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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Thomas W. McGee, III, Circuit Court Judge

Appellate Case No. 2025-000791

Cameron M. Butler, ... Appellant,

v.

Kevin A. Shwedo, Director of the Department of Motor Vehicles, and
Marcia A. Adams, Director of the Department of Administration,
in their Individual and official capacities, and all others similarly situated, ...Respondents.

INITIAL BRIEF OF RESPONDENT KEVIN A. SHWEDO, EXECUTIVE DIRECTOR OF THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES

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COUNTERSTATEMENT OF THE ISSUES ON APPEAL

I. Did the circuit court correctly find section 8-21-15(B)(8) of the South Carolina Code applies retroactively to the processing fee at issue here because clear legislative intent leaves no room for doubt that the General Assembly intended to remedy and resolve litigation against the DMV and because section 8-21-15(B)(8) is remedial?

II. Did the circuit court correctly find section 8-21-30 of the South Carolina Code does apply to the DMV because its Executive Director is not an officer named in Title 8, chapter 21?

Introduction

This appeal arises out of Appellant Cameron M. Butler's contest of a processing fee (only $6.61) charged to him for using a credit card. Two different circuit court judges have rejected this legal challenge in nearly identical cases. Aware of the ongoing litigation, the General Assembly amended the relevant statute to legally bless the practice of charging processing fees that had been in place for twenty-plus years. Appellant's quixotic pursuit should be rejected again.

Statement of the Case

Under a twenty-year-old statewide contract, a DMV customer who purchases a product or service with a credit or debit card pays a statutory fee for the product or service and a processing fee through South Carolina Interactive, LLC's (SCI) merchant card processing system. (Exhibits C & D to DMV's Memo. in Supp.). Appellant challenges the processing fee charged to him for purchasing products in person at the DMV with a credit card. (Compl.) The circuit court granted summary judgment for Respondents Kevin A. Shwedo, Executive Director of the South Carolina Department of Motor Vehicles (the DMV), and Marcia A. Adams, Executive Director of the South Carolina Department of Administration (Admin). (Order).

But this case is not the first of its kind. Appellant filed his complaint on November 3, 2023, (Compl.), in the midst of other litigation involving identical issues. In that litigation, brought by Appellant's counsel on behalf of his two family members (the Lloyd Litigation), another circuit court judge granted summary judgment for the DMV on June 12, 2024. *See* (Exhibits A & B to DMV's Memo. in Supp.). The order in the Lloyd Litigation mirrors the one on appeal here. Yet it was not appealed.

Like the plaintiffs in that case, Appellant alleges here that the processing fee charged to him for using a credit card is unlawful. *See* S.C. Code Ann. § 8-21-15(A) (providing that "[n]o

state . . . department . . . initially may set a fee for performing any duty, responsibility, or function unless the fee for performing the particular duty, responsibility, or function is authorized by statutory law and set by regulation except as provided in this section"). According to Appellant, the DMV is thus liable for a ten-fold penalty under section 8-21-30 of the South Carolina Code. The parties jointly moved for complex case designation and assignment to a single judge on March 22, 2024. (J. Mot. for Complex Case Designation). On September 6, 2024, the Chief Administrative Judge for the Fifth Circuit granted the motion and assigned the case to the Honorable William McGee, III. (Complex Case Designation Order).

Appellant moved for partial summary judgment. (Pl.'s Mot. for Partial Summ. J.). Respondents too filed motions for summary judgment. (DMV Mot. for Summ. J.); (DMV Memo. in Supp. of Mot.); (Admin. Mot. for Summ. J.). Appellant then filed a second motion for partial summary judgment and memorandum in support. (Pl.'s 2nd Mot. for Partial Summ. J.); (Pl.'s Memo. in Supp.). Respondents filed a joint response in opposition, (J. Resp.), and Appellant filed a response in opposition to Respondents' motions for summary judgment, (Pl.'s Resp.). Appellant later filed a reply in support of his motion. (Pl.'s Reply).

