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.

Berkley County Board of Zoning Appeals..... Appellant.

BRIEF OF RESPONDENT

Larry C. Marchant, Jr., (SC Bar 102071)
1720 Main Street, Suite 301
Columbia, South Carolina 29201
Telephone: 803-771-1507
Email: larry@larrycmarchant.com
ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court correctly reverse the decision of the Berkeley County Board of Zoning Appeals by finding that the county zoning ordinance was in direct conflict with distance and measurement requirements prescribed by state law?

2. Did the circuit court correctly declare the Berkeley County Zoning Ordinance 11.4.2 void as preempted by state law?

STATEMENT OF THE CASE AND FACTS

Respondent, Bliss MK, LLC, d/b/a Macedonia Liquor ("Bliss MK") through its principal Keval Trivedi, purchased an abandoned gas station located at 2307 N. Hwy 17A, Bonneau, South Carolina, 29431. (R. at 8-9, ¶¶ 3-4). The property is in the unincorporated area of Berkeley County with no other zoning requirements or restrictions on the property. (R. at 10, ¶ 14). Respondent applied and was granted a permit to operate a retail liquor store on June 13, 2024, by the South Carolina Department of Revenue ("Department"). (R. at 9, ¶ 5, 22). Prior to the issuance of the liquor permit by the Department, notice was provided but there was no protest from the community. (R. at 10, ¶ 14). Bliss MK made substantial investments on the reliance on the state's regulatory framework. (R. at 50, ¶ 3).

Bliss MK was subsequently notified by the County of Berkeley ("County") that the operating permit for his liquor store would not be issued because his location was in violation of local zoning ordinance Section 11.4.2, requiring proximity to a religious institution to be more than one thousand (1,000) feet (doubling the state proximity standard to a church of five-hundred (500) feet pursuant to §61-6-120. (R. at 9, ¶¶ 7-8). Bliss MK further learned the County's method to determine distance (straight line or "as a crow flies") differed from the state's statutory determination of distance (as a pedestrian or vehicle would travel pursuant to §61-6-120 and further articulated in SC Code of Regulations § 7-303). (R. at 9, ¶ 9).

On October 15, 2024, the Berkeley County Board of Zoning Appeals ("BZA") held a hearing including Respondent's request for a variance to operate. (R. at 66). Bliss MK offered testimony and exhibits including, but not limited to: proximity surveys, the location prior operation as a convenience store, liquor retail license, the absence of applicable zoning restrictions, and lack of any public protest to his retail liquor store application previously filed

with the Department. (R. at 66-67, 46-55). Bliss MK argued the local ordinance was in conflict with the state law concerning the increased proximity requirement, and the distance calculation methodology. (R. at 66-67).

During a limited exchange between the members of the BZA and Bliss MK, the distance measured by local zoning ordinance (straight line or "as a crow flies") was confirmed at 892.24 feet and just over the 1,000 feet if measured under state regulation §7-303. (as a pedestrian or vehicle would travel). (R. at 67). A few members of the community spoke in opposition to the liquor store but offered no specifics, only general concerns of their religious beliefs relating to alcohol consumption, the potential of loitering and decreased property values. (R. at 68-69). Bliss MK requested a rebuttal strictly on the law but was denied. (R. at 69).

In a letter postmarked November 1, 2024, BZA served official notice to Respondent of their decision denying relief based local zoning ordinance 11.4.2, imposing a 1,000-foot separation from a "religious institution," as measured in a straight line, pursuant to local zoning ordinance Section 11.4.2. (R. at 8,16).

On December 2, 2024, Bliss MK filed a Notice of Appeal (Petition of Judicial Review) of the decision of the BZA decision to the Berkeley County Court of Common Pleas. (R. at 8-24). On January 3, 2025, Berkeley County filed an Answer. (R. at 25-26). Bliss MK filed a Memorandum in Support of the Appeal. (R. at 28-31). In the Memorandum, Bliss MK provided authority for its position that the State has exclusive authority to regulate alcohol and Berkeley County's zoning ordinance was in conflict with state law. (*Id.*).

