THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Hon. Carmen T. Mullen, Circuit Court Judge

C.A. No.: 2013-002266

JASPER COUNTY BOARD OF EDUCATION .....Appellant

v.

JASPER COUNTY COUNCIL AND JASPER COUNTY AUDITOR..... Respondents.

INITIAL BRIEF OF APPELLANT

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I. STATEMENT OF ISSUE ON APPEAL

Which political subdivision has the authority to determine the school operating tax levy and millage rate for the School District of Jasper County - the Jasper County Board of Education or the Jasper County Council?

II. STATEMENT OF THE CASE

This declaratory judgment action was filed July 15, 2013, by the Jasper County Board of Education ("Board"). The Jasper County Council and Jasper County Auditor ("Council") filed an Answer and Counterclaim on August 30, 2013. The Board contends that it has the legal authority to determine the *ad valorem* millage rate for school operations for the Jasper County School District. The Council contends the opposite — that Council has the substantive authority to determine the school operating millage, not the Board.

The parties filed offsetting claims in the Complaint and a Counterclaim on the fundamental issue of the locus of this substantive authority under the relevant statutes, and also filed cross-motions for judgment on the pleadings. On September 26, 2013, after hearing the motions, Judge Mullen issued the following declarations:

> The Court finds and concludes that Code of Laws of South Carolina § 4-9-70 vests in the Jasper County Council the power to determine the school tax levy, and to determine by ordinance the method of establishing the school tax millage. ... (Order of September 26, 2013, at ___.)
>
> A review of Act No. 982 of 1968, Act No. 601 of 1971, and of the Code of Laws of South Carolina § 4-9-70, reveals no express limitations on the discretion of the Jasper County Council's authority to make appropriations and to levy taxes or to establish a method of school tax millage. ... (Order of September 26, 2013, at ___.)
>
> The Court finds that determination of the amount of the appropriation to the School District operating budget and determination of the millage to fund the school district's operating budget is within the discretion of Jasper

> County Council subject to the exercise of good faith and for an appropriate purpose. ... (Order of September 26, 2013, at ___.)
>
> [I]t is the judgment of the Court that Jasper County Council has been delegated the power to make appropriations and to levy taxes for the Jasper County School District annual operating budget and to determine by ordinance the method of establishing school tax millage. This delegation of power includes the right of Jasper County Council to exercise their discretion subject to the limitations of good faith and acting for an appropriate purpose. (Order of September 26, 2013, at ___.)

Further, in denying the Board's motion and entering judgment for the Council, the Court denied the Board's requests to implement a favorable declaration through injunction and *mandamus* directed to the Council and Auditor. *See*, S.C. Code Ann. § 15-53-120.

Upon receipt of the September 26, 2013, Order the Board filed its motion pursuant to S.C. R. Civ. P. 52(b) and 59(e) (R.__), to alter or amend the judgment entered pursuant to the Order filed September 26, 2013. Judge Mullen denied the Board's motion (R.__), and the Board appeals the judgment dated September 26, 2103, and the order of October 2, 2013, denying the Board's Motion to Alter or Amend Judgment Pursuant to S.C. R. Civ. P. 52(b) and 59(e). (R.____.)

III. STATEMENT OF FACTS

In this case, the "facts" are essentially the subsisting statutes, the meaning of which is contested under the Declaratory Judgments Act.

By Act No. 982 of 1968, the General Assembly created a special entity called the Jasper County Council and established its powers and duties, including "to make appropriations and to levy taxes therefor for corporate purposes and for educational purposes...." S.C. Act No. 982 of 1968, § 6, ¶ 5.

The General Assembly subsequently passed S.C. Act No. 601 of 1971, pertaining to the Board, and re-adopted the pertinent language in S.C. Act No. 288 of 1989:

Section 2. In addition to those powers and duties of the county board of trustees now devolved on the board and those already provided for by general and special legislation, the board has the following powers and duties relative to the public schools of the district: ...

(5) determine and evaluate the educational program in the schools and provide a systematic program of curriculum development and revision designed to provide maximum educational opportunities for each child in the county; ...

(7) adopt a system of budgetary controls and annually adopt a budget, with power to revise when necessary, sufficient to meet the educational needs of the county;

(8) provide for the disbursement of all county, state, and federal educational funds received by the school district; ...

(12) borrow in anticipation of the collection of taxes, state or federal aid. ...; ...

(16) have prepared not more than ninety days from the end of each fiscal year, an audit prepared by a certified public accountant as to the operation of the public schools of Jasper County ...;

(17) pay any outstanding judgment against it when sufficient funds for this purpose are available;

(18) perform any other duties and responsibilities not inconsistent with local and state laws which may be necessary to meet the educational needs of the county.