The circuit court held a hearing on February 21, 2025. At the circuit court's request, the parties filed supplemental briefing related to Appellant's one-subject rule challenge, which is not at issue on appeal. (Order at 3). After considering the extensive briefing, uncontested record, and arguments of counsel, the circuit court denied Appellant's motions for summary judgment and granted summary judgment for Respondents. (Order). This appeal follows.

STATEMENT OF THE FACTS

SCI charges a processing fee to electronically process purchases made by debit or credit card pursuant to a subagreement between it and the DMV. (Exhibits C & D to DMV's Memo. in

Supp.). The subagreement was authorized under a 2004 Master Contract for digital services between the Division of State Information Technology and SCI, and it is currently authorized under the Master Contract renewed in 2021 between Admin and SCI. (Compl. at ¶¶ 9–11, 13–19). Some version of the Master Contract, including the processing fee provision which aids government agencies utilizing the contract in collecting fees and other payments, has been effective for over two decades.

The 2021 Master Contract—along with earlier versions—permits SCI to be compensated for its merchant card processing services through the processing fee in one of two ways: the state agency or department could either absorb the processing fee or pass it on to the customer using the portal. (Exhibit C to DMV's Memo. in Supp. at § 2.5.1.1.9). In either scenario, there is a per-transaction fee of 1.7% plus $1.00 for processing credit or debit cards. (Exhibit D to DMV's Memo. in Supp.). The agreement between the DMV and SCI provided that the processing fees would be passed on to the customer. *Id.*

In July 2022, Appellant used a credit card to pay for his in-person purchase of an out-of-state title, a new registration, and a driver's license at a DMV branch in Blythewood, South Carolina. SCI charged Plaintiff a $6.61 "processing fee" associated with this transaction. (Compl. at ¶¶ 57–59). Some sixteen months later, while the Lloyd Litigation was still ongoing, Appellant sued Respondents, arguing the processing fee is unlawful.

As relevant here,[1] Appellant claimed the processing fee violates sections 8-21-10 and 8-21-15. *See generally* (Compl.). Yet, as the circuit court found, section 8-21-10 does not apply to the DMV. (Order at 17–18). And in 2023, the General Assembly passed Act 51, which included

[1] Though not relevant on appeal, Appellant also sought certification of a bilateral class of Plaintiffs and Defendant state agencies that have agreements with SCI for electronic payment processing.

an amendment to subsection 8-21-15(B), clarifying that "charges for vendor fees, convenience fees, transaction fees, or other similar fees that allow a person to pay a state agency or contracted vendor on behalf of a state agency for goods, services, fees, or other items through any payment method other than cash" are excluded from the fee prohibition in subsection 8-21-15(A). Act No. 51, 2023 S.C. Acts 200, 220 (codified as amended at S.C. Code Ann. § 8-21-15(B)(8)).

This matter comes before the Court on the circuit court's order granting summary judgment for Respondents. (Order).

STANDARD

The DMV adopts Appellant's standard of review, Rule 208(b)(6), SCACR, save for one citation: he claims the Court "is free to decide the question of statutory construction based on its own assessment of which interpretation and reasoning would best comport with the law and public policies of this state and its sense of law, justice and right." Appellant's Br. at 10. But "[t]here is no principle of statutory interpretation that allows a court to simply do what it thinks is just and right." *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n*, 424 S.C. 542, 553–54, 819 S.E.2d 124, 130 (2018) (Few, J., concurring).

> If it were true courts have the authority to interpret statutes according to a sense of justice and right, then courts would have the power to rewrite statutes to suit their own personal preferences, regardless of legislative intent. Courts do not have that power. Rather, . . . courts must employ recognized principles of statutory interpretation with the purpose of discerning legislative intent.

Id. With that caveat, the DMV otherwise agrees with the operative standard of review.

ARGUMENT

Subsection 8-21-15(A) prohibits state agencies from "initially" "set[ting] a fee for performing any duty, responsibility, or function unless the fee . . . is authorized by statutory law and set by regulation." Subsection 8-21-15(B), however, lists fees not subject to that prohibition.

