not cure the issue. Adkins is not qualified to hold the Pocotaligo Township District Seat because he did not meet the residency requirements for the office.

B. <u>A vacancy exists for the Pocotaligo Seat on County Council, and an election must be held to fill the unexpired term for the Pocotaligo Seat on County Council.</u>

Having found that Adkins lacks the qualifications for office because he did not reside in the Pocotaligo District, the Court finds that a "vacancy" exists for Pocotaligo Seat on County Council as of the date of this Order. The South Carolina Supreme Court has observed that the term "vacancy" as applied to public office "has no fixed meaning in the law," that it has "no technical meaning," and "it is not to be taken in a strict technical sense in every case." *Bradford v. Byrnes,* 221 S.C. 255, 263, 70 S.E.2d 228, 232 (1952). The term "vacancy" does not necessarily mean the office is literally vacant, but an office is legally vacant when it is occupied "by one who is not a *de jure* officer[8] and is occupied by a *de facto* officer or a usurper." *Id*. at 255, 70 S.E.2d at 232. In other words, an office is deemed vacant when it is occupied by one who is not qualified to hold office. 1993 S.C. Op. Att'y Gen. 164, 1993 WL 494585 at n.2.

Section 4-9-90 governs vacancies on county council, and it provides as follows:

[8] A *de jure* officer or *officer de jure* is "[a]n officer who exercises the duties of an office for which the holder has fulfilled all the qualifications." Black's Law Dictionary (11th ed. 2019).

> Vacancies on the [county council] shall be filled in the manner of original election for the unexpired terms in the next general election after the vacancy occurs or by special election if the vacancy occurs one hundred eighty days or more prior to the next general election.

Based on the statutory construction of section 4-9-90, having found a vacancy, the Court must order that the vacancy be filled. The only remaining questions involve the character of the election to fill the vacancy and the timing of that election. Section 4-9-90 answers both questions. The next general election in Jasper County is scheduled to take place on November 5, 2024. There are more than 180 days from the vacancy on County Council until the next general election. Thus, the Court orders a special election to take place to fill the unexpired term for the Pocotaligo Seat on County Council. All those eligible to run for the Pocotaligo Seat on County Council may run in this special election. That election should be held in the manner prescribed by section 7-13-190 of the South Carolina Code of Laws.

C. <u>The Redistricting Ordinance did not cure Adkins' disqualification for office.</u>

While Adkins currently resides within the boundaries of the Pocotaligo Township District, resulting from the passage of the Redistricting Ordinance on February 22, 2022, this does not cure Adkins' disqualification for office. Adkins did not meet the residency requirements for office at the time of the primary election on June 9, 2020, the general election on November 3, 2020, upon his swearing in and assuming office on January 2, 2021, and all times prior to the passage of the Redistricting Ordinance on February 22, 2022. Adkins disqualification from office cannot be cured by the subsequent redrawing of the township district lines thirteen (13) months after he took office on January 2, 2021.

The Attorney General opined about a similar issue for the Town of Ridgeville. *See* S.C. Op. Att'y Gen., 1997 WL 811900. As set forth previously, the Court finds the Attorney General's opinion instructive. Adkins did not meet the residency requirements for office when he was elected

and when he assumed office. In fact, Adkins continued to not meet the residency requirements for the first thirteen (13) months in which he occupied the office. Therefore, because Adkins did not meet the residency requirements, his election is a nullity. S.C. Op. Att'y Gen., 1997 WL 811900 at *2. As the Attorney General opined in Ridgeville, Adkins disqualification from office cannot be cured by the subsequent redrawing of the district lines that occurred with the passage of the Redistricting Ordinance on February 22, 2022.

D. Adkins served as a *de facto* officer for the entire time he held office and all the votes he cast and the actions he took as a Councilmember are valid and are not subject to collateral attack.