The provisions pertaining to the Board's budgetary powers remained the same in Act 288 of 1989 as they had been in Act 601 of 1971.

The County Auditor's role and duty is ministerial; the Auditor,

after receiving statements of the rates and sums to be levied for the current year from the department and from other officers and authorities legally empowered to determine the rate or amount of taxes to be levied for the various purposes authorized by law, shall immediately proceed to determine the sums to be levied upon each tract and lot of real property and upon the amount of personal property, monies, and credits listed in his county in the name of each person.

S.C. Code Ann. § 12-39-180. The Auditor then has the power and duty before each September 30 to "make up and complete the tax books of the county" and to prepare and deliver to the County Treasurer the county tax duplicate imposing *ad valorem* taxes. S.C. Code Ann. §§ 12-39-140, -150, -180, -190. The "county auditor's authority is limited to the calculation of taxes on individual tracts of real property. The auditor is not given any authority with regard to the overall tax rate, which is to be determined by the body with the authority to levy the tax." 2009 WL 3658269 (S.C.A.G. Oct. 27, 2009). The Board has no independent controversy with the Auditor, who is named solely on account of the effect of the declaration upon the ministerial levy of taxes once rates and sums are determined by law.

IV. ARGUMENT

A. Summary of Argument

This Court should vacate the declaratory judgment of the Circuit Court and enter a judgment granting the declaratory judgment requested by the Board. An issue regarding statutory interpretation is a question of law. *City of Rock Hill v. Harris*, 391 S.C. 149, 152, 705 S.E.2d 53, 54 (2011). In a case raising a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court. *Id.*

The sole statutory construction that harmonizes all statutory provisions and respects the State Constitution amendments of the 1970s is that the Board has exclusive educational responsibility and budgetary and taxing power and the Council has at most the ministerial duty to provide some method for the Board's budgeted *ad valorem* revenue and school operating rate to be included within the "statement of the rates and sums to be levied" transmitted to the County Auditor.

This construction harmonizes the pre-Home Rule special legislation for the county council (Act 982 of 1968) and the Jasper County special legislation for the Board (Act 288 of 1989) with the public education constitutional amendment (new Article XI of 1973), the local government "Home Rule" constitutional amendment (Article VIII of 1973), the Home Rule Act (1975), and the finance and taxation constitutional amendment (new Article X of 1977). The Council's 1968 discretionary authority to levy property taxes for education did not survive the combination of subsequent constitutional amendments and statutory enactments.

B. Declaratory Judgments Act

A justiciable controversy exists between the Board and the Council regarding their rights, status and other legal relations with regard to the authority to determine the annual local revenue budget and *ad valorem* tax rate of the School District. The Declaratory Judgment Act provides, in part, as follows:

a. "Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15-53-20.

b. An interested party whose, "... rights, status or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute, ... and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. § 15-53-30.

c. "Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper." S.C. Code Ann. § 15-53-120.

d. "When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration ...." S.C. Code Ann. § 15-53-80.

C. Judgment on the Pleadings.

This case turns on the meaning of statutes within our state constitutional structure, not the resolution of factual disputes. "A motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue." *Rosenthal v. Unarco Indus., Inc.*, 278 S.C. 420, 297 S.E.2d 638, 640 (1982). If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. S.C. R. Civ. P. 12. The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *Cunningham v. Anderson Cnty.*, 402 S.C. 434, 441, 741 S.E.2d 545, 549 (Ct. App. 2013), reh'g denied (Feb. 27, 2013). This is one of those cases.

It is unclear if the Circuit Court meant to grant "judgment on the pleadings" or "summary judgment" although the Order does contemplate some historical facts outside the pleadings that were developed in limited pre-hearing discovery. In either case, the inquiry is purely legal. While the Board believes it was unnecessary for the Court to consider facts outside the pleadings, neither those findings nor any other additions to the factual record would have any material bearing upon the proper resolution of the case.

D. County Authority Does Not Comport with Article XI

School districts exist under "new" South Carolina Constitution Article XI, § 3, which provides that: "[t]he General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public institutions of learning, as may be

desirable." *Id., quoted in, Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 558, 713 S.E.2d 604, 607 (2011). Article XI, § 3 was ratified on February 21, 1973, S.C. Act No. 42 of 1973, two weeks before ratification of the local government Home Rule Amendment (Article VIII) on March 7, 1973, *infra.*

Thus, public education was a *state* function at the time Article VIII was revised. The separate nature of school districts under the new universe of political subdivision powers was confirmed promptly and in clear language by the Supreme Court:

> Creation of different provisions for school districts does not impinge upon the 'home rule' amendment because public education is not the duty of the counties, but of the General Assembly. The General Assembly has not been mandated by any constitutional amendment to enact legislation to confer upon the counties the power to control the public school system. To the contrary, the command of new Article XI, Section 3, is 'The General Assembly shall provide for the maintenance and support of a system of free public schools.' ...
>
> The contrast between Article XI and Article VIII should be obvious. In Article XI the General Assembly is charged with the duty to provide for a system of public education, whereas, in Article VIII the General Assembly is required to confer powers upon the counties so that they may carry out local functions. Moreover, a reading of Article XI, which deals specifically with public education, as a whole, in light of the historical background of public education in this State, and attempting to harmonize the entire Article and extract the impact of each section, it is clear that the provisions of Article VIII, which deal solely with local government, have no application to the matter currently before us.

Moye v. Caughman, 265 S.C. 140, 143-44, 217 S.E.2d 36, 37-38 (1975). Consistent with Article XI, § 3, there is a South Carolina School Code, S.C. Code Ann. § 59-1-10, the "purpose of [which] is to provide for a State system of public education and for the establishment, organization, and support of such State system." S.C. Code Ann. § 59-1-20. Under the School Code, the State Board of Education is given the state-wide governance function of the school system. S.C. Code Ann. § 59-5-60. Locally, "[e]ach

school district shall be under the management and control of the board of trustees." S.C. Code Ann. § 59-19-10.[1] Article XI, § 3 (along with Article X, *infra*) is the constitutional basis of the powers conferred upon the Board by Act 288 of 1989.[2]

E. County Authority Does Not Comport with Article VIII (Home Rule)

On March 7, 1973, the "Home Rule Amendment" to the South Carolina Constitution rewriting Article VIII was ratified. *Graham v. Creel*, 289 S.C. 165, 166, 345 S.E.2d 717, 718 (1986); *Neel v. Shealy,* 261 S.C. 266, 199 S.E.2d 542, 543 (1973). Section 1 of Article VIII provides: "The powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law." *Id.* Thus, the pre-home rule county council continued to function under Act 982 of 1968.

However, change in the manner provided by law followed in 1975. The General Assembly enacted the "Home Rule Act," Act No. 283 of 1975, codified now as §§ 4-9-10 through 4-9-1230 of the Code of Laws. All county governments transitioned to the new uniform "home rule" system, S.C. Code Ann. § 4-9-10, and Jasper County transitioned to the council-administrator form of county government. At this point,

> [e]xcept as specifically provided for in this article [Article 7, Sections 4-9-610 to 670 concerning solely the county administrator form of county government] the structure, powers, duties, functions and responsibilities of county government under the council-administrator form shall be as

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[1] In Jasper County the Board has both "county board of education" and "school board of trustees" powers and functions. *See* S.C. Code Ann. § 59-19-100.

[2] Neither party claims the legislation concerning the Board violates S.C. Const. article III, § 34(IX), and the Board believes the correct statutory construction comports with the requirements for special legislation. *See, Home Builders Ass'n of S.Carolina v. Sch. Dist. No. 2 of Dorchester Cnty.*, 405 S.C. 458, 748 S.E.2d 230 (2013) (discussing public education special legislation history and principles generally). The Board does not however concede that any form taken by any future local legislation would not violate art. III, § 34(IX) and/or art. VIII, § 7.

prescribed in Article 1 [Sections 4-9-10 to 190] of this chapter."

S.C. Code Ann. § 6-9-670.

Thus, after July 1, 1976, the "powers, duties, functions and responsibilities" of the Jasper County Council were "prescribed" by the general, uniform statewide law of §§ 4-9-10 through 190, and not Act 982 of 1968. As a county government under Home Rule, Council may "levy ad valorem property taxes . . . and make appropriations for functions and operations of the *county* ...." S.C. Code Ann. § 4-9-30(5) (*emphasis added*). Of paramount importance, education is not included in the § 4-9-30(5) list of county functions.

As far as public education goes, the Home Rule Act is the beginning and the end of transition pursuant to Article VIII, § 1. In *Duncan v. York County*, 267 S.C. 327, 228 S.E.2d 92 (1976), the Court held that section 1 of Article VIII allowed the General Assembly to legislate to bring about an orderly transition to local home rule government, but that such authority was temporary and extended only so far as necessary to place Article VIII fully into operation. The General Assembly "fully implemented 'home rule' by passing the Home Rule Act." *Pickens Cnty. v. Pickens Cnty. Water and Sewer Auth.*, 312 S.C. 218, 221, 439 S.E.2d 840, 842 (1994); *Davis v. Richland Cnty. Council*, 372 S.C. 497, 502, 642 S.E.2d 740, 743 (2007). Unlike special purpose districts that performed functions previously forbidden to counties, public education is not a function that could be transitioned towards county government, either wholesale or through "one shot" acts. *Moye*, 265 S.C. at 143, 217 S.E.2d at 37. "The legislature by inaction cannot alter a constitutional mandate." 1983 WL 167255 (S.C.A.G. August 18, 1983) (*citing Harriss v. Shanahan*, 387 P.2d 771, 789 (Kan. 1963)).