S.C. Code Ann. § 8-21-15(B)(5). In 2023, the General Assembly clarified that "charges for vendor fees, convenience fees, transaction fees, or other similar fees that allow a person to pay a state agency or contracted vendor on behalf of a state agency for goods, services, fees, or other items through any payment method other than cash" are not subject to the fee prohibition. S.C. Code Ann. § 8-21-15(B)(8). On appeal, Appellant does not meaningfully dispute that the processing fees SCI charges under the Master Contract generally fall within subsection 8-21-15(B)(8). He merely contends the statute applies prospectively, so it does not cover the processing fee he paid in July 2022. Thus, while Appellant purports to raise several issues in his brief, there is really just one: whether section 8-21-15(B)(8) applies retroactively.

Because the clear legislative intent leaves no room for doubt and the statute is remedial, subsection 8-21-15(B)(8) applies to the processing fee at issue here. Even if it did not, neither the DMV nor its executive director are officers enumerated in section 8-21-10 *et seq.*, and section 8-21-30 therefore does not apply. The Court should affirm.

I. Subsection 8-21-15(B)(8) applies retroactively to the professing fee.

While statutory amendments are generally considered prospective, "clear legislative intent to the contrary" can overcome that presumption. *Hercules Inc. v. S.C. Tax Comm'n*, 274 S.C. 137, 142, 262 S.E.2d 45, 48 (1980) (citations omitted). "A principal exception . . . is that remedial or procedural statutes are generally held to operate retrospectively." *Id.* (citing *Howard v. Allen*, 368 F. Supp. 310, 315 (D.S.C. 1973)); *see also SCDSS/Child Support Enf't v. Carswell*, 359 S.C. 424, 431, 597 S.E.2d 859, 862 (Ct. App. 2004) ("Under South Carolina law, statutes that are remedial or procedural in nature are generally held to operate retrospectively."). Statutes that "provide procedural or remedial benefits as opposed to statutes affecting vested or substantial rights" should be applied retroactively. *Goff v. Mills*, 279 S.C. 382, 386, 308 S.E.2d 778, 780 (1983).

> [T]he ordinary application of a new rule of law "backwards," say, to pending cases, may or may not, involve a further matter of remedies. Whether it does so, and, if so, what kind of remedy the state court may fashion, depend—like almost all legal issues—upon the kind of case, matter, and circumstances involved. Not all cases concerning retroactivity and remedies are of the same sort.

Reynoldsville Casket Co. v. Hyde, 514 U.S. 749, 754–55 (1995). Against this backdrop, the circuit court properly found the statute retroactive under the unique facts of this case.

A. Clear legislative intent establishes subsection 8-21-15(B)(8) applies retroactively to the processing fees under the twenty-year-old Master Contract.

The index of topics for Act 51 reveals its general purpose was to overhaul and update the law applicable to the DMV. So does the legislative history. *See, e.g.*, S.C. Leg. Upd., Vol. 40, No. 16, 125th Gen. Assemb., 1st Sess. (May 8, 2023) (describing Act 51 as "an omnibus bill relating to the DMV and licenses"). And as part of that, the General Assembly intended to take care of the lawsuits against the DMV over the professing fee. Notably, as Appellant's counsel conceded in the prior case and does not contest here, the General Assembly was well-aware of the Lloyd Litigation challenging the processing fee during the first regular session of the 125th South Carolina General Assembly. *See* (Exhibit A to DMV's Mot. for Summ. J. at 8); (Exhibit B to DMV's Mot. for Summ. J. at 5). Its purpose for amending section 8-21-15(B) to include subsection 8-21-15(B)(8) was to remedy and resolve that (and now this) litigation. That is why the General Assembly included the processing fee exception—which applies to all state agencies—in the middle of the omnibus DMV bill: the DMV was the only agency sued for its use of the statewide Master Contract. No further analysis of legislative intent is necessary.