A hearing was held on March 17, 2025, before the Honorable Diane Schafer Goodstein. (R. at 36-45). Bliss MK argued that, by constitutional provision and by statute,

the State of South Carolina is charged with regulating the manufacture and sale of alcoholic beverages under Article VIII-A of the South Carolina Constitution and § 61-2-80 of the South Carolina Code of Laws (Supp. 2005), which vests the South Carolina Department of Revenue with sole and exclusive authority to regulate the operation of all locations authorized to sell beer, wine, or alcoholic liquors, except as it relates to hours of operation, the issues concerning retail liquor stores, and any conflicting local regulation is preempted. (R. at 40:23-41:19). Bliss MK acknowledged local governments can impose additional restrictions in addition to those imposed by the state, provided these restrictions do not conflict with state law. (R. at 40:5-20).

Berkeley County, on behalf of the Board of Zoning Appeals, argued that under the South Carolina Comprehensive Planning Enabling Act, § 6-29-960 of the South Carolina Code of Laws, the County may impose standards more restrictive than those required under another statute and therefore may impose greater restrictions on liquor stores. (R. at 41:24-44:13). When questioned by the Court, Berkeley County admitted that under its theory, a zoning ordinance could prohibit liquor stores from operating within 50 miles of a church, effectively restricting the sale of liquor throughout the entire county (R. at 43:7-44:2). The circuit court reversed, holding the County's ordinance void and preempted state law. The County appealed the decision of Judge Goodstein.

STANDARD OF REVIEW

"[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." *Mikell v. Cty. of Charleston,* 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009) (citing *Eagle Container, LLC v. Cty. of Newberry,* 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008)). The determination of legislative intent is a matter of law. *Id.*

ARGUMENT

I. The State has Exclusive Authority to Regulate

By constitutional provision and by statute, the State of South Carolina holds nearly exclusive power over the manufacture and sale of alcoholic beverages. *See* S.C. Const., art. VIII-A § 1; *see also* S.C. Code Ann. § 61-2-80. While counties are granted the authority to enact ordinances, they cannot be "inconsistent with the Constitution and general law of this State." S.C. Code Ann. § 4-9-25.

To reinforce the state's exclusive power, during the 2003 legislative session, just after the Court's decision in *Denene,* the South Carolina General Assembly amended § 61-2-80 and declared: "The State, through the Department... 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." S.C. Code Ann. § 61-2-80. (emphasis added).[1]

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[1] The General Assembly amended S.C. Code § 61-2-80 following the Court's 2002 Decision in *Denene* (2003 Act. No. 40, Section 5) See also *Denene,* 352 S.C. at 213. In its subsequent 2004 opinion, the Court referenced the amended § 61-2-80, observing that "the State is the sole and exclusive authority empowered to regulate the operation of all locations authorized to sell beer, wine, or alcoholic liquors, except as it relates to hours of operation more restrictive than those set forth in state law." *Denene, Inc. v. City of Charleston,* 359 S.C. 85, 99, 596 S.E. 2nd. 917, 924 (S.C. 2004).

The express preemption clause found in Section 61-2-80 is dispositive. Express preemption occurs when the General Assembly declares in express terms its intention to preclude local action in a given area. *S.C. State Ports Auth. v. Jasper Cnty*, 368 S.C. 388, 397, 629 S.E.2d 624, 628 (2006). While local governments possess broad zoning authority, they cannot legislate what the State has preempted a particular area of legislation. *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002). In 2021, the Court held that while local governments have broad powers to enact ordinances, this grant of power is given to local governments with "the proviso that the local law not conflict with state law." *Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 217, 863 S.E.2d 456, 462 (2021).

