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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
IN THE COURT OF COMMON PLEAS

HON. H. STEVEN DEBERRY, IV, CIRCUIT COURT JUDGE

CASE NUMBER 2020-CP-07-1840

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, JOHN J. MCCANN AND
STEPHEN G. RILEY.....APPELLANTS,


vs.

BEAUFORT COUNY, SOUTH CAROLINA.....RESPONDENT.

NOTICE OF APPEAL

The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley appeal the Orders of the Hon. H. Steven DeBerry, IV, filed on August 7, 2025, and on August 29, 2025, copies of which are attached hereto as Exhibits 1 and 2. The Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley received written notice of the filing of the final Order on August 29, 2025.

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This 3rd Day of September, 2025.

EXHIBIT "A" TO NOTICE OF APPEAL

CASE NUMBER 2020-CP-07-1840

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT) CASE NO.: 2020-CP-07-01840

The Town of Hilton Head Island, South)
Carolina, John J. McCann and Stephen G.)
Riley,)

Plaintiffs)

vs.)

Beaufort County, South Carolina,)

Defendant.)

**ORDER GRANTING DEFENDANT
BEAUFORT COUNTY'S CROSS
MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

On March 10, 2025, Plaintiffs Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley (collectively "Plaintiffs") filed their Notice of Motion and Motion for Summary Judgment. On March 12, 2025, Defendant Beaufort County, South Carolina ("Beaufort County") filed its Cross Motion for Summary Judgment. On June 9, 2025, Plaintiffs filed their Reply to Beaufort County's Motion for Summary Judgment. The parties agreed that this matter should be decided as a matter of law upon an agreed record comprising stipulated facts, depositions, and documentary evidence. On June 10, 2025, the undersigned heard the Motions for Summary Judgment via WebEx. Attorney Curtis L Coltrane appeared for Plaintiffs, and Attorney M. Dawes Cooke, Jr. appeared for Defendant Beaufort County.

Having considered the parties' filings, oral arguments and the governing law, it is hereby ORDERED, ADJUDGED and DECREED that Defendant Beaufort County's March 12, 2025 Cross Motion for Summary Judgment be, and hereby is, GRANTED. It is further ORDERED, ADJUDGED, and DECREED that Plaintiffs' Motion for Summary Judgment be, and hereby is, DENIED.

FINDINGS OF FACT

The following facts are not disputed:

1. The Contract for Primary Law Enforcement Services

Plaintiff Town of Hilton Head Island ("Town") is a municipality in Beaufort County. Plaintiffs John J. McCann and Stephen G. Riley are taxpayers and property owners in the Town. This lawsuit involves an August 24, 2020 Beaufort County Ordinance that created a uniform service charge ("LESC") on real property in the Town for primary police services.

Because of its large population (including a massive seasonal tourist population), the Town's law enforcement demands exceed those of other parts of Beaufort County. Despite this, the parties stipulate, the Town does not have a municipal police department and has never had one. The parties further stipulate:

All other municipalities in Beaufort County (including the City of Beaufort, the Town of Port Royal, the Town of Bluffton, and the Town of Yemassee) have municipal police departments. All of those municipalities pay for the maintenance and operation of police departments as a part of their municipal budgets.

To provide competent primary police services to its taxpayers, residents, and visitors, the Town has contracted with Beaufort County over the years for the Beaufort County Sheriff's Office ("BCSO") to act as its police department. In fact, the Town has paid Beaufort County for BCSO to serve as its police department since its incorporation in 1983.¹ It has done so through a series of contracts with Beaufort County.

In January, 2015, Town and Beaufort County entered into an Agreement for Police Services ("2015 Agreement"), under which BCSO would provide the Town with "professional police service."² Specifically, BCSO agreed to provide primary police services to the Town and do so over and above what it provides other municipalities. On October 7, 2019, the Town's then-

¹ A 1983 Town ordinance provides: "in order to provide the necessary police protection to protect the health, safety, welfare and property of [Hilton Head] and its citizens, the town shall enter into an intergovernmental service contract with the county sheriff's department." See Town of Hilton Head Island Code of Ordinances § 7-1-10.

