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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From the South Carolina Administrative Law Court

S. Phillip Lenski, Administrative Law Judge

Docket No. 24-ALJ-17-0391-IJ

Appellate Case No. 2025-001745

South Carolina Department of Revenue,

Respondent,

v.

Market Hall, LLC, d/b/a Soda City Market,

Appellant.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 2

ARGUMENT 4

Standard of Review 4

I. The Administrative Summons Fails the Powell Test for Good Faith 5
A. The Department Lacks a Legitimate Purpose 5
B. The Information Sought Is Not Relevant to Any Legitimate Purpose 6
C. The Department Failed to Exhaust Less Intrusive Alternatives 6
II. The Summons Violates Article I, Section 10 of the South Carolina Constitution 7
A. The Summons Constitutes an Unreasonable Invasion of Privacy 7
B. The Department's Interest Does Not Justify the Privacy Invasion 7
III. The Department Lacks Statutory Authority to Conduct a Fishing Expedition 8
A. The Department May Only Summon Information Relating to Matters It Has Authority to Investigate or Determine 8
B. The Department Has Not Identified Any Specific Matter Requiring Investigation or Determination 8
IV. The Summons Is Overly Broad and Unduly Burdensome 9
A. The Request Lacks Reasonable Limitations 9
B. Alternative Sources Render the Summons Unnecessary 9
V. Procedural Deficiencies Warrant Reversal 9
A. The Department's Consent to Stay Constitutes Waiver 9
B. The Department Failed to Oppose Market Hall's Petition for Rehearing 10
VI. This Court Has Appellate Jurisdiction Over Market Hall's Appeal 10
A. Statutory Framework Governs Appeals from the Administrative Law Court 10
B. SCALC Rule 29 Is Permissive, Not Mandatory for Appellate Jurisdiction 11
C. Purely Legal Issues Require No Motion for Reconsideration 11
D. The Department's Conduct Demonstrates Recognition of Valid Appeal 11
E. This Court Has Already Recognized Appellate Jurisdiction 12

CONCLUSION 12

TABLE OF AUTHORITIES

CASES

CLEMMONS V. LOWE'S HOME CTRS., INC.–HARBISON,
420 S.C. 282, 803 S.E.2D 268 (2017) 4
HENSON V. CITY OF GEORGETOWN,
358 S.C. 133, 594 S.E.2D 499 (CT. APP. 2004) 10
STATE V. MCCALL,
364 S.C. 205, 612 S.E.2D 453 (CT. APP. 2005) 9
UNITED STATES V. MORTON SALT CO.,
338 U.S. 632, 70 S. CT. 357 (1950) 5, 6
UNITED STATES V. POWELL,
379 U.S. 48, 85 S. CT. 248 (1964) 5

CONSTITUTIONAL PROVISIONS

S.C. CONST. ART. I, § 10 ..... 7, 11

STATUTES

S.C. CODE ANN. § 1-23-610 10
S.C. CODE ANN. § 12-4-330 ..... 8, 11
S.C. CODE ANN. § 12-54-110 11

RULES

RULE 29, SCALC 10, 11

STATEMENT OF ISSUES ON APPEAL

1. Whether the Administrative Law Court erred in enforcing an administrative summons that fails the Powell test for good faith where the South Carolina Department of Revenue failed to demonstrate a legitimate investigative purpose and issued the summons as a speculative fishing expedition without evidence of any specific violations or noncompliant vendors?

2. Whether the Administrative Law Court erred in rejecting Appellant's constitutional privacy challenge under Article I, Section 10 of the South Carolina Constitution where the Department's blanket request for all vendor applications constitutes an unreasonable invasion of privacy not narrowly tailored to any legitimate state interest?

3. Whether the Department waived its right to enforce the administrative summons by consenting to a stay of the enforcement order pending appeal and failing to oppose Appellant's Petition for Rehearing seeking reinstatement of the appeal?

4. Whether this Court has appellate jurisdiction over Market Hall's appeal from the Administrative Law Court's final order enforcing an administrative summons, where Market Hall filed a timely notice of appeal under S.C. Code Ann. § 1-23-610 but did not file a motion for reconsideration under SCALC Rule 29, and where the issues on appeal involve purely legal questions that were fully adjudicated below.