Notwithstanding Adkins' lack of qualification for the Pocotaligo Seat on Council, Adkins has been properly serving on Council as a *de facto* officer and can continue service as a *de facto* officer until he or his successor comes to office after a Court-ordered election. By virtue of Adkins' *de facto* status, any actions of County Council which relied on Adkins' votes, or which may rely on his votes in the future, are fully valid and not subject to collateral attack.

"[A] *de facto* officer is one who is in possession of an office, in good faith, entered by right, claiming to be entitled thereto, and discharging its duties under color of authority." *Heyward v. Long*, 178 S.C. 351, 183 S.E. 145, 151 (1935). A *de facto* officer is one who has a colorable right or title to the office, accompanied by possession. S.C. Op. Att'y Gen., 1997 WL 811900 at *2 (S.C.A.G. Nov. 20, 1997).

The Attorney General has considered this issue on at least three occasions. On every occasion, the Attorney General advised that the *de facto* councilmember should continue to serve in a *de facto* capacity until his successor is selected in the election required by section 4-9-90 of the South Carolina Code of Laws. *Id*. These recommendations by the Attorney General are in accord with Supreme Court precedent. In *Bradford*, the Court stated, "[i]n the absence of [a]

pertinent statutory or constitutional provision, public officers hold over *de facto* until their successors are appointed or elected and qualify." 221 S.C. at 262, 70 S.E.2d at 231. "As nature abhors a void, the law of government does not ordinarily countenance an *interregnum*."[9] *Id.*

The Attorney General considered this issue precisely when opining to the Town of Ridgeland about its Town councilman, who had served for the past sixteen years but who never was qualified to serve because he did not reside in the Town. S.C. Op. Att'y Gen., 1997 WL 811900 at *2. The Town's attorney asked the Attorney General what impact the Town councilman's lack of residency over the past sixteen years had upon the votes and actions taken by town council during that time. The Attorney General determined that all of the Town's actions during the past sixteen years were valid because the councilman was a *de facto* officer. Importantly, the Attorney General decided the councilman qualified as a *de facto* officer because the issue of the councilman's residence was unknown until "fairly recently," and no one raised the issue during that sixteen-year timeframe. *Id.* at *3.

Here, Adkins has been in possession of his office, under the color of an election, and has been discharging his duties on County Council under color of that authority. There is no question that Adkins has held office and has undertaken all duties attendant to that office, including voting and attending meetings. In addition, it is clear that Jasper County only learned that Adkins did not meet the residency requirements in mid-January 2022. Upon learning this, the County promptly filed this lawsuit on February 15, 2022, asking the Court to declare whether Adkins was qualified for office, and if so, to order an election to fill the vacancy caused by his disqualification.

[9] An "*interregnum*" is "the vacancy which occurs when there is no government." *Bradford*, 221 S.C. at 262, 70 S.E.2d at 231.

Therefore, based on the foregoing, the Court finds: (i) Adkins served as a *de facto* member of County Council from January 2, 2021 until such a time as a *de jure* officer is elected to fill the office; and (ii) Adkins' votes (and any other actions of County Council relying on Adkins' votes) are valid and not subject to collateral attack.

Conclusion

In conclusion, the Court finds that Ordinance 2-31 is plain and unambiguous, and the Court agrees with that interpretation of Ordinance 2-31 as advocated for by Jasper County and as set forth in this Order. The Court further finds that Ordinance 2-31 is valid and does not conflict with State law. Further, the Court grants the following declaratory relief:

(i) Adkins is not qualified to serve on County Council;

(ii) A vacancy exists for the Pocotaligo Seat on County Council, and a special election is hereby ordered to fill the unexpired term for the Pocotaligo Seat on County Council;

(iii) The Redistricting Ordinance did not cure Adkins' disqualification for office; and

(iv) Adkins served as a *de facto* officer for the entire time he held office and all the votes he cast and actions he took as a Councilmember were valid and are not subject to collateral attack.

IT IS SO ORDERED.

The Honorable Michael G. Nettles

Jasper Common Pleas

Case Caption: Jasper County VS Alvin Adkins , defendant, et al

Case Number: 2022CP2700082

Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140