The Attorney General's Office has said of *Moye* that, "this recognition that the legislature is vested with duties over education could possibly be read to restrict that body's power to relinquish its control to county councils." 1980 WL 120778 (S.C.A.G. July 22, 1980).

Thus, as far as the separation of public education and local governments go, the transition was effected with the Home Rule Act. Inconsistent acts commingling these functions did not survive any more than did lingering special acts creating the pre-Home Rule county governments in various counties.

F. County Authority Does Not Comport with Article X

For a long time, Article 10, § 6 of the South Carolina Constitution of 1895 "allowed the General Assembly to grant counties the power to levy taxes only for specific listed purposes such as ... education...." *Cornelius v. Oconee Cnty.*, 369 S.C. 531, 535 663 S.E.2d 492, 494 (2006); S.C. Const. art. X, § 6 (7 Code of Laws of S.C. 306 (1952)). Old § 6 provided that,

> The General Assembly shall not have power to authorize any county or township to levy a tax or issue bonds for any purpose except for educational purposes, to build and repair public roads, buildings and bridges, to maintain and support prisoners, pay jurors, County officers, and for litigation, quarantine and court expenses and for ordinary County purposes, to support paupers, and pay past indebtedness[.]

Old § 5 of the Constitution provided that, "The corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes ...." S.C. Const. art. X, § 5 (7 Code of Laws of S.C. 276 (1952)). Thus, under the old regime in effect when Act 982 of 1968 was adopted, the Constitution recognized "counties, townships, and school districts as separate and distinct political subdivisions and each may be authorized to levy taxes for

educational purposes. Article 10, Sections 5 and 6, and Article 11, Section 6, of the South Carolina Constitution." *Bowaters Carolina Corp. v. Smith*, 257 S.C. 563, 570, 186 S.E.2d 761, 763 (1972); *see also*, *Gould v. Barton*, 256 S.C. 175, 192, 181 S.E.2d 662, 669 (1971) ("Under Article 10, Section 6, a county may levy a tax and issue bonds for educational purposes.") and *Stackhouse v. Floyd*, 248 S.C. 183, 202, 149 S.E.2d 437, 447 (1966) ("Article X, Section 6 expressly permits a county to levy a tax and issue bonds for educational purposes."); *Grey v. Vaigneur*, 243 S.C. 604, 609, 135 S.E.2d 229, 232 (1964); *Powell v. Thomas*, 214 S.C. 376, 380, 52 S.E.2d 782, 783 (1949); S.C. Const. art. X, § 5 (7 Code of Laws of S.C. 276 (1952)). In 1944, the Supreme Court held that a county tax for education was "a valid exercise of the power contained in ... Section 5, Article 10. ... Under the foregoing section of the Constitution, the General Assembly is clearly given the power to authorize a county to levy taxes for educational purposes." *Moseley v. Welch*, 209 S.C. 19, 29, 39 S.E.2d 133, 138 (1946).

The concept that counties and school districts and cities could all levy property taxes for education was therefore in place under old Article X as the 1970s approached. The old § 6 reference to "education" taxes (old § 6) linked with the "corporate purpose" reference in old § 5 countenanced counties' involvement. This was convenient under the old regime of the 1895 constitution because the local revenue budget and corresponding property taxes were typically controlled by the legislative delegations through supply bills, and there was no practical reason to have two supply bills instead of one where the same delegation in Columbia made both sets of decisions.

But that was about to change. As noted *supra*, the universe of constitutional provisions for counties changed dramatically in 1973 under Article VIII, the same year

Article XI was revised for public education. A similar change in the constitutional authority for finance, taxation, and public debt occurred in 1977 with new Article X. The school operating tax power in Jasper County has to comply with the structure and limitations of this new reality. Our Supreme Court has recently noted the error of relying upon tax cases decided under prior constitutional arrangements. *Home Builders Ass'n of S. Carolina v. School Dist. No. 2 of Dorchester Cnty.*, 405 S.C. 458, 462, 748 S.E.2d 230, 232 n.4 (2013) (referencing repealed S.C. Const. art. XI, § 6 (7 Code of Laws of S.C. 327 (1952)).

