IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Case No. 2024-CP-08-03363
Appellate Case No. 2025-000960

Bliss MK, LLC d/b/a Macedonia Liquor .....Respondent,

v.

Berkeley County Board of Zoning Appeals .....Appellant.

INITIAL REPLY BRIEF

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ARGUMENT IN REPLY

This appeal hinges on whether Berkeley County Zoning Ordinance Section 11.4.2 ("Section 11.4.2") is preempted as a matter of state law.[1] Section 11.4.2 establishes a minimum distance between a liquor store and a religious institution in excess of the minimum distance established in S.C. Code Ann. § 61-6-120.

I. In amending S.C. Code Ann. § 61-2-80, the General Assembly intended to regulate the operation of liquor stores, not to preempt local governments from exercising their police powers with respect to land use.

As a baseline, there is "[a] strong presumption exists in favor of the validity and application of zoning ordinances." *Peterson Outdoor Advert. v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 632 (1997). In addition, "all laws concerning local government shall be liberally construed" in the local government's favor. S.C. Const., art. VIII, § 17; *see also* S.C. Code Ann. § 4-9-25 ("The powers of a county must be liberally construed in favor of the county").

In considering whether a local ordinance has been preempted by a state statute, courts consider whether the municipality had the power to enact the ordinance and whether the ordinance "is consistent with the Constitution and the general law of the State." *Foothills Brewing Concern, Inc. v. City of Greenville*, 377 S.C. 355, 361, 660 S.E.2d 264, 267 (2008). For field preemption to apply, "an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way. Furthermore, for there to be a conflict between a state statute and a municipal ordinance both must contain either express or implied conditions which are inconsistent or irreconcilable with each other." *Id.* (citations and quotations omitted).

[1] The parties generally agree as to the facts, and there has been no appeal of the factual findings of the ZBA.

Without dispute, counties may enact zoning and other ordinances relating to land use within their boundaries as part of their police power. S.C. Code Ann. § 6-29-710; *see Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963). The issue here is whether S.C. Code Ann. § 61-2-80 precludes the County from regulating land use with respect to Bliss MK, LLC, d/b/a Macedonia Liquor ("Bliss MK").

Bliss MK makes much of an amendment to § 61-2-80 in 2003, essentially arguing that Berkeley County (the "County") has no authority to zone liquor stores. This section cannot be read as broadly as urged by Bliss MK. To do so would deprive counties of the ability to exercise an important component of their police powers.

The original enactment of § 61-2-80 provided in part, "The department is the sole and exclusive authority empowered to regulate the operation of all retail locations authorized to sell beer, wine, or alcoholic liquors and is authorized to establish conditions or restrictions which the department considers necessary before issuing or renewing a license or permit." Act No. 415, 1996 S.C. Acts 2461. In 2003, this language was amended to read, "The State, through the department, is the sole and exclusive authority empowered to regulate the operation of all locations authorized to sell beer, wine, or alcoholic liquors, is authorized to establish conditions or restrictions which the department considers necessary before issuing or renewing a license or permit, and occupies the entire field of beer, wine, and liquor regulation except as it relates to hours of operation more restrictive than those set forth in this title." Act No. 40, 2003 S.C. Acts ____.

The County contends that § 61-2-80 is limited to "the operation of all locations authorized to sell beer, wine, or alcoholic liquors" and does not extend to cover land use regulation by a local government. The key word there being "operation." As found by this court, "[t]he authority

conferred on the Department of Revenue [] is limited to the issuance and enforcement of licensing." *McKeown v. Charleston Cnty. Bd. of Zoning Appeal*, 347 S.C. 203, 208, 553 S.E.2d 484, 486 (Ct. App. 2001). Nothing about Section 11.4.2 relates to the operation of any business. Instead, it regulates land use within the County consistent with the County's police powers. As such, there is no preemption. *See id.*, citing *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 397 S.E.2d 662 (1990). Bliss MK's argument, taken to its logical end, would result in a rule that local governments could not apply any zoning, building codes, fire codes, or any other measure to liquor stores. Such a construction would lead to an absurd result and should not be applied. *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (holding South Carolina courts "will not construe a statute in a way which leads to an absurd result").

The County's construction is consistent with the case law on the subject. *Town of Hilton Head Island*, 302 S.C. at 552, 397 S.E.2d at 663 (citing predecessor statute and clarifying in upholding zoning provision that "[w]e do not interpret the language of the statute as diminishing the power conferred upon local governments to regulate land use."); *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212–13, 574 S.E.2d 196, 198 (2002) ("In *Fine Liquors*, the Court concluded the predecessor to § 61–2–80 did *not* indicate the legislature intended to pre-empt the field, thereby precluding municipalities from passing any ordinance which affected the operation of liquor stores. Accordingly, the Court has already ruled on the issue presented by this appeal." (citations and quotation omitted)). Nothing about the amendment changed these basic principles. *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 596 S.E.2d 917 (2004) ("*Denene II*").

In *Denene II*, decided after the 2003 amendment, the South Carolina Supreme Court reiterated that "[a] municipality has the power to enact regulations for the purpose of preserving

the health, safety, welfare, and comfort of dwellers in urban centers, particularly in regard to alcohol." 359 S.C. at 92–93, 596 S.E.2d at 921. Later in the opinion, the Court referenced the revised statute for the proposition that "the operation of a bar has always been subject to the state's police powers." 359 S.C. at 99, 596 S.E.2d at 924. Although the preemption issue is not addressed, the language of the opinion tracks the traditional analysis that § 61–2–80 relates to the operation of a liquor store but does curtail the power of local governments to enact land use ordinances relating to alcohol.

For these reasons, the circuit court erred in finding that Section 11.4.2 was preempted.

II. Section 11.4.2 does not conflict with state law.

Again, the analysis starts with a strong presumption in favor of the validity and application of zoning ordinances. *Peterson*, 327 S.C. at 235, 489 S.E.2d at 632. "[A]dditional regulation to that of State law does not constitute a conflict therewith." *Denene*, 352 S.C. at 214, 574 S.E.2d at 199. "Further, in order for there to be a conflict between a state statute and a municipal ordinance both must contain either express or implied conditions which are inconsistent or irreconcilable with each other. Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand." *Town of Hilton Head Island*, 302 S.C. at 553, 397 S.E.2d at 664 (quotation omitted). This general rule has been codified in the zoning context in S.C. Code Ann. § 6-29-960.

Section 11.4.2 does not in any way create a licensing scheme for a retail liquor store as suggested in Bliss MK's brief. Licensing issues fall exclusively to the Department of Revenue ("DOR"). The County's minimum distance requirements and determination method in Section 11.4.2 are in addition to and distinct from those imposed by the State in S.C. Code Ann. § 61-6-120(A), which relates to the locational standards to be considered by DOR in issuing liquor store

licenses, and its implementing regulations, S.C. Code Ann. Regs. 7-303. These provisions are not inconsistent with the State's requirements, nor is there any reason that there should be uniformity in local government zoning requirements for liquor stores. Each local government should be free to exercise its police powers consistent with the needs of its residents, which will vary from jurisdiction to jurisdiction. As such, the requirements of Section 11.4.2 present "mere difference in detail" and not conflicts. *See Town of Hilton Head Island*, 302 S.C. at 553, 397 S.E.2d at 664. Thus, the circuit court erred in finding that Section 11.4.2 conflicted with state law.

CONCLUSION

For the above reasons, this Court should find that Section 11.4.2 is not preempted and is a valid exercise of the County's police power and should reverse the order of the circuit court and reinstate the decision of the ZBA.

Respectfully submitted,

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