

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

John C. Few and D. Garrison Hill, Circuit Court Judges

Opinion No. 2010-5016 (S.C. Ct. App. Filed August 1, 2012,
Withdrawn, Substituted, and Refiled January 23, 2013

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S.C. Supreme Court

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

v.

Greenville County, Herman G. Kirven, Jr., Judy Gilstrap, Eric Bedingfield, Jim Burns, Scott
Case, Joseph Dill, Cort Flint, Lottie Gibson, Mark Kingsbury, Xanthene Norris, Robert Taylor
and Tony Trout Respondents.

APPENDIX VOLUME I

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

John C. Few, Circuit Court Judge

Case No. 06-CP-23-4637

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

v.

Greenville County, Herman G. Kirven, Jr., Judy Gilstrap, Eric
Bedingfield, Jim Burns, Scott Case, Joseph Dill, Cort Flint, Lottie
Gibson, Mark Kingsbury, Xanthene Norris, Robert Taylor, and
Tony Trout, ... Appellants.

RECORD ON APPEAL

Volume I

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for infra-structure purposes such as flooding and drainage, roads, lights, sewer, and public buildings and grounds.

Sloan contends that Council's approval on January 20, 1998, of a disbursement to Crestwood Forest Village Committee to purchase computer and related supplies to be used in a computer learning lab to assist welfare mothers in getting off welfare is outside the guidelines adopted by Council. Although I express no opinion as to the merits of this claim, I do find that Sloan has demonstrated the limited showing necessary to entitle him to a temporary injunction as to this one proposed disbursement. Sloan has shown a likelihood of success on the merits, no adequate remedy at law, and has further demonstrated irreparable harm if an injunction is not granted. Accordingly, I grant Sloan's request for a temporary injunction as to this one proposed disbursement. The temporary injunction shall remain in effect pending a hearing on the merits. I further find and conclude that it would be appropriate that I retain jurisdiction over this matter pending the hearing on the merits.

Accordingly, it is hereby ordered that plaintiff's motion for a temporary injunction is hereby granted as to County Council's approval of a proposed disbursement from Council Reserves of \$1,907.00 to the Crestwood Forest Village Committee. It is further ordered that I shall retain jurisdiction over this case pending the hearing on the merits of this issue. Finally, pursuant to Rule 65(c) of the South Carolina Rules of Civil Procedure, it is hereby ordered that plaintiff post bond in the amount of \$250.00.

IT IS SO ORDERED.

Thomas J. Ervin
Thomas J. Ervin

Dated this 23rd day of
February, 1998.

2

A Certified Copy
Shirley C. [Signature] Clerk of Court C.P. & S.S.
Ex-Officio Clerk County Court
Greenville County, S.C.
Dated 3-2-98

McP. 298

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

Edward D. Sloan, Jr., individually, and as a
 Citizen, Resident, Taxpayer and Registered
 Elector of Greenville County, and on behalf of
 all others similarly situated,

Plaintiff,

v.

The County Council of Greenville County, as the
 Governing Body of Greenville County, a
 Political Subdivision of the State of South
 Carolina,

Defendants.

ORDER

C.A. No. 96-CP-23-2918

 FILED
 MAR 2 10 50 AM '98
 CLERK OF COURT

This non-jury matter came before me for a bench trial on February 10, 1998. Both parties were represented by their respective counsel at trial. James G. Carpenter and Jennifer J. Horton of James G. Carpenter, P.C. appeared on behalf of the plaintiff, Edward D. Sloan, Jr. ("Sloan"). Ronald K. Wray, II of Gibbs, Gallivan, White & Boyd, P.A. appeared on behalf of the defendant, Greenville County ("County").

The parties submitted this action to the Court on stipulated facts with agreed-upon exhibits. Based upon the record before me, for the reasons set forth below, I conclude that County is entitled to judgment in its favor. I hereby enter the following findings of fact and conclusions of law.

FINDINGS OF FACT

The parties submitted this action to the Court on stipulated facts with agreed-upon exhibits. Accordingly, the Court adopts the facts stipulated to by the parties as its findings of fact in this matter.

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In fiscal year 1994-95, as part of its annual budgeting process, Greenville County Council established "County Council Reserves" as an item in the County's annual operating budget. Council Reserves has remained an item in the annual operating budget since 1994-95, although Council appropriated only one dollar to Council Reserves in fiscal year 1995-96. According to Council's financial policies for the 1997-98 fiscal year, Council Reserves are to "allow the Council to address special community needs not normally falling with [sic] the operational purview of County government" and to provide for "nonrecurring community requests." The amount that may be appropriated to Council Reserves is set at a maximum of .3% of estimated annual operating revenue. However, as noted, a lesser amount may be, and has been appropriated by Council.

By stipulation, the parties introduced as exhibits records setting forth the disbursements that have been made from Council Reserves. The parties further stipulated that in August, 1996, Council adopted by resolution guidelines that limit the use of Council Reserves to infrastructure purposes such as flooding and drainage, roads, lights, sewer, and public buildings and grounds.

CONCLUSIONS OF LAW

Sloan initiated this action as a citizen, resident, taxpayer, and registered elector of Greenville County pursuant to the South Carolina Uniform Declaratory Judgment Act and 42 U.S.C. Section 1983. Sloan contends that County's establishment of Council Reserves as part of its annual operating budget is in violation of various statutory and constitutional provisions. Sloan brought this action seeking a temporary, preliminary, and permanent injunction against County's further appropriations which he alleges "are not for legitimate governmental purposes." Sloan also requested declaratory relief. I find and conclude that this Court has jurisdiction over

this matter and that venue is proper.

Although Sloan's complaint cites a number of statutory and constitutional provisions that Sloan alleges County is violating, ~~and in his complaint he argued only two bases in support of his claim~~ First, he contended that some Council Reserve disbursements are constitutional violations because they allegedly violate the United States and South Carolina constitutions in that they allegedly have resulted in the funding of religious activity. Sloan alleges and argued that these alleged disbursements violate U.S. Constitution, Article I, Amendment I, and South Carolina Constitution, Article I, Section 4. Second, Sloan alleged and argued that disbursements from Council Reserves violate Section 7-81 of the Greenville County Code. Based upon my careful review of the record and evidence submitted before me, I find and conclude that Sloan is not entitled to relief on either of these bases and I further conclude that County is entitled to judgment in its favor.

Initially, I note that the only relief requested in the complaint is injunctive and declaratory relief. The allegations in the complaint, however, relate to disbursements already made by Greenville County Council from Council Reserves. I find and conclude that Sloan is not entitled to declaratory and injunctive relief pertaining to disbursements already made since these claims do not present a justiciable controversy and, in any event, the disbursement of these funds makes these claims moot.

As noted above, Sloan initiated this action pursuant to the Uniform Declaratory Judgment Act, South Carolina Code Ann. Sections 15-53-10 through 15-53-140 (1976). Like all other civil actions, cases brought under the Declaratory Judgment Act must involve an actual, justiciable controversy. South Carolina Elec. and Gas Co. v. South Carolina Pub. Serv. Authority, 215 S.C.

193, 54 S.E.2d 777 (1949). "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from this dispute of a contingent, hypothetical or abstract character." Notios Corp. v. Harvey, 256 S.C. 275, 182 S.E.2d 55, 57 (1971).

Sloan's request for declaratory and injunctive relief relating to funds already disbursed seeks nothing more than an advisory opinion from this Court. Providing such an opinion clearly would be inappropriate. As stated by the South Carolina Supreme Court in Powers v. McNeir, 255 S.C. 150, 177 S.E.2d 551, 553 (1970):

While it has been held that the Declaratory Judgment Statute should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships without awaiting a violation of the rights or a disturbance of the relationships, Williams Furniture Corporation v. Southern Coatings and Chemical Company, 216 S.C. 1, 56 S.E.2d 576, it is uniformly held that the Declaratory Judgment Act does not require the court to give a purely advisory opinion as to the issues sought to be raised. City of Columbia v. Sanders, 231 S.C. 61, 97 S.E.2d 210.

Thus, it has been held that while the Declaratory Judgment Act should be liberally construed and applied, "there is a limit beyond which the court should not go." Park v. Safeco Ins. Co. of America, 251 S.C. 410, 414, 162 S.E.2d 709, 711 (1968) (holding that no justiciable controversy existed regarding plaintiff's request to ask the court to determine which insurance company, if either, should pay a judgment when and if such judgment should be obtained). Accordingly, I find and conclude that County is entitled to judgment in its favor since Sloan's allegations regarding disbursements already made fail to present a justiciable controversy.

In addition to the fact that Sloan's claims fail to present a justiciable controversy, I further find and conclude that County is entitled to judgment on the ground that Sloan's claims relating

to disbursements already made are moot. In Treasured Arts, Inc. v. Watson, 319 S.C. 560, 463 S.E.2d 90 (1995), the South Carolina Supreme Court held that claims for injunctive relief should be dismissed as moot when granting injunctive relief would have no practical legal effect upon the existing case. See also Matthis v. South Carolina State Highway Department, 260 S.C. 344, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. This is true when some event occurs making it impossible for the reviewing court to grant effectual relief."). Since Sloan's complaint relates to disbursements already made by County, any ruling by the Court regarding these disbursement obviously would have no practical legal effect upon the parties. Thus, I find and conclude that these claims should be dismissed as moot.

Addressing the merits of Sloan's claims seeking declaratory relief relating to disbursements made by County allegedly to support religious activities, I find and conclude that the record before me fails to support these claims. In analyzing such claims, courts focus upon the three-part test set forth in Lemon v. Kurtzman, 403 U.S. 602 (1971). The Lemon test provides as follows: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion."

Based upon the record before me, I find and conclude that Sloan has failed to maintain his burden of proving that County has inappropriately used tax revenue in order to further religious purposes. Sloan argues that exhibits showing County's disbursement of funds to "Church and Community Human Relations" and to the Salvation Army establishes his entitlement to relief as a matter of law. However, what is clear from those courts applying the

Lemon test is that the mere fact that public funds may be disbursed to charitable or sectarian organizations does not in and of itself render the challenged action unconstitutional or in violation of statutory or constitutional provisions. Rather, the burden is upon the plaintiff to show that the disbursement of such funds has been used to advance religion. See, e.g., Zobrest v. Catalina Foothills School Dist., 509 U.S. 1 (1993) (no establishment clause violation in using public funds to furnish a publicly employed interpreter to a disabled child enrolled in a Catholic school); Witters v. Washington Dep't of Servs. For Blind, 474 U.S. 481 (1986) (holding that Establishment Clause did not bar a State from issuing a vocational tuition grant to a blind person who wished to use the grant to attend a Christian college and become a pastor, missionary, or youth director); Agostini v. Felton, ___ U.S. ___, 117 S. Ct. 1997 (1997) (upholding federally-funded program that provided supplemental remedial instruction to disadvantaged children on the premises of sectarian schools, even though the instruction was provided by government employees); Hunt v. McNair, 258 S.C. 97, 187 S.E.2d 645 (1972) (upholding the appropriation of public funds to Baptist College at Charleston); Durham v. McLeod, 259 S.C. 409, 192 S.E.2d 202 (1972) (holding legislative act relating to student loans did not violate constitution since it was neutral and applied to all institutions of higher learning).

In the present case, there is no evidence that Council Reserves have been used to further sectarian purposes. Absent such proof and with no evidence of what the funds were used for, the Court is left to guess or speculate. Sloan, as the party seeking affirmative relief, has the burden of showing the Court that County's disbursement of funds showed a legislative intent to promote religion. Because I find and conclude that Sloan has failed to maintain his burden of proof on this issue, I conclude as a matter of law that the appropriations by County were valid and not in

Mr. P. 6 07 11

violation of the Constitution, and judgment is therefore entered in County's favor as to these claims.

I also disagree with Sloan's contention that County is violating Greenville County Code

Section 7-81. Section 7-81 of the Greenville County Code provides as follows:

Sec. 7-81. Appropriations and disbursements generally.

(a) Appropriations of funds shall be made only by county council to departments and agencies to provide services to county citizens. Appropriation of funds to private, nonprofit organizations and institutions to provide services is prohibited.

(b) Requests for county funds will be submitted to council for review during the regular county budget process, and appropriations will be made only for specific line-item purposes. As required by section 7-66 of this chapter, the annual report from departments and agencies to council shall verify that funds were expended in accordance with the purposes for which they were allocated.

(c) County funds will be disbursed to departments and agencies in one of the following ways:

- (1) *Departments and agencies funded one hundred percent with county funds.* Departments and agencies are required to conform with the accounting, purchasing and personnel policies of the county. The accounting department will be responsible for all fund disbursement through the county's accounting system.
- (2) *Department or agencies funded less than one hundred percent by county funds.* Agencies will be subject to the county's purchasing and personnel policies if comparable policies do not exist. If feasible, the department or agency will receive county funds through the county's accounting system. If not feasible, departments or agencies will receive funds in accordance with a schedule prepared by the county administrator to include the following:
 - a. The agency will estimate its first month's expense. The finance department will issue a check to the agency for this amount.
 - b. Subsequent payment will be made on an estimated basis predicated on actual expenditures.

In the present case, the parties stipulated that Council Reserves are an item in the County's annual operating budget. The parties further stipulated that County Council is a department of Greenville County government. Sloan made no challenge to the budgeting process itself, and offered no evidence that County's budget ordinance was not adopted consistent with South Carolina statutory and constitutional provisions. I find and conclude that Council's appropriation of funds to the Council Reserves budget item as an item in County's annual budget ordinance is in compliance with Section 7-81. I further find and conclude that there is nothing in the record that would support a finding that County's actions rise to the level of illegality in violation of the County Code.

Additionally, I find and conclude that County's actions have been consistent with the constitutional and statutory power granted county governments. Specifically, S.C. Code Ann. Section 4-9-30 (1976 and Supp. 1996) provides that each county government "shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:

(5)(a) To assess property and levy ~~ad valorem~~ property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above.

The law is clear that state and local governments are statutorily and constitutionally permitted to expend public funds for a "public purpose." In Nichols v. South Carolina Research

Authority, 290 S.C. 415, 351 S.E.2d 155 (1986), the court noted that public purpose is "a fluid concept which changes with time, place, population, economy and countless other circumstances. It is a reflection of changing needs of society." 351 S.E.2d at 160. Furthermore, the court agreed with other courts and legal scholars that have concluded that "a public purpose has for its objective the promotion of the public health, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division." Id.

"The consensus of modern legislative and judicial thinking is to broaden the scope of activities which may be classed as involving a public purpose." Id. Furthermore, legislation may be found to serve a public purpose even though it (1) benefits some more than others and (2) results in profit to individuals. Id. at 161. As stated by the court in Anderson v. Bachr, 265 S.C. 153, 217 S.E.2d 43, 47 (1975), "legislation does not have to benefit all of the people in order to serve a public purpose. At the same time legislation is not for a private purpose merely because some individual makes a profit as a result of the enactment."

The burden is upon the plaintiff to show that a particular enactment does not comply with the public purpose test. Moreover, the Nichols court emphasized that "the determination of public purpose is one for the legislative branch." Nichols, 351 S.E.2d at 161. As the cases cited and relied upon by the Nichols court attest, decisions by the South Carolina appellate courts in which public or corporate purposes have been held to pass constitutional muster have involved a wide variety of subjects. See Hagsloop v. City Council of Charleston, 123 S.C. 272, 115 S.E.596 (1923) (hotel); Chapman v. Greenville Chamber of Commerce, 127 S.C. 173, 120 S.E. 584 (1923) (office building site); Battle v. Wilcox, 128 S.C. 580, 122 S.E. 516 (1924), and Cathcart v. City of Columbia, 170 S.C. 362, 170 S.E. 435 (1933) (stadium); Davis v. Saluda, 147 S.C. 498, 145 S.E. 412 (1928),

Green v. Rockhill, 149 S.C. 234, 147 S.E. 346 (1929), and Roach v. City of Columbia, 172 S.C. 478, 174 S.E. 461 (1934) (waterworks and sewerage); South Carolina Farm Bureau Marketing Association v. South Carolina Ports Authority, 278 S.C. 198, 293 S.E.2d 854 (1982) (grain elevators).

Based upon these statutory and constitutional provisions and in reliance upon the numerous cases from the South Carolina Supreme Court, I find and conclude that Sloan has not sustained his burden of proving that County has engaged in any illegal acts. As noted, Council Reserves are approved during County's annual budgeting process and Council Reserves has been an item in the County's annual budget ordinance since 1994-1995. Furthermore, since Council Reserves are part of the County's annual budget, I reject Sloan's argument that each disbursement is a supplemental appropriation as defined by S.C. Code Ann. Section 4-9-140. Rather, I find that the notice requirement is satisfied by County's adoption of its annual budget with Council Reserves being an item in the budget. Thus, I find and conclude that County is entitled to judgment in its favor on this claim as well.

Finally, at trial Sloan presented two other matters which must be addressed. First, Sloan argued that County's payment of Rotary Club dues for various County officials is in violation of statutory and constitutional provisions. Second, Sloan argued that County's proposed disbursement of \$1,907.00 from Council Reserves for the purpose of buying computers and related supplies to be used in a computer learning lab sponsored by Crestwood Forest Village Committee is not moot and should be enjoined.

For the reasons stated on the record during the hearing, I conclude that Sloan's claims relating to Rotary Club dues should be dismissed without prejudice. Sloan's complaint in this

W. p. 10 of 11

action clearly is premised upon County's alleged statutory and constitutional violations relating to Council Reserves. Both parties agreed at the hearing that the Rotary Club dues were not paid from Council Reserves. Accordingly, I find and conclude that Sloan's allegations relating to Rotary Club dues should be dismissed without prejudice. Because Sloan's claims relating to the proposed disbursement of funds to Crestwood Forest Village Committee involve funds that have been approved to be disbursed, but the funds have not yet been disbursed, I find that it would be more appropriate to address that issue in a separate order.

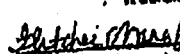
Accordingly, for the reasons stated above, it is hereby ordered, adjudged, and decreed as follows:

1. The plaintiff's claims relating to Rotary Club dues are dismissed without prejudice;
2. The plaintiff's claims relating to the proposed disbursement to Crestwood Forest Village Committee will be addressed in a separate order;
3. All other claims are dismissed with prejudice, and judgment is hereby entered in County's favor as to these claims.

IT IS SO ORDERED.


Thomas J. Ervin

Dated this 23rd day of
February, 1998.

A Certified Copy

L. H. Smith, Clerk of Court C.P. & G.S.
Ex-Officio Clerk County Court
Greenville County, S.C.
Filed 3-2-98

78 P 11/11

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 96-CP-23-2918

Edward D. Sloan, Jr.

County Council, etc

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other-_____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other-_____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

A hearing was held on the Plaintiff's request for Permanent Injunction on the expenditure of Council Reserves of \$1,907.00 to the Oconee County Forest Village Committee. After considering the testimony and evidence presented, this expenditure does not meet the County Council guidelines. The injunction, therefore, is now permanent. Defendant

Dated at Greenville, South Carolina, this 4 day of May 1998.

Court, is permanently restrained and enjoined from disbursing the \$1,907.00 in question.

This judgment was entered on the 4 day of May, 1998, and a copy mailed first class this 4 day of May, 1998 to attorneys of record or to parties (when appearing pro se) as follows:

James G. Carpenter
205 East Broad Street
Greenville, S.C. 29601

Ronald B. Livingston-Horton 5-14-98
ATTORNEY(S) FOR THE PLAINTIFF(S)

SCRPC FORM 4
(Rev. 2/96)

Ch# 070627 dated 5-11-98
amt - \$250.00
forwarded to: Edward D. Sloan, Jr.

Ronald Wray
W. Howard Boyd Jr.
P.O. Box 10537

Greenville, S.C. 29603
ATTORNEY(S) FOR THE DEFENDANT(S)

Fletcher G. Mearns
CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Edward D. Sloan, Jr., individually, and as)
a Citizen, Resident, Taxpayer and)
Registered Elector of Greenville County,)
and on behalf of all others similarly)
situated,)

Plaintiff,)

vs.)

The County Council of Greenville County)
as the Governing Body of Greenville)
County, a Political Subdivision of the)
State of South Carolina,)

Defendant.)

Civil Action No. 98-CP-23-1610

ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JUN 15 11 13 AM '98
PLEINER T. CARR, JR.**STATEMENT OF THE CASE**

This action came before the court on June 4, 1998, on the Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction. Present for the Plaintiff Edward D. Sloan, Jr. were James G. Carpenter and Jennifer J. Horton. Present for the Defendant Greenville County Council were Boyd B. Nicholson, Jr. and Thomas H. Coker, Jr.

Plaintiff is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina, and brings this action individually on his behalf and on behalf of all others similarly situated. Defendant is a political subdivision of the State of South Carolina. Venue is proper in Greenville County, South Carolina.

STATEMENT OF FACTS

The County has established "County Council Reserves," also commonly referred to as a discretionary fund, as part of its annual operating budget. According to the County's policies for the 1997-98 fiscal year, Council Reserves are to "allow the Council to address special commu-

nity needs not normally falling [within] the operational purview of County Government" and to provide for "nonrecurring community requests." In its Fiscal Year 1997-98 Annual Budget, Defendant included \$216,000 of "Council Reserves" from which Defendant would donate up to \$18,000, per Council member, at the request of each of the 12 members of County Council. On or about August 20, 1996, Defendant adopted "Guidelines for Discretionary Funds" which limit the uses for Council Reserves Fund to infrastructure purposes such as: flooding, roads, lights, sewer, and public buildings and grounds.

Earlier this year, County Council voted to approve an expenditure from Council Reserves which was admittedly in violation of the Guidelines, a check for \$1907.00 of Council Reserve Funds to a Tenants' Association for computers.

The Plaintiff challenged this expenditure and the constitutionality and legality of the discretionary fund in a separate suit against the County bearing civil action number 96-CP-23-2918. On February 10, 1998, this Court, the Honorable Thomas J. Ervin Presiding, heard the matter. In an order filed March 2, 1998, Judge Ervin found that the County's use of the fund did not violate the South Carolina Constitution, the law of this state, or the Greenville County Code. See Order of the Honorable Thomas J. Ervin filed March 2, 1998.

Nevertheless, Judge Ervin issued a second order granting a Preliminary Injunction against the expenditure for the computers, because it violated the Guidelines. Judge Ervin retained jurisdiction, ordered the parties to develop the factual record, and ordered a hearing on a Permanent Injunction.

At the hearing on the permanent injunction, on May 4, 1998, Judge Ervin excluded testimony or evidence of other expenditures or proposed expenditures which would violate the

Guidelines, and ruled that the plaintiff must file a separate lawsuit on those expenditures. However, the court did make the Preliminary Injunction a Permanent Injunction. The wording of the Permanent Injunction is as follows:

A hearing was held on the Plaintiff's request for a Permanent Injunction on the expenditure of Council Reserves of \$1907.00 to the Crestwood Forest Village Committee. After considering the testimony and evidence presented this expenditure does not meet the County Council Guidelines. The injunction, therefore, is now made permanent. Defendant County is permanently restrained and enjoined from disbursing the \$1907.00 in question since it does not meet the County Council Guidelines. The plaintiff's bond of \$250 is returned.

The following day, May 5, 1998, Mr. Sloan filed this present action, and served County Attorney with the Summons, Complaint, and Motion for TRO that same afternoon. The pleadings mentioned two proposed expenditures: money to Slater Marietta Health & Human Services, for renovations to a privately owned building which housed public agencies, and \$5000 for a private night watchman's patrol car.

On February 10, 1998, Councilman Rick Blackwell requested that discretionary funds be provided to Slater/Marietta Health and Human Services, a private organization, for the purpose of refurbishing new office space the organization had recently purchased. In this action defendant submitted an affidavit from John Hansley, dated June 2, 1998, in which he stated that the check for Slater Marietta Health & Human Services was issued May 11, 1998, six days after the filing of this action and the motion, and that the check had been cashed. This action renders the particular expenditure relating to the Slater Marietta Health & Human Services a moot issue for injunctive relief.