Article X of the Constitution was rewritten via Act No. 71 of 1977, effective as of November 30, 1977. The revision "deleted the county-purpose limitation but retained the corporate-purpose requirement that local government taxes be levied only for goals compatible with the reasons for creating that particular kind of local entity." 2 James Lowell Underwood, *The Constitution of South Carolina* 183 (1989); *see* Article X, § 14(4) (general obligation debt may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision); 1979 WL 42841 (S.C.A.G. Mar. 6, 1979) ("[t]hose cases were decided before the enactment of new Article X of the South Carolina Constitution, however, and, in my opinion, certain provisions of new Article X may no longer allow this practice.")

Gone from the post-1977 Article X is authority for *counties* to tax for *educational* purposes. *Compare* S.C. Const. art. X, § 6 (7 Code of Laws of S.C. 306 (1952)) *with* S.C. Act No. 71 of 1977 (1977 S.C. Statutes at Large, at 94). Under "new" Article X § 6, the General Assembly may "vest the power of assessing and collecting taxes in all of the political subdivisions of the State." However, by 1977 there were specific and separate

constitutional articles for public education (Art. XI) and local government (Art. VIII). The scope of those preexisting articles must be harmonized with Article X as well with each other.[3] One example is Article VIII, § 7 requiring the General Assembly to provide for the "structure, organization, powers, duties, functions, and the responsibilities of counties." The Supreme Court has stated that "in Article VIII the General Assembly is required to confer powers upon the counties so that they may carry out local functions." *Moye*, 265 S.C. at 143, 217 S.E.2d at 38. The instrument of that mandate is the Home Rule Act, by which Council may only "levy ad valorem property taxes ... and make appropriations for functions and operations of the *county* ...." S.C. Code § 4-9-30(5) (*emphasis added*).

The 1977 date of Article X also casts doubt on the continuing viability of S.C. Code Ann. § 4-9-70, the section of the 1975 Home Rule Act (Act 283 of 1975) which purported to deal with school matters. Section 14-3704, 1977 Stat. at Large of S.C., at 700; *codified as* S.C. Code Ann. § 4-9-70. The section begins by stating, "[t]he provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public school education and all school districts, boards of trustees and county boards of education shall continue to perform their statutory functions in matters related thereto as prescribed in the general law of the State." *Id.* Thus, even before considering constitutional harmony, it is a given that nothing in the Home Rule Act can grant a county any expanded power over public education,. There followed provisos in the section:

> ... provided, however, that except as otherwise provided for in this section *the county council shall determine by ordinance the method of*

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[3] *E.g., Moye v. Caughman, supra* (comparing Articles VIII and XI).

> *establishing the school tax millage* except in those cases where boards of trustees of the districts or the county board of education established such millage at the time one of the alternate forms of government provided for in this chapter becomes effective. In counties containing more than one school district, where all such districts are located wholly within the boundaries of the county, council may be ordinance establish county-wide school tax millage....[4]

There are three qualifying "provided" clauses with sequential exceptions addressing the then five methods of establishing school district millage rates: school district boards, county boards of education, county councils, legislative delegations, and electors directly by meeting or referendum. The first "provided" clause begins with "except as otherwise provided in this section (*i.e.*, § 4-9-70)," council "shall determine by ordinance the method of establishing school tax millage" followed by the exceptions:

(1) school district or county boards which already established the school tax millage on July 1, 1976;[5]

(2) counties "containing more than one district" all within the county where the council "may" establish the county-wide millage;

(3) legislative delegations under the second "provided" clause (not quoted above); and

(4) electors directly by meeting or referendum in the third "provided" clause (not quoted above).

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[4] *Id.* (*emphasis added*). Of this section of the Home Rule Act, the Attorney General's Office has said, "This section of the Home Rule legislation embodies the general principle of law recognized in this state that the county and the school district, even though co-extensive in area, are separate and distinct governmental, corporate entities and are separately subject to constitutional and statutory provisions applicable to each." 1978 WL 34754 (S.C.A.G. Mar. 8, 1978).

[5] It is also possible to construct § 4-9-70 so that the Board falls within the first exception of school boards which already established the school millage, since the Board's budgetary authority under Act 601 of 1971, which was effective on July 1, 1976, was in all relevant parts identical to its authority under Act 288 of 1989. In that case, "[w]here the board or the county board of education had the power to set the school tax millage when 'home rule' became effective, the council in those counties most probably does not have the authority to do anything other than accept the proposed school district budget and authorize that the requested school tax millage be levied and collected." 1979 WL 42838 (S.C.A.G. Mar. 5, 1979).

Thus, under § 4-9-70, the most authority that the Council could retain after the Home Rule Act is "to determine the method of establishing the school tax millage." Since Jasper County contains only one school district, the clause concerning counties with more than one school district does not apply.