² The 2015 Agreement expired on January 31, 2018, but the parties continued on a monthly basis until 2020, when the LESC was enacted.

Mayor (Plaintiff McCann) wrote to the Chairman of Beaufort County Council, stating that, starting in 2021, the Town would only pay Beaufort County \$300,000 per year for BCSO acting as its police department.

2. Statistical Data Regarding Law Enforcement Services Provided in Municipalities

The Town consumes more BCSO resources than other municipalities. BCSO dispatch receives calls for assistance from throughout Beaufort County and directs those calls to the appropriate responding agency. In the year before the LESC, BCSO provided the primary response for all 97,336 calls for service in the Town that would normally have been handled by a municipal police department, if one existed. Comparatively, BCSO responded to far fewer primary service calls in other municipalities:

<u>MUNICIPALITY</u>	<u>RESPONSES BY TOWN POLICE DEPARTMENT</u>	<u>RESPONSES BY BCSO</u>
Beaufort (98,558 total calls for service)	86,623 (88% of total calls for service)	11,935 (12% of total calls for service)
Bluffton (70,688 total calls for service)	64,778 (92% of total calls for service)	5,890 (8% of total calls for service)
Port Royal (37,083 total calls for service)	33,699 (91% of total calls for service)	3,384 (9% of total calls for service)
Hilton Head Island (97,366 total calls for service)	0 (0% of total calls for service)	97,366 (100% of total calls for service)

Based on these statistics, if the Town had a police department, BCSO would likely have only responded to about 10% of its primary service calls, rather than all of them.

3. Costs to Provide Law Enforcement Services

BCSO provides "secondary" and "primary" law enforcement services in Beaufort County. "Secondary" law enforcement services include service of process, warrant service, bomb squad services, disaster services, emergency management, multi-agency violent crime task force,

helicopter services, marine services, *etc.* BCSO provides secondary services equally on an as-needed basis everywhere in Beaufort County. BCSO's 2020 budgeted costs for providing such "secondary" services was \$29,663,512.00.

On the other hand, "primary" law enforcement services are those that a municipal police department would normally handle, such as patrol and responding to citizen calls. In every municipality except the Town, police departments provide nearly all primary law enforcement services, with BCSO servicing a minority of calls and patrols. Because the Town does not have a police department, BCSO provides 100% of its "primary" law enforcement services. It does not do so for any other municipality. As a result, the Town consumes far more resources than other municipalities, where BCSO primarily provides only secondary services.

Under the Town's agreement with Beaufort County, BCSO has more than 40 employees who provide the Town's primary law enforcement services. TischlerBise estimated that the permanent population of Hilton Head would be 40,035 and its seasonal population would be 70,046 in 2020. At the time of the LESC (discussed below), the annual cost and value of primary services that BCSO provided the Town was at least \$4,383,257.00. The actual cost of providing *both* primary and secondary law enforcement services would have been substantially greater. If BCSO did not provide primary police services, the Town would have likely spent much more operating and setting up its own police department than it pays Beaufort County to provide those services.³ The total fees that Hilton Head property owners pay under the LESC are less than what any other municipality in Beaufort County pays for its police force, yet the Sheriff serves a much larger population in Hilton Head than any municipal police force serves in the other municipalities. The parties have stipulated to the costs incurred by other municipalities annually for the operation of their police departments. These are annual operating costs, which do not include the cost of setting up the police force:

³ Sheriff Tanner testified that "The Town of Hilton Head saves millions and has over the past 40 years.... I would, knowing what I know about law enforcement and knowing what I know about recruiting and retention, it would – it would be a very difficult task for them to start their own police force, and it would be extremely expensive."