STATEMENT OF THE CASE

This case arises from the South Carolina Department of Revenue's attempt to compel Market Hall, LLC d/b/a Soda City Market to produce vendor application information through an administrative summons issued without evidence of any specific violations or legitimate investigative purpose. On November 8, 2024, the Department filed a Petition for Rule to Show Cause seeking to enforce administrative summonses, including a revised summons dated August 15, 2024, requesting all Soda City Market vendor applications for 2024.

Following a hearing on May 20, 2025, the Administrative Law Court granted the Department's petition as to one summons and issued an Order Enforcing Summons on August 4, 2025, requiring Market Hall to comply within thirty days. Market Hall timely filed its Notice of Appeal on August 29, 2025. After initial procedural complications, this Court granted Market Hall's Petition for Rehearing and reinstated the appeal on October 29, 2025. The Department subsequently filed a Motion to Dismiss Appeal with Prejudice on November 7, 2025. This Motion was denied without prejudice, directing the parties to address this Court’s appellate jurisdiction in their briefs.

STATEMENT OF FACTS

Market Hall owns and operates Soda City Market, a weekly farmers market located in Columbia, South Carolina, with approximately 7,000 to 10,000 visitors and between 150 and 220 vendors every Saturday. (R. p. 7, 225). To participate in Soda City Market, prospective vendors must submit an online application to Market Hall, which requires vendors to have a South Carolina retail license among other requirements. (R. pp. 7-8).

On June 5, 2024, the Department delivered an administrative summons to Market Hall seeking records related to a specific vendor, Elevation Catering, LLC, a/k/a Bubblelicious Waffles LLC. (R. pp. 8-9). On June 8, 2024, the Department issued a second summons seeking

copies of all Soda City Market vendor applications for calendar year 2024. (R. pp. 9-10). Market Hall contended that it fully complied with the first summons regarding Bubblelicious but argued that the second summons was a fishing expedition, a violation of its right to privacy and would be unduly burdensome. (R. pp. 9-10).

On August 15, 2024, the Department issued revised versions of both summonses. The revised second summons sought all business records related to Soda City Market vendor applications for January through July 2024, including owner names, vendor names, email addresses, phone numbers, production addresses, website links, vendor categories, South Carolina retail license numbers, and frequency of vendor participation. (R. pp. 9-10).

At the hearing, Bailie Campbell, a collections supervisor with the Department, testified that the Department routinely requests vendor information from festivals and markets throughout the state for compliance purposes. Ms. Campbell acknowledged that she could not recall summoning any other market for a complete list of vendor information, noting that most markets and festivals comply willingly. When asked why the Department did not seek information directly from vendors, Ms. Campbell testified that vendors are typically more forthcoming with third parties than with the state. (R. pp. 160-163, 175-176).

Emile DeFelice, President of Market Hall, testified that he welcomes regulatory oversight and does not object to regulators performing compliance work during market operations. However, Mr. DeFelice testified that he refuses to willingly provide the Department with vendor information because it is proprietary information and he will not surrender it simply because the government requests it. Mr. DeFelice testified that he complied with the Bubblelicious Summons because the Department articulated that it was pursuing a specific investigation and had cause to believe that there was a potential violation. (R. pp. 231-238).

Stephen Ruxton, the market manager, testified that when the Department's revenue officer delivered the summons, the officer remarked that he would rather be with his kids or at a baseball game than issuing summonses, leading Mr. Ruxton to conclude that Department officials do not want to work on Saturdays, collecting the information from individual vendors and wanted Market Hall to do his work for him by responding to the Second Summons. (R. pp. 289-290).

Significantly, when Market Hall previously provided vendor information for Bubblelicious in response to a targeted summons based on specific violations, the Department's own official stated that the spreadsheet you submitted for elevation catering did not in fact assist us with the request made. (R. pp. 150, 357). Notwithstanding the expressed statement of the Department representative that the information provided by Market Hall was not helpful (R. pp. 150, 357) where the Department had a specific cause to seek information, the Department sought to compel Market Hall to provide the same unhelpful information on all its vendors when the Department admitted it had no cause to believe any violation occurred. (R. pp. 172–175).