On April 20, 1998, County Councilman Dana Sullivan requested that \$5,000 from the discretionary fund be donated for the purchase of a patrol car for use by a private night watchman or security guard to patrol Woody Creek, Sugar Creek, Stoney Creek, and Chelsea Woods

neighborhoods. John Hansley, the County's Director of Finance and Administrative Services, testified in a deposition in the earlier action that this proposed expenditure violated the Guidelines for Discretionary Funds. Hansley's affidavit also states that Hansley had denied the request for the patrol car funds, and that Mr. Sullivan had "not renewed his request nor asked County Council to review the denial of his request." Defendant has also submitted a copy of a letter dated May 8, 1998, from Councilman Sullivan to Ron Wray, the former attorney for the County, in which he notifies Mr. Wray of the withdrawal of his request. Hansley also testified in his deposition that if seven members of County Council vote to approve an expenditure of public funds from the Council Reserve Fund, he would issue the check, even though the expenditure does not comply with the Guidelines.

LEGAL ANALYSIS

The Court will address each prayer for injunctive relief in the order pleaded.

1. Patrol Car

Mr. Hansley has denied this request, and at the hearing the County stipulated that this request did not comport with Guidelines for Discretionary Funds. Moreover, Councilman Sullivan seems to have withdrawn his request. Therefore, there seems to be no justiciable controversy. A civil action must involve an actual, justiciable controversy. South Carolina Elec. and Gas Co. v. South Carolina Pub. Serv. Authority, 215 S.C. 193, 54 S.E.2d 777 (1949). "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from the dispute of a contingent, hypothetical or abstract character." No-los Corp. v. Hanvey, 256 S.C. 275, 182 S.E.2d 55, 57 (1971). At the hearing, counsel for the

defendant represented to the Court that the county would not make this expenditure. Sloan's motion for a preliminary injunction to block this expenditure must be denied.

2. Slater/Marietta Health and Human Services

As stated above, the County has already disbursed this money. A court cannot enjoin an act already committed. Spencer v. Mahon, 75 S.C. 232, 55 S.E. 321 (1906); Treasured Arts, Inc. v. Watson, 319 S.C. 560, 463 S.E.2d 90 (1995); Mathis v. South Carolina Highway Department, 260 S.C. 344, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. This is true when some event occurs making it impossible for the reviewing court to grant effectual relief.") The Court makes no determination on whether this expenditure was proper; nevertheless, the court is compelled to deny Sloan's motion to enjoin the disbursement because it is already disbursed, and therefore the issue of injunctive relief is moot.

3. Voting to circumvent the Guidelines

Sloan further argues that the County Council should be enjoined from voting to circumvent or waive the Guidelines for Discretionary Funds, as they did in the expenditure regarding the computers. Mr. Hansley testified that he would issue a check on an expenditure he found to violate the Guidelines, if the County Council again voted to disburse the money. The court finds this action to be improper. The money in the Council Reserves Fund was allocated in the budget with the contemplation that it would be used in accordance with the Guidelines. If Mr. Hansley or his designee determines that a request for expenditure of discretionary funds violates the Guidelines, County Council shall not vote to circumvent or waive the Guidelines by disbursing the money.

The court finds that plaintiff has made the showing necessary to entitle him to a Preliminary Injunction. Plaintiff has shown a substantial likelihood of success on the merits. The court finds that a vote to disburse money from the Council Reserve Funds in admitted violation of the Guidelines is an illegal use of those public funds. The court finds that plaintiff has no adequate remedy at law for these illegal expenditures, and irreparable harm if an injunction is not granted. ~~Plaintiff~~ I find that ~~he~~ voted to spend Council Reserve Funds in violation of the Guidelines and believe that it is an acceptable practice. I further find that the County will suffer no prejudice if the Court enjoins it from voting to circumvent or waive the Guidelines for Discretionary Funds in order to disburse funds for purposes which violate the Guidelines. If County Council spends money for projects falling outside the Guidelines, those expenditures must come, by proper and legal budgeting procedures, from funds other than the Council Reserve Funds, which are governed by the Guidelines. Therefore, the Court grants a preliminary injunction on this issue.

CONCLUSION

It is therefore ordered as follows:

(1) Sloan's motion to enjoin the County's disbursing \$5,000 from its discretionary fund to a neighborhood association for the purchase of a patrol car is denied, for lack of a justiciable controversy;

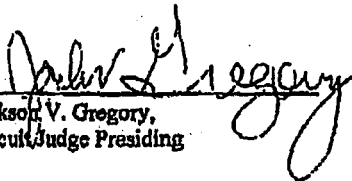
(2) Sloan's motion to enjoin the County's disbursing money to the Slater/Marietta Health and Human Services organization for renovation of the organization's building is denied, as moot; and

(3) Sloan's motion to enjoin the County from voting to circumvent or waive the Guidelines for Discretionary Funds is granted. Accordingly, the court enters the following Preliminary Injunction.

PRELIMINARY INJUNCTION

The Court preliminarily enjoins County Council from voting to circumvent or waive the Guidelines for Discretionary Funds to make a disbursement from the Council Reserve Funds in violation of the Guidelines for Discretionary Funds. This Preliminary Injunction shall remain in effect during the pendency of this case and until a final hearing on the merits.

SO ORDERED this 15th day of June, 1998.


Jackson V. Gregory,
Circuit Judge Presiding

A Certified Copy
 Clerk of Court C.P. & O.S.
Ex-Officio Clerk County Court
Greenville County, S.C.

6:15:98

Jan 15 2001 3:49PM

No. 4972 P. 3/7

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Edward D. Sloan, Jr., individually, and as
a Citizen, Resident, Taxpayer and
Registered Elector of Greenville County,
and on behalf of all others similarly
situated,

Plaintiff,

vs.

The County Council of Greenville County
as the Governing Body of Greenville
County, a Political Subdivision of the
State of South Carolina,
Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 98-CF-23-1610

ORDER GRANTING PERMANENT
INJUNCTION AND ATTORNEYS FEES

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WINTERKORN, JR.

JAN 15 3 49 52

STATEMENT OF THE CASE

This action came before the court for non-jury trial on September 20, 1999. Present for the Plaintiff was James G. Carpenter. Present for the Defendant Greenville County Council were Boyd B. Nicholson, Jr., and Jeffrey Wile. Plaintiff Edward D. Sloan, Jr. is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina, and brings this action individually on his behalf and on behalf of all others similarly situated, requesting injunctive relief against the defendant County Council.

STATEMENT OF FACTS

The County established "County Council Reserves," to allow the Council to address special community needs not normally falling within the operational purview of County Government. In its Fiscal Year 1997-98, the County allocated \$18,000 to each member of County Council to spend at his request. On August 20, 1996, Council adopted "Guidelines for Discre-

DN

tionary Funds" which limit the use of Council Reserves Fund to infrastructure purposes such as flood prevention, roads, lights, sewer systems, and public buildings and grounds.

In 1998, County Council voted to expend from Council Reserves \$1,907.00 to a tenants' association for computers. Mr. Sloan challenged this expenditure in civil action number 96-CP-23-2918. This Court, the Honorable Thomas J. Ervin presiding, granted a preliminary injunction enjoining the expenditure, because it violated the Guidelines. Judge Ervin retained jurisdiction of the matter, ordered the parties to develop the factual record, and ordered a hearing on a Permanent Injunction.

This court made the preliminary injunction permanent, but excluded evidence of other expenditures alleged to violate the Guidelines. The following day, Mr. Sloan filed this present action, and served county attorney with the Summons, Complaint, and Motion for Preliminary Injunction that same afternoon. The pleadings charged that two proposed expenditures, one to Slater Marietta Health & Human Services, a private organization, for renovations to a privately owned building which housed some public agencies, and the other for a neighborhood's private night watchman patrol car, violated the Guidelines.

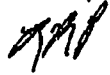
By letter dated three days after the filing of this action, the Councilman requesting funds for the private patrol car withdrew his request. Six days after the filing of this action and before the motion could be heard, the County issued the check for Slater Marietta Health & Human Services. Thus, this Court ruled that any action on either request was rendered moot.

John Hansley, the County Finance Administrator who oversaw withdrawals from the fund testified that if the County Council voted to approve an expenditure from the Council Reserve Fund which violated the Guidelines, he would issue the check. He further testified that such an expenditure could be issued within twenty-four hours.

LEGAL ANALYSIS

The request for disbursement for the private patrol car and the disbursement made to Slater-Marietta Health and Human Services are moot. A civil action must involve an actual, justiciable controversy. South Carolina Elec. and Gas Co. v. South Carolina Pub. Serv. Authority, 215 S.C. 193, 54 S.E.2d 777 (1949). "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from the dispute of a contingent, hypothetical or abstract character." Notkos Corp. v. Hanvey, 256 S.C. 275, 182 S.E.2d 55, 57 (1971). A court cannot enjoin an act already committed. Spencer v. Mahon, 75 S.C. 232, 55 S.E. 321 (1906); Treasured Arts, Inc. v. Watson, 319 S.C. 560, 463 S.E.2d 90 (1995); Mathis v. South Carolina Highway Department, 260 S.C. 344, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. This is true when some event occurs making it impossible for the reviewing court to grant effectual relief.")

This court, The Honorable Jackson Gregory presiding, issued a preliminary injunction enjoining the County Council from voting to circumvent or waive the Guidelines for Discretionary Funds. The Court finds that Mr. Sloan has demonstrated the necessity of a permanent injunction. This Court rarely possesses the authority to enjoin actions of a legislative body, but the South Carolina Supreme Court has recognized an exception, in which "the mere passage of the ordinance would immediately occasion, or would be followed by, some irreparable loss or injury beyond the power of redress by subsequent judicial proceedings." Chester County Hospital & Nursing Center v. Martin, 281 S.C. 25, 314 S.E.2d 308 (1984), quoting 43A C.J.S. (Injunctions, § 126, note 30, p. 227.



The Court finds that a vote to disburse money from the Council Reserve Funds in violation of the Guidelines is an illegal use of public funds. The Court finds that Mr. Sloan has no adequate remedy at law for these illegal expenditures, and would suffer irreparable harm if the injunction is not granted. In the past, County Council voted to spend Council Reserve Funds in violation of the Guidelines. If the preliminary injunction is terminated, and the County votes again to violate the Guidelines, the check could be issued in less than twenty-four hours, and obtaining judicial relief would be nearly impossible.

Furthermore, the County will suffer no prejudice from an order permanently enjoining voting to circumvent or waive the Guidelines. If County Council spends money for projects falling outside the Guidelines, those expenditures must come, by proper and legal budgeting procedures, from funds other than the Council Reserve Funds, which are governed by the Guidelines.

The Court orders that the preliminary injunction be made permanent. The Council established the Council Reserves Fund and Guidelines to govern allocation of this money. County Council shall not vote to circumvent or waive these Guidelines. Therefore, the Court permanently enjoins the County on this issue.

Finally, the Court finds that Mr. Sloan is entitled to an award of attorneys fees under S.C. Code Ann. §15-77-300. The court finds that Mr. Sloan is a prevailing party, because he was awarded preliminary and permanent injunctive relief. Second, the Court finds that the County acted without substantial justification in pressing its claims in this lawsuit, because voting to expend money outside the guidelines is an illegal act, and the county is not justified in defending an illegal act. Finally, the Court finds that there are no special circumstances which would make an award of fees unjust. Mr. Sloan has funded this litigation with his own resources. The community as a whole benefits when civic minded citizens bring such actions. "It is very commend-

Jan. 5, 2004 3:00PM

No. 4872 3. 7/7

able that public-spirited citizens should endeavor to protect the taxpayers of a county from the efforts of an accommodating fiscal court to make unauthorized and unlawful appropriations of public funds." *Shillito v. City of Spartanburg*, 214 S.C. 11, 26, 51 S.E.2d 93 (1948), quoting *Fox v. Lantrip*, 169 Ky. 759, 185 S.W. 136, 139. The Court continued, "Citizens should be encouraged to bring suits like these." *Id.*

The court directed Plaintiff's counsel to submit affidavits documenting attorneys fees. Upon a review of the affidavits and detailed records and a consideration of the quality of representation and the reputation of counsel, the court awards the plaintiff attorneys fees of \$ 6,125.00 for James Carpenter, \$ 687.95 for Jennifer Miller, and costs of \$ 93.37 for a total of \$ 6,902.14

PERMANENT INJUNCTION

The Court permanently enjoins County Council from voting to circumvent or waive the Guidelines for Discretionary Funds. This Court shall review the County's compliance with this injunction two years after this order to determine the effect of this Injunction.

Dated: December 15, 2000

*none pro tunc September 20, 1999
this order was mispleaded by the court and not signed until October 2001*

[Signature]
Larry R. Patterson,
Circuit Judge Presiding

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2006CP2304637 P 2:45

Edward D Sloan Jr vs. Greenville County

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a).
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE - _____

This judgment was entered on the 10th day of February, 2010, and a copy mailed first class this 10th day of February, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

James G. Carpenter The Carpenter Law Firm,
PC 319 East North Street, Ste. 230 Greenville,
SC 296013101

ATTORNEY(S) FOR THE PLAINTIFF(S)

Boyd Benjamin Nicholson Haynsworth Sinkler
Boyd, PA P.O. Box 2048 Greenville, SC 29602
Joel M. Bondurant Jr. Haynsworth Sinkler
Boyd P.O. Box 2048 Greenville, SC 296022048

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP APP-24/FORM 4

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

CPFORM4M1

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

2006 FEB 10 P 2:46

The South Carolina Public Interest)

2006-CP-23-4637

Foundation, and Edward D. Sloan, Jr.,)

individually, and on behalf of all others)

similarly situated,)

ORDER

Plaintiffs,)

v.)

Greenville County, Herman G. Kirven, Jr.,)

Judy Gilstrap, Eric Bedingfield, Jim)

Burns, Scott Case, Joseph Dill, Cort Flint,)

Lottie Gibson, Mark Kingsbury, Xanthene)

Norris, Robert Taylor, and Tony Trout.)

Defendants.)

This lawsuit concerns the legality of a line item in the budget for Greenville County entitled "Council District Expense Fund." The parties agree that the case presents questions of law to be decided on undisputed facts. All parties have made motions for summary judgment, and Defendants have made a motion to dismiss. The central question is whether the "Council District Expense Fund" in Greenville County's budget for 2006-2007 delegates legislative authority to individual members of the Greenville County Council. Because the Court finds that the "Council District Expense Fund" allows individual Council members "absolute, unregulated, and undefined discretion" to make policy-based spending decisions that are legally required to be made by the Council as a whole, the "Council District Expense Fund" is declared to be an impermissible delegation of legislative authority, and thus to be illegal. The motions of Plaintiffs are GRANTED, and the motions of Defendants are DENIED.



Defendants first contend that Plaintiffs' claims are barred under the doctrine of *res judicata* because they have already been litigated in a prior lawsuit brought by Mr. Sloan: Sloan v. Greenville County, C/A # 96-CP-23-2918. Because the "Council District Expense Fund" appears in each annual budget for Greenville County, the enactment of each budget creates separate legal claims. As the United States Supreme Court has explained in the context of federal income taxes levied on an annual basis, "[e]ach year is the origin of a new liability and of a separate cause of action." *Commissioner of Internal Revenue v. Sunnen*, 333 U.S. 591, 598 (1948). The same reasoning applies here. The fact that Mr. Sloan might have, or even did, challenge the legality of an identical line item in a previous budget does not bar Plaintiffs from the causes of action brought in this case.

Greenville County uses the Council-Administrator form of government. S.C. Code Ann. § 4-9-10(b) (1976). Under this form of government, County Council exercises the legislative authority of Greenville County, and delegates the primary administrative or executive authority to the County Administrator. *See generally* S.C. Code Ann. § 4-9-620. While Council may delegate administrative or executive authority to an individual council member in some circumstances, Defendants concede that Council may not delegate legislative authority. "A municipal governing body cannot delegate to a municipal officer or even to one of its own committees the power to decide legislative matters properly resting in the judgment and discretion of that body *or to one member of the governing body*." 56 Am.Jur. 2d Municipal Corporations § 134 (emphasis added). *See also* 2A McQuillin Mun. Corp. § 10:43 (3rd ed.). When exercising legislative authority, the County must act through the Council as a whole.



On August 2, 2005, Defendants enacted Ordinance No. 3940, which appropriated funds for "the operation of county government for the fiscal year beginning July 1, 2006 and ending June 30, 2007." This budget ordinance included a "Council District Expense Fund" for the twelve individual members of the Greenville County Council, which the parties refer to as the "Slush Fund." The Slush Fund provides funding for individual Council members to address the following types of costs: "general business supplies," "special documents, incentives and awards," "periodicals, professional journals, and reference books," "per diem and mileage," "community functions, conferences, and training seminars," and "costs associated with special, nonrecurring community requests for infrastructure purposes such as: flooding; roads; lights; sewer and drainage; public buildings and grounds; infrastructure related studies," and "contributions to local governments." Plaintiffs contend that allowing individual Council members to spend money for "costs associated with special, nonrecurring community requests for infrastructure purposes such as: flooding; roads; lights; sewer and drainage; public buildings and grounds; infrastructure related studies" is an impermissible delegation of legislative authority.

This case is not decided on Constitutional grounds.¹ However, the cases discussed below holding that legislative authority may not be delegated are based on the "non-delegation" doctrine. This doctrine is based on South Carolina Constitution, Article I, Section 8, which provides that "the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other." This Section applies

¹ Plaintiffs have alleged a Constitutional basis for the legal proposition that County Council may not delegate legislative authority. However, Defendants' concession that County Council may not delegate legislative authority makes it unnecessary to decide whether this prohibition is based on the Constitution or not.

to State government, and does not appear to apply to local governments.² However, as Defendants have conceded Council may not delegate legislative authority, the reasoning of these cases explaining the difference between legislative and executive authority is applicable to this case.

The Supreme Court of South Carolina has held that "[i]t is fundamental that the appropriation of public funds is a legislative function." *Gregory v. Rollins*, 230 S.C. 269, 95 S.E.2d 487, 490 (1956). The Court has stated that despite "the difficulty in determining where lawful delegation of power ends and unlawful delegation begins," a "workable guideline for ascertaining the boundary" exists. *Bauer v. S. C. State Hous. Auth.*, 271 S.C. 219, 233, 246 S.E.2d 869, 876 (1978). A "statute which in effect reposes an absolute, unregulated, and undefined discretion in an administrative body bestows arbitrary powers and is an unlawful delegation of legislative powers."³ *Id.* (quoting *S.C. State Highway Dep't v. Harbin*, 226 S.C. 585, 595, 86 S.E.2d 466, 471 (1955)).

Applying this standard to the Slush Fund, the ordinance allows individual Council members "absolute, unregulated, and undefined discretion" to make expenditures for a broad list of purposes. The only limitation on a Council member's spending choice is that it be "associated with special, non-recurring community requests for infrastructure purposes." The list following this phrase begins with "such as . . . ," and therefore provides examples, not further limitation. Members may individually determine whether to spend money on road construction or repair, public park construction, storm water drainage, sewer projects, lighting, or even for other purposes. It is difficult to imagine an

² The introductory clause of the section states: "In the government of this State. . . ."

³ Greenville County concedes that this is the test for the Court to apply. See October 7, 2008 hearing transcript at 35-36.



expenditure a Council member may choose to make that is not arguably "associated" with infrastructure.

In making the determination as to how to spend the money allocated to him or her, each individual Council member must necessarily weigh the public policy considerations that favor one expenditure over another. One Council member may decide after considering these competing policies that the most appropriate expenditure of funds is for road construction, while another member believes it is for parks. One member may be unaware of policy considerations in favor of sidewalks in neighborhoods, and decide to spend money on speed bumps.

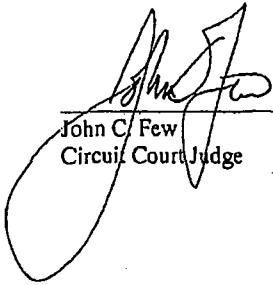
The Slush Fund allows Council members to implement public policy that may have been rejected by the Council as a whole. For example, Council may consider passing a proposed ordinance to improve sewer service throughout the County. After weighing the benefits of improved sewer service, the Council may decide that taxpayer money should be spent for other purposes, and vote not to enact that ordinance. By using the Slush Fund, however, an individual Council member may essentially veto the Council's policy determination by using that member's funds for sewer construction.

In all of these scenarios, different and often conflicting public policy is being implemented by different Council members in different parts of the County. These policy decisions are not being made after an open and public debate by the elected County Council, but based on the individual private preferences of Council members. Allowing members to make these policy decisions about how to spend taxpayer money is to allow individual members to make legislative decisions. This is an impermissible delegation of legislative authority.



Because the "Council District Expense Fund" violates the prohibition against delegating legislative authority, it violates State law. Plaintiffs' Motion for Summary Judgment is GRANTED, and Defendants' motions are DENIED. The "Council District Expense Fund" portion of the 2006-2007 budget for Greenville County is declared to be illegal.

IT IS SO ORDERED.



John C. Few
Circuit Court Judge

February 8, 2010

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2006CP2301637
200 NOV 11 A 9:30

Edward D Sloan Jr vs. Greenville County

CLERK OF COURT
GREENVILLE CO S.C.

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court;

Dated at Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE -

This judgment was entered on the 11th day of November, 2010, and a copy mailed first class this 11th day of November, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

James G. Carpenter The Carpenter Law Firm, PC
819 East North Street, Ste. 230 Greenville, SC
296013101

Boyd Benjamin Nicholson Haynsworth Sinkler
Boyd, PA P.O. Box 2048 Greenville, SC 29602
Joel M. Bondurant Jr. Haynsworth Sinkler Boyd

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

P.O. Box 2048 Greenville, SC 296022048

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 2010 NOV 11 A 8:30
CASE NO. 06-CP-23-4637

The South Carolina Public Interest
Foundation, and Edward D. Sloan, JEFFREY D. CLARK OF COURT
individually, and on behalf of all others
similarly situated,)
Plaintiffs.)

v.)

**ORDER GRANTING PLAINTIFFS
ATTORNEYS' FEES AND COSTS**

Greenville County, a Political Subdivision)
of the State of South Carolina, Herman G.)
Kirven, Jr., Judy Gilstrap, Eric)
Beddingfield, Jim Burns, Scott Case,)
Joseph Dill, Cort Flint, Lottie Gibson,)
Mark Kingsbury, Xanthene Norris, Robert)
Taylor, and Tony Trout,)
Defendants.)

On February 10, 2010, Judge Few entered an order granting judgment to Plaintiffs. On February 22, 2010, Plaintiffs moved the Court for costs and attorneys fees pursuant to SCRCP 54 and S.C. Code Ann § 15-77-300 and attached a memorandum of law and an affidavit of counsel.

In any civil action brought by . . . any party who is contesting state action, . . . the court may allow the *prevailing party* to recover *reasonable attorney's fees to be taxed as court costs* against the appropriate agency if:

- (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and
- (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.

S.C. Code Ann. § 15-77-300. Judge Few has since become Chief Judge of the South Carolina Court of Appeals, and the undersigned has been designated to hear the attorneys fee motion and all other cases filed by Mr. Edward D. Sloan and the South Carolina Public Interest Foundation.

This court held a hearing on October 7, 2010 on plaintiff's motion. Present at the hearing were James Carpenter, Esquire, on behalf of plaintiffs, and Benjamin "Nick" Nicholson, Esquire.

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on behalf of defendants. The court has reviewed the legal memoranda, the facts of record and the applicable law, and finds and concludes as follows.