		BLUFFTON	BEAUFORT	PORT ROYAL
2020				
	Population	27,716	13,607	14,220
	P.D. Budget	\$7,270,955.00	\$4,688,073.00	\$2,349,405.00
2021				
	Population	32,191	12,960	14,753
	P.D. Budget	\$7,102,892.00	\$4,504,976.00	\$2,496,796.00
2022				
	Population	34,493	13,656	15,585
	P.D. Budget	\$7,727,168.00	\$4,783,813.00	\$2,705,235.00
2023				
	Population	35,243	13,850	16,287
	P.D. Budget	\$8,552,719.00	\$5,320,754.00	\$2,862,950.00
2024				
	Population	40,000	13,935	16,881
	P.D. Budget	\$10,272,435.00	\$6,054,894.00	\$3,183,400.00

Thus, as Sheriff Tanner testified, Hilton Head has saved a tremendous amount of money by having the Sheriff provide its police force, compared to the cost of setting up and maintaining its own police force.

4. The LESC Ordinance

Although the Town expressed that it would not pay Beaufort County more than \$300,000 for primary law enforcement, BCSO continued to provide those services to the Town. To underwrite the costs of those services, Beaufort County considered a uniform service charge on properties in the Town, the LESC at issue. Beaufort County retained the fiscal, economic, and planning consulting firm TischlerBise—which has prepared over 900 impact fees and 800 fiscal impact analyses nationwide—to study BCSO's provision of police services to the Town. TischlerBise developed a methodology intended to fairly and uniformly apply a LESC to the Town based upon the historical utilization of police services by different categories of properties. TischlerBise was informed that the annual cost of primary law enforcement services to the Town

was \$4,383,257. It calculated the LESC so as to generate sufficient revenue to pay the cost of primary law enforcement services. TischlerBise noted that those services are in lieu of the Town “providing its own police force *and is above the base level of law enforcement service* provided to incorporated places in the County.”

On August 24, 2020, County Council passed Ordinance 2020/29 (“Ordinance”), which created the LESC. Plaintiffs do not dispute that Beaufort County enacted the Ordinance in procedural compliance with the law and TischlerBise’s recommendations. The LESC is “charged to properties in the Town to cover the cost of law enforcement services provided within the Town by the Sheriff’s Office over and beyond the level of services provided in the incorporated municipalities which provide their own law enforcement services.”

The parties have stipulated that there are no genuine issues of material fact for a jury to decide and that this matter should be decided as a matter of law. For the following reasons, the Court determines that the LESC is a valid uniform service fee and not an unlawful tax. The Court therefore grants Beaufort County’s motion for summary judgment and denies Plaintiffs’ Motion for Summary Judgment.

STANDARD OF REVIEW

As the parties claiming entitlement to relief from the Court, Plaintiffs bear the burden of proving their claims. “The burden of proof in a declaratory judgment action rests on the plaintiff[s].” *Crossmann Cmty. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 411 S.C. 506, 520, 769 S.E.2d 453, 460 (Ct. App. 2015); *accord Vermont Mut. Ins. Co. v. Singleton by & ex rel. Singleton*, 316 S.C. 5, 10, 446 S.E.2d 417, 421 (1994) (“Where an action is filed for declaratory judgment seeking affirmative relief, the movant must prove his material allegations by a preponderance of the evidence.”); *Martin v. Cantrell*, 225 S.C. 140, 144, 81 S.E.2d 37, 38-39 (1954) (“The plaintiff seeks affirmative relief under the declaratory judgment act, and of course the burden of proof rests upon her in this action, as well as in other actions, to prove the material allegations of her complaint by the greater weight or preponderance of the testimony.”).

The standards governing a motion for summary judgment are well-settled in South Carolina:

Rule 56(c), SCRPC, provides that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

An adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth specific facts showing there is a genuine issue for trial. *Strickland v. Madden*, 323 S.C. 63, 68, 448 S.E.2d 581, 584 (Ct. App. 1994).