ARGUMENT

Standard of Review

The South Carolina Administrative Procedures Act governs judicial review of decisions by administrative agencies. Clemmons v. Lowe's Home Ctrs., Inc.-Harbison, 420 S.C. 282, 803 S.E.2d 268 (2017). An appellate court's review is limited to the determination of whether the agency's decision is supported by substantial evidence or is controlled by an error of law. *Id.* The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. However, the court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings,

inferences, conclusions, or decisions are in violation of constitutional or statutory provisions, in excess of the statutory authority of the agency, made upon unlawful procedure, affected by other error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

I. The Administrative Summons Fails the Powell Test for Good Faith

A. The Department Lacks a Legitimate Purpose

To enforce an administrative summons, the government must demonstrate that "the investigation will be conducted pursuant to a legitimate purpose." United States v. Powell, 379 U.S. 48, 85 S. Ct. 248 (1964). The Department's stated purpose of creating a master list for general compliance checks, without any evidence of suspected violations, fails this fundamental requirement. The Department's own witness testimony reveals the absence of any legitimate investigative purpose. Ms. Campbell testified that the Department had not identified any specific vendors suspected of noncompliance, nor had it articulated any violations of tax laws by Market Hall's vendors. (R. pp. 172-175). The summons was issued purely on speculation that violations might exist, which constitutes an impermissible fishing expedition.

Federal courts have recognized that administrative summonses cannot be used for general fishing expeditions through records. United States v. Morton Salt Co., 338 U.S. 632, 70 S. Ct. 357 (1950), stating, “[B]ecause judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. *Id.* at 634 and 360. The Department's blanket request for all vendor information without any particularized suspicion clearly falls within this prohibited category.

B. The Information Sought Is Not Relevant to Any Legitimate Purpose

Without a legitimate investigative purpose, the Department cannot establish relevance. The Department's own acknowledgment that it had no evidence of violations by any specific vendors undermines any claim of relevance. (R. pp. 172-175). Moreover, the Department's previous experience with similar information demonstrates its lack of utility. (R. pp. 150, 357). When Market Hall provided vendor information for Bubblelicious in response to a targeted summons based on specific violations, the Department's own official stated that the spreadsheet you submitted for elevation catering did not in fact assist us with the request made. (R. pp. 150, 357). This admission directly contradicts the Department's current claim that such information is relevant to its enforcement activities.

C. The Department Failed to Exhaust Less Intrusive Alternatives

The Department has not demonstrated that the information is unavailable through less intrusive means. The evidence shows that other regulatory agencies routinely obtain compliance information directly from vendors at the market. Mr. DeFelice testified that City of Columbia investigators routinely go "from vendor to vendor ensuring business licenses are valid" and that the City maintains evidence of valid sales tax licenses. (R. pp. 233-236). Similarly, the South Carolina Department of Health and the local Fire Department conduct direct vendor-to-vendor compliance checks. (R. pp. 226-229). The Department's preference for convenience over proper procedure does not justify compelling a third party to produce information.

As Mr. Ruxton testified, the revenue agent who served the summons indicated his unwillingness to work on Saturdays and stated he would rather be with his family than doing his job. (R. pp. 289-290). This testimony reveals that the summons was issued not for legitimate

investigative purposes, but to avoid the Department's responsibility to conduct proper compliance checks.

II. The Summons Violates Article I, Section 10 of the South Carolina Constitution

A. The Summons Constitutes an Unreasonable Invasion of Privacy

Article I, Section 10 of the South Carolina Constitution protects against unreasonable searches and seizures and unreasonable invasions of privacy. The constitutional analysis requires courts to balance competing interests and determine whether any invasion of privacy is unreasonable.

Market Hall has a legitimate privacy interest in its proprietary vendor information. The vendor applications contain sensitive business information that vendors provided with an expectation of confidentiality. Mr. DeFelice testified that Market Hall considers vendor information to be proprietary. (R. p. 232). The Department's blanket request for all vendor applications, without any specific investigation or suspected violations, constitutes an unreasonable invasion of privacy that is not narrowly tailored to any legitimate state interest.

B. The Department's Interest Does Not Justify the Privacy Invasion

South Carolina courts require that privacy invasions be balanced against the state's interests. Here, the Department has failed to articulate any compelling state interest that would justify the broad invasion of privacy. The Department's speculative interest in general compliance checks, without evidence of actual violations, cannot outweigh Market Hall's constitutional privacy rights.