I. PLAINTIFFS ARE DUE ATTORNEYS' FEES UNDER S.C. CODE ANN. §15-77-300.

A. A Standard of Review

A citizen must prove three elements to be eligible for reimbursement of attorneys' fees under § 15-77-300: (1) the citizen must be the prevailing party; (2) the government entity must have acted without substantial justification; and (3) no special circumstances would render the award of attorney's fees unjust. *Heath v. County of Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990); *Richland County v. Kuiser*, 351 S.C. 89, 567 S.E.2d 260 (Ct. App. 2002). The award of attorneys' fees is discretionary with the trial court. *Heath v. County of Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990). Plaintiffs meet the three requirements for an award of attorney's fees under this statute by the greater weight of the evidence.

B. Plaintiffs are Prevailing Parties.

For several years, Defendants have authorized and operated a fund variously known as the Council District Expense Fund, Council Reserves, Discretionary Funds, or the Slush Fund. Judge Few ruled, "[t]he 'Council District Expense Fund' portion of the 2006-2007 budget for Greenville County is declared to be illegal" See February 10, 2010 Order. He based his rulings on the well-established law of this State that legislative authority may not be delegated. Accordingly, Plaintiffs prevailed.

C. Defendants Acted Without Substantial Justification.

In analyzing this element, courts look to whether the governmental defendant had a reasonable basis in law and fact in its defense. *Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue*, 358 S.C. 647, 595 S.E.2d 890 (Ct. App. 2004). *Cornelius v. Oconee*

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Order Awarding Attorneys' Fees and Costs

County, 369 S.C. 531, 633 S.E.2d 492 (2006). Defendants did not have a reasonable basis in law or fact to support the defense they raised in this case.

Plaintiffs attached to their Complaint a South Carolina Attorney General opinion dated November 13, 2003, stating that a county council's delegation of legislative power to an individual member was unlawful. 2003 WL 22862787. The facts and circumstances were quite similar to those of this case. The Attorney General opinion relied upon 12 South Carolina judicial opinions to support its conclusion that a county council could not lawfully delegate authority to make expenditures to individual council members. The Court finds that this Attorney General opinion accurately states the law regarding delegation of legislative authority as it has been understood for at least 100 years, and if Defendants did not know this legal principle, they were willfully ignorant of it.

Defendants argued in their Memorandum in Opposition and during the hearing on this matter that their reliance upon a circuit court order in earlier litigation between the parties substantially justified their vigorous defense in the present case. Specifically, Defendants argued that in the previous litigation Mr. Sloan raised the issue of delegating legislative authority with the same policy challenged in this case, and that the trial judge in that prior action held that Mr. Sloan had not sustained his burden of proving that the policy was illegal. *See* Defendants Memorandum in Opposition to Plaintiffs' Motion for Attorney's Fees, *id.* at pp. 2-3 (discussing the complaint and order from the prior action). However, this Court has reviewed the prior order and finds that it did not specifically address the issue of delegation of legislative authority. The Court finds that the 2003 Attorney General Opinion was an accurate statement of the law and one which no county would have reasonable grounds to reject.

Even after Plaintiffs provided a copy of the 2003 Attorney General opinion to

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Order Awarding Attorneys' Fees and Costs

Defendants, Greenville County Council appropriated annual Slush Funds that delegated legislative authority to its individual council members so they could make independent expenditures for fiscal years ending June 30, 2008, June 30, 2009, June 30, 2010¹, and June 30, 2011². Under these circumstances, Defendants were not "substantially justified" in pressing their vigorous and persistent defense.

D. No Special Circumstances Make an Award of Fees Unjust.

Finally, no special circumstances make an award of fees unjust. Plaintiffs funded this litigation with their own private funds. The County and the State benefit when civic-minded citizens bring such actions. "It is very commendable that public-spirited citizens should endeavor to protect the taxpayers of a county from the efforts of an accommodating fiscal court to make unauthorized and unlawful appropriations of public funds..." *Shillito v. City of Spartanburg*, 214 S.C. 11, 26, 51 S.E.2d 95 (1948) (quoting *Fox v. Lantrip*, 169 Ky. 759, 185 S.W. 136, 139). "Citizens should be encouraged to bring suits like these." *Id.*

This Court ruled that Defendants' actions were illegal. The Attorney General cited twelve South Carolina cases spanning more than 100 years that put the Defendants on notice of the illegality of their actions. Under these circumstances, Defendants' conduct was not substantially justified, and no special circumstances make an award of fees unjust. Accordingly, Plaintiffs meet the qualifications for an award of attorneys' fees under S.C. Code Ann. § 15-77-300.

¹ Defendants adopted ordinances appropriating funds for fiscal years ending June 30, 2010, and June 30, 2011 in May and June 2009.

² The Defendants have represented that on February 16, 2010, County Council met in the Committee of the Whole and at its Regular Council Meeting and voted to amend the Policy to require that the following types of projects must be approved by the entire County Council before a disbursement will be made out of the Council District Expense account: (i) costs associated with special, non recurring community requests for infrastructure purposes such as flooding, roads, lights, sewer and drainage, public buildings and grounds, and infrastructure related studies, and (ii) contributions to local taxing entities in Greenville County for community projects.

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Order Awarding Attorneys' Fees and Costs

II. PLAINTIFFS ARE ENTITLED TO RECOVER COSTS IN THIS MATTER.

Plaintiffs are entitled to recover costs in this matter.

In every civil action commenced or prosecuted in the courts of record in this State, except cases in chancery, the attorneys for the plaintiff or defendant shall be entitled to recover costs and disbursements of the adverse party as prescribed in §§ 15-37-20, 15-37-60, 15-37-70, and 15-37-120 to 15-37-160, and Chapter 21 of Title 8, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, *such costs to be allowed as of course* to the attorneys for the plaintiff or defendant and all officers of the court thereto entitled accordingly as the action may terminate and to be inserted in the judgment against the losing party. *In cases in chancery the same rule as to costs shall prevail unless otherwise ordered by the court.*

S.C. Code Ann. § 15-37-10 (emphasis added). Accordingly, Plaintiffs should be awarded costs.

III. PLAINTIFFS' ATTORNEYS' FEES AND COSTS ARE REASONABLE.

As of the time of the filing of the Motion for Attorneys Fees, Plaintiffs had incurred \$59,612.50 in attorneys' fees and \$471.65 in costs. This case presented a financial risk for Plaintiffs. The County and the public benefited from this litigation. Plaintiffs' counsel attached an affidavit and monthly invoices documenting attorneys' fees and costs (Affidavit of James G. Carpenter and Exhibits to Affidavit). Defendants have not objected to any particular entry, the rate charged, or the total as being unreasonable. The Court is familiar with attorneys' fees in this jurisdiction, and is familiar with Plaintiffs' counsel. The Court finds that the attorneys' fees and costs stated in the affidavit are reasonable, and Plaintiffs are entitled to an award of attorneys' fees and costs.

There are six factors for the trial court to consider when determining an award of attorneys fees: (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal

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Order Awarding Attorneys' Fees and Costs

services; and (6) the beneficial results obtained. *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). "Upon request for attorneys fees that are authorized by contract or statute, the trial court should make specific findings of fact on the record for each of these factors." *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 357, 594 S.E.2d 888, 898 (Ct. App. 2004) (citing *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997); see also *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427, S.E.2d 659 (1993)).

First, as to the nature, extent and difficulty of the legal services rendered, the issues raised in this litigation are relatively uncommon. Plaintiffs spent considerable time in gathering evidence through FOIA and discovery and in researching the facts and the law to prove the violation.

Second, as to the time and labor necessarily devoted to the case, Defendants continued their illegal conduct after Plaintiffs brought this action in July of 2006 and even after the Court announced its intended ruling in July of 2009. The Defendants' stubborn opposition caused the Plaintiffs to spend considerable time, effort and money to litigate their claims. Finally, the time and labor Plaintiffs devoted to this action were reasonable and not duplicative.

Third, Plaintiffs' attorneys are experienced and skilled in public interest cases such as this one and are of good professional standing and well known to the courts of this State. See, e.g. *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v. Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005), *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470

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Order Awarding Attorneys' Fees and Costs

(2004), *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Cl. App. 2003). *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Cl. App. 2000).

Fourth, there was no "contingency of compensation." Plaintiffs paid these fees as they accrued. Plaintiffs should be reimbursed for their significant fees and expenses they contributed to a matter of great public interest.

Fifth, as to the fee customary charged in the locality for similar legal services, the Court is familiar with attorney fees customarily charged in this legal community. The time spent and the hourly rates requested by Counsel are reasonable. Plaintiffs have presented Counsel's affidavit supported by detailed time records detailing Plaintiffs' attorneys' fees and costs. Furthermore, Counsel has discounted the normal rates due to the public interest nature of this litigation.

Sixth, Plaintiffs obtained beneficial results. Defendants refused to correct the violation even after receiving notice of the case law and the Court's announcement of its intended ruling. Furthermore, Plaintiffs' litigation benefits every citizen of the County by requiring that the Defendant County comply with the law of this State.

The Court finds that Plaintiffs' attorneys' fees and costs requested are reasonable, and that Plaintiffs are entitled to a full award of attorney's fees and costs, with interest.

IV. CONCLUSION

Plaintiffs have prevailed in this case. The Defendants were not substantially justified in this litigation. The amount of attorneys' fees is reasonable. No other factors make an award of attorneys' fees unjust. Therefore, the Court hereby awards the Plaintiffs their attorneys' fees and costs through January 31, 2010. The Court hereby orders the Defendants to pay attorneys' fees

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Order Awarding Attorneys' Fees and Costs

of \$59,612.50, and costs of \$471.65 to the Plaintiffs for fees through January 31, 2010. Plaintiffs may file an affidavit addressing fees incurred after January 31, 2010.

SO ORDERED, this 10th day of November, 2010.

D. Garrison Hill

D. Garrison Hill
Circuit Judge

Greenville, South Carolina

PHH
Paul B. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 11/11/10

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
)

Edward D. Sloan, Jr., individually,
and as a Citizen, Resident,
taxpayer and Registered Elector
of Greenville County, and on
behalf of all others similarly
situated,

Plaintiff,

vs.

The County Council of Greenville
County as the Governing Body of
Greenville County, a Political
Subdivision of the State of South
Carolina,

Defendant.

ANSWER

C.A. No. 96-CP-2312918

FILED-CLERK
GREENVILLE
FLETCHER
MAY 1 3 41 PM '97

ENTERED COMPUTER

The defendant, Greenville County Council, answering the second amended complaint of the plaintiff herein, would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

I

The defendant, Greenville County Council, denies the allegations of paragraph 1.

II

It lacks sufficient information to form a belief as to the allegations of paragraph 2, and therefore denies same. However, it would allege and show unto the Court that the plaintiff is not entitled to any relief based upon the allegations of the complaint.

III

It lacks sufficient information to form a belief as to the allegations of paragraph 3, and therefore denies same.

IV

It admits the allegations of paragraph 4.

V

It denies the allegations of paragraph 5.

VI

It admits so much of the allegations of paragraph 6 as allege that no discovery has been conducted in this lawsuit to date. It denies the remaining allegations of paragraph 6.

VII

It denies the allegations of paragraph 7.

VIII

It denies the allegations of paragraph 8.

IX

It denies the allegations of paragraph 9.

X

It denies the allegations of paragraph 10.

XI

It denies the allegations of paragraph 11.

XII

It denies the allegations of paragraph 12.

XIII

It denies the allegations of paragraph 13.

XIV

It denies the allegations of paragraph 14.

XV

It denies the allegations of paragraph 15.

XVI

It denies the allegations of paragraph 16.

XVII

It denies the allegations of paragraph 17.

XVIII

It denies the allegations of paragraph 18.

XIX

The defendant denies each and every allegation of the second amended complaint not specifically admitted, modified or explained.

FOR A SECOND DEFENSE

XX

The defendant incorporates the allegations of its first defense which are consistent with this defense.

XXI

It alleges that the second amended complaint fails to state facts sufficient to constitute a cause of action against it, and accordingly, the second amended complaint should be dismissed.

FOR A THIRD DEFENSE

XXII

The defendant incorporates the allegations of its first defense which are consistent with this defense.

XXIII

It alleges that the plaintiff lacks standing to bring this action, and accordingly, it should be dismissed.

FOR A FOURTH DEFENSE

XXIV

The defendant incorporates the allegations of its first defense which are consistent with this defense.

XXV

It alleges that the issues raised by the allegations of the second amended complaint are now moot, and accordingly, this action should be dismissed.

WHEREFORE, having fully answered the second amended complaint of the plaintiff herein, the defendant, Greenville County Council, prays that the same be dismissed with costs, and for such other and further relief as the Court may deem just and proper.

Greenville, SC

May 1, 1997


W. Howard Boyd, Jr. (#826)
Ronald K. Wray, II (#65246)
GIBBES, GALLIVAN, WHITE
& BOYD, P.A.
P. O. Box 10589
Greenville, SC 29603
(864) 271-9580

Attorneys for Defendant.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Edward D. Sloan, Jr., individually,
and as a Citizen, Resident,
taxpayer and Registered Elector
of Greenville County, and on
behalf of all others similarly
situated,

Plaintiff,

vs.

The County Council of Greenville
County as the Governing Body of
Greenville County, a Political
subdivision of the State of South
Carolina,

Defendant.

CERTIFICATE OF SERVICE

C.A. No. 96-CF-2322918

FILED
CLERK OF COURT
GREENVILLE
SOUTH CAROLINA
MAY 1 3 41 PM '97

The undersigned, Lou Ann Wakeland, secretary of W. Howard Boyd, Jr., certifies that on the 1st day of May, 1997, she served an answer, first set of interrogatories to plaintiffs and first request for production, inspection and copying to plaintiff of defendant, Greenville County Council, on the attorney for the plaintiff, by depositing in the United States mail, with due and proper postage affixed thereto, copies of the same addressed to:

Mr. William F. Able
Attorney at Law
P. O. Box 508
Irmo, SC 29063

Lou Ann Wakeland
Lou Ann Wakeland

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Edward D. Sloan, Jr., individually, and as)
a Citizen, Resident, Taxpayer and)
Registered Elector of Greenville County,)
and on behalf of all others similarly)
situated,)

Plaintiff,)

vs.)

The County Council of Greenville County)
as the Governing Body of Greenville)
County, a Political Subdivision of the)
State of South Carolina,)
Defendant.)

C.A. No. 96-CP-23-2918

THIRD AMENDED COMPLAINT

FILED
CLERK OF COURT
GREENVILLE, S.C.

Dec 15 1 05 PM '97

Plaintiff, complaining of the Defendant would show unto the Court:

JURISDICTION and VENUE

1. This action is brought pursuant to 42 U.S.C. § 1983, S.C. R. Civ. P. 57 and 65, and S.C. Code Ann. §15-53-10, known as the Uniform Declaratory Judgment Act.
2. Plaintiff is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina, and brings this action individually on his behalf and on behalf of all others similarly situated.
3. Defendant is a political subdivision of the State of South Carolina.
4. Defendant is vested with the power of governing the County in compliance with the Constitution and laws of South Carolina and with enacting ordinances consistent with the Constitution and statutory law.
5. Venue is proper in Greenville County, South Carolina.
6. Defendant's actions as alleged are capable of repetition, yet evading review.

DONATIONS BY DEFENDANT

7. In its Fiscal Year 1994-95 Annual Budget, Defendant established "County Council Reserves" of \$60,000 from which Defendant would, at the request of each member of County Council, donate or spend up to \$5,000.
8. Defendant stated the purpose of the Council Reserves as to "address special community needs not normally falling within the operational purview of County Government." Greenville County Fiscal Year 1996-97 Annual Budget, p. 195 (emphasis added).
9. Defendant has donated at least \$71,593.82 to religious charities, private educational institutions, non-profit organizations, and political subdivisions from 1994 through September, 1997.
10. On or about October 3, 1994, Defendant donated \$1,000 to the Civil Air Patrol.
11. On or about October 3, 1994, Defendant donated \$3,790 to the Snickers Soccer Tournament.
12. On or about October 5, 1994, Defendant donated \$210 to the Libertarian Education Institute.
13. On or about November 15, 1994, Defendant donated \$1,500 to the March of Dimes.
14. On or about December 2, 1994, Defendant donated \$2,500 to the Berea Branch Library.
15. On or about December 2, 1994, Defendant donated \$2,000 to "Share."
16. On or about January 31, 1995, Defendant donated \$1,000 to the National Association for the Advancement of Colored People (NAACP).
17. On or about February 8, 1995, Defendant donated \$5,000 to "A Child's Haven (a private non-profit organization)."

18. On or about February 17, 1995, Defendant donated \$300 to Church & Community Human Relations.
19. On or about March 6, 1995, Defendant donated \$982.82 to the Glassy Mountain Fire District.
20. On or about March 13, 1995, Defendant donated \$500 to the Phyllis Wheatley Assoc.
21. On or about March 13, 1995, Defendant donated \$500 to the Lean on Me Tutorial School.
22. On or about April 25, 1995, Defendant donated \$5,000 to the Greer Human Resources Center.
23. On or about May 16, 1995, Defendant donated \$5,000 to the Greenville Tech Foundation.
24. On or about May 18, 1995, Defendant donated \$500 to the Greenville Cultural Exchange.
25. On or about May 22, 1995, Defendant donated \$1,000 to Jack and Jill of America.
26. On or about May 30, 1995, Defendant donated \$500 to Neighborhoods in Action.
27. On or about May 30, 1995, Defendant donated \$1,000 to the Possum Kingdom Fire Department.
28. On or about May 30, 1995, Defendant donated \$1,000 to the Canebrake Fire Department.
29. On or about June 7, 1995, Defendant donated \$500 to the Salvation Army.
30. On or about June 7, 1995, Defendant donated \$500 to the Family Counseling Center.
31. On or about July 28, 1995, Defendant donated \$1,000 to the South Greenville Fire District.
32. On or about June 28, 1995, Defendant donated \$1,000 to the Piedmont Fire District.
33. On or about June 28, 1995, Defendant donated \$1,000 to the Dunklin Fire District.

34. On or about June 29, 1995, Defendant donated \$1,500 to the Greenville County Library West Branch.
35. On or about July 3, 1995, Defendant donated \$1,000 to the Phyllis Wheatley Association.
36. On or about July 3, 1995, Defendant donated \$2,500 to the Berea Branch Library.
37. On or about July 3, 1995, Defendant donated \$1,500 to the Greenville Zoo Board.
38. On or about July 3, 1995, Defendant donated \$1,000 to "Share."
39. On or about October 31, 1995, Defendant donated \$520 to the National Association for the Advancement of Colored People (NAACP) "for 2 tickets to NAACP banquet."
40. On or about November 2, 1995, Defendant donated \$450 to the National Association for the Advancement of Colored People (NAACP) "for a second table [at the banquet]."
41. On or about November 20, 1995, Defendant donated \$210 to the National Association for the Advancement of Colored People (NAACP) which "paid for 28 to attend [the banquet]."
42. In its Fiscal Year 1996-97 Annual Budget, Defendant budgeted \$120,000 for "Council Reserves," from which Defendant would, at the request of each member of County Council, donate or spend up to \$10,000.
43. On or about July 8, 1996, Defendant donated \$358.00 to James Forbes, III "for Rotary Club of Gvl. . . . membership dues."
44. On or about July 10, 1996, Defendant donated \$408.00 to Gerald Seals "for [Rotary Club of Greenville] dues."
45. On or about August 8, 1996, Defendant donated \$358.00 to Johnny Mack Brown "for Sheriff's FY97 [Rotary Club of Greenville] dues."

46. On or about September 26, 1996, Defendant donated \$5,000 to the Mauldin Library Building Fund.
47. On or about September 25, 1996, Defendant donated \$5,000 to the Simpsonville Library Building Fund.
48. On or about February 18, 1997, Defendant donated \$3,507.00 to Sugar Creek Homeowners Association.
49. On or about April 28, 1997, Defendant donated \$7,500 the City of Travelers Rest.
50. On or about June 27, 1997, Defendant donated \$10,000 to the City of Greer.
51. On or about June 30, 1997, Defendant donated \$10,000 to the Greenville Zoo Board.
52. Upon information and belief, Defendant continues to make donations (payments not in exchange for any tangible consideration) to private non-profit organizations, political subdivisions, and other private entities.

FIRST CAUSE OF ACTION

53. Plaintiff incorporates all preceding paragraphs by reference.
54. Defendant has violated and continues to violate Greenville County Code, Division 2, § 7-81(a). "Appropriation of funds shall be made only by county council to departments and agencies to provide public services to county citizens. Appropriation of funds to private, nonprofit organizations and institutions to provide services is prohibited. *Id.* (emphasis added).
55. Defendant continues to donate to private, nonprofit organizations, and other private entities.

56. If the Court does not enjoin Defendant's appropriations, expenditures, disbursements, and other actions violating Greenville County Code, Division 2, § 7-81, County taxpayers will suffer irreparable harm including, but not limited to, levying of taxes for illegal expenditures.

SECOND CAUSE OF ACTION

57. Plaintiff incorporates all preceding paragraphs by reference.
58. Defendant has violated Article I, § 2 of the Constitution of South Carolina. "The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof . . ." *Id.*
59. Defendant has financially supported sectarian religious activity.
60. If the Court does not enjoin Defendant's appropriations, expenditures, disbursements, and other actions violating Article I, § 2 of the Constitution of South Carolina, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

THIRD CAUSE OF ACTION

61. Plaintiff incorporates all preceding paragraphs by reference.
62. Plaintiff complains under 42 U.S.C. § 1983 that Defendant has violated the First Amendment of the United States Constitution, which is applicable to the States by the Fourteenth Amendment to the United States Constitution.
63. Defendant has financially supported religious activity.
64. If the Court does not enjoin Defendant's expenditures, appropriations, disbursements, and other actions violating the First Amendment of the United States Constitution, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

FOURTH CAUSE OF ACTION

65. Plaintiff incorporates all preceding paragraphs by reference.
66. Defendant violated South Carolina Code Annotated § 4-9-30 which allows county governments "to . . . make appropriations for functions and operations of the county . . ." (emphasis added).
67. Defendant continues to disburse funds for purposes other than county functions and operations.
68. If the Court does not enjoin Defendant's appropriations, expenditures, disbursements, and other actions violating South Carolina Code Annotated § 4-9-30, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

FIFTH CAUSE OF ACTION

69. Plaintiff incorporates all preceding paragraphs by reference.
70. Defendant violated Article XI, § 4 of the South Carolina Constitution, which states, "No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution." *Id.*
71. Defendant donated funds to religious or other private educational institutions.
72. If the Court does not enjoin Defendant's appropriations, expenditures, disbursements, and other actions violating Article XI, § 4 of the South Carolina Constitution, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

PROCEDURAL ILLEGALITIES BY DEFENDANT

73. On August 20, 1996, the Defendant adopted "Guidelines for Discretionary Funds" as a resolution, rather than as an ordinance, which continues to allow use of Council Reserves "for infrastructure purposes such as: flooding, roads, lights, sewer, and public buildings and grounds." Greenville County Finance Minutes, Page 2, August 5, 1996 and Page 14, August 20, 1996.
74. Defendant has continued to draw upon Council Reserves without voting on each expenditure or appropriation.
75. On or about June 30, 1997, Defendant donated \$10,000 to the Greenville Zoo Board at the request of an individual member of County Council, an unappropriated transaction.

76. Defendant has directed Council Reserves funds to municipalities such as Greer and Traveler's Rest and to subdivisions.
77. Contech Construction, Inc. (a Georgia corporation), Metromont Materials, Eddie Underwood, Dobson True Value Hardware, and Gossett Pipe Company have received public funds from the Defendant.
78. Upon information and belief, Defendant will continue to appropriate, disburse, and spend Council Reserves funds unless the Court orders cessation.