See Paine Gayle Props., LLC v. CSX Transp., Inc., 400 S.C. 568, 576, 735 S.E.2d 528, 532-33 (Ct. App. 2012) (affirming grant of summary judgment).

"Where cross motions for summary judgment are filed, the parties concede the issue before us should be decided as a matter of law." *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)." *Buonaiuto v. Town of Hilton Head Island*, 440 S.C. 144, 150, 889 S.E.2d 625, 628-29 (Ct. App. 2023). The parties in this case have stipulated that there are no genuine issues of material fact to be decided and that the validity of the LESC should be decided as a matter of law.

CONCLUSIONS OF LAW

The Home Rule Act vests legislative power in county governments. *See* § 4-9-120 ("[C]ouncil shall take legislative action by ordinance"); *North Charleston Land Corporation v. City of North Charleston*, 281 S.C. 470, 474, 316 S.E.2d 137, 139 (1984) ("An ordinance is a legislative enactment and is presumed to be constitutional"). "The courts should not and will not interfere in the administration of the internal domestic affairs of the counties and cities, unless there is a manifest disregard or abuse of power or discretion." *See State ex rel. Edwards v. Osborne*, 193 S.C. 158, 7 S.E.2d 526, 533 (1940). A court's analysis of a local ordinance must be "exercised carefully and cautiously, as it is not the function of the Court to pass upon the wisdom

or expediency of municipal ordinances or regulations." *See McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 504-05, 719 S.E.2d 660, 663 (2011) (citation omitted); *accord Dunes West Golf Club, LLC v. Town of Mt. Pleasant*, 401 S.C. 280, 300, 737 S.E.2d 601, 611 (2013) ("It is not the function of the courts to pass upon the wisdom or folly of municipal ordinances.").

Plaintiffs assert that the LESC is illegal because Beaufort County may not impose new taxes unless the General Assembly authorizes it. *See* S.C. Code § 6-1-310. Beaufort County contends that the LESC is not a tax, but a "uniform service charge" or "service or user fee."⁴ The General Assembly has authorized Beaufort County to assess "uniform service charges." *See* S.C. Code § 4-9-30(5)(a); *accord* S.C. Code § 6-1-330(A) ("A local governing body . . . is authorized to charge and collect a service or user fee."). The General Assembly defines "service or user fee" and "uniform service charge" as follows:

"Service or user fee" means a charge required to be paid in return for a particular government service or program. "Service or user fee" also includes "uniform service charges". The revenue generated from the fee must: (a) be used to the benefit of the payers, even if the general public also benefits; (b) only be used for the specific improvement contemplated; (c) not exceed the cost of the improvement; and (d) be uniformly imposed on all payers.

S.C. Code § 61-1-300(6); *accord C.R. Campbell Const. Co. v. City of Charleston*, 325 S.C. 235, 481 S.E.2d 437, 438 (1997) (*citing Brown v. Cty. of Horry*, 308 S.C. 180, 181, 182, 417 S.E.2d 565, 566 (1992)). For the reasons that follow, the Court determines that, under the undisputed facts, the LESC satisfies the statutory definition of a service or user fee.

1. The LESC Benefits Payers.

The first statutory requirement is that the "revenue generated from the [LESC] must . . . be used to the benefit of the payers, even if the general public also benefits." S.C. Code § 61-1-300(6). The statute does not require that the benefits to those taxpayers be unique or different from the benefits to other taxpayers. It does not require that the services paid by the LESC accrue

⁴ "Generally, a tax is an enforced contribution to provide for the support of government, whereas a fee is a charge for a particular benefit to the payer." *BellSouth Telecommunications, Inc. v. City of Orangeburg*, 337 S.C. 35, 39-40, 522 S.E.2d 804, 806 (1999).

only to the payers. It simply requires that those who pay the LESC receive some benefit. The record is undisputed that the LESC benefits paying property owners in the Town. The BCSO provides significantly more primary law enforcement services to the Town compared to other municipalities. BCSO responds to *all* calls for assistance in the Town, totaling nearly one hundred thousand in 2019. This allows the Town to avoid the much greater expense of creating and maintaining its own police department at taxpayer expense. There is no doubt that the payers of the LESC—property owners in the Town—receive a benefit.

