

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2013-CP-27-00362

JASPER COUNTY BOARD)
OF EDUCATION,)

Plaintiff,)

vs.)

JASPER COUNTY COUNCIL)
and)
JASPER COUNTY AUDITOR)

Defendants.)

ORDER

In this action, the Jasper County Board of Education seeks a declaratory judgment that the Jasper County Council does not have the authority to determine the school tax millage of the Jasper County School District, or, in the alternative, that the County Council must accept the millage determination of the School Board for the school operating budget and incorporate it into the County's annual appropriation ordinance. The Defendant Counterclaimants seek a declaratory judgment that no power to levy an ad valorem tax to fund revenue for the School District operating budget in Jasper County has ever been delegated by the General Assembly to the Jasper County Board of Education. The matter is before the Court on the Plaintiff's motion for judgment on the pleadings and the Defendants' cross motion for judgment on the pleadings or in the alternative for summary judgment. The Plaintiff's complaint alleged that certain delegation of powers to Jasper County Council respecting the determination of the School District operating revenue and tax millage was unconstitutional. However, at the hearing the plaintiff stated that the matter could be resolved as a matter of statutory interpretation and the issue of constitutionality was not argued and is abandoned.

After the pleadings are closed, but within such time as not to delay the trial, any party may move for judgment on the pleadings. South Carolina Rules of Civil Procedure Rule 12 states that "a motion for judgment on the pleadings is proper where pleadings

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entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue.” Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 297 S.E.2d 638, 640 (1982). If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. SCRCP 12. The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. Cunningham v. Anderson Cnty., 402 S.C. 434, 442, 741 S.E.2d 545, 549 (Ct. App. 2013). A motion for summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is not a genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Health Promotion Specialists, LLC v. S. Carolina Bd. Of Dentistry, 2011-200626, 2013 WL 2631075 (S.C. June 12, 2013).

FINDINGS OF FACT

Because both the complaint and the counter-claim raise issues of statutory interpretation, there are very few facts which require recitation and they may be briefly stated. Jasper County Council was created by the General Assembly in its 1968 Acts and Joint Resolutions No. 982, p. 2370, which in relevant part, gave County Council the authority “[t]o make appropriations and to levy taxes therefore . . . for educational purposes” This Statute also required every “county official, department, commission, institution or board receiving grants or appropriations from county, state and federal funds . . . [to] make a full and detailed report of its financial status . . . together with its budget and recommendations for the coming year, to the county council.” Since 1968, the Jasper County Council has been considering and approving the revenue side of the Jasper County School District operating budget and setting the corresponding millage.

In 1971, the General Assembly created the Jasper County Board of Education. 1971 Acts and Joint Resolutions No. 601, p. 1114 (S.C.).¹ Section two of that Act gave

¹ The Plaintiff also invited the attention of the Court to 1989 Acts and Joint Resolutions No. 288, p. 1685 (S.C.). The provisions of Section Two of Act No. 601 of 1971 were re-adopted in their entirety by Act No. 288 and, therefore, Act No. 288 changed none of the powers of the School Board.

to the School Board a number of powers. The pleadings, memorandum and argument for the School Board make reference to a number of these powers, and the Court has reviewed Section Two in its entirety. In argument, the Plaintiff invited the Court's attention to three of those delegated powers: (1) the power to determine and evaluate educational programs to provide maximum educational opportunity for children of the county, (2) the power to adopt a system of budgetary controls and annually adopt a budget sufficient to meet the educational needs of the county, and (3) the power to perform other duties and responsibilities not inconsistent with the local and state laws which might be necessary to meet the educational needs of the county. The Plaintiff also referred the Court to various provisions of the South Carolina Code of Laws and of the South Carolina Constitution. None of the statutes nor constitutional provisions referred to by the Plaintiff specifically give to the School Board the power to set a millage or to impose a tax.

Following the adoption of the Home Rule Act in 1975, Jasper County did not call for a referendum on the form of government, but instead accepted the legislatively assigned Council – Administrator form of government provided for in Code of Laws of South Carolina § 4-9-10(b). Of particular significance, at the time of adoption of the Council – Administrator form of government, Jasper County Council was appropriating funds for the school operating budget in the County's budget ordinance and setting the millage. There is no evidence in this record that at the time of adoption of the Council – Administrator form of government that the School Board was establishing such millage.