To the extent that Berkeley County relies on pre-2003 authority such as *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 397 S.E.2d 662 (1990), that reliance is misplaced. In 2003, the General Assembly amended Title 61 to expressly occupy the field and confirm the Department's exclusive regulatory authority, narrowing any space for local regulation to hours-of-operation matters. S.C. Code Ann. § 61-2-80. In addition, businesses and individuals involved in the sale of alcoholic beverages are subjected to liquor neutral zoning ordinances enacted by local governments such as prohibiting illuminated signs that are visible from the beach. *See Town of Hilton Head Island v. Fine Liquors Ltd.*, 302 S.C. 550, 552, 397 S.E.2d 662, 663 (1990). However, Berkeley County's ordinance is not liquor neutral and upon their own admission, could virtually eliminate retail liquor stores by having the authority under the local ordinance to increase the proximity requirements from a religious institution to as much as 50 miles. (R. at 43:7-44:2).

If this Court fails to read the current version of Section 61-2-80 as so broadly preemptive, then local zoning ordinances that directly target alcoholic beverages may be

permissible only if they are consistent with state law and regulations. Under *Denene's* two-step analysis, assuming arguendo that the County possesses general zoning power, the ordinance fails the second step because it conflicts with State law. The Court has upheld local ordinances that touch upon the sale of alcohol, provided the local ordinance is not in conflict with state law. *Denene*, 352 S.C. at 214, 574 S.E.2d at 199.[2] Whether a local ordinance is a valid exercise of local authority under state law is determined by a two-step process. *Denene*, 352 S.C. at 211, 574 S.E.2d at 198.

The first inquiry is as to whether the county or municipality has the power to enact the ordinance. *Denene*, 352 S.C. at 212, 574 S.E.2d at 198. "If the State has preempted a particular area of legislation, a municipality is without power to regulate the field." *Id.* If it is found that the county or municipality had the power to enact the ordinance, the second question to be answered is whether the ordinance is consistent with the state constitution and the general law of the state. *Id.* The County ordinance fails the second step because it is not consistent with state liquor regulations and creates an entirely different licensing eligibility for a retail liquor store.

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[2] *Denene, Inc. v. City of Charleston,* 353 S.C. 208, 574 S.E.2d 196 (2002) (*holding a city ordinance which prohibited businesses from on premises service or consumption of any wines or malt liquors between 1:30 a.m. and 7:30 a.m. did not conflict with a state statute*); *Hospitality Ass'n of S.C., Inc. v. County of Charleston*, 320 S.C. 219, 464 S.E.2d 113 (1995) (*holding local governments the power to enact a fees on rental accommodations and food and beverages, providing the ordinances are not inconsistent with the Constitution or general law of this State); Town of Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 397 S.E.2d 662 (1990) (*holding that an ordinance prohibiting internally illuminated signs that are visible from the beach was not preempted by state law and applied to the "red dot" signs of retail liquor stores); McKeown v. Charleston County Bd. Of Zoning Appeal*, 347 S.C. 203, 553 S.E.2d 484 (Ct. App. 2001) (*holding the Charleston County zoning ordinance restricted land use within the municipality, and did not conflict with the state licensing provisions of the Department of Revenue for issuing beer and wine sales permits.*)

II. State Law Prescribes a Uniform, Exclusive Method of Measuring Proximity for Liquor Licensure, Which Counties Cannot Displace.

The General Assembly has mandated uniform minimum distance (500 feet outside municipalities) for retail liquor sales from churches, schools, or playgrounds, and further defines a clear and objective method for measuring the statutory distance "by following the shortest route of ordinary pedestrian or vehicular travel along the public thoroughfare." *See* S.C. Code Ann. § 61-6-120.[3] South Carolina Code of Regulations § 7-303 establishes a clear and objective method for measuring the statutory distance between a proposed retail liquor location and nearby churches, schools, or playgrounds. Berkeley County's ordinance, by imposing a 1,000-foot requirement and using a "straight line" measurement, directly conflicts with, and frustrates, the state's exclusive regulatory scheme. "[E]ven in the absence of an express conflict, the ordinances cannot stand, for the ordinances frustrate the purpose of the proviso and are therefore preempted." *Wilson ex rel. State*, 434 S.C. at 219, 863 S.E.2d at 462.