The case of *Stone v. Traynham*, 278 S.C. 407, 297 S.E.2d 420 (1982) is instructive. In *Crow v. McAlpine*, 277 S.C. 240, 285 S.E.2d 355 (1981), the Court held that an appointed school board could not be vested with any taxing power because of South Carolina Const. Art. X, § 5 (no "taxation without representation"). In Orangeburg County, the county board of education established millage rates for the several school districts in the county, but the county school board was appointed and the district school boards were elected. In *Stone*, the Supreme Court upheld the county council ordinance under § 4-9-70 "to determine the method" by transferring the millage authority from the appointed county board to the elected school district boards. The Court said in *Stone* that

> enacting § 4–9–70, the General Assembly attempted to insure that the taxing power for all school districts would be properly vested in some authority. The clear intent is to vest the power to determine the school tax levy in county council in all cases where it is not vested elsewhere. It is inconceivable the legislature would not provide for the levy merely because it could not constitutionally vest control of that power in appointed boards of education.

The Jasper Board, by contrast, was elected at the time of Home Rule and has continued to be elected ever since. To the extent taxing power was not already invested in the Board under the 1971 special act (discussed *supra*, at n.5), there was and is no constitutional impediment to reposing the power of school taxation in the Board.

A county council's reliance upon the above-quoted passage in *Stone* to take to itself substantive control of school operating revenue, does not consider the change in

Article X that occurred *after* the Home Rule Act was adopted in 1975.[6] When the Home Rule Act was passed, the General Assembly could still rely on the then-existing provisions of *old* Article X sections 5 and 6, which (as surveyed above) did provide express authority to vest school taxing powers in *either* school boards or county councils. Although not expressed in the Home Rule Act, a court could conceivably find "legislative intent" to use § 4-9-70 to repose tax powers in county councils *in 1975* – this was expressly constitutionally authorized even if it was inconsistent with the entire policy of existing Articles VIII and XI as revised in 1973. When Article X was amended in 1977 however, the anomaly that could protect delegation to counties of school tax power disappeared, consistent with the design of the completed transition to new Articles VIII, X, and XI. By 1977, articles VIII and XI were effective, separating local and state governmental functions, respectively.

Even if § 4-9-70 can be read to provide authority to establish a "method" of establishing the school millage rate, this cannot be implicitly expanded to substantive authority to determine the budget and millage for the school system. "The mere act of administering the tax does not change the status of the tax." *Owen Indus. Products, Inc. v. Sharpe*, 274 S.C. 193, 197, 262 S.E.2d 33, 35 (1980). The leap from "method" to substantive control is an extralegal invention. "The act of county officers in administering the tax levied in the school district does not make the tax any less a school district tax." *Bowaters*, 257 S.C. at 572, 186 S.E.2d at 764. Counties are charged with administering the property tax system, and in the absence of a general law on school operating tax *administration* by the County officers charged with levying and collecting

[6] "It is true that Article X (which relates to taxation) has not yet been rewritten ...." *Knight v. Salisbury*, 262 S.C. 565, 206 S.E.2d 875, 877 (1974).

taxes, the General Assembly could allow the counties to establish the "method" of doing so.

The Orangeburg County Council did this when it responded to the "taxation without representation" problem by having the elected school authorities determine the school tax instead of the appointed school authorities. *Stone*, *supra.* The Orangeburg County Council did not use the Home Rule Act to arrogate unto itself – and rightly so under the opening clause of § 4-9-70 – the *substantive* authority of determining school budgets and local revenue levies. In 1979, close on the heels of the constitutional revisions, the Attorney General wrote an opinion stating that, "perhaps, county councils were not intended to exercise any powers with respect to education in its broadest sense." Op. S.C. Atty. Gen., August 9, 1979 (quoted in 2008 WL 5476547 (S.C.A.G. 2008)). In another opinion of the era, the Attorney General opined,

> As previously discussed, County Council and the board of trustees of the school district constitute separate governmental units, each with broad powers invested in them by the General Assembly. The Oconee County Council by its own actions may not delegate to itself authority and responsibility which the General Assembly by law has granted to another governmental entity. With regard to the relationship between the school districts and County government, the General Assembly has specifically declared in § 4-9-70 that no additional powers shall be devolved upon the County Council which have historically been exercised by the school districts in performing their statutory functions. S.C. Code Ann. § 59-19-90 (1976) specifically states that the board of trustees of the school district shall 'take care of, manage and control the school property of the district.'

1978 WL 34754 (S.C.A.G.). As noted in *Gould v. Barton*, 256 S.C. 175, 181 S.E.2d 662 (1971), "[t]he power to approve the budget carries with it the power to disapprove until the budget conforms to the legislative wish ...." *Id.*, at 674.