CONCLUSIONS OF LAW

It has long been held in South Carolina that as a general proposition, the determination of powers and duties of local county governments and school districts resides in the General Assembly. Gaud v. Walker, 214 S.C. 451, 53 S.E.2d 316 (S.C. 1949). School districts have no inherent right of local self-government – all powers are derived from the General Assembly. Moseley v. Welch, 2009 S.C.19, 39 S.E.2d 133 (S.C. 1946). In South Carolina, counties and school districts, even though frequently co-existent in area, are separate and distinct governmental entities. Cf. Grey v. Vaigneur,

243 S.C. 604, 135 S.E.2d 227 (S.C. 1962). However, the fact that counties and school districts are separate and distinct governmental entities does not mean that they are separated in every respect. For example, Code of Laws of South Carolina § 4-1-80 requires the governing board of each county to furnish the superintendent of education with office space and furniture.

Because this is a case of statutory interpretation, we now turn to a review of relevant decisions on that subject. The cardinal rule of statutory construction for a Court is to ascertain the intent of the legislature and to give it effect. Knotts v. S.C. Dept. of Natural Resources, 48 S.C. 1, 558 S.E.2d 511 (S.Ct. 2002). In ascertaining the intention of the legislature, the Court need not look beyond words of the statute to ascertain the intent of the legislature when it appears on the face of the statute. Wright v. Colleton County School Dist., 301 S.C. 282, 391 S.E.2d 564 (S.Ct. 1990).

Tax statutes like other laws should be construed with the view towards ascertaining and giving effect to the intention of the legislature. Meredith v. Elliott, 247 S.C. 335, 147 S.E.2d 244 (S.C. 1966). No tax can be imposed without express statutory authority and that authority is construed against the taxing entity. Wingfield v. S.C. Tax Comm'n., 147 SC 116, 144 SE 846 (SC 1928). Statutes imposing taxes cannot be extended by implication beyond the clear import of the language used. Adams v. Burts, 245 S.C. 339, 140 S.E.2d 586 (S.Ct. 1965). Local governmental entities only have the power to tax where the General Assembly specifically delegates that authority and therefore the authority is not extended by implication. Hospitality Association of SC, Inc. v. Charleston, 320 SC 219, 464 S.E.2d 113 (SC 1995).

Where the power over a particular subject matter has been delegated to local government by the General Assembly without any express limitations, the extent to which that power shall be exercised rests in the discretion of the local authorities and, as long as it is exercised in good faith and for an appropriate purpose, the Courts have no grounds upon which to interfere. Lomax v. City of Greenville, 225 S.C. 289, 82 S.E.2d 191 (S.C. 1954).

The Court's review of the statute creating Jasper County Council, 1968 Acts and Joint Resolutions No. 988, p. 2370, in conjunction with the rules of statutory construction set forth herein, leads to the conclusion that the Jasper County Council was given the

power to approve the operating budget revenue of the school district and to levy the taxes therefore. This conclusion is consistent with other provisions of the statute including Section Eight, which appears to require the School District to forward its budget and recommendations for the next ensuing year to the County Council. As previously noted, in Wright v. Colleton County School District, *supra.*, the Court need not go beyond the words of the statute to ascertain the intent of the legislature when it appears on the face of the statute. The power to set the school operating budget millage was clearly given to County Council in 1968.

On the other hand, 1971 Acts and Resolutions No. 601, p. 1114 (S.C.) does not delegate any taxing power to the Jasper County School Board for operating revenue. A tax statute may not be extended beyond its clear import, and any substantial doubt as to its meaning must be resolved against the School Board and in favor of taxpayers. Beard v. South Carolina Tax Commission, 230 S.C. 357, 95 S.E.2d 628 (S.C. 1950); Alltell Communications, Inc. v. South Carolina Tax Commission, 399, S.C. 313, 731 S.E.2d. 869 (S.C. 2012); Clark v. South Carolina Tax Commission, 259 S.C. 161, 191 S.E.2d. 23 (S.C. 1972). Nowhere in Act No. 601 of 1971 or Act No. 288 of 1989 is there any mention of the power to "tax" or to "set millage". That power cannot be inferred or implied, but must be clearly delegated. Adams v. Burts, *supra.* A fair reading of the cited statutes leads to the conclusion that there has been no delegation of taxing authority for operating revenue to the Board.

