

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

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JAN 14 2014

Appellate Case No. 2012-213599

Case No. 2012-CP-40-1560

SC Court of Appeals

South Carolina Public Interest Foundation and Edward D. Sloan, individually, and on behalf of all others similarly situated, Plaintiffs,

Of whom Edward Sloan is the Appellant,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Defendants,

Of whom South Carolina Department of Transportation is the Respondent.

RESPONDENT'S RETURN TO APPELLANT'S PETITION TO AMEND NOTICE OF
APPEAL AND CAPTION

Respondent, the South Carolina Department of Transportation, opposes Appellant's PETITION TO AMEND NOTICE OF APPEAL AND CAPTION.

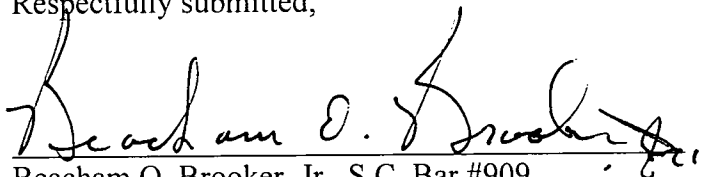
The South Carolina Public Interest Foundation and Mr. Sloan sued the Department and Mr. Walsh in his official capacity under the S.C. Uniform Declaratory Judgments Act, S.C. Code Ann. §15-53-10, *et seq.* (Rev. 2005), seeking a declaration that the Department and Mr. Walsh, in deciding to utilize personnel of the Engineering division of the Department to inspect a

privately-owned bridge in Aiken at the request of a City of Aiken, violated sections 5 and 11 of article X of the South Carolina Constitution which prohibits the use of public funds to benefit a private individual. The Circuit Court, L. Casey Manning, J., dismissed the complaint as to both the Department and Mr. Walsh. Appellant now seeks to reinstate the Foundation as a party appellant and Mr. Walsh as a party respondent. Respondent does not object to the inclusion of the Foundation as appellant because it was allegedly aggrieved by the order of the Circuit Court. However, Respondent does oppose the inclusion of Mr. Walsh as Respondent.

The relief sought by Appellant is necessarily in the nature of mandamus. Assuming Appellant can overcome the mootness objection in general, it cannot with respect to Mr. Walsh who has retired. Any order directed to him would have no effect because he no longer occupies the position of Deputy Secretary of Transportation for Engineering. S.C. Code §57-3-20 (2) (Supp. 2013). He is thus no longer vested with the powers of that office.

The Court should grant the petition with respect to the named Appellants and deny it with respect to Mr. Walsh as party-Respondent.

Respectfully submitted,



Beacham O. Brooker, Jr., S.C. Bar #909
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Attorney for Respondent

Columbia, S.C.
January 13, 2014

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Of Whom Edward Sloan is the Appellant,

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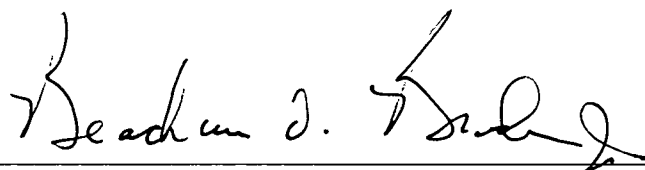
South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering, Defendants,

Of whom South Carolina Department of Transportation is the Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served the South Carolina Public Interest Foundation and Edward D. Sloan, Jr., Petitioners, with **Respondent's Return to Appellant's Petition to Amend Notice of Appeal and Caption** by U.S. Mail, postage prepaid, this 13th day of January, 2014, as follows

James G. Carpenter, Esquire
Jennifer J. Miller, Esquire
819 E. North Street
Greenville, SC 29601



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737-1260

January 13, 2014

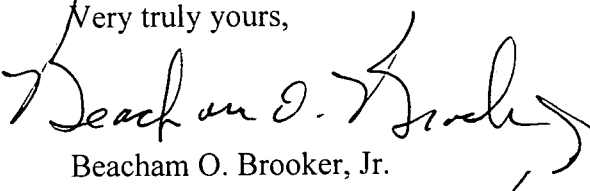
Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: South Carolina Public Interest Foundation and Edward D. Sloan, Jr.
vs. South Carolina Department of Transportation and John V. Walsh
Appellate Case No. 2012-213599

Dear Ms. Kitchings:

Enclosed for filing please find the original and six (6) copies of the Respondent's Return to Appellant's Petition to Amend Notice of Appeal and Caption, along with a Certificate of Service on opposing counsel. Please return a filed copy of each pleading to me using the envelope provided.

Thank you for your assistance in this matter.

Very truly yours,

Beacham O. Brooker, Jr.

BOB,JR.:jmt
Enclosures

cc: James G. Carpenter, Esq.
Jennifer J. Miller, Esq.
(w/enclosure)

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