The Department's own actions demonstrate the weakness of its claimed interest. The Department consented to a stay of the enforcement order pending appeal, acknowledging that its purported urgent need for the information was not genuine. This consent directly contradicts any claim of compelling state interest.

III. The Department lacks Statutory Authority to Conduct a Fishing Expedition

A. The Department May Only Summon Information "Relating to Any Matters Which the Department Has Authority to Investigate or Determine"

The Department's authority to issue administrative summonses is governed by S.C. Code Ann. § 12-4-330. S.C. Code Ann. § 12-4-330(A) limits the Department's power to matters it has authority to investigate or determine. The Department cannot investigate or determine matters where no evidence suggests investigation or determination is warranted. The phrase "to determine" presupposes that there is something specific to be determined, not a general fishing expedition hoping to discover something to investigate.

The Department's interpretation would essentially grant unlimited summons power whenever it claims a general interest in compliance. Such an interpretation would render the statutory limitation meaningless and exceed the General Assembly's intent.

B. The Department Has Not Identified Any Specific Matter Requiring Investigation or Determination

The Department must identify specific matters requiring investigation or determination before issuing a summons. Here, the Department has admitted it had no evidence of violations by any specific vendors and no ongoing investigation of any particular taxpayer. (R. pp. 172-175). The summons was issued in hope that the Department "might discover something to investigate about a specific taxpayer," which is precisely the type of speculative fishing expedition that exceeds statutory authority. (R. pp. 172-175).

IV. The Summons Is Overly Broad and Unduly Burdensome

A. The Request Lacks Reasonable Limitations

The Department's request for "all vendor applications for 2024" without any limitation or specificity demonstrates the summons' overbroad nature. (R. pp. 334-337, 341-343). A

blanket request for all vendor information, affecting hundreds of vendors, cannot be considered reasonably tailored when the Department has identified no specific compliance issues.

B. Alternative Sources Render the Summons Unnecessary

The Department's claim that the information is unavailable elsewhere is contradicted by the evidence. Mr. DeFelice testified that some information sought by the Department, including retail license information, is available at the City of Columbia. (R. pp. 233-236). The Department's failure to pursue these readily available sources before compelling a private party to produce proprietary information demonstrates the unreasonable nature of the summons.

V. Procedural Deficiencies Warrant Reversal

A. The Department's Consent to Stay Constitutes Waiver

The Department consented to a stay of the enforcement order pending appeal, explicitly stating that "The Department consents to the Respondent's Motion to Stay". This consent acknowledges the validity of Market Hall's appeal and constitutes a waiver of any argument that the summons should be enforced. Under the doctrine of judicial estoppel, the Department cannot simultaneously consent to a stay and argue that enforcement is necessary State v. McCall, 364 S.C. 205, 612 S.E.2d 453 (Ct. App. 2005).

Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation. *Id.* The Department's current position that Market Hall's appeal should be dismissed is directly inconsistent with its previous position consenting to a stay pending appeal.

C. The Department Failed to Oppose Market Hall's Petition for Rehearing

The Department had the opportunity to oppose Market Hall's Petition for Rehearing but remained silent. This failure to raise its arguments when Market Hall sought reinstatement of the appeal constitutes a waiver of those arguments. Under South Carolina appellate procedure,

ordinarily no point will be considered which is not set forth in the statement of the issues on appeal. Henson v. City of Georgetown, 358 S.C. 133, 594 S.E.2d 499 (Ct. App. 2004). The Department should not be permitted to remain silent during the reinstatement process and then file a motion to dismiss based on arguments it could have raised earlier.

VI. This Court Has Appellate Jurisdiction Over Market Hall's Appeal

A. Statutory Framework Governs Appeals from the Administrative Law Court

Appeals from the Administrative Law Court are governed by statute, not by administrative court rules. S.C. Code Ann. § 1-23-610(A) establishes the exclusive requirements for appealing an ALC decision: "(1) a final decision of an administrative law judge, and (2) compliance with the South Carolina Appellate Court Rules in civil cases." S.C. Code Ann. § 1-23-610. The statute contains no requirement that a party file a motion for reconsideration before appealing.