Even so, the circuit court properly found the legislation here analogous to the bill at issue in *Carolina Power & Light Co. v. Town of Pageland*, 321 S.C. 538, 471 S.E.2d 137 (1996). In that case, our supreme court considered whether an "annexation exception" to the statute providing

that "a rural cooperative may provide service only in rural areas" applied retroactively to permit the rural co-op to continue to serve the Town of Pageland even after the Town had grown into a non-rural area. *Id.* at 542, 471 S.E.2d at 139. The co-op had been serving customers in the area when the Town annexed the area in 1949. *Id.* at 541, 471 S.E.2d at 138. Although the General Assembly did not enact the annexation exception until 1963—14 years later—the court found "retroactive application of the [exception] so clearly compelled as to leave no room for doubt." *Id.* at 543, 471 S.E.2d at 140.

While the statute there did not expressly provide the exception should apply retroactively, the court held it was "indisputable" that "the intent of the legislature in adopting the annexation exception was to permit co-ops to continue to serve existing customers and not require ouster of a co-op due solely to a city's annexation." *Id.* at 543, 471 S.E.2d at 140. "To apply the statute prospectively," the court continued, "only would force an ouster of Co-op . . . [which would be] so clearly contrary to the legislative intent." *Id.* The court therefore found the annexation exception applied "retroactively to permit [the] Co-op to continue serving those customers within Pageland's municipal boundaries which it has been serving since the 1949 annexation." *Id.* at 544, 471 S.E.2d at 140.

The circuit court properly found *Carolina Power & Light* analogous and instructive here. It is undisputed that, in compliance with the South Carolina Procurement Code, the State executed the Master Contract with SCI in 2004. Since then, it has been renewed multiple times. Indeed, some version of the Master Contract has been in place for over two decades. *Cf. Haig v. Agee*, 453 U.S. 280, 300 (1981) ("congressional acquiescence may sometimes be found from nothing more than silence in the face of an administrative policy"); *Williams v. Gov't Emps. Ins. Co.*, 409 S.C. 586, 602, 762 S.E.2d 705, 714 (2014) ("The General Assembly is presumed to know the law[.]").

And it is also undisputed that each version provided the processing fee for merchant card processing services was 1.7% plus $1.00 per transaction, permitting the agency to absorb the processing fee or pass it on to customers using the portal.

It is not "pure conjecture" that the General Assembly knew about and wanted to remedy these lawsuits. *Cf. Maharaj v. Stubbs & Perdue, P.A.*, 681 F.3d 558, 575 (4th Cir. 2012) ("Faced with statutory silence, [courts] presume that Congress is aware of the legal context in which it is legislating." (quoting *Palisades Collections LLC v. Shorts*, 552 F.3d 327, 334 n.4 (4th Cir. 2008))). Appellant's counsel conceded as much in the Lloyd Litigation. (Exhibit A to DMV's Mot. for Summ. J. at 8); (Exhibit B to DMV's Mot. for Summ. J. at 5). Nor can it be seriously contested that the General Assembly knew the Master Contract existed and state agencies had been operating under it—and charging processing fees—for decades. *Cf. A.T. Massey Coal Co. v. Barnhart*, 381 F. Supp. 2d 469, 481 (D. Md. 2005) ("In appropriate circumstances, courts will presume that Congress was aware of certain facts or practices in place at the time a statute was enacted."); *State v. McKnight*, 352 S.C. 635, 648, 576 S.E.2d 168, 175 (2003) ("There is a presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.").

"Armed with knowledge of the prior lawsuit against the DMV, as well as the existing individual agency contracts under the Master Contract, the General Assembly included the express exception to the fee prohibition to allow the DMV and other state entities to *continue* serving customers as they had for years under the Master Contract." Order at 12–13; *cf. Carolina Power & Light*, 321 S.C. at 544, 471 S.E.2d at 140. Section 8-21-15(B)(8) was thus a retroactive blessing by the General Assembly of a contract that all of state government had been using for decades. *See* 16B AM. JUR. 2D *Constitutional Law* § 735 ("Legislation is considered retroactive if its

application determines the legal significance of acts or events that occurred prior to the statute's effective date.").