SIXTH CAUSE OF ACTION

79. Plaintiff incorporates all preceding paragraphs by reference.
80. Defendant has violated and continues to violate Greenville County Code, Division 2, § 7-81. "(a) Appropriation of funds shall be made only by county council to departments and agencies to provide public services to county citizens. Appropriation of funds to private, nonprofit organizations and institutions to provide services is prohibited. (b) Requests for county funds will be submitted to council for review during the regular county budget process, and appropriations will be made only for specific line item purposes." *Id.* (emphasis added).
81. Defendant disbursed funds at the requests of individual members rather than collectively as the "county council" for "public services."
82. If the Court does not enjoin Defendant's expenditures, disbursements, appropriations at the request of individual members of County Council, and other actions violating Greenville County Code, Division 2, § 7-81, Greenville County taxpayers will suffer irreparable harm and levying of taxes for illegal expenditures

SEVENTH CAUSE OF ACTION

83. Plaintiff incorporates all preceding paragraphs by reference.
84. Defendant violated South Carolina Code Annotated § 4-9-140 which states, "The procedure for approval of supplemental appropriations shall be the same as that prescribed for enactment of ordinances."
85. Defendant, at the requests of members of Greenville County Council, made "appropriations of additional funds which had come available" after the budget ordinance had been enacted.
86. If the Court does not enjoin expenditures, disbursements, appropriations by Defendant at the request of individual members of County Council, and other actions violating South Carolina Code Annotated § 4-9-140, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

EIGHTH CAUSE OF ACTION

87. Plaintiff incorporates all preceding and following paragraphs by reference.
88. Defendant violated South Carolina Code Annotated § 4-9-130 which requires public hearings and reasonable notice whenever "council action" is taken to "make appropriations, including supplemental appropriations."
89. Defendant, at the request of individual members of County Council, made supplemental appropriations after budget ordinances had already been enacted and did not hold public hearings or give reasonable notice.
90. If the Court does not enjoin expenditures, disbursements, appropriations by Defendant at the request of individual members of County Council, and other actions violating South

Carolina Code Annotated § 4-9-130, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

NINTH CAUSE OF ACTION

91. Plaintiff incorporates all preceding and following paragraphs by reference.
92. Defendant has violated South Carolina Code Annotated § 4-9-120 which states, "All ordinances shall be read at three public meetings of council on three separate days with an interval of not less than seven days between the second and third meetings."
93. Defendant has made supplemental appropriations without reading ordinances aloud at three public meetings of council on three separate days with an interval of less than seven days before the final reading.
94. If the Court does not enjoin expenditures, disbursements, appropriations by Defendant at the request of individual members of County Council, and other actions violating South Carolina Code Annotated § 4-9-120, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

TENTH CAUSE OF ACTION

95. Plaintiff incorporates all preceding paragraphs by reference.
96. Defendant has violated Article X, § 5 of the Constitution of South Carolina. "No tax, subsidy or charge shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied." *Id.* (emphasis added).

97. Defendant disbursed proceeds of taxes that were budgeted only as "County Reserves."
98. In the last three budgets, Defendant has not "distinctly state[d] [each] public purpose" for which Council Reserves funds would be spent.
99. If the Court does not enjoin expenditures, disbursements, appropriations by Defendant at the request of individual members of County Council, and other actions violating Article X, § 5 of the Constitution of South Carolina, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

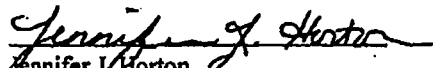
ELEVENTH CAUSE OF ACTION

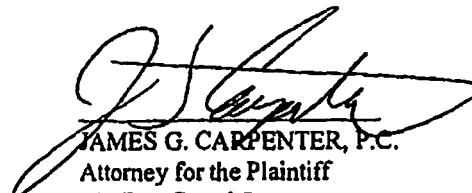
100. Plaintiff incorporates all preceding paragraphs by reference.
101. Defendant has violated Articles I, §§ 1, 2, 3, and 23; X §§ 7, 8, and 11; and XII, § 1 of the South Carolina Constitution and § 11-1-40 of the South Carolina Code Annotated.
102. Defendant has acted *ultra vires* and in excess of its authority and in violation of Plaintiff's constitutional rights.
103. If the Court does not enjoin Defendant's expenditures, disbursements, appropriations at the request of individual members of County Council, and other actions violating Articles I, §§ 1, 2, 3, and 23; X §§ 7, 8, and 11; and XII, § 1 of the South Carolina Constitution and § 11-1-40 of the South Carolina Code Annotated, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

WHEREFORE, Plaintiff prays the Court for:

1. Temporary, preliminary, and permanent injunctions Defendant's appropriation, expenditure, disbursement, and donation of public funds which are not for legitimate governmental purposes.
2. A declaratory judgment that Defendant's establishing "Council Reserves" and appropriating, spending, disbursing, and donating public funds as described above violates the applicable statutes, Constitutions, ordinances, and policies.
3. Temporary, preliminary, and permanent injunctions enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds from the 1996-97 "Council Reserves" in violation of the S.C. Constitution and Code and the Greenville County Codes regarding procedures for appropriation and expenditures.
4. Costs and attorneys fees under 42 U.S.C. § 1988.
5. Such other and further relief as the court deems just and proper.

Respectfully submitted,


Jennifer J. Morton


JAMES G. CARPENTER, P.C.
Attorney for the Plaintiff
205 East Broad Street
Greenville, SC 29601
(864) 235-1269

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Edward D. Sloan, Jr., individually, and as a
Citizen, Resident, Taxpayer and Registered
Elector of Greenville County, and on behalf of
all others similarly situated,

Plaintiff,

v.

The County Council of Greenville County, as the
Governing Body of Greenville County, a
Political Subdivision of the State of South
Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

FILED
CLERK
JUL 12 07 P.M.

ANSWER TO THIRD
AMENDED COMPLAINT

C.A. No. 96-CP-23-2918

ENTERED COMPUTER

The defendant, Greenville County, answering the third amended complaint of the plaintiff herein, would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. The defendant, Greenville County, admits, upon information and belief, so much of the allegations of paragraph 1 as allege that this action is brought pursuant to 42 U.S.C. Section 1983 and S.C. Code Ann. Section 15-53-10, known as the Uniform Declaratory Judgment Act. It denies the remaining allegations of paragraph 1 and specifically denies that the plaintiff is entitled to any relief in this action.

2. It lacks sufficient information to form a belief as to the allegations of paragraph 2, and therefore denies same.

3. It admits the allegations of paragraph 3.

4. It admits the allegations of paragraph 4.

5. It admits, upon information and belief, the allegations of paragraph 5.

6. It denies the allegations of paragraph 6.
7. It admits so much of the allegations of paragraph 7 as allege that in its fiscal year 1994-1995 annual budget, it established Council Reserves in the amount of \$60,000.00. It denies the remaining allegations of paragraph 7.
8. It denies the allegations of paragraph 8.
9. It denies the allegations of paragraph 9.
10. In response to the allegations of paragraphs 10 through 51, it craves reference to the records regarding disbursements made by County Council, denying any allegations of paragraphs 10 through 51 that are inconsistent therewith.
11. It denies the allegations of paragraph 52 and would allege and show unto the Court that Council Reserves are for infrastructure purposes only such as flooding, roads, lights, sewer, and public buildings and grounds.
12. In response to the allegations of paragraph 53, it realleges and incorporates herein by reference its answers to paragraphs 1 through 52 above.
13. It denies the allegations of paragraphs 54, 55, and 56.
14. In response to the allegations of paragraph 57, it realleges and incorporates herein by reference its answers to paragraphs 1 through 56 above.
15. It denies the allegations of paragraphs 58, 59 and 60.
16. In response to the allegations of paragraph 61, it realleges and incorporates herein by reference its answers to paragraphs 1 through 60 above.
17. It denies the allegations of paragraphs 62, 63 and 64.

18. In response to the allegations of paragraph 65, it realleges and incorporates herein by reference its answers to paragraphs 1 through 64 above.

19. It denies the allegations of paragraphs 66, 67 and 68.

20. In response to the allegations of paragraph 69, it realleges and incorporates herein by reference its answers to paragraphs 1 through 68 above.

21. It denies the allegations of paragraphs 70, 71 and 72.

22. It admits so much of the allegations of paragraph 73 as allege that Council Reserves may be used only for infrastructure purposes such as flooding, roads, lights, sewer, and public buildings and grounds. It denies the remaining allegations of paragraph 73.

23. It denies the allegations of paragraph 74.

24. In response to the allegations of paragraphs 75, 76 and 77, it craves reference to the records regarding disbursements made by County Council, denying any allegations of paragraphs 75, 76 and 77 that are inconsistent therewith.

25. In response to the allegations of paragraph 78, it would allege and show unto the Court that its disbursements are consistent with applicable constitutional and statutory provisions.

26. In response to the allegations of paragraph 79, it realleges and incorporates herein by reference its answers to paragraphs 1 through 78 above.

27. It denies the allegations of paragraphs 80, 81 and 82.

28. In response to the allegations of paragraph 83, it realleges and incorporates herein by reference its answers to paragraphs 1 through 82 above.

29. It denies the allegations of paragraphs 84, 85 and 86.

30. In response to the allegations of paragraph 87, it realleges and incorporates herein by reference its answers to paragraphs 1 through 86 above.

31. It denies the allegations of paragraphs 88, 89 and 90.

32. In response to the allegations of paragraph 91, it realleges and incorporates herein by reference its answers to paragraphs 1 through 90 above.

33. It denies the allegations of paragraphs 92, 93 and 94.

34. In response to the allegations of paragraph 95, it realleges and incorporates herein by reference its answers to paragraphs 1 through 94 above.

35. It denies the allegations of paragraphs 96, 97, 98 and 99.

36. In response to the allegations of paragraph 100, it realleges and incorporates herein by reference its answers to paragraphs 1 through 99 above.

37. It denies the allegations of paragraphs 101, 102 and 103.

38. It denies each and every allegation of the third amended complaint not specifically admitted, modified or explained hereinabove.

FOR A SECOND DEFENSE

39. It incorporates the allegations of its first defense which are consistent with this defense.

40. It alleges that the third amended complaint fails to state facts sufficient to constitute a cause of action against it, and accordingly, the third amended complaint should be dismissed.

FOR A THIRD DEFENSE

41. It incorporates the allegations of its first defense which are consistent with this defense.

42. It alleges that the complaint fails to allege the violation of any constitutional rights of the plaintiff, and that the complaint fails to assert a cause of action pursuant to 42 U.S.C. Section 1983. Accordingly, the plaintiffs' third cause of action should be dismissed.

FOR A FOURTH DEFENSE

43. It incorporates the allegations of its first defense which are consistent with this defense.

44. It alleges that the plaintiff lacks standing to bring this action, and accordingly, the complaint should be dismissed.

FOR A FIFTH DEFENSE

45. It incorporates the allegations of its first defense which are consistent with this defense.

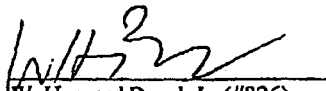
46. It alleges that the issues raised by the allegations of the third amended complaint are now moot, and accordingly, this action should be dismissed.

FOR A SIXTH DEFENSE

47. It incorporates the allegations of its first defense which are consistent with this defense.

48. It alleges that its actions have been in compliance with all statutory and constitutional provisions of the State of South Carolina. Accordingly, the plaintiffs' claims should be dismissed.

WHEREFORE, having fully answered the third amended complaint of the plaintiff herein,
the defendant, Greenville County, prays that the same be dismissed with costs, and for such other
and further relief as the Court may deem just and proper.



W. Howard Boyd, Jr. (#826)
Ronald K. Wray, II (#65246)
GIBBES, GALLIVAN, WHITE
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P. O. Box 10589
Greenville, SC 29603
(864) 271-9580

Greenville, SC

December 30, 1997

Attorneys for Defendant.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

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

v.

Greenville County, a Political Subdivision
of the State of South Carolina, Herman G.
Kirven, Jr., Judy Gilstrap, Eric
Beddingfield, Jim Burns, Scott Case,
Joseph Dill, Cort Flint, Lottie Gibson,
Mark Kingsbury, Xanthene Norris, Robert
Taylor, and Tony Trout,
Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-23-4637

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

**(Constitutional Challenge to
Council District Expense)**

Now come the plaintiffs, by their undersigned attorney, and as a Complaint in the
above-captioned action alleges as follows:

1. Plaintiff South Carolina Public Interest Foundation is a not-for-profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the proper application and implementation of the South Carolina Constitution and laws.
2. Plaintiff Edward D. Sloan Jr. is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina.
3. Defendant Greenville County is a political subdivision of the State of South Carolina.
4. The individual defendants are members of the Greenville County Council, the governing body of the County, and are named in their official capacities.
5. Venue is properly placed in Greenville County.
6. This Court has jurisdiction under the common law of South Carolina as set out in *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan*

v. Wilkins, 362 S.C. 430, 608 S.E.2d 579 (2005), *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004), *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), and *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

7. This Court has jurisdiction pursuant to S.C. Code § 15-53-10, et seq., known as the Uniform Declaratory Judgment Act.
8. Upon information and belief, for several years Defendants have authorized and operated a fund variously known as the Council District Expense Fund, Council Reserves, Discretionary Funds, or the Slush Fund.
9. On August 2, 2005, Greenville County Council adopted Ordinance No. 3940 (**Exhibit A**), which appropriated funds "for the operation of county government for the fiscal year beginning July 1, 2006 and ending June 30, 2007, which, upon information and belief, included an appropriation for an account called "Council District Expense."
10. Upon information and belief, pursuant to the "Council District Expense" account definition (**Exhibit B**), the account includes an annual appropriation of more than \$23,000 per council member in "Funds for a Council Member to address," among other things:

Costs associated with special, nonrecurring community requests for infrastructure purposes such as:

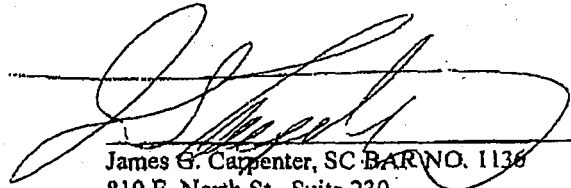
- Flooding
- Roads
- Lights
- Sewer and drainage
- Public buildings and grounds
- Infrastructure related studies.

11. County Council's delegation of legislative power to an individual member, as described herein, is unconstitutional and illegal, as explained in a South Carolina Attorney General opinion dated November 13, 2003 (Exhibit C).

WHEREFORE, Plaintiff prays the Court for an order:

1. Declaring that the delegation of the discretionary spending authority is illegal, invalid, and unconstitutional;
2. Temporary, Preliminary, and Permanent Injunctive Relief forbidding the expenditure of funds in this manner, without the approval of the County Council as a whole;
3. Granting Plaintiff costs and attorneys fees; and
4. Granting plaintiff such other and further relief as the court deems just and proper.

Respectfully submitted
THE CARPENTER LAW FIRM, PC



James G. Carpenter, SC BAR NO. 1136
819 E. North St., Suite 230
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3058

Attorneys for Plaintiffs

County of Greenville
Operating and Capital Budget
Fiscal Years 2006 and 2007

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**COUNTY OF GREENVILLE
FISCAL YEAR 2006-2007 BUDGET ORDINANCE
Ordinance No. 3940**

SECTION 1: The following funds are hereby appropriated for the operations of county government for the fiscal year beginning July 1, 2006 and ending June 30, 2007.

SCHEDULE A: GENERAL FUND

Administrative Services	\$	1,948,725	
General Services		9,664,494	
Human Resources		1,724,447	
Public Works		14,002,558	
Public Safety		29,278,075	
Elected & Appointed Offices/Judicial		13,233,501	
Elected & Appointed Offices/Fiscal		2,201,549	
Elected & Appointed Offices/Law Enforcement		28,572,423	
Other Services		5,237,744	
Subtotal	\$	105,863,516	
Other Financing Uses		3,558,802	
TOTAL GENERAL FUND	\$	109,422,318	

SCHEDULE B: SPECIAL REVENUE FUND

Road Program			
Road Projects	\$	11,600,000	
Fund Balance Contribution for future projects		3,718,125	\$ 15,318,125
Accommodations Tax			750,107
Charity Hospitalization			4,076,644
Infrastructure Bank			
Transfer to Debt Service	\$	3,582,137	
Economic Development		620,776	
Fund Balance Contribution		409,635	4,612,548
Victim's Rights			1,127,415
Home Incarceration Program			51,446
Emergency 911		1,512,941	
Contribution to Fund Balance		107,059	1,620,000
TOTAL SPECIAL REVENUE FUND			\$ 27,556,285

SCHEDULE C: DEBT SERVICE FUND

	G.O. BONDS	COPs, SSRBs, CAPITAL LEASES	TOTAL
Principal	\$ 2,895,000	\$ 7,456,336	\$ 10,351,336
Interest	2,224,591	4,160,563	6,385,154
Service Charge	7,000	7,000	14,000
Fund Balance (Reserved for Debt)		29,999	29,999
TOTAL DEBT SERVICE FUND	\$ 5,126,591	\$ 11,653,898	\$ 16,780,489

SCHEDULE D: CAPITAL PROJECTS FUND

Information Technology	\$	1,700,000
Ortho Photography/Land Base		100,000
Automobile Replacement Program		1,500,000
TOTAL CAPITAL PROJECTS FUND	\$	3,300,000

SCHEDULE E: INTERNAL SERVICE FUND

Fleet Management	\$	4,839,483
Health and Dental		21,275,652
Workers Compensation		1,871,779
TOTAL INTERNAL SERVICE FUND	\$	27,986,914

SCHEDULE F: ENTERPRISE FUND

Solid Waste	\$	9,625,003
Stormwater Management Program		5,975,000
TOTAL ENTERPRISE FUND	\$	15,600,003

Exhibit A

County of Greenville
Operating and Capital Budget
Fiscal Years 2006 and 2007

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SECTION 2: Revenues available in FY2007 are estimated according to the following schedules.

SCHEDULE A: GENERAL FUND

Property Tax (including delinquent taxes)	\$	59,649,716
County Office Revenue		23,689,650
State Shared Taxes		19,172,042
Other Revenue		4,681,609
Transfers In		1,000,000
Fund Balance Contribution		1,229,301
TOTAL GENERAL FUND	\$	109,422,318

SCHEDULE B: SPECIAL REVENUE FUND

Road Paving			
Road Maintenance Fees	\$	4,458,125	
Bond Issues		10,000,000	
Other		360,000	
Transfers In		500,000	\$ 15,318,125
Accommodations Tax			750,107
Charity Hospitalization			
Property Tax (including delinquent taxes)	\$	3,617,568	
State Shared Taxes (Merchants Inventory)		230,520	
Fund Balance Contribution		228,556	4,076,644
Infrastructure Bank			4,612,548
Victim's Right			1,127,415
Home Incarceration Program			51,446
E911 User Fees			1,620,000
TOTAL SPECIAL REVENUE FUND			\$ 27,556,285

SCHEDULE C: DEBT SERVICE FUND

	G.O. BONDS	COPs, SSRBs, CAPITAL LEASES	TOTAL
Property Tax (including delinquent taxes)	\$ 2,193,005	\$ 3,362,607	\$ 5,555,612
Intergovernmental	2,108,391	2,625,764	4,734,155
Interest	148,122	150,000	298,122
Interfund Transfers	-	4,453,163	4,453,163
Fund Balance Contribution	677,073	1,062,364	1,739,437
TOTAL DEBT SERVICE FUND	\$ 5,126,591	\$ 11,653,898	\$ 16,780,489

SCHEDULE D: CAPITAL PROJECTS FUND

General Fund Transfer	\$	1,800,000
Master Lease Proceeds		1,500,000
TOTAL CAPITAL PROJECTS FUND	\$	3,300,000

SCHEDULE E: INTERNAL SERVICE FUND

Fleet Management Reimbursements	\$	4,839,483
Health and Dental Premiums		21,275,652
Workers Compensation Premiums		1,871,779
TOTAL INTERNAL SERVICE FUND	\$	27,986,914

SCHEDULE F: ENTERPRISE FUND

Solid Waste			
Property Tax	\$	4,093,608	
Solid Waste Tipping Fees		3,200,000	
Other		1,514,410	
Fund Balance Contribution		816,985	\$ 9,625,003
Stormwater Utility Fee			5,975,000
TOTAL ENTERPRISE FUND			\$ 15,600,003

County of Greenville
Operating and Capital Budget
Fiscal Years 2006 and 2007

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SECTION 3: TAX RATES. Tax rates are authorized to be levied on each dollar valuation of taxable property as listed for taxes on January 1, 2006 for the purpose of raising revenue from property taxes as set forth in aforementioned estimates of revenue and in order to finance the aforementioned appropriations. Such rates of tax shall be based on an estimated net assessed valuation of property for the purpose of taxation of \$1,420,900,000 and an estimated current collection rate of ninety-five percent (95%). The millage rate shall equal the rate necessary to generate the same amount of revenue produced by the FY2004-2005 levy as shown below.

TAX RATES FY2004-2005	
General Fund	40.8
Special Revenue Fund	
Charity Hospitalization	3.0
Debt Service Funds	
G. O. Bonds	1.0
Certificate of Participation	2.8
Enterprise Fund	
Solid Waste	2.3
TOTAL	49.9

SECTION 4: LINE ITEM ACCOUNTS ESTABLISHED. All line item accounts as set forth in the FY2007 Budget Proposal, as adjusted and established by the aforementioned appropriation, are herein established and incorporated as if fully set forth and shall be expended, transferred, or supplemented pursuant to the Greenville County Code. The County Administrator is authorized to transfer funds between departments to make necessary changes and adjustments to reflect Council amendments to the proposed budget.

SECTION 5: REVERSION. Upon the expiration of this ordinance all unencumbered balances remaining in the funds listed in Section 1 shall revert to their respective funds except Charity Hospitalization, which reverts to the General Fund.

SECTION 6: ACCOUNTING. All County Offices, Departments, Agencies, Commissions, or Boards funded wholly or in part by County Council shall submit copies of annual operating budget, financial statements and quarterly reports of revenue and expense to the Finance Department for appropriate evaluation and Council Review.

SECTION 7: PRESCRIPTION FOR PROGRESS. From the FY2006-2007 capital projects, \$700,000 of the FY2007 Prescription for Progress \$11,600,000 road program shall be designated to assist the seven municipal road improvement programs. The allotment to any municipality shall be capped at 50% of the total amount allocated to municipalities in the Prescription for Progress Program. Each municipality prior to any future funding from Greenville County Road Improvement funds shall provide official documentation that road improvements have been appropriately made with the funding. The County shall utilize the formula used in FY2001 to determine allocations.

SECTION 8: ROAD IMPROVEMENT FUNDING. Road Improvement Funding distribution is based on "percentage of road miles per district" and "worse roads first" as hereafter described. Staff will calculate the total miles of roads in the County's Official Countywide Road Inventory (OCRI) and the total miles of roads in the OCRI broken down by district (OCRI-D). Staff shall divide each district's OCRI-D by the

*County of Greenville
Operating and Capital Budget
Fiscal Years 2006 and 2007*

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OCRI to determine the "percentage allocation" of road miles by district and this ratio shall be applied to the total dollars allocated for road improvements; however, no district shall receive a "percentage allocation" greater than 15% and this ratio shall be applied to the total dollars allocated for road improvements. Within each district's "percentage allocation," roads shall be designated for improvement on the basis of "worst roads first." Worst roads first shall be based on a road's assigned pavement condition. After determining the "percentage allocation," it is possible that excess "percentage allocation" may exist. Any excess "percentage allocation" shall be distributed on a "worst roads first" basis; however, such distribution shall not cause a district's allocation to exceed 15% of the total funds allocated for road improvements.

SECTION 9: INFRASTRUCTURE BANK. Five percent (5%) of Infrastructure Bank funding from future FILOT transactions, following compliance with the master ordinance, shall be used for economic development purposes.

SECTION 10: LEVY AUTHORIZED. A copy of this ordinance shall be furnished to the County Auditor and the Auditor is hereby authorized and directed to levy in the year 2006 on all taxable property in Greenville County a tax as determined in Section 3.

SECTION 11: All ordinances in conflict are hereby repealed.

SECTION 12: This ordinance shall take effect July 1, 2006.

ADOPTED IN REGULAR MEETING THIS 2nd Day of August, 2005.