These are not a mere difference in detail, but a substantive conflict that not only disrupts the uniformity of the mandated proximity requirements but determines whether a business is eligible for a license. *See* Berk Co. Ord. 11.4.2. "An ordinance is preempted when the state statutory scheme so thoroughly and pervasively covers the subject so as to occupy the field or when the subject mandates statewide uniformity." *S.C. State Ports Auth.*, 368 S.C. at 397, 629 S.E.2d at 628.

[3] (A) The department shall not grant or issue any license provided for in this article, Article 5, or Article 7 of this chapter, if the place of business is within three hundred feet of any church, school, or playground situated within a municipality or within five hundred feet of any church, school, or playground situated outside of a municipality. Such distance shall be computed by following the shortest route of ordinary pedestrian or vehicular travel along the public thoroughfare from the nearest point of the grounds in use as part of such church, school, or playground, which, as used herein

Berkeley County also relies on *McKeown v. Charleston County Board of Zoning Appeal*, another pre-2003 version of § 61-2-80. (upholding the county's more restrictive zoning authority pursuant to §6-29-960, requiring a 500-foot distance requirement for a location serving beer and wine to a neighborhood ("if either is silent where the other speaks, there is no conflict.")). *McKeown v. Charleston County Board,* 347 S.C. 203, 209, 553 S.E.2d 484, 487 (Ct. App. 2001). However, the zoning matter in *McKeown* concerned the sale of beer and wine, regulated under separate statute that does not mandate proximity requirements. *See* S.C. Code Ann. § 61-4-520 (6).[4]

Unlike *McKeown*, the state law is not silent as to proximity requirements for retail liquor stores. The County's ordinance does not only conflict, but also creates an entirely different licensing scheme for a retail liquor store. The State's uniform measurement prescribed in S.C. Code Regs. 7-303 is "from the nearest entrance of the place of business" to the nearest entrance of the protected site "by following the shortest route of ordinary pedestrian or vehicular travel along public thoroughfares." S.C. Code Regs. 7-303. The County's ordinance is substantially different mandating the measurement "shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a commercial bar and/or liquor store is operated, to the nearest property line of the premises of a religious institution." *See* Berk. Co. Ord. 11.4.2. The conflict is direct and outcome determinative creating an inconsistency in the state's regulation of alcohol. Allowing local governments to redefine either (a) the applicable radius or (b) the method of measurement would yield a patchwork

[4] (6) The department may consider, among other factors, as indications of unsuitable location, the proximity to residences, schools, playgrounds, and churches. This item does not apply to locations licensed before April 21, 1986. S.C. Code § 61-4-520

that is irreconcilable with the State's exclusive regulatory control. *See* S.C. Code Ann. § 61-2-80.

CONCLUSION

The General Assembly has occupied the field of alcohol regulation (except local hours) and has mandated a uniform, exclusive method for measuring proximity for liquor licensing. Berkeley County's ordinance directly conflicts with these controlling provisions by imposing a different measurement method and enlarging proximity limits in a manner that undermines the State's licensing scheme. Under the express preemption of S.C. Code Ann. § 61-2-80 and *Denene's* conflict analysis, the ordinance is void to the extent of conflict. The circuit court's order should be affirmed.

Respectfully Submitted,

Larry C. Marchant, Jr., (SC Bar 102071)
1720 Main Street, Suite 301
Columbia, South Carolina 29201
Telephone: 803-771-1507
Email: larry@larrycmarchant.com
ATTORNEY FOR RESPONDENT

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