Like in *Carolina Power & Light*, "retroactive application of the [exception is] clearly compelled as to leave no room for doubt." 321 S.C. at 543, 471 S.E.2d at 140. Any other result would be "so clearly contrary to the legislative intent" to remedy this lawsuit by allowing the DMV and other state agencies to continue to use SCI's services under the Master Contract by passing the processing fee onto its customers without violating any state law. *Id.* at 543, 471 S.E.2d at 140; *see also Ray Bell Constr. Co. v. Sch. Dist. of Greenville Cnty.*, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998) ("However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the [General Assembly] or would defeat the plain legislative intention. If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect." (citation omitted)).

Appellant's attempt to distinguish *Carolina Power & Light* has no footing. The court in that case did not find its retroactive ruling was "rooted in the amendment's language" as Appellant claims. Appellant's Br. at 21. In fact, the court did not cite or quote the statutory language after its initial recitation of it. *See generally* 321 S.C. at 542–44, 471 S.E.2d at 139–40. Nor did it state legislative intent must come from specific language in the text of a statute to apply retroactively. *Id.* Rather, the court focused on the practical effect of a prospective application of the statute: such application "only would force an ouster of Co-op," and the court should not "apply the statute in a manner so clearly contrary to the legislative intent." *Id.* at 544, 471 S.E.2d at 140.

Equally misguided is Appellant's attempt to liken this situation to the one in *South Carolina Department of Revenue v. Rosemary Coin Machines, Inc.*, 339 S.C. 25, 528 S.E.2d 416 (2000). In

Rosemary, the court considered a statute that amended licensing requirements for video poker machines "so as to require owners of multi-player machines to obtain a separate license for each station." *Id.* at 26, 528 S.E.2d at 417. That statute was substantive because it clearly imposed a new obligation on owners of multi-player machines, requiring them to obtain separate licenses for each station. *Id.* As to legislative intent, it is true the court found "nothing in the amendment from which [it] could conclude the legislature intended for it to be applied retroactively." *Id.* at 28, 528 S.E.2d at 418. But that is of no moment here. Nothing indicates any party even presented any other evidence in that case.

Here, however, Appellant does not dispute—and his counsel even previously conceded—that the General Assembly had knowledge of the twenty-year-old Master Contract and the existing lawsuit at the time of the amendment and desired to remedy the lawsuit.[2]

B. Alternatively, section 8-21-15(B)(8) applies retroactively because it is remedial.

The circuit court also found subsection 8-21-15(B)(8) is remedial. "A statute is remedial when it creates new remedies for existing rights or enlarges the rights of persons under disability, unless it violates a contractual obligation, creates a new right, or divests a vested right." *Hooks v. S. Bell Tel. & Tel. Co.*, 291 S.C. 41, 43, 351 S.E.2d 900, 902 (Ct. App. 1986) (citing *Smith v. Eagle Constr. Co.*, 282 S.C. 140, 143–44, 318 S.E.2d 8, 9 (1984)); *see also Remedial Statute*, BLACK'S LAW DICTIONARY 1634 (10th ed. 2014) (A "remedial statute" is a "statute enacted to correct one or more defects, mistakes, or omissions.").[3] Generally, a statute affects a "vested or substantial

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[2] That Act 51 includes other effective dates does not necessarily foreclose retroactive application. *Compare SCANA Corp. v. S.C. Dep't of Revenue*, 384 S.C. 388, 391, 683 S.E.2d 468, 469 (2009) (rejecting the dissent and finding SCANA may carry forward an investment tax credit for 1996 even though the effective date was after 1996), *with id.* at 394, 683 S.E.2d at 471 (Beatty, J., dissenting) (noting the Act contained different effective dates which included retroactive dates).