The procedural "method" language of § 4-9-70 cannot be converted to substantive control, given the limitation of substantive taxing power to county functions and omitting

education in § 4-9-30(5), the separation of county and state functions in the revised constitutional Articles VIII and XI, and the subsequent removal of the County's substantive authority to tax for education from Article X in 1977.

G. Act 288 of 1989 is Complete, Plain and Unambiguous: the Board Controls the School Operating Tax

Given the boundaries set by the constitution, the resolution of this case is simple and straightforward. "The primary concern in interpreting a statute is to ascertain and effectuate legislative intent. All rules of statutory construction are subservient to the rule that legislative intent must prevail if it can reasonably be discovered in the language used, and that language must be construed in light of the intended purpose of the statute. As in this case, where a statute is complete, plain, and unambiguous, legislative intent must be determined from the language of the statute itself." *Charleston Cnty. Parents for Pub. Sch., Inc. v. Moseley*, 343 S.C. 509, 515, 541 S.E.2d 533, 536 (2001). "The duty rests upon this court to endeavor to harmonize not only legislative enactments with the Constitution, but the various provisions of the Constitution itself." *Hildebrand v. High Sch. Dist. No. 32*, 138 S.C. 445, 136 S.E. 757, 760 (1927).

The provisions of Act 288 of 1989, read under these statutory interpretation rules, give the Board the control of the finances of the Jasper County School District. There is no mention of the County Council in any of the powers and duties spelled out in Act 288. Most importantly, the Board must "adopt a budget, with power to revise when necessary, sufficient to meet the educational needs of the county." (§ 2 ¶ (7))

The local revenue budget and *ad valorem* tax rate are two sides of the same coin. *Lee Cnty. v. Stevens*, 277 S.C. 421, 289 S.E.2d 155 (1982). The budgeting power

encompasses the power to determine ad valorem revenue, which is inseparably tied to a millage rate:

> Taxes for meeting public expenses are annually determined in a budget set by a particular governing body ....
>
> Property taxes are levied to help provide the necessary revenue to meet the expenditure found in the budget. ...
>
> In general terms, the appropriate tax rate is reached by dividing the assessed value of the property to be taxed into that part of the budget to be generated by property taxes.

Id. In order for the Board to perform its exclusive budgeting powers under Act No. 288 of 1989 and to "determine ... the educational program," (§ 2 ¶ (5)) the Board must have the power to establish the millage rate for school operations. Not only is this power implicit in § 2 ¶ (7) of the local law, but it is also included within the general grant of powers and responsibilities in § 2 ¶ (18) of the same local law.

The inseparability of budgets and taxes is further referenced in the State Constitution:

> each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year. Whenever it shall happen that the ordinary expenses of a political subdivision for any year shall exceed the income of such political subdivision, the governing body of such political subdivision shall provide for levying a tax in the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses for such ensuing year.

S.C. Const. art. X, § 7(b). The Board's school operating levy is also "essential to the exercise of other powers that have been granted," 84 C.J.S. Taxation § 467, and well encompassed by Act 288 of 1989, current Article X, § 7(b), and the duties of school trustees in South Carolina School Code, S.C. Code Ann. § 59-1-10 *et seq.*.(*e.g.*, South

Carolina Education Finance Act of 1977, S.C. Code Ann. § 59-20-10 *et seq.*, S.C. Code Ann. § 59-21-1030, S.C. Code Ann. § 59-73-20*)*.

General law, not the Council or the Home Rule Act, effectuates the General Assembly's policy to limit increases in *ad valorem* tax rate and *ipso facto* the budget adopted by the Board. S.C. Code Ann. §§ 6-1-300, -320. When the General Assembly has intended to give a legislative delegation budgetary oversight of another entity, it has done so in explicit terms. *Charleston Cnty. Parents,* 541 S.E.2d at 536. Such explicit terms are absent from Act 288 of 1989. Any attempt by the Council to claim oversight of the millage rate is irreconcilable with the plain language and meaning of "annually adopt a budget, with power to revise when necessary, sufficient to meet the educational needs of the county" as given to the Board along with "any other duties and responsibilities not inconsistent with local and state laws which may be necessary to meet the educational needs of the county."