GREENVILLE COUNTY, SOUTH CAROLINA

Account Name

Council District Expense

Description

Funds for a Council Member to address:

- Cost of general business supplies such as pens, paper, stationery, business cards, postage for district mailings, and ink cartridges;
- Cost of special documents, incentives and awards given either to the public or county employees for outstanding service or special recognition and the cost of framing by outside vendors of special documents;
- Cost of periodicals, professional journals, and reference books;
- Cost of per diem and mileage involved in the conduct of county business;
- Costs associated with community functions, conferences and training seminars such as food, gas, mileage, automobile rental, accommodations, tuition, and materials;
- Costs associated with special, non recurring community requests for infrastructure purposes such as:
 - Flooding
 - Roads
 - Lights
 - Sewer and drainage
 - Public buildings and grounds
 - Infrastructure related studies
- Contributions to local governments in Greenville County for community projects;
- In a fiscal year that a general election is to be held, funds will be made available to council members running contested races or not seeking re-election in two semi-annual allotments: 1) one-half of the appropriation on July 1; and 2) the remaining one-half of the appropriation on January 1;
- Funds may be encumbered for viable projects only and will lapse at the end of a council member's term.

Exhibit B

Westlaw

2003 WL 22862787 (S.C.A.G.)

2003 WL 22862787 (S.C.A.G.)

(Cite as: 2003 WL 22862787 (S.C.A.G.))

Page 1

Office of the Attorney General
State of South Carolina

*1 November 13, 2003

The Honorable Dean Fowler, Jr.
Florence County Treasurer
180 North Irby Street MSC-Z
Florence, South Carolina 29501

The Honorable Thomas E. Smith, Jr.
Member
Florence County Council
Post Office Box 308
Pamplico, South Carolina 29583

Gentlemen:

By a letter dated July 7, 2003, Mr. Fowler requested an opinion of this Office as to the use of what he terms "*Discretionary Funds*, which have been created by the County Council of Florence County." In his letter, Mr. Fowler states that separate funds have been created for each individual district of Florence County, to be spent at the discretion of the council member for each respective district. He further indicates that the surplus funds for each district are annually carried over in the individual district's account to the next fiscal year. Mr. Fowler notes that there is collectively \$1.7 million dollars in funds which currently are available for the nine council districts.

In response to Mr. Fowler's July 7 letter, Councilman Smith wrote to this Office in a letter dated July 14, 2003 to clarify the situation and provide additional facts regarding the nature of the funds which Mr. Fowler referred to as "discretionary." Mr. Smith stated that the funds of the 2003-2004 budget in dispute were appropriated by the Council following "every procedural and statutory requirement, including public hearings and the required three readings." Mr. Smith informs us that the funds in question were appropriated as follows in the 2003-2004 budget:

- (1) On page 50 of the budget ordinance there is appropriated to Fund 10, Department 439 (Public Works) the sum of \$420,000 for road paving.
- (2) On page 108 of the budget ordinance there is appropriated to the Fund 37 (Capital Improvement) the sum of \$450,000 for Infrastructure Improvements.

It appears from information provided by Mr. Fowler that these appropriations were allocated equally among the nine council districts in Florence County. Mr. Smith has indicated that during the hearings no one argued or moved to eliminate these appropriations, nor was any motion made to eliminate the application of the "carry over" funds from the previous year for the same purposes in the current year. Mr. Smith states that the term "discretionary funds" is Mr. Fowler's term of reference for these funds, not the County Council's description. Moreover, it is Mr. Smith's position that the funds have been

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2003 WL 22862787 (S.C.A.G.)
(Cite as: 2003 WL 22862787 (S.C.A.G.))

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consistently spent in each of the nine districts for public purposes according to the policies and procedures of Florence County. He notes that these funds have been used in his district for "road improvements, public recreation, feasibility studies for water and sewer services, assistance to municipalities for their building or water projects, and for rural fire districts." He further states that the amounts and uses of these funds are matters of public record, subject to the Freedom of Information Act requests as well as internal and external audits.

*2 In response to Councilman Smith's July 14 letter, Mr. Fowler wrote a letter dated July 22, 2003 which he copied to this Office. Mr. Fowler defended the use of the term "discretionary funds" in lieu of "infrastructure funds" in that the money is dedicated to each individual council district and is spent at "the will of each individual councilperson, for whatever project, for whomever, and whenever it is deemed appropriate by that council person." Accordingly, Mr. Fowler argues that the term "discretionary" is appropriate.

Mr. Fowler has also provided a September 3 newspaper article dealing with these funds. This article describes "discretionary funds" as being used for municipalities, charities, festivals, beautification projects, baseball teams, schools, associations as well as other entities.

Based upon the information provided, the primary question raised in this dispute can be summarized as follows:

Does the County Council of Florence County possess the legal authority to structure particular appropriations of public funds where individual council members are given discretion as to how the funds are specifically expended within their respective council districts?

Law / Analysis

It should be noted at the outset that a county ordinance is entitled to a presumption of constitutionality. See, *Rothchild v. Richland County Bd. of Adjustment*, 309 S.C. 194, 420 S.E.2d 883, 856 (1992). Accordingly, while this Office may comment upon constitutional problems, only a court may declare an ordinance void as in conflict with the Constitution.

On the other hand, we have previously stated that

[g]enerally, it is recognized that unless a statute specifically provides otherwise, legislative powers vested in the governing body of a municipality cannot be delegated to administrative officials of the municipality. However, purely administrative, ministerial, or executive powers may be delegated by a municipal governing body to the appropriate officer.

Op. S.C. Atty. Gen., October 8, 1985. And, in an opinion dated April 4, 1996, we recognized that "strictly governmental powers ... cannot be conferred upon a corporation or individual."

Moreover, in another opinion, dated March 6, 1980, we recognized that "[i]t has long been the law in this State that no municipality may by contract part with the authority delegated it by the State to exercise the police power." Likewise, in Op. S.C. Atty. Gen., January 7, 1985, we stated that while "[d]uties which are purely ministerial and executive and do not involve the exercise of discretion may be delegated" by a municipal corporation or a county governing board to an agent, employee or servant, by contrast, "[p]owers involving the exercise of judgment and discretion are in the nature of public trusts and cannot be delegated" Quoting 20 C.J.S., Counties, § 89. As was noted in that opinion, "[t]he law

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has always recognized and emphasized the distinction between instances in which a discretion must be exercised by the officer or department or governing body in which the power is vested, and the performance of merely ministerial duties by subordinates or agents." Citing, McQuillin, Municipal Corporations, § 10.41.

*3 These principles have also been adopted by our own Supreme Court. In *G. Curtis Martin Investment Trust v. Clay*, 274 S.C. 608, 266 S.E.2d 82 (1980), for example, the Court recited the rule that "[a] municipal corporation or other corporate political entity created by state law, to which police power has been delegated, may not divest itself of such power by contract or otherwise." 266 S.E.2d at 85. See also, *City of Bft. v. Bft.-Jasper County Water and Sewer Auth.*, 325 S.C. 174, 480 S.E.2d 728 (1997) [contested clause in contract represents an unlawful delegation of governmental power by water authority]; see also, *Op. S.C. Atty. Gen., Op. No. 85-81* (August 8, 1985) [administrative body cannot delegate quasi-judicial, discretionary functions].

In this same regard, it is well established that a municipal council may not delegate discretionary duties to individual members of council. It has thus been recognized as the governing rule that

[a] municipal governing body cannot delegate to a municipal officer or even to one of its own committees the power to decide legislative matters properly resting in the judgment and discretion of that body or to one member of the governing body. Thus, acts by individual members of a public body cannot bind the municipality unless officially sanctioned in accordance with a statute. The members of the governing body are chosen by the people to represent the municipality and they are charged with a public trust and the faithful performance of their duties and the public is entitled to the judgment and discretion of each member although the governing body may refer matters coming before it to a committee for examination and fact-finding.

56 Am.Jur.2d, Municipal Corporations, § 134.

In addition, as we emphasized in *Op. S.C. Atty. Gen., Op. No. 84-111* (September 6, 1984), "[i]t is a well established rule in this State, as well as other States, that where the Legislature has committed a matter to a board, bureau or commission or other administrative agency, such ... must act thereon as a body at a stated meeting, or one properly called, and of which all the members of such board have notice, or of which they are given an opportunity to attend [A]greement by the individual members acting separately, and not as a body ... is not sufficient." See, *Gaskin v. Jones*, 198 S.C. 509, 18 S.E.2d 454 (1942) [in the absence of statute or other controlling provision, the common law rule that a majority of a whole body is necessary applies]. In *Abbeville v. McMillan*, 52 S.C. 60, 72 (1897), our Supreme Court quoted with approval the language used by the United States Supreme Court in *Cooley v. O'Connor*, 12 Wall. 391 at 398 (1871):

[i]t is true that when an authority is given jointly to several persons, they must generally act jointly or their acts are invalid The commissioners were public agents, clothed with public authority. They were created to perform a governmental function, and it is a familiar principle that an authority given to several for public purposes may be executed by a majority of their number.

*4 Several cases support the foregoing legal principles. For example, in *Northern Boiler Co. v. David*, 105 N.E.2d 451 (Ohio 1952), *affd.*, 106 N.E.2d 620 (1952) the Ohio Court held that an ordinance which provided that no permit shall be granted to the Director of Public Service to cut the curb within any ward

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of the city over the objection of the council member for that ward was unconstitutional. Referencing the general rule cited above, the Court found that such ordinance unlawfully delegated the legislative power of the municipal council to a single member thereof:

[t]here is no doubt that the council of a municipal corporation is authorized ... to regulate the streets and highways of such municipal corporation. But in exercising that right they cannot act in an arbitrary manner. So, in delegating the right to grant or effectively prevent a property owner to cut the curb as a necessary step in constructing a driveway to provide ingress and egress to a public highway from such abutting property, the rule or policy in determining the basis on which such permit will be granted or withheld must be determined by the Council. Such a matter is legislative in character. The ordinance under consideration, as above indicated, fails to provide such legislative policy and in delegating the right to one of its members, to prevent a property owner of cutting the curb, so that ingress or egress may be provided from his property to the public thoroughfare upon which it abuts, for whatever reasons he deems sufficient, without spelling out the legislative policy with regard thereto, constitutes the delegation of legislative authority to such councilman, and such ordinance is, for that reason, unconstitutional and of no legal effect.

105 N.E.2d at 453. (emphasis added).

On appeal, the Supreme Court of Ohio noted that "[a]n uncontrolled discretion has invariably been held to be a delegation of legislative power." 106 N.E.2d at 623. The Court rejected the contention that appeal could ultimately be had to the council for review and that, therefore, no unlawful delegation was present. Referencing 9 McQuillin, Municipal Corporations, § 26.203, the Court upheld the lower court's ruling that the ordinance in question unlawfully delegated authority to the single member of council, observing that "[a]n ordinance conferring upon officials unrestricted discretion in the granting or refusal of building permits is a denial both of equal protection and due process of law." 106 N.E.2d at 624.

Likewise, our own courts have generally not been supportive of a subdelegation of discretionary functions to individual members of a public body or to agents or employees of that body. In *Pettiford v. S.C. State Bd. of Ed.*, 218 S.C. 322, 62 S.E.2d 780 (1950), our Supreme Court held that an administrative board or body, when acting in a quasi-judicial capacity, must itself consider all the evidence before rendering a decision. In the Supreme Court's opinion, while the Board of Education could delegate to Board members the authority to take testimony and hear witnesses, the Board could not subdelegate its decision-making authority.

*5 Moreover, in *Dawson v. State Law Enforcement Division*, 304 S.C. 59, 403 S.E.2d 124 (1991), the Supreme Court articulated the following reasoning:

[w]e further conclude the Grievance Committee, as the final administrative authority, may not delegate its role as final decision-maker to the Personnel Director. See *Bradley v. State Human Affairs Comm'n.*, 293 S.C. 376, 360 S.E.2d 537 (Ct. App. 1987). Once an appeal is forwarded to the Grievance Committee, the Committee has exclusive jurisdiction to decide all issues.

403 S.E.2d at 125.

In *Bradley*, the Court of Appeals held that the State Employee Grievance Committee chairperson could not delegate quasi-judicial powers of the Committee to the Committee's attorney, notwithstanding that a specific statute provided that the attorney could assist the Committee in preparation of its findings of fact, statements of policy and conclusions of law. The Court of Appeals concluded:

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[a] reading of the statute makes it clear that the job of a committee attorney is only advisory to the committee. (Not all committee members are lawyers and as such are not familiar with procedural and evidentiary matters.) However, the role of decision maker cannot be delegated. *Kerr-McGee Nuclear Corporation v. New Mexico Environmental Improvement Board*, 97 N.M. 88, 97, 637 P.2d 38, 47 (1981) (administrative bodies cannot delegate power, authority and functions which under the law may be exercised only by them, which are quasi-judicial in character or which require the exercise of judgment). Cf. *South Carolina Department of Social Services v. Bacot*, 280 S.C. 485, 489, 313 S.E.2d 45, 48 (Ct. App. 1984) (family court's duty to decide issue of paternity cannot be delegated to expert or anyone else). Here, the committee chairman took it upon himself to delegate decision making to the attorney. This was error. 360 S.E.2d at 539. ...

In addition, *Carll v. South Carolina Jobs-Economic Development Authority (JEDA)*, 284 S.C. 438, 327 S.E.2d 331 (1985) is instructive. In *Carll*, it was contended that the Act creating JEDA constituted an unlawful delegation of legislative power. The Court, rejecting the argument, analyzed the Act as follows:

[a]ccording to the provisions of the Act the Authority may delegate the implementation of the loan programs to lending institutions, but retains ultimate responsibility for the programs through regulations and contractual agreements with the institutions, and the Authority must provide proper oversight for implementation of the programs. Each loan made by the lending institution must be to someone in the beneficiary class and must comply with all of the Authority's regulations. Further, the lending institution must submit evidence satisfactory to the Authority that all loans satisfy the conditions and regulations of the Authority.

A careful review of these provisions shows the Authority maintains final control over the implementation and management of loan programs. Given the Authority's control over and involvement in the implementation of these programs, the Authority's power to delegate ministerial responsibility by contract pursuant to the Act and the Authority's regulations constitutes a constitutionally permissible delegation.

*6 327 S.E.2d at 336-337. (emphasis added).

The previous opinions of this Office are also in accord with the above-referenced South Carolina court decisions. In *Op. Atty. Gen.*, 89-45 (April 13, 1989), the question addressed was whether the administrative functions of a town's water and sewer department could be lawfully delegated to a single commissioner of public works. In concluding that such subdelegation was not authorized we stated:

[t]he general law, applicable in this situation, is that authority vested in a board or commission for public purposes may be exercised by a majority of the members if all have had notice and opportunity to act and a quorum, or the number fixed by statute, are present. The presence and vote of a quorum is necessary, and the action of less than a quorum of a public body is void. 1 *Am.Jur.2d Administrative Law* Sec. 196: Unless otherwise provided by statute, the authority of a commission may not be exercised by a single member of such body, or less than a majority. 73 *C.J.S. Public Administrative Law and Procedure* Sec. 20. Therefore, the response to your question is that the elected commissioner has no individual authority to single-handedly make decisions concerning direction and control of the water and sewer department. Instead, all such decisions must be made by a majority vote of a quorum of the commissioners of public works, except where the Town ordinance provides otherwise. See also, *Pettiford v. S.C. State Board of Education*, *supra*, as to what constitutes an unlawful delegation of power. (emphasis added).

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And in an Opinion, dated April 6, 1989, we addressed the issue of the Workers' Compensation Commissioners' authority to delegate the approval of settlement agreements. We referenced previous opinions, dated August 2, 1985 and December 1, 1986. In the April 6, 1989 Opinion, we stated:

[w]e believe that the August 2, 1985, Opinion made clear that the approval of workers' compensation settlements is a quasi-judicial function involving an exercise of discretion by an official who maintains quasi-judicial power under the Compensation Act and is non-delegable in the absence of express statutory authority. In the event that any doubt remains, I reference a recent State court decision [which recognized that] ... administrative bodies cannot delegate power, authority and functions which under the law may be exercised only by them, which are quasi-judicial in character or which require the exercise of judgement *Bradley v. State Human Affairs Comm.*, 296 S.C. 376, 360 S.E.2d 537, 539 (S.C. App. 1987).

Furthermore, in an Opinion dated August 25, 1983, we said that "[i]t would appear, then, that the Director of SLED has the authority to delegate the responsibilities for conducting hearing to a separate hearing officer so long as the final decision on the matter is made by him."

Also pertinent to the issue here is the case of *Gunter v. Blanton*, 259 S.C. 436, 192 S.E.2d 473 (1972). In *Gunter*, our Supreme Court struck down as unconstitutional a statute which delegated to the county legislative delegation the authority to approve or disapprove any tax increase adopted by the board of trustees of the school district. The Court's reasoning is pertinent to the present situation. Concluding that the General Assembly possessed no constitutional authority to delegate the approval or disapproval of tax increases to the delegation, the *Gunter* Court's reasoning may be summarized as follows:

*7 [u]nder Act No. 685, the Board of Trustees was granted the general power to levy taxes for school purposes in the district. After conferring this power on the Board, the Legislature passed Act No. 542 which attempted to amend the previous Act by granting to the Cherokee County Legislative Delegation the authority to approve or disapprove any tax increase adopted by the Board. This in effect, constituted the County Legislative Delegation a committee of the Legislature to determine not only when a tax increase was proper but also to take such action with regard to the increase as that committee might deem proper.

That the determination of the amount of the tax levy in the school district may be a legislative function delegable to the corporate authorities of the School District under Article X, Section 5 of the Constitution is beside the point. The Act does not and cannot authorize the members of the delegation to participate in this determination as legislators, for they may exercise legislative power only as members of the General Assembly. (emphasis added).

192 S.E.2d at 474.

We turn now to the application of the foregoing principles to the so-called "discretionary fund" presently being used in Florence County. It appears that the principal dispute concerning these funds surrounds the fact that the funds are placed in separate accounts, are expended at the virtually uncontrolled discretion of each individual member of Florence County Council, and may be carried forward each year. Council members are apparently authorized to expend these funds with virtually absolute discretion so long as they are expended for the general purposes established by county council as part of the appropriations process, i.e. for road paving or infrastructure improvement. [FN1]

However, the central problem here is the redelegation or subdelegation by Florence County Council to each individual member of Council to determine in that member's discretion how his or her share of the

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funds appropriated are to be spent. In our opinion, a court would likely conclude that such discretionary decisions may not be delegated to individual members of county council.

Courts have held that one of the most fundamental legislative powers bestowed upon a municipal council is the spending power. *Vermont Dept. of Public Service v. Massachusetts Municipal Wholesale Electric Co.*, 151 Vt. 73, 558 A.2d 215, 220 (1988). Moreover, as was stated in *Syrtel Building, Inc. v. City of Syracuse*, 78 Misc. 780, 358 N.Y.S.2d 627, 630 (1974) "[w]here the exercise of judgment and discretion and the power to burden the public treasury have been so vested by the Legislature, they may not be delegated wholesale."

In this same regard, our own Supreme Court has determined that the Legislature may not delegate authority to members of the legislative delegations to determine how so-called "C" funds may be spent in the county. *Tucker v. South Carolina Dept. of Highways and Public Transportation*, 309 S.C. 395, 424 S.E.2d 468 (1992). Likewise, the Court has held that the delegation of the spending power to a committee made up of members of the General Assembly unlawfully delegated legislative power to a committee of the Legislature. *State ex rel. McLeod v. McInnis*, 278 S.C. 307, 295 S.E.2d 633 (1982). While the express rationale of the Court in *Tucker* and *McInnis* is that the delegation of the power to make the expenditures constituted a violation of the separation of powers requirements of Article I, § 8 of the State Constitution, these cases are also instructive with respect to the situation at hand. The decisions also stand for the proposition that legislative power resides in the hands of the General Assembly and may not be delegated to a committee of the Legislature. *McInnis*, supra. [FN2] Similarly, the legislative authority bestowed upon county council to determine how taxpayers' monies are spent may not be subdelegated to individual members of county council.

*8 In an opinion dated January 11, 1985, we analyzed the role of the county administrator and county council in the budget process. We emphasized in that opinion the broad discretion which county council possesses in the spending and appropriation of county funds. We summarized the process this way:

Article X, Section 7(b) of the Constitution of South Carolina mandates that a county, as a political subdivision, "prepare and maintain annual budgets which provide for a sufficient income to meet its estimated expenses for each year Section 4-9-140, Code of Laws of South Carolina ... provides additionally, in part:

County Council shall adopt annually and prior to the beginning of the fiscal year operating and capital budgets for the operation of county government

Clearly, the ultimate responsibility for adopting and maintaining the annual budgets and insuring that adequate revenue is generated to meet expenses lies with ... County Council.

In another opinion dated March 31, 1997, we recognized that "[c]ounty council has 'general authority over the county treasury.'" Thus, an agreement whereby the Sheriff's Department might sell certain weapons with the proceeds going directly to the Sheriff's Office could not restrict county council in the appropriations and spending process. And in *Op. S.C. Atty. Gen.*, October 22, 1996, we noted that "[i]t goes without saying that the decision to spend money by a county council involves considerable discretion." Citing, *State ex rel. Snyder v. State Controlling Board*, 464 N.E.2d 617 (Ohio 1983). Finally, in *Op. S.C. Atty. Gen.*, *Op. No. 90-8* (January 17, 1990), we emphasized that any expenditure of proceeds by a law enforcement agency for an item that would have a recurring expense "must be approved by the governing body before the purchase."

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Moreover, in the January 17, 1990 opinion we referenced § 4-9-30(6), further concluding that "only county council" could properly allocate county funds (gambling proceeds) to pay a county employee's moving expenses. In that same vein, an opinion dated July 20, 1981 found that Aiken County Council is not authorized to allocate monies "from the county general fund for distribution and disbursement by individual members" of County Council.

Just as the latter opinion suggests, there appears to be no statute which authorizes a county council to delegate spending authority to its individual members. While § 4-9-100 authorizes additional administrative duties to be delegated to the chairman and to receive additional compensation therefor, no state law appears to authorize subdelegation to individual Council members such broad discretion as is present here to determine how the funds in question are to be spent. The fact that the General Assembly authorized subdelegation to a specific council member (chairman) in the limited circumstances defined by § 4-9-100 (administrative duties) strongly suggests that the subdelegation of authority to individual council members to expend funds from the so-called "discretionary fund" is not present. Absent such statutory authority being expressly provided by the General Assembly, it is our opinion that a court would conclude, just as the July 20, 1981 opinion so concluded, that this authority is lacking.

*9 It is true that § 4-9-30(6) authorizes county councils to establish such agencies and departments as are necessary and proper. Thus, it could perhaps be argued that the Florence County system allowing individual members of county council to possess the sole discretion to determine how these county funds are spent is no different from the creation of county agencies with the accompanying discretion necessary to implement the County Council's appropriations.

This argument, in our judgment, fails for the simple reason that Florence County Council may not delegate legislative or such broad discretionary power whether it be to an agency of the county or to individual members of Council itself. *McInnis*, supra. State law requires county council as a body, not individual members thereof, to determine how county funds are expended. Moreover, as we recognized in *Op. S.C. Atty. Gen.*, June 24, 1997 a statute (or ordinance) "which in effect reposes an absolute, unregulated and undefined discretion in another body bestows arbitrary powers and is an unlawful delegation of legislative powers." Citing, *South Carolina State Highway Dept. v. Harbin*, 226 S.C. 585, 86 S.E.2d 466 (1955); *State v. Watkins*, 259 S.C. 185, 191 S.E.2d 135 (1972); *Schryver v. Schirmer*, 171 N.W.2d 634 (S.D. 1969). And, as the Supreme Court recently stressed in *Condon v. Hodges*, 349 S.C. 232, 562 S.E.2d 623 (2002), a law or enactment must "declare[] a legislative policy, establish[] primary standards for carrying it out, it lay [] down an intelligible principle to which the administrative officer must conform, with a proper regard for the protection of the public interests" See also, *Bauer v. S.C. State Housing Authority*, 271 S.C. 219, 246 S.E.2d 869 (1978); *Cole v. Manning*, 240 S.C. 160, 125 S.E.2d 621 (1962).