[3] The inquiry is not whether the statute itself is a "remedy."

right" if it creates or abolishes a private right of action or irreversibly strikes a constitutional or vested right. *See Merchs. Mut. Ins. Co. v. S.C. Second Inj. Fund*, 277 S.C. 604, 608, 291 S.E.2d 667, 669 (1982) (stating "[a] statute of limitations affects the remedy, not the right" but "a statute which creates a new liability and fixes the time within which that action may be commenced is not a statute of limitations").

The retroactive analysis typically arises in the context of rights and remedies available to private parties. And the DMV agrees with Appellant that subsection 8-21-15(B)(8) does not speak in terms of any remedies to him. Appellant's Br. at 12. But that is beside the point. As the circuit court properly found, "whether a statute applies retroactively or prospectively is necessarily decided upon a case-by-case basis." Order at 13; *see also Reynoldsville Casket Co.*, 514 U.S. at 754–55 ("Not all cases concerning retroactivity and remedies are of the same sort.").

Under these circumstances, the specific exception for processing fees now included in subsection 8-21-15(B)(8) does not create or affect "vested or substantial rights." As for Appellant's contention that subsection 8-21-15(A) gave him a "statutory right not to pay credit card processing fees" before section 8-21-15(B)(8) was enacted, Appellant's Br. at 12, that is a misreading of the statute. Section 8-21-15(A) says nothing about any rights to Appellant. *See Denson v. Nat'l Cas. Co.*, 439 S.C. 142, 151-52, 886 S.E.2d 228, 233 (2023) ("Generally, when a statute does not expressly create civil liability, a duty will not be implied unless the statute was enacted for the special benefit of a private party.").

Nor does the statute itself impose any new obligation on either party. It simply confirms that the DMV and other agencies have the authority to charge certain fees through SCI as they have done for over two decades under the Master Contract. Appellant's argument that section 8-21-15(B)(8) permits the DMV to now "impose a new obligation on its customer to pay processing

fees when using a credit card," Appellant's Br. at 12, ignores this fact. So does his new citation to *Kneisley v. Lattimore-Stevens Co.*, 533 N.E.2d 743, 745 (Ohio 1988). While Appellant's complaint deals with a "past transaction," section 8-21-15(B)(8) does not impose "new or additional burdens, duties, obligations or liabilities," *id.*, on that transaction or on Appellant. That is why the circuit court properly rejected Appellant's continued citation to *Edwards v. State Law Enforcement Division*, 395 S.C. 571, 720 S.E.2d 462 (2011), which imposed a new duty to register on sex offenders even after they had been pardoned. (Order at 14 n. 5).

As the circuit court found, "section 8-21-15(B)(8) merely establishes a specific exception for a fee that already fell within a more general exception to the statutory fee prohibition. It thus clarifies the remedy already available to the DMV and other state agencies for charging processing fees under the twenty-year-old Master Contract." (Order at 14); *cf. Hooks*, 291 S.C. at 43, 351 S.E.2d at 902 (finding a statute that "merely enables claimants to obtain lump sum payment of funds to which they are already entitled" is remedial and applies retroactively); *Carolina Power & Light Co.*, 321 S.C. at 544, 471 S.E.2d at 140 (applying annexation exception "retroactively to permit [the] Co-op to continue serving those customers within Pageland's municipal boundaries which it has been serving since the 1949 annexation").

Citing case law and tests from other jurisdictions, Appellant contends the circuit court's use of the word "clarifies" somehow amounts to an additional finding that section 8-21-15(B)(8) is "clarifying legislation." Appellant's Br. at 13–15. The Court need not consider Appellant's arguments on this front because the circuit court made no independent finding that section 8-21-15(B)(8) was clarifying legislation. *See generally* (Order).

Where, as here, a statute does not create a "new right of recovery" or revive "any lapsed right," it is "obviously remedial." *Goff*, 279 S.C. at 386, 308 S.E.2d at 780. That is especially so

given the General Assembly's knowledge of the prior lawsuit (and the Master Contract) and clear intent to remedy it by clarifying this type of fee is excepted from the fee prohibition. *See supra* Section I.A. Applying subsection 8-21-15(B)(8) retroactively does not affect any contractual obligation either. In fact, it supports existing obligations under the Master Contract. *See Smith*, 282 S.C. at 143–44, 318 S.E.2d at 9 ("Statutes directed to the enforcement of contracts, or merely providing an additional remedy, or enlarging or making more efficient an existing remedy, for their enforcement, do not impair the obligation of the contracts." (quoting *Byrd v. Johnson*, 16 S.E.2d 843, 846 (N.C. 1941))).