"This Court will not construe a statute in a way which ... renders it meaningless." *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) *citing Lancaster Cnty. Bar Ass'n v. S. Carolina Comm'n on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) (in construing a statute, this Court will reject an interpretation which leads to an absurd result that could not have been intended by the General Assembly); *Gordon v. Phillips Utils., Inc.*, 362 S.C. 403, 608 S.E.2d 425 (2005) (it is presumed that the General Assembly intended to accomplish something by its choice of words and would not do a futile thing); *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 574 S.E.2d 196 (2002) (this Court must presume the General Assembly did not intend a futile act, but rather intended its statutes to accomplish

something); and *Hinton v. S.C. Dep't of Probation, Parole and Pardon Servs.*, 357 S.C. 327, 592 S.E.2d 335 (Ct.App.2004) (the Court should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless). Section 2 of Act 288 of 1989, subsection (5) ("determine and evaluate the educational program in the schools and provide a systematic program of curriculum development and revision designed to provide maximum educational opportunities for each child in the county" and subsection (7) ("annually adopt a budget, with power to revise when necessary, sufficient to meet the educational needs of the county") are rendered meaningless by the trial court's judgment adopting the County's view of its power to control the local operating revenue of the Board regardless of the Board's budget.

The straightforward application of the plain meaning of the Act 288 of 1989 is the only interpretation that comports with the State Constitution – which changed in key respects after the special act of 1968 which purports to give the Council its authority over the Board. "[W]here the Constitution has been amended, the provisions of the amendment control in the event of conflict with preexisting provisions." *Knight v. Salisbury*, 262 S.C. 565, 573, 206 S.E.2d 875, 877 (1974). Constitutional provisions "must be harmonized with [another constitutional provision] which is the latest expression of the electorate as to its will for constitutional provisions on this subject. This is true not only of Article X, but it is true of any other provision in the Constitution." *Knight*, 262 S.C. at 574, 206 S.E.2d at 879. Courts "will, if possible, construe a statute so as to render it constitutional." *Disabato v. S. Carolina Ass'n of Sch. Adm'rs*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013). "Constitutional constructions of statutes are not only judicially preferred, they are mandated; a possible constitutional construction must

prevail over an unconstitutional interpretation." *State v. McGrier*, 378 S.C. 320, 329, 663 S.E.2d 15, 19 (2008).

As demonstrated below, the trial court's declaratory judgment that the County has legislative discretion to alter the Board's decisions in the exercise of the Board's powers under Act 288 of 1989 is a construction inconsistent with the South Carolina Constitution as changed in the 1970s. The reiteration of the Board's governance powers by the General Assembly in 1989 is clear, plainly consistent with all constitutional provisions and the Home Rule Act, and complete unto itself.

V. CONCLUSION

There is nothing in Article XI providing any *county* power over education – taxes or otherwise. There is nothing in Article VIII providing any *county* powers over education – taxes or otherwise. *Moye* makes this much clear. To the 1975 decision in *Moye* there needs only be added the effect of the 1977 constitutional amendment eliminating county educational tax powers from Article X.

The entity in which the General Assembly may repose taxing authority pursuant to Article X, § 6, is confined by and must be harmonized with the limited scope of each of Articles VIII and XI. Only the Board's proposed interpretation of Act 288 of 1989 accomplishes this.

School operating budgeting and millage-setting power residing in the Board is entirely consistent with the general law as well as with these constitutional provisions. S.C. Code Ann. § 59–17–10 states that a school district is a body politic. Section 59–1–160 defines a school district as an area encompassing a legal entity whose sole purpose is that of providing free school education and the area of which constitutes a complete tax unit. "School districts and their governing boards are generally considered political subdivisions of the State and hence may properly be vested with the State's taxing

power." *Crow, supra.* The State Constitution requires that, "each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year." S.C. Const. art. X, § 7. And of course, many school boards already have budgeting and millage-setting power – some by legislation and too many by litigation.

The Board requests this Court to reverse the Circuit Court's declaratory judgment and enter an appropriate declaratory judgment consistent with these arguments.

Respectfully submitted,

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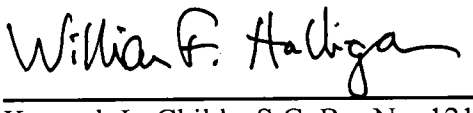

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February 11, 2014

Columbia, South Carolina

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v.

JASPER COUNTY COUNCIL AND JASPER COUNTY AUDITOR..... Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Appellant's Initial Designation of Matter to be Included in the Record On Appeal by depositing a copy of it in the United States Mail, postage prepaid, on February 11, 2014, addressed to Marvin C. Jones, Esq., by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to Marvin C. Jones, Esq., P.O. Box 420, Ridgeland, SC 29936.

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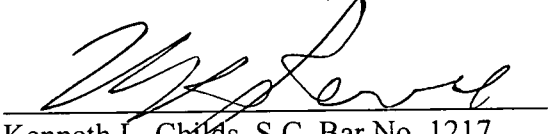

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Initial Brief complies with Rule 211(b), SCACR.

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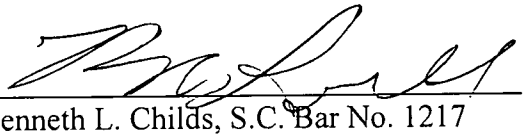

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