In *Richards v. City of Columbia*, 227 S.C. 538, 88 S.E.2d 683 (1955), the Supreme Court applied this test to a municipal ordinance, declaring that such ordinance unlawfully delegated legislative power. There, consistent with an Act of the General Assembly, the City Council of Columbia delegated to the Commission for Urban Rehabilitation and/or the Rehabilitation Director the authority to determine whether a dwelling "is unfit for human habitation if conditions existing in such dwelling or dwelling unit are dangerous or injurious to the health, safety or morals of the occupants of such dwelling or dwelling unit, the occupants of neighboring dwellings or other residents of the City" Certain minimal conditions were specified in the ordinance to make a dwelling fit for human habitation. Other conditions

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were enumerated which would make a dwelling unfit. Nevertheless, the Court struck down this portion of the ordinance as constituting an unlawful delegation of legislative authority. The Court reasoned as follows:

[t]he sixth point is that the statute and ordinance contain an unconstitutional delegation of legislative authority. The recent case of South Carolina State Highway Department v. Harbin ... sustains appellants with respect to the portions of section 9 of the ordinance which are italicized in the quotation of it hereinabove and those provisions must be stricken down as unconstitutional. They do not contain a sufficiently definite standard or yardstick, just as in the Harbin case it was held that the attempted delegation of authority to the Highway Department to suspend or revoke a driver's license for cause satisfactory to it was invalid.

*10 88 S.E.2d at 691. In Harbin, the Court, in striking down the statute in question, noted that "... in the grant of this authority [to Highway Department to revoke or suspend driver's license for cause satisfactory to the Department], there is no standard except the personal judgment of the administrative officers of the Department." 226 S.C. at 596.

Likewise, the only apparent standard here regarding the expenditure of the funds in question by individual members of Florence County Council is that such funds be for road paving or infrastructure improvements. Otherwise, such expenditures lie within the sole discretion or the "personal judgment" of the member of Florence County Council. Harbin, supra. In our opinion, based upon the foregoing authorities, a court would likely determine that such constitutes an unconstitutional delegation of the legislative power.

Conclusion

Of course, the Florence County Ordinance creating the so-called "discretionary fund" would be entitled to a presumption of validity. Only a court could declare such ordinance to be unconstitutional. However, it is our opinion that the delegation of discretion to individual members of County Council to determine how such funds may be spent in their district constitutes an unlawful delegation of legislative power. Rather than this being a delegation of mere administrative or ministerial functions, Florence County Council has delegated legislative authority without the necessary governing standards or guidelines to avoid serious constitutional questions regarding these expenditures. As our Supreme Court recognized in Harbin v. S.C. Highway Dept., supra, "an absolute, unregulated, and undefined discretion in an administrative body bestows arbitrary power and is an unlawful delegation of legislative powers."

In our opinion, the so-called "discretionary fund" most likely falls into this category. A previous opinion of this Office concluded that the authority to make distribution of funds could not be delegated by County Council to individual council members. We reaffirm this conclusion today. Accordingly, in our opinion, a court would likely conclude that the delegation of discretion to individual members of county council to determine how these funds are spent is unconstitutional.

Yours Very Truly,

Henry McMaster

[FN1]. There is evidently some dispute as to whether all expenditures are for a public purpose, however. We have been provided a news article appearing in the News Journal, dated September 3, 2003 which

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presents certain information that some expenditures may have been for private purposes. An opinion of the Attorney General cannot determine factual disputes. See, Op. S.C. Atty. Gen., December 12, 1983. Thus, we make no conclusion regarding whether or not all expenditures from this fund have been for a public purpose.

[FN2]. The constitutional principle of separation of powers applicable to state government by Article I, § 8 of the Constitution has been held inapplicable to local political subdivisions of the State. *Gaud v. Walker*, 214 S.C. 451, 53 S.E.2d 316 (1949). County Councils typically exercise the powers of all three branches of government. See, Op. S.C. Atty. Gen., September 10, 1973. Nevertheless, the legislative and discretionary decision-making authority may not be delegated.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE) CASE NO. 06-CP-23-4637

2006 AUG 21 P 4: 52
The South Carolina Public Interest)
Foundation, and Edward D. Sloan,)
Jr., individually, and on behalf of)
all others similarly situated,)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

Plaintiffs,

v.

MOTION TO DISMISS

Greenville County, a Political)
Subdivision of the State of South)
Carolina, Herman G. Kirven, Jr.,)
Judy Gilstrap, Eric Beddingfield,)
Jim Burns, Scott Case, Joseph Dill,)
Cort Flint, Lottie Gibson, Mark)
Kingsbury, Xanthene Norris,)
Robert Taylor, and Tony Trout,)

Defendants.

Pursuant to Rules 12(b)(1) and 12(b)(6), SCRCP, the Defendants Greenville County and Greenville County Council (collectively the "County") hereby move that the Court dismiss the Plaintiffs' complaint. This motion is made in lieu of providing an answer to Plaintiffs' complaint, and it is based upon the following:

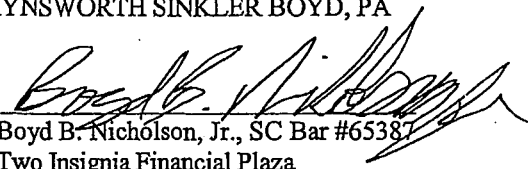
(1) The Plaintiffs' complaint is barred by the doctrines of res judicata and collateral estoppel. In the case of Sloan v. Greenville County, C.A. No. 96-CP-23-2918 (hereinafter "Sloan I"), Plaintiff Edward Sloan has already litigated or could have litigated the same issues raised in the present case. Thus, Plaintiffs' claims are barred.

(2) The South Carolina Public Interest Foundation has no standing to bring this action, as it is not a taxpayer of Greenville County. Mr. Sloan likewise has no standing to bring

this action, as he has previously litigated or could have litigated in Sloan I all the issues that he raises in his present complaint. Thus, he has no direct interest in the current action.

The County bases its motion on the attached pleadings from Sloan I, the memorandum of law that the County will file prior to a hearing in this matter, and such other materials as may be presented to the Court.

HAYNSWORTH SINKLER BOYD, PA

By: 

Boyd B. Nicholson, Jr., SC Bar #65387
Two Insignia Financial Plaza
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Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-3200
Attorneys for Defendants

Dated: August 21, 2006
Greenville, South Carolina
DOC #554859

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

96-CP-23- 2918

Edward D. Sloan, Jr., Individually,)
as a Citizen, Resident, Taxpayer)
and Registered Elector of)
Greenville County, and on behalf)
of all others similarly situated,)

Plaintiff,)

vs.)

The County Council of Greenville)
County as the Governing Body of)
Greenville County, a Political)
Subdivision of the State of South)
Carolina,)

Defendant.)

COMPLAINT
FOR DECLARATORY JUDGMENT
TEMPORARY RESTRAINING ORDER,
WRIT OF MANDAMUS, AND PERMANENT
INJUNCTIVE RELIEF

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
J. T. HENNER, JR.

OCT 14 9 41 AM '96

Plaintiff, complaining of the Defendant, would show unto the Court:

I. CONSTITUTIONAL AND LEGAL BACKGROUND

1. This action is brought pursuant to Section 15-53-10 of the South Carolina Code, Annotated (hereinafter S.C.C.A.), as amended, known as the Uniform Declaratory Judgment Act; Rule 57 SCRCP; and Rule 65 SCRCP.

2. Plaintiff seeks a declaratory judgment, a writ of prohibition and/or a writ of mandamus prohibiting the County Council from failing and refusing to comply with provisions of the South Carolina Constitution and statutory provisions and/or violating the ordinances of Greenville County pertaining to the levying and collection of revenues, appropriation thereof and the expenditure thereof and, directing and/or requiring the Greenville County Council to comply with said provisions; the political power of the people (Art. I, Section 1); the right of the people to petition for redress of grievances (Art. I, Section 2); the right of Plaintiff to equal protection and due process (Art. I, Section 3); the prohibition of appropriation and/or expenditure of funds (Article XI, Section 4) and Section 7-81 of the Greenville County Ordinances; the mandatory application of the provisions of the Constitution (Art. I, Section 23); the right of the people to consent and/or refuse to consent to charge (Art. X, Section 5) and its requirement that any tax levied shall state the public purpose to which the proceeds shall apply; the prohibition of the pledge of the credit of either the

State or a political subdivision for the benefit of any individual, company, association, or corporation (Art. X, Section 11); the Constitutional provisions pertaining to budgets of political subdivisions (Article X, Section 7(b)); Payment from the treasury of a political subdivision only in pursuance of appropriations made by law (Article X, Section 8); the prohibition of a political subdivision from pledging or loaning its credit for the benefit of any individual, company, association, corporation, or any religious or other private education institution (Article, Section 11); functions of government (Article XII, Section 1); the power to levy ad valorem taxes and make appropriations for public purposes as set forth in Section 4-9-30(5), S.C.C.A.; the adoption of a budget and appropriations pursuant to Section 4-9-140, S.C.C.A.; the prohibition of the diversion of funds (Section 11-1-40, S.C.C.A.).

II. PARTIES

3. Plaintiff is a citizen, resident, taxpayer and registered elector of Greenville County and bring this action individually on his behalf and on behalf of all others similarly situated.

4. Greenville County (herein after the "County") is a political subdivision of the State of South Carolina and the Greenville County Council (hereinafter the "Council") is vested with the power of governing said County in compliance with the Constitution and laws of said State and with enacting such ordinances as are consistent with the Constitution and statutory law.

III. HISTORICAL BACKGROUND AND ACTS OF DEFENDANTS

5. Plaintiff is also informed and believes that Defendant has expended or authorized to be expended (a/k/a "donated") funds for religious, charitable, private, political, non-governmental and/or other unconstitutional and unlawful purposes in contravention of said Constitution and laws.

6. Plaintiff is informed and believes that such is in violation of the Constitution and laws of the State of South Carolina; Section 7-81 of the Ordinances of Greenville County; the Budget Policies of Greenville County and Revenue Policies of Greenville County and are contrary to the public interest.

7. Plaintiff is further informed and believes that such donations and/or contributions are in excess of the authority granted the Defendant, and are *ultra vires*.

8. Plaintiff is reliably informed that the Defendant is engaged in willful acts in violation of the statutes, specifically that is acting *ultra vires*, and that it should be enjoined from further such acts, appropriations, expenditures, contributions, donations or otherwise disbursing funds as hereinabove set forth until further order of this Court.

9. Plaintiff is further informed and believes that this Court should issue a writ of prohibition prohibiting Defendant from making donations of funds and a writ of mandamus requiring the Defendant to comply with and not violate the statutes and the Constitution, laws, ordinances and policies applicable thereto.

10. If Defendant is not enjoined, Plaintiff is informed and believe that he and the

taxpayers of Greenville County will suffer irreparable harm in the way of violations of the Constitution and statutes, denial of due process and equal protection as guaranteed by the Constitution and the aforesaid statutes as well as being subjected to assessments and levying of taxes for payment of such contributions, donations, and expenditures all in violation of due process and equal protection.

11. Accordingly, Plaintiff believes that he is entitled to injunctive relief and a writ of mandamus directing the Defendant to strictly comply with and not violate the Constitution, the law and the ordinances and policies of Greenville County

12. Plaintiff is informed and believes that Defendant knew, or by the exercise of due diligence, should have known, that its acts are and were unlawful, *ultra vires*, in excess of authority, without authority, unconstitutional, and in violation of the statutory law of this State.

14. Plaintiff is also informed and believes that such funds may be expended only for the purposes and in the manner authorized by law, that such cannot be diverted for other purposes, that all laws pertaining thereto must be strictly construed, that such are without authority, are void, and further that Defendant has acted in bad faith, made unlawful contributions, donations, and/or expenditures and has abused its discretion in that it has no discretion to violate Constitutional and statutory authority.

15. That Defendant has no authority to make such contributions, donations, and/or expenditures, that such is strictly prohibited by the Constitution and such should be enjoined.

16. Plaintiff is entitled to a temporary and permanent injunction enjoining Defendant from such expenditures. Plaintiff is informed and believe that he will suffer irreparable harm in the way of assessments levies, taxation, prejudice to his position and that the public will be exposed to loss and harm as recited herein, if a temporary order is not issued.

17. Plaintiff further believes the harm to Defendant, if any, which Plaintiff specifically denies, is negligible as compared to that suffered or to be suffered by Plaintiff and taxpayers at large and that he is entitled to injunctive relief, a writ of mandamus and/or prohibition requiring Defendant to strictly comply with the Constitution and the statutes and to cease and desist from any further activities as referred to above until Order of this Court.

IV. RELIEF SOUGHT

1. The issuance of a temporary restraining order restraining and enjoining Defendant from making donations until a hearing can be had as to whether or not to make such temporary restraining order made permanent pending the outcome of this litigation;

2. The issuance of a declaratory judgment adjudging said acts of Defendant in violation of the Constitution and the statutes, unlawful, unconstitutional, *ultra vires*, arbitrary, capricious, an abuse of discretion, misconduct and a breach of duty;

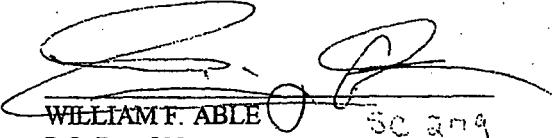
3. Declaring the provisions of the Constitution and the statutes aforesaid to be mandatory and Defendant's compliance therewith is required.

4. Enjoining Defendant from further expenditures except in strict compliance with the Constitution and laws regarding the assessment, levy, collection, budgeting, appropriation and expenditure of public funds.

5. A writ of mandamus requiring Defendant to strictly comply with the applicable Constitutional provisions and laws and directing it to cease and desist committing acts not within its discretion, lawful duties and authority;

6. For an award of attorney's fees and costs and for such other and further relief as the Court deems just and proper:

Irmo, SC
October 11, 1996



WILLIAM F. ABLE
P.O. Box 508
Irmo, SC 29063
(803)749-1764 Fax (803) 781-8758
Attorney for Plaintiffs

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
96-CP- 23-

Edward D. Sloan, Jr., Individually,
as a Citizen, Resident, Taxpayer
and Registered Elector of
Greenville County, and on behalf
of all others similarly situated,

Plaintiff,

vs.

The County Council of Greenville
County as the Governing Body of
Greenville County, a Political
Subdivision of the State of South
Carolina,

Defendant.

SUMMONS

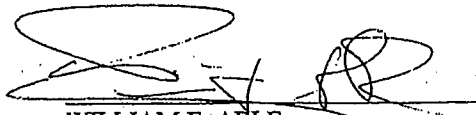
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
FLETCHER C. JAMES JR.

OCT 14 9 41 AM '96

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his offices, Post Office Box 508, Irmo, South Carolina, 29063 within thirty (30) days after the service hereof exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

October 11, 1996



WILLIAM F. ABLE
PO Box 508
Irmo, SC 29063
(803) 7401764 (fax) 781-8758
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

96-CP-23- 2918

Edward D. Sloan, Jr., Individually,)
as a Citizen, Resident, Taxpayer)
and Registered Elector of)
Greenville County, and on behalf)
of all others similarly situated,)

Plaintiff,

vs.

The County Council of Greenville)
County as the Governing Body of)
Greenville County, a Political)
Subdivision of the State of South)
Carolina,)

Defendant.

ACCEPTANCE OF SERVICE

FILED-CLERK OF COURT
GREENVILLE COUNTY
FLETCHER

OCT 14 11 05 AM '96

in

Service of the Summons and Verified Complaint is hereby acknowledged and a copy thereof
retained this 14th day of October, 1996.

GREENVILLE COUNTY

BY: Ruth Brinkman
Its

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
96-CP- 23-

Edward D. Sloan, Jr., Individually,)
as a Citizen, Resident, Taxpayer)
and Registered Elector of)
Greenville County, and on behalf)
of all others similarly situated,)

Plaintiff,)

vs.)

VERIFICATION

The County Council of Greenville)
County as the Governing Body of)
Greenville County, a Political)
Subdivision of the State of South)
Carolina,)

Defendant.)

PERSONALLY appeared before me, Edward D. Sloan, Jr., who, being duly sworn, deposes and says that he is a citizen, resident, registered elector, property owner and taxpayer in Greenville County. He has read the complaint herein and the matters alleged therein are true of his own knowledge except those alleged upon information and belief, and, as to those, he believes them to be true.

Edward D. Sloan, Jr. (L.S.)
EDWARD D. SLOAN, JR.

SWORN to before me this 14th day of October, 1996.

[Signature] (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 12-20-97

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
96-CP-23-2918

Edward D. Sloan, Jr., Individually,)
as a Citizen, Resident, Taxpayer)
and Registered Elector of)
Greenville County, and on behalf)
of all others similarly situated,)

Plaintiff,)

vs.)

The County Council of Greenville)
County as the Governing Body of)
Greenville County, a Political)
Subdivision of the State of South)
Carolina,)

Defendant.)

ENTERED COMPUTER

AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT
TEMPORARY RESTRAINING ORDER
WRIT OF MANDAMUS, AND PERMANENT
INJUNCTIVE RELIEF

Plaintiff, complaining of the Defendant, would show unto the Court:

I. CONSTITUTIONAL AND LEGAL BACKGROUND

1. This action is brought pursuant to Section 15-53-10, et seq., of the South Carolina Code of Laws (hereinafter S.C.C.A.), as amended, known as the Uniform Declaratory Judgment Act; Rule 57 SCRCP,; and Rule 65 SCRCP.

2. Plaintiff seeks a declaratory judgment, a writ of prohibition and/or a writ of mandamus prohibiting the Defendant from failing and refusing to comply with provisions of the South Carolina Constitution and statutory provisions as well as the legally enacted Ordinances of Greenville County pertaining to the levying and collection of revenues, appropriations thereof and the expenditure thereof and, directing and/or requiring the said Defendant to comply with said provisions; the political

power of the people (Art. I, Section 1); the right of the people to petition for redress of grievances (Ar. I, Section 2); the right of the Plaintiff to equal protection and due process (Art. I, Section 3); the prohibition of appropriation and/or expenditure of funds (Art. XI, Section 4) and Section 7-81 of the Greenville County Ordinances; the mandatory application of the provisions of the Constitution (Art. I, Section 23); the right of the people to consent and/or refuse to consent to charge (Art. X, Section 5) and its requirement that any tax levied shall state the public purpose to which the proceeds shall apply; the prohibition of the pledge of the credit of either the State or a political subdivision for the benefit of any individual, company, association, or corporation (Art. X, Section 11; the Constitutional provisions pertaining to budgets of political subdivisions [Art. X, Section 7(b)]; payments from the treasurer of a political subdivision only in pursuance of appropriations made by law (Art. X, Section 8); the prohibition of a political subdivision from pledging or loaning its credit for the benefit of an individual, company, association, corporation, or any religious or other private educational institution (Art. X, Section 11); functions of government (Art. XII, Section 1); the power to levy ad valorem taxes and make appropriations for public purposes as set forth in Section 4-9-30(5), S.C.C.A.; the adoption of a budget and appropriations pursuant to Section 4-9-140, S.C.C.A.; and the prohibition of the diversion of funds (section 11-1-40, S.C.C.A.).

II. PARTIES

3. Plaintiff is a citizen, resident, taxpayer and registered elector of Greenville County and brings this action individually on his behalf and on behalf of all other similarly situated.

4. Greenville County (hereinafter "County" and/or "Defendant") is a political subdivision of the State of South Carolina and the Greenville County Council (hereinafter "Council") is vested with the power of governing said County in compliance with the Constitution and laws of said State

and with enacting such ordinances as are consistent with the Constitution and statutory law.

III. HISTORICAL BACKGROUND AND ACTS OF DEFENDANT

5. Plaintiff is informed and believes that, over the years, Defendant has followed a custom, policy, practice and/or procedure of "appropriating" a "discretionary" fund, from which each of the Council members, either tacitly or in writing, agree and are allowed to expend a proportionate share of such appropriated fund as he/she deems fit, and Plaintiff has copies of vouchers, purchase orders, requisitions, drafts and/or checks reflecting expenditures for purposes as stated above and as will be hereinafter stated.

6. Plaintiff is also informed and believes (and has the aforesaid documents reflecting such) that various Council members have individually requested, authorized and/or expended (a/k/a "donated") funds to religious, charitable, private, political, non-governmental and/or other unconstitutional and unlawful purposes in contravention of said Constitution and laws.

7. Plaintiff is further informed and believes that such is in violation of the Constitution and laws of the State of South Carolina; Section 7-81 of the Ordinances of Greenville County; the Budget Policies of Greenville County and Revenue Policies of Greenville County and is contrary to the public interest.

8. Plaintiff is also informed and believes that such expenditures, donations and/or contributions are in excess of the authority granted the Defendant, and are *ultra vires*.

9. Plaintiff is reliably informed that the Defendant is engaged in willful acts in violation of the statute, specifically that it is acting *ultra vires*, and that it should be enjoined from further such acts, appropriations, expenditures, contributions, donations or otherwise disbursing funds as hereinabove set forth until further Order of this Court.

10. Plaintiff is further informed and believes that this Court should issue a writ of prohibition prohibiting Defendant from such disbursing of funds and a writ of mandamus requiring the Defendant to comply with the statutes and the Constitution, laws, ordinances and policies lawfully enacted and applicable thereto.

11. If Defendant is not enjoined, Plaintiff is informed and believes that he and the taxpayers of Greenville County will suffer irreparable harm in the way of violations of the Constitution and statutes, denial of due process and equal protection as guaranteed by the Constitution and the aforesaid statutes as well as being subjected to assessments and levying of taxes for payment of such illegal contributions, donations, and expenditures all in violation of due process and equal protection.

12. Accordingly, Plaintiff believes that he is entitled to injunctive relief and a writ of mandamus directing Defendant to strictly comply with the Constitution, the law and the ordinances and policies of Greenville County.

13. Plaintiff is informed and believes that Defendant knew, or by the exercise of due diligence, should have known, that its acts are and were unlawful, *ultra vires*, in excess of authority, without authority, unconstitutional, and in violation of the statutory law of this State.

14. Plaintiff is also informed and believes that such funds may be expended only for the purposes and in the manner authorized by law, that such cannot be diverted for other purposes, that all laws pertaining thereto must be strictly construed, that such acts are without authority, are void, and, further, that Defendant has acted in bad faith, made unlawful contributions, donations and/or expenditures and included in its budget items not authorized by law and have abused its discretion in that it has no discretion to violate the Constitution and statutory authority.

15. That Defendant has no authority to make such contributions, donations, and/or expenditures, that such are strictly prohibited by the Constitution and should be enjoined.

16. Plaintiff is entitled to a temporary and permanent injunction enjoining Defendant from such expenditures. Plaintiff is informed and believes that he will suffer irreparable harm in the way of assessments, levies, taxation, prejudice to his position and that the public will be exposed to loss and harm as recited herein, if a temporary order is not issued.

17. Plaintiff further believes the harm to Defendant, if any, which Plaintiff specifically denies, is negligible as compared to that suffered or to be suffered by Plaintiff and taxpayers at large and that he is entitled to injunctive relief, a writ of mandamus and/or prohibition requiring Defendant to strictly comply with the Constitution and the statutes and to cease and desist from any activities as referred to above until further Order of this Court.