Because the General Assembly intended subsection 8-21-15(B)(8)—which is remedial and does not affect any vested or substantial right—to remedy this lawsuit and permit agencies to continue operating under the Master Contract as they had for decades, two circuit court judges properly found section 8-2-15(B)(8) applies retroactively. The Court should affirm.

II. The circuit court did not find the processing fee was associated with agency sales of tangible products or authorized in the Procurement Code.

Appellant devotes ten pages of his brief to arguing the circuit court erred in finding the processing fee was associated with agency sales of tangible products and authorized under the Procurement Code. Appellant's Br. at 23–32. Yet the circuit court never made those findings. In fact, Appellant admits the circuit court here did not rule on that issue as the circuit court did in the Lloyd Litigation.[4] Appellant's Br. at 8–9. The circuit court simply explained—and Appellant does not challenge—that the Master Contract was executed under the requirements of the Procurement Code. *See* (Order at 12 & 19). Appellant's strawman arguments are thus unpreserved. *See Floyd v. Floyd*, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct. App. 2005) ("Without an initial ruling by the

[4] Appellant's counsel did not appeal the order in the Lloyd Litigation, and the Court should not permit a collateral attack on it now.

trial court, a reviewing court" cannot "evaluate whether the trial court committed error." (quoting *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 103, 594 S.E.2d 485, 498 (Ct. App. 2004))).

In any event, the authorities Appellant cites do not support his argument. As to the Attorney General opinions, those are not binding precedent. *See State v. Ramsey*, 409 S.C. 206, 212, 762 S.E.2d 15, 18 (2014) ("although it may be persuasive authority, an Attorney General's opinion is not binding on this Court"); *Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 560–61, 713 S.E.2d 604, 609 (2011) (same). Even if they were, they are inapposite. One involved whether the Department of Revenue (DOR) could charge an additional "submission/handling fee for electronic recording of documents" above that permitted by statute to collect taxes. S.C. Att'y Gen. Op., 2013 S.C. AG LEXIS 67, at *1 (Apr. 5, 2013). Section 12-53-40 of the South Carolina Code allowed DOR to charge only "an amount equivalent to five percent of the total of the warrant or tax execution or the sum of three dollars, whichever is greater." *Id.* at 1–2. Because no other statute revealed DOR could "impose an additional fee in situations where documents . . . are filed electronically as opposed to in paper form," the Attorney General opined DOR was limited to charging the fees stated in section 12-53-40. *Id.* at 2. The fee here is not analogous.

And the other opinions discussing section 8-21-10 do not apply because, unlike this case, they dealt specifically with an officer named in section 8-21-10: sheriffs. *See* S.C. Att'y Gen. Op., 2011 S.C. AG LEXIS 32, at *1(Mar. 16, 2011) (concluding a sheriff could not charge for providing a service to a private security agency, citing section 8-21-10 as prohibiting the fee); S.C. Att'y Gen. Op., 2011 S.C. AG LEXIS 149, at *1 (Oct. 11, 2011) (stating that a sheriff could not charge a fee for providing a drug-sniffing dog to a school district as sheriffs are specifically named officers in section 8-21-10 and the statutes cited in it); *see also infra* Section III.

The cases Appellant cites likewise offer little help. In *Oliver v. South Carolina Department of Highways and Public Transportation*, 309 S.C. 313, 422 S.E.2d 128 (1992), and *South Carolina Public Service Authority v. Spearwant Liquidating Co.*, 201 S.C. 207, 22 S.E.2d 252 (1942), our supreme court considered the propriety of awarding costs pursuant to a statute against a losing party at trial, not fees authorized by statute and set by a state entity through a statewide contract. And in *State v. Wilder*, 198 S.C. 390, 18 S.E.2d 324 (1941), the Court merely considered whether the Sumter County clerk of court was entitled to compensation for filing or otherwise entering documents or records in his office without statutory authority. These cases have nothing to do with the General Assembly's clear intent in section 8-21-15(B)(8) to bless the processing fee here.