In 1975, the General Assembly adopted Code of Laws of South Carolina § 4-9-70. This statute clarified that county councils would not be charged with responsibility for public school education. However, that Section contained a number of provisos, the first of which states, "that except as otherwise provided for in this section the county council shall determine by ordinance the method of establishing the school tax millage except in those cases where boards of trustees of the districts or county board of education establish such millage at the time one of the alternate forms of government provided for in this chapter becomes effective." The Court has found that the Jasper County Board of Education was not setting its own millage at the time that Jasper County adopted the Council – Administrator form of government. In addition, no evidence has been put before the Court that any of the other exceptions contained in other provisos of

Code of Laws of South Carolina § 4-9-70, are applicable to the Jasper County School District.

The Supreme Court has recognized the wide discretion of the Legislature in determining how to go about accomplishing its constitutional duty of providing for the maintenance and support of a system of free public schools. Burriss v. Anderson County Board of Education, 369 S.C. 443, 633 S.E.2d 482, (S.C. 2006). In Stone v. Traynham, 278 S.C. 407, 297 S.E.2d 420 (S.C. 1982), the Supreme Court had before it a case which called for an interpretation of the several provisos included in Code of Laws of South Carolina § 4-9-70, but, most particularly, the first proviso which the one in issue here. The Supreme Court stated as follows:

By enacting § 4-9-70, the General Assembly attempted to ensure that the taxing power for all school districts would be properly vested in some authority. *The clear intent is to vest the power to determine the school tax levy in county council in all cases where it is not vested elsewhere.*

278 S.C. at 410, 297 S.E.2d at 422 (*emphasis added*).

The Court finds and concludes that Code of Laws of South Carolina § 4-9-70 vests in the Jasper County Council the power to determine the school tax levy, and to determine by ordinance the method of establishing the school tax millage.

As an alternative theory of relief, the Plaintiff asserts in it's Complaint that "[t]o the extent that the Council has any power concerning the *ad valorem* property tax levy for the budget adopted by the Board, the power is limited to appropriating the property tax revenue and establishing the *ad valorem* property tax millage rate previously adopted by the Board. . . ." Of necessity, the Plaintiffs' claim is directed at the authority extended to the County Council in Act No. 982 of 1968 "to make appropriations and to levy taxes . . . for educational purposes . . .", or to language of the first proviso of Code of Laws of South Carolina § 4-9-70 which states, "the county council shall determine by ordinance the method of establishing school tax millage . . ." or both. In neither case does the delegation require Jasper County Council to adopt an appropriation or set millage previously adopted in a resolution of the Jasper County School Board. A review of Act No. 982 of 1968, Act No. 601 of 1971, and of the Code of Laws of South Carolina § 4-9-70, reveals no express limitations on the discretion of the Jasper County

Council's authority to make appropriations and to levy taxes or to establish a method of school tax millage. Additionally, nowhere among the constitutional provisions or other statutes cited by the Plaintiff does the Court find any such express limitation. In this case the Complaint does not allege that the Jasper County Council acted in bad faith or for an inappropriate purpose and there has not been offered any evidence on this issue. The Court finds that determination of the amount of the appropriation to the School District operating budget and determination of the millage to fund the school district's operating budget is within the discretion of Jasper County Council subject to the exercise of good faith and for an appropriate purpose.

Based upon the Findings of Fact and Conclusions of Law, the motion of the Plaintiff for judgment on the pleadings is DENIED.

Further, based upon the Findings of Fact and Conclusions of Law, the Defendant – Counterclaimant's motion for summary judgment is GRANTED and it is the judgment of the Court that Jasper County Council has been delegated the power to make appropriations and to levy taxes for the Jasper County School District annual operating budget and to determine by ordinance the method of establishing school tax millage. This delegation of power includes the right of Jasper County Council to exercise their discretion subject to the limitations of good faith and acting for an appropriate purpose.

AND IT IS SO ORDERED.



Carmen T. Mullen
Judge, Fourteenth Judicial Circuit

25 September, 2013

Beaufort, South Carolina



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