IV. RELIEF SOUGHT

1. The issuance of a temporary restraining order restraining and enjoining Defendant from any further expenditures of funds and/or the disbursing of such funds ("discretionary") until a hearing can be had as to whether or not to make such temporary restraining order permanent pending the outcome of this litigation;

2. The issuance of a declaratory judgment adjudging said acts of Defendant in violation of the Constitution and the statutes, unlawful, unconstitutional, *ultra vires*, arbitrary, capricious, an abuse of discretion, misconduct and a breach of duty;

3. An order rescinding, suspending, superseding or otherwise staying any assessment, levy, appropriation and/or expenditure of such funds until the Constitution and statutes have been complied with;

4. Declaring the provisions of the Constitution and the statutes aforesaid to be mandatory and Defendant's compliance therewith is required;

5. Enjoining Defendant from further expenditures related to funds except in strict compliance with the Constitution and laws regarding the assessment, levy, collection, budgeting, appropriation and expenditure of public funds;

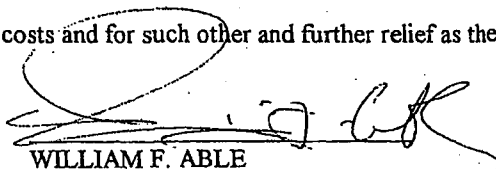
6. A writ of mandamus requiring Defendant to strictly comply with the applicable Constitutional provisions and laws and directing it to cease and desist committing acts not within its discretion, lawful duties and authority;

7. Declaring the assessments, levies, collections, budgeting and appropriations undertaken so far as they relate to the aforesaid donations, contributions, and/or expenditures to be null, void, unlawful, without authority and in excess of lawful authority;

8. For an award of attorney's fees and costs and for such other and further relief as the Court deems just and proper.

Irmo, South Carolina

February 17, 1997



WILLIAM F. ABLE

PO Box 508

Irmo, SC 29063

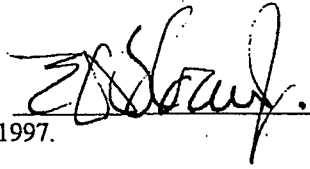
(803) 749-1764 Fax (803) 781-8758

Attorney for Plaintiff

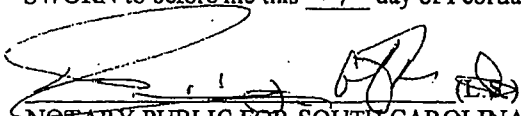
VERIFICATION

PERSONALLY appeared before me, Edward D. Sloan, Jr., who being duly sworn, deposes and says that he is the plaintiff in the foregoing action, that he has read the complaint herein and the matters alleged therein are true of his own knowledge except those alleged upon information and belief, and, as to those, he believes them to be true.

SWORN to before me this 17th day of February, 1997.



(L.S.)



NOTARY PUBLIC FOR SOUTH CAROLINA

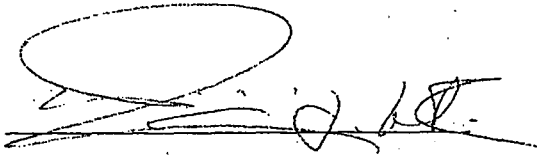
My Commission Expires: 2/13/2000

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Plaintiff's Amended Complaint was served upon Defendant by depositing same in the United States Mail, postage prepaid to counsel for Defendant as follows:

W. Howard Boyd, Jr., Esquire
PO Box 10589
Greenville, SC 29603

this 14 day of February, 1997.

A handwritten signature in dark ink, appearing to read "W. Howard Boyd, Jr.", is written over a horizontal line.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

)
) IN THE COURT OF COMMON PLEAS
)

Edward D. Sloan, Jr., individually,
and as a Citizen, Resident,
Taxpayer and Registered Elector
of Greenville County, and on
behalf of all others similarly
situated,

Plaintiff,

vs.

The County Council of Greenville
County as the Governing Body of
Greenville County, a Political
Subdivision of the State of South
Carolina,

Defendant.

ANSWER

C.A. No. 96-CP-231-2918

FILED-CLERK OF COURT
GREENVILLE, S.C.
FLETCHER
MAY 1 3 41 PM '97

ENTERED COMPUTER

The defendant, Greenville County Council, answering the second amended complaint of the plaintiff herein, would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

I

The defendant, Greenville County Council, denies the allegations of paragraph 1.

II

It lacks sufficient information to form a belief as to the allegations of paragraph 2, and therefore denies same. However, it would allege and show unto the Court that the plaintiff is not entitled to any relief based upon the allegations of the complaint.

III

It lacks sufficient information to form a belief as to the allegations of paragraph 3, and therefore denies same.

IV

It admits the allegations of paragraph 4.

V

It denies the allegations of paragraph 5.

VI

It admits so much of the allegations of paragraph 6 as allege that no discovery has been conducted in this lawsuit to date. It denies the remaining allegations of paragraph 6.

VII

It denies the allegations of paragraph 7.

VIII

It denies the allegations of paragraph 8.

IX

It denies the allegations of paragraph 9.

X

It denies the allegations of paragraph 10.

XI

It denies the allegations of paragraph 11.

XII

It denies the allegations of paragraph 12.

XIII

It denies the allegations of paragraph 13.

XIV

It denies the allegations of paragraph 14.

XV

It denies the allegations of paragraph 15.

XVI

It denies the allegations of paragraph 16.

XVII

It denies the allegations of paragraph 17.

XVIII

It denies the allegations of paragraph 18.

XIX

The defendant denies each and every allegation of the second amended complaint not specifically admitted, modified or explained.

FOR A SECOND DEFENSE

XX

The defendant incorporates the allegations of its first defense which are consistent with this defense.

XXI

It alleges that the second amended complaint fails to state facts sufficient to constitute a cause of action against it, and accordingly, the second amended complaint should be dismissed.

FOR A THIRD DEFENSE

XXII

The defendant incorporates the allegations of its first defense which are consistent with this defense.

XXIII

It alleges that the plaintiff lacks standing to bring this action, and accordingly, it should be dismissed.

FOR A FOURTH DEFENSE

XXIV

The defendant incorporates the allegations of its first defense which are consistent with this defense.

XXV

It alleges that the issues raised by the allegations of the second amended complaint are now moot, and accordingly, this action should be dismissed.

WHEREFORE, having fully answered the second amended complaint of the plaintiff herein, the defendant, Greenville County Council, prays that the same be dismissed with costs, and for such other and further relief as the Court may deem just and proper.


W. Howard Boyd, Jr. (#826)
Ronald K. Wray, II (#65246)
GIBBES, GALLIVAN, WHITE
& BOYD, P.A.
P. O. Box 10589
Greenville, SC 29603
(864) 271-9580

Greenville, SC

May 1, 1997

Attorneys for Defendant.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

)
) IN THE COURT OF COMMON PLEAS
)

Edward D. Sloan, Jr., individually,
and as a Citizen, Resident,
taxpayer and Registered Elector
of Greenville County, and on
behalf of all others similarly
situated,

Plaintiff,

vs.

The County Council of Greenville
County as the Governing Body of
Greenville County, a Political
Subdivision of the State of South
Carolina,

Defendant.

CERTIFICATE OF SERVICE

C.A. No. 96-CP-2291

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
MAY 1 3 41 PM '97

The undersigned, Lou Ann Wakeland, secretary of W. Howard Boyd, Jr., certifies that on the 1st day of May, 1997, she served an answer, first set of interrogatories to plaintiffs and first request for production, inspection and copying to plaintiff of defendant, Greenville County Council, on the attorney for the plaintiff, by depositing in the United States mail, with due and proper postage affixed thereto, copies of the same addressed to:

Mr. William F. Able
Attorney at Law
P. O. Box 508
Irmo, SC 29063

Lou Ann Wakeland
Lou Ann Wakeland

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
96-CP-23-2918

Edward D. Sloan, Jr., Individually,)
as a Citizen, Resident, Taxpayer)
and Registered Elector of)
Greenville County, and on behalf)
of all others similarly situated,)

Plaintiff,)

vs.)

The County Council of Greenville)
County as the Governing Body of)
Greenville County, a Political)
Subdivision of the State of South)
Carolina,)

Defendant.)

SECOND AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT
TEMPORARY RESTRAINING ORDER,
WRIT OF MANDAMUS, AND PERMANENT
INJUNCTIVE RELIEF

ENTERED COMPUTER

APR 16 12 48 PM '97
FILED
CLERK OF COURT
JUDGE
SB

Plaintiff, complaining of the Defendant, would show unto the Court:

I. CONSTITUTIONAL AND LEGAL BACKGROUND

1. This action is brought pursuant to Section 15-53-10 of the South Carolina Code, Annotated (hereinafter S.C.C.A.), as amended, known as the Uniform Declaratory Judgment Act; Rule 57 SCRCP; and Rule 65 SCRCP.

2. Plaintiff seeks a declaratory judgment, a writ of prohibition and/or a writ of mandamus prohibiting the Defendant from failing and refusing to comply with provisions of the South Carolina Constitution and statutory provisions and/or violating the ordinances of Greenville County pertaining to the levying and collection of revenues, appropriation thereof and the expenditure thereof and, directing and/or requiring the said Defendant to comply with said provisions; the political power of the people (Art. I, Section 1); the right of the people to petition for redress of grievances (Art. I, Section 2); the right of Plaintiff to equal protection and due process (Art. I,

Section 3); the prohibition of appropriation and/or expenditure of funds (Article XI, Section 4) and Section 7-81 of the Greenville County Ordinances; the mandatory application of the provisions of the Constitution (Art. I, Section 23); the right of the people to consent and/or refuse to consent to charge (Art. X, Section 5) and its requirement that any tax levied shall state the public purpose to which the proceeds shall apply; the prohibition of the pledge of the credit of either the State or a political subdivision for the benefit of any individual, company, association, or corporation (Art. X, Section 11); the Constitutional provisions pertaining to budgets of political subdivisions (Article X, Section 1(b)); Payment from the treasury of a political subdivision only in pursuance of appropriations made by law (Article X, Section 8); the prohibition of a political subdivision from pledging or loaning its credit for the benefit of any individual, company, association, corporation, or any religious or other private educational institution (Article, Section 11); functions of government (Article XII, Section 1); the power to levy ad valorem taxes and make appropriations for public purposes as set forth in Section 4-9-30(5), S.C.C.A.; the adoption of a budget and appropriations pursuant to Section 4-9-140, S.C.C.A.; the prohibition of the diversion of funds (Section 11-1-40, S.C.C.A.).

II. PARTIES

3. Plaintiff is a citizen, resident, taxpayer and registered elector of Greenville County and bring this action individually on his behalf and on behalf of all others similarly situated.

4. Greenville County (herein after the "County" and/or "Defendant") is a political subdivision of the State of South Carolina and the Greenville County Council (hereinafter the "Council") is vested with the power of governing said County in compliance with the Constitution and laws of said State and with enacting such ordinances as are consistent with the Constitution and statutory law.

2 

III. HISTORICAL BACKGROUND AND ACTS OF DEFENDANTS

5. Plaintiff is also informed and believes that, over the years, Defendant has followed a custom, policy, practice and/or procedure of "appropriating" a "discretionary" fund, from which each of the Council members, either tacitly or in writing, agree and are allowed to expend a proportionate share of such appropriated fund as he/she deems fit, as partially evidenced by the itemized list attached hereto as Exhibit "A" and incorporated herein by referenced, and Plaintiff has copies of supporting vouchers, purchase orders, requisitions, drafts and/or checks reflecting expenditures for such purposes.

6. Plaintiff is further informed and believes that other such expenditures may have been made in that no discovery has been done to date and that which is reflected herein and on the attached Exhibit "A" is only that which Plaintiff has been able to obtain without discovery.

7. Plaintiff is also informed and believes (and the aforesaid documents so reflect) that various Council members have individually requested, authorized and/or expended (a/k/a "donated") funds to religious, charitable, private, political, non-governmental and/or other unconstitutional and unlawful purposes in contravention of said Constitution and laws.

8. Plaintiff is informed and believes that such are illegal, unconstitutional and/or *ultra vires* in the following particulars:

(a) In violation of Article 1, Sections 1 of the Constitution of the State of South Carolina in that they are in derogation of all political power vesting in the people (Plaintiff) and their (his) right at all times to modify their form of government:

(b) In violation of Article 1, Section 2 of said Constitution in that such violate and/or impinge upon religious freedom, the establishment and/or support of religion, the abridging of free speech and/or support the purported "free speech" of others to the derogation of Plaintiff's "free speech", and further abridging the right of freedom of assembly and to petition the government by the people (plaintiff) and/or favoring and financially supporting such rights of others to the detriment of the others (Plaintiff);

(c) In violation of Article 1, Section 3 of said Constitution in that disproportionately

impact detrimentally upon the rights of the people (Plaintiff) to privileges and immunities without due process and in the denial of Plaintiff and others to the equal protection of the laws;

(d) In violation of Article X, Section 5 of said Constitution in that the unconstitutionality, illegality and *ultra vires* nature of the acts alleged are impose a tax, subsidy or charge for which the people have not consented and for which their representatives are without authority to consent whether or not lawfully assembled, and further by failing to distinctly state the public purpose to which the proceeds of the tax is to be applied

(e) In the violation of Article X, Section 8 of said Constitution by wilfully drawing money out of the County Treasurer (Finance Department) in pursuance to appropriations not made according to law and the Constitution;

(f) In violation of Section 4-9-30, S.C.C.A., in that said expenditures are in violation of the statutory requirement to levy ad valorem property taxes and service charges in a uniform manner and in direction to the level of services provided to the area taxed and/or charged;

(g) In violation of Article X, Section 11 of the South Carolina Constitution in that the credit of the Defendant, by virtue of the violations alleged herein, has been and is being pledged and/or loaned for the benefit of individuals, companies, associations, corporations, religious and/or private educational institutions;

(h) In violation of Article XI, Section 4 of said Constitution in that the violations alleged herein result in the payment from public funds and/or credit of the Defendant being used for the direct benefit of religious and private educational institutions;

(i) In violation of Section 7-81(a) of the Greenville County Code in that appropriation of funds shall be made only to departments and agencies to provide public services and such are prohibited to private, nonprofit organizations and institutions;

(j) In violation of Section 7-81(b) of said Code in that such fund from which such aggrieved expenditures originate does not state line-item purpose; and

(k) The Budget Policies of Greenville County and Revenue Policies of Greenville County and is contrary to the public interest.

9. Plaintiff is further informed and believes that such donations and/or contributions are in excess of the authority granted the Defendant, and are *ultra vires*.

10. Plaintiff is reliably informed that the Defendant is engaged in willful acts in violation of the statutes, specifically that is acting *ultra vires*, and that it should be enjoined from further such acts, appropriations, expenditures, contributions, donations or otherwise disbursing funds as

hereinabove set forth until further order of this Court.

11. Plaintiff is further informed and believes that this Court should issue a writ of prohibition prohibiting Defendant from making donations of funds and a writ of mandamus requiring the Defendant to comply with and not violate the statutes and the Constitution, laws, ordinances and policies lawfully enacted and applicable thereto.

12. If Defendant is not enjoined, Plaintiff is informed and believe that he and the taxpayers of Greenville County will suffer irreparable harm in the way of violations of the Constitution and statutes, denial of due process and equal protection as guaranteed by the Constitution and the aforesaid statutes as well as being subjected to assessments and levying of taxes for payment of such illegal contributions, donations, and expenditures all in violation of due process and equal protection.

13. Accordingly, Plaintiff believes that he is entitled to injunctive relief and a writ of mandamus directing the Defendant to strictly comply with the Constitution, the law and the ordinances and policies of Greenville County.

14. Plaintiff is informed and believes that Defendant knew, or by the exercise of due diligence, should have known, that its acts are and were unlawful, *ultra vires*, in excess of authority, without authority, unconstitutional, and in violation of the statutory law of this State.

15. Plaintiff is also informed and believes that such funds may be expended only for the purposes and in the manner authorized by law, that such cannot be diverted for other purposes, that all laws pertaining thereto must be strictly construed, that such are without authority, are void, and further that Defendant has acted in bad faith, made unlawful contributions, donations, and/or expenditures and included in its budget items not authorized by law and has abused its discretion in that it has no discretion to violate Constitutional and statutory authority.

16. That Defendant has no authority to make such contributions, donations, and/or expenditures, that such is strictly prohibited by the Constitution and such should be enjoined.

17. Plaintiff is entitled to a temporary and permanent injunction enjoining Defendant from such expenditures. Plaintiff is informed and believes that he will suffer irreparable harm in the way of assessments levies, taxation, prejudice to his position and that the public will be exposed to loss and harm as recited herein, if a temporary order is not issued.

18. Plaintiff further believes the harm to Defendant, if any, which Plaintiff specifically denies, is negligible as compared to that suffered or to be suffered by Plaintiff and taxpayers at large and that he is entitled to injunctive relief, a writ of mandamus and/or prohibition requiring Defendant to strictly comply with the Constitution and the statutes and to cease and desist from any further activities as referred to above until further Order of this Court.

IV. RELIEF SOUGHT

1. The issuance of a temporary restraining order restraining and enjoining Defendant from making any further expenditures of funds and/or disbursing of such funds ("discretionary") until a hearing can be had as to whether or not to make such temporary restraining order permanent pending the outcome of this litigation;

2. The issuance of a declaratory judgment adjudging said acts of Defendant in violation of the Constitution and the statutes, unlawful, unconstitutional, *ultra vires*, arbitrary, capricious, an abuse of discretion, misconduct and a breach of duty;

3. An order rescinding, suspending, superseding or otherwise staying any assessment, levy, appropriation and/or expenditure of such funds until the Constitution and statutes have been complied with;

4. Declaring the provisions of the Constitution and the statutes aforesaid to be mandatory and Defendant's compliance therewith is required.

5. Enjoining Defendant from further expenditures related to funds except in strict compliance with the Constitution and laws regarding the assessment, levy, collection, budgeting, appropriation and expenditure of public funds.

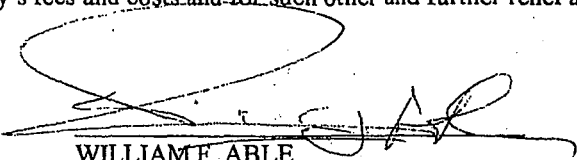
6. A writ of mandamus requiring Defendant to strictly comply with the applicable Constitutional provisions and laws and directing it to cease and desist committing acts not within its

discretion, lawful duties and authority;

7. Declaring the assessments, levies, collections, budgeting and appropriations undertaken so far as they relate to the aforesaid donations, contributions, and/or expenditures to be null, void, unlawful, without authority and in excess of lawful authority; and

8. For an award of attorney's fees and costs and for such other and further relief as the Court deems just and proper:

Columbia, SC
April 14, 1997



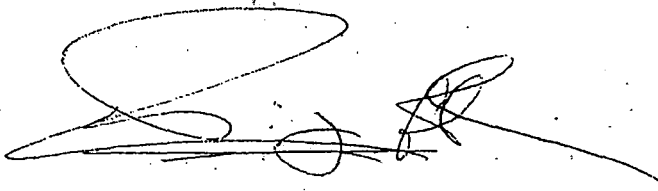
WILLIAM F. ABLE
111 Stonemark Lane
Columbia, SC 29210
(803) 731-2850 Fax (803) 731-0862
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Plaintiff's Second Amended Complaint was served upon Defendant by depositing same in the United States Mail, postage prepaid, addressed to counsel for Defendant as follows:

Ronald K. Wray, Esquire
PO Box 10589
Greenville, SC 29603

this 14 day of April, 1997.



KNOWN QUESTIONABLE EXPENDITURES

DATE	CHECK #	PAYEE	AMOUNT
1/13/95	063029	Lean On Me Tutorial	\$ 500.00
1/31/95	058632	NAACP G'ville Youth Council	1,000.00
1/13/95	063012	Phillis Wheatley Assoc.	500.00
1/17/95	060828	Church & Community Human Rel.	300.00
1/08/95	059687	Child's Haven	5,000.00
12/04/94	052691	SHARE	2,000.00
12/02/94	052677	Berea Branch Library	2,000.00
6/07/95	072062	Salvation Army/Homeless Shelter	500.00
4/25/95	067963	Greer Human Resources Center	5,000.00
5/16/95	070118	G'ville Tech Foundation	5,000.00
5/18/95	070371	G'ville Cultural Exchange	500.00
5/22/95	070667	Jack and Jill of America	1,000.00
5/30/95	071463	Possum Kingdom Fire Dept.	1,000.00
5/30/95	071438	Neighborhoods in Action	500.00
5/30/95	071464	Canebrake Fire Dept.	1,000.00
6/07/95	072063	Family Counseling Ctr., Womens Shelter	500.00
6/28/95	073848	South G'ville Fire Dept.	1,000.00
6/28/95	073899	Piedmont Fire District	1,000.00
6/29/95	074205	G'ville County Library, West Branch	1,500.00
7/03/95	074388	Berea Branch Library	2,500.00
7/03/95	074389	G'ville Zoo Board	1,500.00
7/03/95	074391	SHARE	1,000.00
10/03/94	045573	Civil Air Patrol	1,000.00
10/03/94	045574	Snickers Soccer Tournament	3,790.00
10/05/94	045740	Libertarian Education Institute Lib.	210.00
7/04/95	221886	Rotary Club of G'ville	358.00
7/10/95	222115	Rotary Club of G'ville	408.00
8/08/96	224419	Rotary Club of G'ville	358.00
3/06/95	062397	G'ville Water System	982.82
11/20/95	086775	G'ville Branch NAACP	210.00
11/02/95	085111	G'ville Branch NAACP	450.00
10/31/95	084774	G'ville Branch NAACP	520.00
1/31/95	058632	NAACP G'ville Youth Council	1,000.00

EXHIBIT "A"

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 96 -CP23- 2918

Sloan

County Council of O'ville Co.

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other- _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other- _____

IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Plaintiff's Motion to Amend Complaint is granted

ENTERED COMPUTER

Dated at GREENVILLE, South Carolina, this 15th day of Dec. 1997.

for Wells
PRESIDING JUDGE

This judgment was entered on the 16th day of Dec, 1997, and a copy mailed first class this 16th day of Dec, 1997 to attorneys of record or to parties (when appearing pro se) as follows:

James Carpenter

205 E. Broad St

291601

Ronald Wray

P.O. Box 11589

291602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Fletcher G. Marm
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS:
CIVIL ACTION NO. 96-CP-23-2918

Edward D. Sloan, Jr., Individually,)
as a Citizen, Resident, Taxpayer,)
and Registered Elector of)
Greenville County, and on behalf)
of all others similarly situated,)
Plaintiff,)

vs.)

The County Council of Greenville)
County as the Governing Body of)
Greenville County, a Political)
Subdivision of the State of South)
Carolina,)
Defendant.)

ENTRY OF APPEARANCE

ENTERED COMPUTER

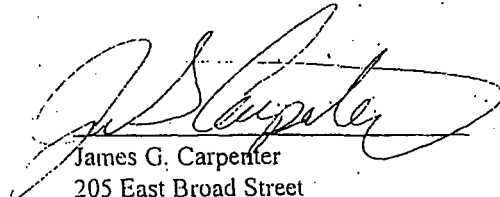
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
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JUL 18 4 49 PM '97

NOW COMES the undersigned attorney and makes this entry of appearance, and in support of such entry would show to the court that the plaintiff has discharged his previous attorney. He is a member in good standing of the State Bar of South Carolina. The undersigned has been retained by the plaintiff as counsel in this action.

Please serve all pleadings intended for the plaintiff on the undersigned.

Respectfully submitted,


James G. Carpenter
205 East Broad Street
Greenville, SC 29601
(864) 235-1269

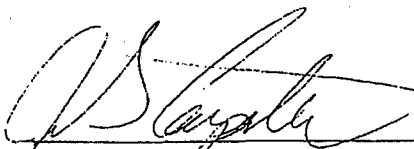
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO. 96-CP-23-2918
	)	
Edward D. Sloan, Jr., Individually,	)	
as a Citizen, Resident, Taxpayer,	)	
and Registered Elector of	)	
Greenville County, and on behalf	)	
of all others similarly situated,	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
The County Council of Greenville	)	
County as the Governing Body of	)	
Greenville County, a Political	)	
Subdivision of the State of South	)	
Carolina,	)	
Defendant.	)	

FILED-CLERK OF COURT
GREENVILLE, S.C.
FLETCHER

JUL 18 4 49 PM '97

The undersigned attorney hereby certifies that he served a copy of the foregoing Entry of Appearance upon counsel for the defendant, Ronald K. Wray, II, by hand delivery to his office on Coffee Street in Greenville, this 18th day of July, 1997.