III. The circuit court correctly found section 8-21-30 does not apply to the DMV.

Section 8-21-30 provides that "[i]f any *officer herein named* shall charge any other fee or fees for any services herein mentioned, such officer shall be liable to forfeit ten times the amount so improperly charged, to be recovered by suit in the court of common pleas, by attachment or by sale when the penalty does not exceed twenty dollars." S.C. Code Ann. § 8-21-30. Although this penalty provision relates only to an "officer herein named," *id.*, Appellant argues Executive Director Shwedo should nonetheless be liable for the penalty if the fee here is improper. The circuit court properly found the Executive Director of the DMV is not an officer named in Title 8, chapter 21 of the South Carolina Code.

To begin, the question is not simply whether the DMV's Executive Director is an "officer." Instead, the question is whether he is an "officer herein named" in Title 8, chapter 21. *Thompson v. Killian*, Op. No. 28305 (S.C. Sup. Ct. filed Nov. 5, 2025) (Howard Adv. Sh. No. 39 at 92) ("[T]he plain language of section 8-21-30 limits its applicability to specific officers and fees for services specified in chapter 21."). And the answer is an unequivocable "no."

Title 8, chapter 21 names a variety of officers. Section 8-21-10 provides that "[t]he several officers named in this chapter [and several other chapters], shall be entitled to receive and recover the fees and costs prescribed by this chapter [and the several other chapters], and none other, for the services herein enumerated." As Appellant concedes, the officers named in Title 8, chapter 21 include the Secretary of State, county auditors, notaries public, deputy surveyors, clerks of court, probate judges, magistrates, and constables. Appellant's Br. at 33. Section 8-21-10 encompasses many other statutes with various named "officers" too.[5] None runs the DMV.

The DMV, of course, does not argue its Executive Director is not a public officer. Nor does it contend the penalty provision applies only to local officers. But not just any public officer—local or state—is subject to the penalty.[6] The penalty provision applies only to "any officer herein named." S.C. Code Ann. § 8-21-30. If the General Assembly intended the penalty to apply to any "public officer" as Appellant insists, it would have said so or it could have omitted the phrase "herein named." It did not.

As the circuit court found, applying section 8-21-30 to the DMV and all "public officers," as Appellant urges, would violate the canons of statutory construction. Order at 18; *see also* *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) ("The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express

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[5] *See* S.C. Code Ann. § 8-21-10 ("The several officers named in this chapter, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, shall be entitled to receive and recover the fees and costs prescribed by this chapter, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, and none other, for the services herein enumerated.").

[6] Appellant is correct that agencies generally act through their public officers, and section 8-21-15 lists agencies in the fee prohibition. It does not, however, name officers. *See* S.C. Code Ann. § 8-21-15 (listing "state agency, department, board, committee, commission, or authority").

or include one thing implies the exclusion of another, or of the alternative.'" (quoting *Expressio unius est exclusio alterius*, BLACK'S LAW DICTIONARY (7th ed. 1999))). And neither Appellant nor this Court can "rewrite the statute and inject matters into it." Order at 18 (quoting *Hodges*, 341 S.C. at 87, 533 S.E.2d at 582). Thus, even if Appellant could show the processing fee is unlawful, he is not entitled to "a penalty in the amount of ten times for each illegal or wrongful processing fee" under section 8-21-30.[7]

CONCLUSION

For these reasons, the Court should affirm the circuit court's order granting summary judgment for Respondents.

Respectfully submitted,

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[7] After all, he did not seek recovery in his complaint under the ten-fold penalty statute. He sought only declarations and injunctive relief. *See generally* (Compl.).