Plaintiffs focus on the statutory definition of the Sheriff's responsibilities as "the chief law enforcement officer of the county" *See* S.C. Att. Gen. Op., 2002 WL 31958840, at *2 (Dec. 20, 2002), and the Sheriff's own pronouncements that he must provide law enforcement services to the entire county. However, the Sheriff's role as chief law enforcement officer does not mandate that he act in lieu of a municipal police department or be the exclusive provider of primary law enforcement in a municipality. The only statutory duty on the BCSO is that "deputy sheriffs shall patrol the entire county at least twice a week by sections assigned to each by the sheriff, remaining on duty at night when occasion or circumstances suggest the propriety thereof to prevent or detect crime or to make an arrest." *See* S.C. Code § 23-13-70. BCSO is required to fulfill this statutory duty in both towns with police departments and unincorporated areas. BCSO has always fulfilled this duty in the entire County.

However, the Town is the only municipality that asks the BCSO to serve as its primary police department. The law does not require that BCSO serve as the Town's police department without the Town paying the additional costs for it to do so. The Office of the Attorney General "has advised it appears that while a sheriff, as chief law enforcement officer of a county, is statutorily obligated to patrol his county, which presumably would include a municipality within that county, a sheriff, as a county official, is not generally considered to be obligated to provide specific services within a municipality." *See* S.C. Att. Gen. Op., 2011 WL 1740740, at *7 (Apr. 20, 2011) (emphasis added). The Office of the Attorney General has confirmed that a sheriff may contract with a municipality to provide primary police services:

[I]t appears that while a sheriff, as chief law enforcement officer of a county is statutorily obligated to patrol his county, which presumably would include a municipality within that county, a sheriff, as a county official, is not generally considered to be obligated to provide specific services within a municipality.

However, a sheriff could offer contract law enforcement services to a municipality. *See* S.C. Att. Gen. Op. 92-67 (Nov. 6, 1992) (emphasis added); *accord* S.C. Att. Gen. Op., 2018 WL 1557222, at *1 (Mar. 16, 2018) (permitting "a sheriffs (sic) department to contract with a municipality to provide law enforcement services"); S.C. Att. Gen. Op., 2011 WL 1740740, at *7 (Apr. 20, 2011) (sheriff "could offer contract law enforcement services to a municipality.").

That is precisely what Beaufort County had traditionally done with the Town. Under a series of agreements, BCSO performed the services a Town police department would do (if one existed) and the Town paid for those services. As the TischlerBise report observed, "[t]hese law enforcement services are provided to [the Town] in lieu of the Town providing its own police force and is above the base level of law enforcement service provided to incorporated places in the County." There is no dispute that the LESC has provided a benefit to the Town taxpayers.

The Court finds that the residents of Hilton Head significantly benefit by having a full range of police services provided by the Beaufort County Sheriff, at a much lower cost per resident than any other municipality in Beaufort County pays for its police services.

2. **The LESC Is Used Only for Law Enforcement in the Town and Does Not Exceed the Cost of the Improvement.**

The record further shows that the second and third requirements for a service charge—*i.e.*, that the LESC only be used for the contemplated purpose and not exceed the cost—have been satisfied.

It is undisputed that Tischler Bise calculated the amount of the LESC with the intention that it would equal the anticipated costs of primary law enforcement costs for the Town. Beaufort County has taken care to determine a fair and accurate allocation of the costs of primary law enforcement services. There is no evidence that the LESC has been utilized to give a windfall to Beaufort County or to fund other expenses. The Ordinance itself provides, in Section 3, that "All

proceeds derived from the law enforcement service charge and uniform user fee authorized hereby shall be recorded in a separate fund within the County’s accounts. Such proceeds shall be used for law enforcement and related administrative services to be provided by the Beaufort County Sheriff’s Office in the Service Area, in lieu of the applicable municipality providing its own law enforcement force at a level above the base level of law enforcement services provided by the Sheriff’s Office in the unincorporated County.”