The Department's argument that SCALC Rule 29 creates a mandatory prerequisite for appellate jurisdiction conflicts with the plain language of the governing statute. Where a statute and an administrative rule conflict, the statute controls. The General Assembly has spoken clearly on the requirements for appeals from the ALC, and courts cannot add requirements not contained in the statute.

B. SCALC Rule 29 Is Permissive, Not Mandatory for Appellate Jurisdiction

The language of SCALC Rule 29(D) itself demonstrates that reconsideration is not a jurisdictional prerequisite. The rule begins with permissive language stating that a party may request reconsideration indicating that reconsideration is optional, not mandatory. While the rule later states that a party "must file a motion for reconsideration prior to filing a notice of appeal," this language must be read in context as applying only to parties who choose to seek reconsideration. Moreover, SCALC Rule 29 serves primarily as an issue preservation rule, not

a jurisdictional bar. The purpose of requiring reconsideration is to allow the ALC to correct errors and preserve issues for appeal, not to create an absolute barrier to appellate review.

C. Purely Legal Issues Require No Motion for Reconsideration

South Carolina law is clear that a motion for reconsideration is not required when the issues on appeal are purely legal and were ruled upon by the tribunal. The issues in this case involve purely legal questions regarding the Department's statutory authority under S.C. Code Ann. §§ 12-4-330 and 12-54-110, constitutional privacy protections under Article I, Section 10 of the South Carolina Constitution, and the application of the Powell test for administrative summonses.

The ALC's order conclusively resolved the summons enforcement petition based on legal determinations, with no additional factual development needed. Where legal issues have been fully presented and adjudicated below, requiring reconsideration would serve no purpose and would create an unnecessary procedural barrier to appellate review.

D. The Department's Conduct Demonstrates Recognition of Valid Appeal

The Department's own actions demonstrate its recognition of the validity of Market Hall's appeal. On October 10, 2025, the Department explicitly consented to a stay of the ALC's order pending appeal, stating "The Department consents to the Respondent's Motion to Stay". By consenting to a stay pending appeal, the Department acknowledged the existence of a valid appeal and should be estopped from now arguing that no valid appeal exists.

Additionally, the Department failed to oppose Market Hall's Petition for Rehearing, which this Court treated as a Motion to Reinstate the appeal. The Department's silence during

the reinstatement process, followed by its motion to dismiss after reinstatement was granted, demonstrates inconsistent position-taking that undermines its jurisdictional challenge.

E. This Court Has Already Recognized Appellate Jurisdiction

This Court's October 29, 2025, order reinstating Market Hall's appeal constitutes a judicial determination that appellate jurisdiction exists. The Court granted rehearing, vacated the remittitur, and reinstated the appeal after finding that the ALC's order was final. If jurisdictional defects existed, reinstatement would not have occurred. Jurisdictional issues cannot be waived, but the Court's reinstatement order demonstrates that no jurisdictional defect exists. The Department's motion to dismiss, filed after reinstatement, improperly seeks to relitigate jurisdictional issues already resolved by this Court.

CONCLUSION

This Court has appellate jurisdiction over Market Hall's appeal because Market Hall complied with the statutory requirements for appeal under S.C. Code Ann. § 1-23-610, the issues involve purely legal questions that were fully adjudicated below, and this Court has already recognized the validity of the appeal by reinstating it. The Department's administrative summons fails the Powell test for good faith, violates Article I, Section 10 of the South Carolina Constitution, exceeds statutory authority, and is overly broad and unduly burdensome.

The Department's failure to identify any specific violations or legitimate investigative purpose renders this summons an impermissible fishing expedition that should be quashed. Market Hall respectfully requests that this Court exercise its appellate jurisdiction, reverse the Administrative Law Court's enforcement order and quash the administrative summons. The protection of constitutional privacy rights and the prevention of administrative overreach require that government agencies demonstrate legitimate investigative purposes before compelling private parties to produce proprietary information.

Respectfully submitted,

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Appellant.

PROOF OF SERVICE

The undersigned, counsel for Appellant Market Hall, LLC, d/b/a Soda City Market, hereby certifies that on this 2**8th day of September 2026**, a true and correct copy of the **Final Brief of Appellant** in the above-captioned matter was served upon counsel for Respondent by electronic mail to their AIS-registered email addresses as follows:

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