The parties have stipulated that the available complete data for the years during which the LESC was collected shows that the amount of fees collected correlates closely with the amounts expended for providing primary law enforcement services to the Town:

<u>FY 2020/2021</u>	Sheriff HHI Services Fee Expenditures \$ 4,255,542.00
	LESC Collected \$ 4,647,365.00
<u>FY 2021/2022</u>	Sheriff HHI Services Fee Expenditures \$ 5,095,848.00
	LESC Collected \$ 4,828,652.00
<u>FY 2022/2023</u>	Sheriff HHI Services Fee Expenditures \$ 5,127,555.00
	LESC Collected \$ 5,081,214.75

While there has been some minor variation from year to year due to uncertainties in budgeting, collection, and expenditure, the amounts collected have closely tracked actual expenditures. For the three years above, the total amount expended to provide primary law enforcement service to the Town was \$14,478,945, while the amount of LESC collected was \$14,557,231.

Plaintiffs presented no evidence that the LESC has been used for any purpose other than providing primary law enforcement services in the Town. As a result, the Court determines that the second and third elements of the statute have been satisfied.

3. The LESC Is Uniformly Imposed on All Pavers.

Finally, the LESC is imposed on a uniform basis among similarly-situated property owners. The TischlerBise firm was retained specifically to assure that the LESC would be imposed uniformly based upon anticipated consumption of law enforcement services by each different

category of property in Hilton Head. The Ordinance provides a procedure by which a fee payer may appeal the assessment of the User Fee on a parcel of property. Plaintiffs have not argued, or presented any evidence, that the LESC is not uniformly imposed on properties that benefit from the police services provided by the Sheriff's Office.

CONCLUSION

For the foregoing reasons, the Court hereby GRANTS Defendant's Cross-Motion for Summary Judgment and DENIES Plaintiffs' Motion for Summary Judgment.

[JUDGE'S SIGNATURE ON FOLLOWING PAGE]



Beaufort Common Pleas

Case Caption: Hilton Head Town South Carolina , plaintiff, et al VS Beaufort
County South Carolina , defendant, et al
Case Number: 2020CP0701840
Type: Order/Summary Judgment

H. Steven DeBerry, IV

Circuit Court Judge 2771

EXHIBIT "B" TO NOTICE OF APPEAL

CASE NUMBER 2020-CP-07-1840

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)	
)	
THE TOWN OF HILTON HEAD)	
ISLAND, SOUTH CAROLINA; JOHN)	
J. MCCAN, and STEPHEN G. RILEY,)	
)	
Plaintiffs,)	
)	
vs.)	ORDER
)	Case No.: 2020-CP-07-01840
)	
BEAUFORT COUNTY, SOUTH)	
CAROLINA)	
)	
)	
Defendant.)	
)	
)	

The Plaintiff, Town of Hilton Head Island, South Carolina, John J. McCann and Stephen G. Riley, requests the Court to reconsider the Order dated August 7, 2025 and in the Florence County Clerk of Court’s office.

Having duly considered the motion of the Plaintiff, this Court has determined that its original ruling of August 7, 2025 is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion is therefore DENIED.

AND IT IS SO ORDERED.

Dated: _____

H. Steven DeBerry, IV
Judge, Twelfth Judicial Circuit



Beaufort Common Pleas

Case Caption: Hilton Head Town South Carolina , plaintiff, et al VS Beaufort
County South Carolina , defendant, et al
Case Number: 2020CP0701840
Type: Order/Other

H. Steven DeBerry, IV

Circuit Court Judge 2771