Respectfully submitted,



James G. Carpenter
205 East Broad Street
Greenville, SC 29601
(864) 235-1269

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Edward D. Sloan, Jr., Individually,)
as a Citizen, Resident, Taxpayer,)
and Registered Elector of)
Greenville County, and on behalf)
of all others similarly situated,)
Plaintiff,)

vs.)

The County Council of Greenville)
County as the Governing Body of)
Greenville County, a Political)
Subdivision of the State of South)
Carolina,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 96-CP-23-2918

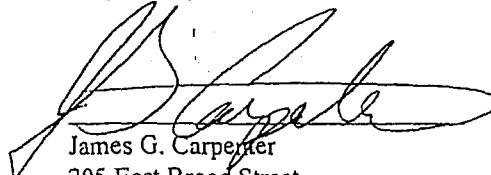
SET 12-17-97 3:30
@ AM/PM
CT RM # Judge Watson
YOU ARE RESPONSIBLE FOR
NOTIFYING OPPOSING COUNSEL.

MOTION TO AMEND COMPLAINT

NOW COMES the undersigned attorney and moves the court for an order allowing the plaintiff to file the attached Third Amended Complaint. The undersigned attorney made an entry of appearance July 18, 1997, and has been diligent to work with counsel for the defendant to exchange discovery documents. The new complaint arises out of the same set of facts as the previous versions, and clarifies the issues for the court. Counsel for the defendants does not consent to this amendment.

WHEREFORE, plaintiff moves the court, pursuant to S.C.R. Civ.P. 15 for an order allowing amendment.

Respectfully submitted,



James G. Carpenter
205 East Broad Street
Greenville, SC 29601
(864) 235-1269

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Edward D. Sloan, Jr., individually, and as)
a Citizen, Resident, Taxpayer and)
Registered Elector of Greenville County,)
and on behalf of all others similarly)
situated,)

Plaintiff,)

vs.)

The County Council of Greenville County)
as the Governing Body of Greenville)
County, a Political Subdivision of the)
State of South Carolina,)
Defendant.)

C.A. No. 96-CP-23-2918

THIRD AMENDED COMPLAINT

FILED
CLERK OF COURT
GREENVILLE, S.C.
Dec 15 1 05 PM '97

Plaintiff, complaining of the Defendant would show unto the Court:

JURISDICTION and VENUE

1. This action is brought pursuant to 42 U.S.C. § 1983, S.C. R. Civ. P. 57 and 65, and S.C. Code Ann. §15-53-10, known as the Uniform Declaratory Judgment Act.
2. Plaintiff is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina, and brings this action individually on his behalf and on behalf of all others similarly situated.
3. Defendant is a political subdivision of the State of South Carolina.
4. Defendant is vested with the power of governing the County in compliance with the Constitution and laws of South Carolina and with enacting ordinances consistent with the Constitution and statutory law.
5. Venue is proper in Greenville County, South Carolina.
6. Defendant's actions as alleged are capable of repetition, yet evading review.

DONATIONS BY DEFENDANT

7. In its Fiscal Year 1994-95 Annual Budget, Defendant established "County Council Reserves" of \$60,000 from which Defendant would, at the request of each member of County Council, donate or spend up to \$5,000.
8. Defendant stated the purpose of the Council Reserves as to "address special community needs **not normally falling within the operational purview of County Government.**" Greenville County Fiscal Year 1996-97 Annual Budget, p. 195 (emphasis added).
9. Defendant has donated at least \$71,593.82 to religious charities, private educational institutions, non-profit organizations, and political subdivisions from 1994 through September, 1997.
10. On or about October 3, 1994, Defendant donated \$1,000 to the Civil Air Patrol.
11. On or about October 3, 1994, Defendant donated \$3,790 to the Snickers Soccer Tournament.
12. On or about October 5, 1994, Defendant donated \$210 to the Libertarian Education Institute.
13. On or about November 15, 1994, Defendant donated \$1,500 to the March of Dimes.
14. On or about December 2, 1994, Defendant donated \$2,500 to the Berea Branch Library.
15. On or about December 2, 1994, Defendant donated \$2,000 to "Share."
16. On or about January 31, 1995, Defendant donated \$1,000 to the National Association for the Advancement of Colored People (NAACP).
17. On or about February 8, 1995, Defendant donated \$5,000 to "A Child's Haven (a private non-profit organization)."

18. On or about February 17, 1995, Defendant donated \$300 to Church & Community Human Relations.
19. On or about March 6, 1995, Defendant donated \$982.82 to the Glassy Mountain Fire District.
20. On or about March 13, 1995, Defendant donated \$500 to the Phyllis Wheatley Assoc.
21. On or about March 13, 1995, Defendant donated \$500 to the Lean on Me Tutorial School.
22. On or about April 25, 1995, Defendant donated \$5,000 to the Greer Human Resources Center.
23. On or about May 16, 1995, Defendant donated \$5,000 to the Greenville Tech Foundation.
24. On or about May 18, 1995, Defendant donated \$500 to the Greenville Cultural Exchange.
25. On or about May 22, 1995, Defendant donated \$1,000 to Jack and Jill of America.
26. On or about May 30, 1995, Defendant donated \$500 to Neighborhoods in Action.
27. On or about May 30, 1995, Defendant donated \$1,000 to the Possum Kingdom Fire Department.
28. On or about May 30, 1995, Defendant donated \$1,000 to the Canebrake Fire Department.
29. On or about June 7, 1995, Defendant donated \$500 to the Salvation Army.
30. On or about June 7, 1995, Defendant donated \$500 to the Family Counseling Center.
31. On or about July 28, 1995, Defendant donated \$1,000 to the South Greenville Fire District.
32. On or about June 28, 1995, Defendant donated \$1,000 to the Piedmont Fire District.
33. On or about June 28, 1995, Defendant donated \$1,000 to the Dunklin Fire District.

34. On or about June 29, 1995, Defendant donated \$1,500 to the Greenville County Library West Branch.
35. On or about July 3, 1995, Defendant donated \$1,000 to the Phyllis Wheatley Association.
36. On or about July 3, 1995, Defendant donated \$2,500 to the Berea Branch Library.
37. On or about July 3, 1995, Defendant donated \$1,500 to the Greenville Zoo Board.
38. On or about July 3, 1995, Defendant donated \$1,000 to "Share."
39. On or about October 31, 1995, Defendant donated \$520 to the National Association for the Advancement of Colored People (NAACP) "for 2 tickets to NAACP banquet."
40. On or about November 2, 1995, Defendant donated \$450 to the National Association for the Advancement of Colored People (NAACP) "for a second table [at the banquet]."
41. On or about November 20, 1995, Defendant donated \$210 to the National Association for the Advancement of Colored People (NAACP) which "paid for 28 to attend [the banquet]."
42. In its Fiscal Year 1996-97 Annual Budget, Defendant budgeted \$120,000 for "Council Reserves," from which Defendant would, at the request of each member of County Council, donate or spend up to \$10,000.
43. On or about July 8, 1996, Defendant donated \$358.00 to James Forbes, III "for Rotary Club of Gvl. . . . membership dues."
44. On or about July 10, 1996, Defendant donated \$408.00 to Gerald Seals "for [Rotary Club of Greenville] dues."
45. On or about August 8, 1996, Defendant donated \$358.00 to Johnny Mack Brown "for Sheriff's FY97 [Rotary Club of Greenville] dues."

46. On or about September 26, 1996, Defendant donated \$5,000 to the Mauldin Library Building Fund.
47. On or about September 25, 1996, Defendant donated \$5,000 to the Simpsonville Library Building Fund.
48. On or about February 18, 1997, Defendant donated \$3,507.00 to Sugar Creek Homeowners Association.
49. On or about April 28, 1997, Defendant donated \$7,500 the City of Travelers Rest.
50. On or about June 27, 1997, Defendant donated \$10,000 to the City of Greer.
51. On or about June 30, 1997, Defendant donated \$10,000 to the Greenville Zoo Board.
52. Upon information and belief, Defendant continues to make donations (payments not in exchange for any tangible consideration) to private non-profit organizations, political subdivisions, and other private entities.

FIRST CAUSE OF ACTION

53. Plaintiff incorporates all preceding paragraphs by reference.
54. Defendant has violated and continues to violate Greenville County Code, Division 2, § 7-81(a). **"Appropriation of funds shall be made only by county council to departments and agencies to provide public services to county citizens. Appropriation of funds to private, nonprofit organizations and institutions to provide services is prohibited.** *Id.* (emphasis added).
55. Defendant continues to donate to private, nonprofit organizations, and other private entities.

56. If the Court does not enjoin Defendant's appropriations, expenditures, disbursements, and other actions violating Greenville County Code, Division 2, § 7-81, County taxpayers will suffer irreparable harm including, but not limited to, levying of taxes for illegal expenditures.

SECOND CAUSE OF ACTION

57. Plaintiff incorporates all preceding paragraphs by reference.
58. Defendant has violated Article I, § 2 of the Constitution of South Carolina. "The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . ." *Id.*
59. Defendant has financially supported sectarian religious activity.
60. If the Court does not enjoin Defendant's appropriations, expenditures, disbursements, and other actions violating Article I, § 2 of the Constitution of South Carolina, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

THIRD CAUSE OF ACTION

61. Plaintiff incorporates all preceding paragraphs by reference.
62. Plaintiff complains under 42 U.S.C. § 1983 that Defendant has violated the First Amendment of the United States Constitution, which is applicable to the States by the Fourteenth Amendment to the United States Constitution.
63. Defendant has financially supported religious activity.
64. If the Court does not enjoin Defendant's expenditures, appropriations, disbursements, and other actions violating the First Amendment of the United States Constitution, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

FOURTH CAUSE OF ACTION

65. Plaintiff incorporates all preceding paragraphs by reference.
66. Defendant violated South Carolina Code Annotated § 4-9-30 which allows county governments "to . . . make appropriations for functions and operations of the county . . ." (emphasis added).
67. Defendant continues to disburse funds for purposes other than county functions and operations.
68. If the Court does not enjoin Defendant's appropriations, expenditures, disbursements, and other actions violating South Carolina Code Annotated § 4-9-30, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

FIFTH CAUSE OF ACTION

69. Plaintiff incorporates all preceding paragraphs by reference.
70. Defendant violated Article XI, § 4 of the South Carolina Constitution, which states, "No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution." *Id.*
71. Defendant donated funds to religious or other private educational institutions.
72. If the Court does not enjoin Defendant's appropriations, expenditures, disbursements, and other actions violating Article XI, § 4 of the South Carolina Constitution, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

PROCEDURAL ILLEGALITIES BY DEFENDANT

73. On August 20, 1996, the Defendant adopted "Guidelines for Discretionary Funds" as a resolution, rather than as an ordinance, which continues to allow use of Council Reserves "for infrastructure purposes such as: flooding, roads, lights, sewer, and public buildings and grounds." Greenville County Finance Minutes, Page 2, August 5, 1996 and Page 14, August 20, 1996.
74. Defendant has continued to draw upon Council Reserves without voting on each expenditure or appropriation. 
75. On or about June 30, 1997, Defendant donated \$10,000 to the Greenville Zoo Board at the request of an individual member of County Council, an unappropriated transaction.

76. Defendant has directed Council Reserves funds to municipalities such as Greer and Traveler's Rest and to subdivisions.
77. Contech Construction, Inc. (a Georgia corporation), Metromont Materials, Eddie Underwood, Dobson True Value Hardware, and Gossett Pipe Company have received public funds from the Defendant.
78. Upon information and belief, Defendant will continue to appropriate, disburse, and spend Council Reserves funds unless the Court orders cessation.

SIXTH CAUSE OF ACTION

79. Plaintiff incorporates all preceding paragraphs by reference.
80. Defendant has violated and continues to violate Greenville County Code, Division 2, § 7-81. "(a) Appropriation of funds shall be made **only by county council** to departments and agencies to provide public services to county citizens. Appropriation of funds to private, nonprofit organizations and institutions to provide services is prohibited. (b) Requests for county funds will be submitted to council for review during the regular county budget process, and appropriations will be made only for specific line item purposes." *Id.* (emphasis added).
81. Defendant disbursed funds at the requests of individual members rather than collectively as the "county council" for "public services."
82. If the Court does not enjoin Defendant's expenditures, disbursements, appropriations at the request of individual members of County Council, and other actions violating Greenville County Code, Division 2, § 7-81, Greenville County taxpayers will suffer irreparable harm and levying of taxes for illegal expenditures

SEVENTH CAUSE OF ACTION

83. Plaintiff incorporates all preceding paragraphs by reference.
84. Defendant violated South Carolina Code Annotated § 4-9-140 which states, "The procedure for approval of supplemental appropriations shall be the same as that prescribed for enactment of ordinances."
85. Defendant, at the requests of members of Greenville County Council, made "appropriations of additional funds which had come available" after the budget ordinance had been enacted.
86. If the Court does not enjoin expenditures, disbursements, appropriations by Defendant at the request of individual members of County Council, and other actions violating South Carolina Code Annotated § 4-9-140, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

EIGHTH CAUSE OF ACTION

87. Plaintiff incorporates all preceding and following paragraphs by reference.
88. Defendant violated South Carolina Code Annotated § 4-9-130 which requires public hearings and reasonable notice whenever "council action" is taken to "make appropriations, including supplemental appropriations."
89. Defendant, at the request of individual members of County Council, made supplemental appropriations after budget ordinances had already been enacted and did not hold public hearings or give reasonable notice.
90. If the Court does not enjoin expenditures, disbursements, appropriations by Defendant at the request of individual members of County Council, and other actions violating South

Carolina Code Annotated § 4-9-130, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

NINTH CAUSE OF ACTION

91. Plaintiff incorporates all preceding and following paragraphs by reference.
92. Defendant has violated South Carolina Code Annotated § 4-9-120 which states, "All ordinances shall be read at three public meetings of council on three separate days with an interval of not less than seven days between the second and third meetings."
93. Defendant has made supplemental appropriations without reading ordinances aloud at three public meetings of council on three separate days with an interval of less than seven days before the final reading.
94. If the Court does not enjoin expenditures, disbursements, appropriations by Defendant at the request of individual members of County Council, and other actions violating South Carolina Code Annotated § 4-9-120, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

TENTH CAUSE OF ACTION

95. Plaintiff incorporates all preceding paragraphs by reference.
96. Defendant has violated Article X, § 5 of the Constitution of South Carolina. "No tax, subsidy or charge shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied." *Id.* (emphasis added).

97. Defendant disbursed proceeds of taxes that were budgeted only as "County Reserves."
98. In the last three budgets, Defendant has not "distinctly state[d] [each] public purpose" for which Council Reserves funds would be spent.
99. If the Court does not enjoin expenditures, disbursements, appropriations by Defendant at the request of individual members of County Council, and other actions violating Article X, § 5 of the Constitution of South Carolina, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

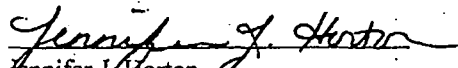
ELEVENTH CAUSE OF ACTION

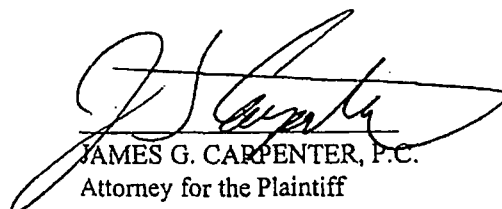
100. Plaintiff incorporates all preceding paragraphs by reference.
101. Defendant has violated Articles I, §§ 1, 2, 3, and 23; X §§ 7, 8, and 11; and XII, § 1 of the South Carolina Constitution and § 11-1-40 of the South Carolina Code Annotated.
102. Defendant has acted *ultra vires* and in excess of its authority and in violation of Plaintiff's constitutional rights.
103. If the Court does not enjoin Defendant's expenditures, disbursements, appropriations at the request of individual members of County Council, and other actions violating Articles I, §§ 1, 2, 3, and 23; X §§ 7, 8, and 11; and XII, § 1 of the South Carolina Constitution and § 11-1-40 of the South Carolina Code Annotated, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

WHEREFORE, Plaintiff prays the Court for:

1. Temporary, preliminary, and permanent injunctions Defendant's appropriation, expenditure, disbursement, and donation of public funds which are not for legitimate governmental purposes.
2. A declaratory judgment that Defendant's establishing "Council Reserves" and appropriating, spending, disbursing, and donating public funds as described above violates the applicable statutes, Constitutions, ordinances, and policies.
3. Temporary, preliminary, and permanent injunctions enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds from the 1996-97 "Council Reserves" in violation of the S.C. Constitution and Code and the Greenville County Codes regarding procedures for appropriation and expenditures.
4. Costs and attorneys fees under 42 U.S.C. § 1988.
5. Such other and further relief as the court deems just and proper.

Respectfully submitted,


Jennifer J. Horton


JAMES G. CARPENTER, P.C.
Attorney for the Plaintiff
205 East Broad Street
Greenville, SC 29601
(864) 235-1269

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Edward D. Sloan, Jr., individually, and as a
Citizen, Resident, Taxpayer and Registered
Elector of Greenville County, and on behalf of
all others similarly situated,

Plaintiff,

v.

The County Council of Greenville County, as the
Governing Body of Greenville County, a
Political Subdivision of the State of South
Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

FILED - CLERK OF COURT
GREENVILLE COUNTY
FLEET

ANSWER TO THIRD
AMENDED COMPLAINT

C.A. No. 96-CP-23-2918

ENTERED COMPUTER

The defendant, Greenville County, answering the third amended complaint of the plaintiff
herein, would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. The defendant, Greenville County, admits, upon information and belief, so much of
the allegations of paragraph 1 as allege that this action is brought pursuant to 42 U.S.C. Section
1983 and S.C. Code Ann. Section 15-53-10, known as the Uniform Declaratory Judgment Act. It
denies the remaining allegations of paragraph 1 and specifically denies that the plaintiff is entitled
to any relief in this action.
2. It lacks sufficient information to form a belief as to the allegations of paragraph 2,
and therefore denies same.
3. It admits the allegations of paragraph 3.
4. It admits the allegations of paragraph 4.
5. It admits, upon information and belief, the allegations of paragraph 5.

6. It denies the allegations of paragraph 6.

7. It admits so much of the allegations of paragraph 7 as allege that in its fiscal year 1994-1995 annual budget, it established Council Reserves in the amount of \$60,000.00. It denies the remaining allegations of paragraph 7.

8. It denies the allegations of paragraph 8.

9. It denies the allegations of paragraph 9.

10. In response to the allegations of paragraphs 10 through 51, it craves reference to the records regarding disbursements made by County Council, denying any allegations of paragraphs 10 through 51 that are inconsistent therewith.

11. It denies the allegations of paragraph 52 and would allege and show unto the Court that Council Reserves are for infrastructure purposes only such as flooding, roads, lights, sewer, and public buildings and grounds.

12. In response to the allegations of paragraph 53, it realleges and incorporates herein by reference its answers to paragraphs 1 through 52 above.

13. It denies the allegations of paragraphs 54, 55, and 56.

14. In response to the allegations of paragraph 57, it realleges and incorporates herein by reference its answers to paragraphs 1 through 56 above.

15. It denies the allegations of paragraphs 58, 59 and 60.

16. In response to the allegations of paragraph 61, it realleges and incorporates herein by reference its answers to paragraphs 1 through 60 above.

17. It denies the allegations of paragraphs 62, 63 and 64.

18. In response to the allegations of paragraph 65, it realleges and incorporates herein by reference its answers to paragraphs 1 through 64 above.

19. It denies the allegations of paragraphs 66, 67 and 68.

20. In response to the allegations of paragraph 69, it realleges and incorporates herein by reference its answers to paragraphs 1 through 68 above.

21. It denies the allegations of paragraphs 70, 71 and 72.

22. It admits so much of the allegations of paragraph 73 as allege that Council Reserves may be used only for infrastructure purposes such as flooding, roads, lights, sewer, and public buildings and grounds. It denies the remaining allegations of paragraph 73.

23. It denies the allegations of paragraph 74.

24. In response to the allegations of paragraphs 75, 76 and 77, it craves reference to the records regarding disbursements made by County Council, denying any allegations of paragraphs 75, 76 and 77 that are inconsistent therewith.

25. In response to the allegations of paragraph 78, it would allege and show unto the Court that its disbursements are consistent with applicable constitutional and statutory provisions.

26. In response to the allegations of paragraph 79, it realleges and incorporates herein by reference its answers to paragraphs 1 through 78 above.

27. It denies the allegations of paragraphs 80, 81 and 82.

28. In response to the allegations of paragraph 83, it realleges and incorporates herein by reference its answers to paragraphs 1 through 82 above.

29. It denies the allegations of paragraphs 84, 85 and 86.

30. In response to the allegations of paragraph 87, it realleges and incorporates herein by reference its answers to paragraphs 1 through 86 above.

31. It denies the allegations of paragraphs 88, 89 and 90.

32. In response to the allegations of paragraph 91, it realleges and incorporates herein by reference its answers to paragraphs 1 through 90 above.

33. It denies the allegations of paragraphs 92, 93 and 94.

34. In response to the allegations of paragraph 95, it realleges and incorporates herein by reference its answers to paragraphs 1 through 94 above.

35. It denies the allegations of paragraphs 96, 97, 98 and 99.

36. In response to the allegations of paragraph 100, it realleges and incorporates herein by reference its answers to paragraphs 1 through 99 above.

37. It denies the allegations of paragraphs 101, 102 and 103.

38. It denies each and every allegation of the third amended complaint not specifically admitted, modified or explained hereinabove.

FOR A SECOND DEFENSE

39. It incorporates the allegations of its first defense which are consistent with this defense.

40. It alleges that the third amended complaint fails to state facts sufficient to constitute a cause of action against it, and accordingly, the third amended complaint should be dismissed.

FOR A THIRD DEFENSE

41. It incorporates the allegations of its first defense which are consistent with this defense.

42. It alleges that the complaint fails to allege the violation of any constitutional rights of the plaintiff, and that the complaint fails to assert a cause of action pursuant to 42 U.S.C. Section 1983. Accordingly, the plaintiffs' third cause of action should be dismissed.

FOR A FOURTH DEFENSE

43. It incorporates the allegations of its first defense which are consistent with this defense.

44. It alleges that the plaintiff lacks standing to bring this action, and accordingly, the complaint should be dismissed.

FOR A FIFTH DEFENSE

45. It incorporates the allegations of its first defense which are consistent with this defense.

46. It alleges that the issues raised by the allegations of the third amended complaint are now moot, and accordingly, this action should be dismissed.

FOR A SIXTH DEFENSE

47. It incorporates the allegations of its first defense which are consistent with this defense.

48. It alleges that its actions have been in compliance with all statutory and constitutional provisions of the State of South Carolina. Accordingly, the plaintiffs' claims should be dismissed.

WHEREFORE, having fully answered the third amended complaint of the plaintiff herein,
the defendant, Greenville County, prays that the same be dismissed with costs, and for such other
and further relief as the Court may deem just and proper.


W. Howard Boyd, Jr. (#826)
Ronald K. Wray, II (#65246)
GIBBES, GALLIVAN, WHITE
& BOYD, P.A.
P. O. Box 10589
Greenville, SC 29603
(864) 271-9580

Greenville, SC

December 30, 1997

Attorneys for Defendant.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Edward D. Sloan, Jr., individually, and as a
Citizen, Resident, Taxpayer and Registered
Elector of Greenville County, and on behalf of all
others similarly situated,

Plaintiff,

v.

The County Council of Greenville County, as the
Governing Body of Greenville County, a
Political Subdivision of the State of South
Carolina,

Defendants.

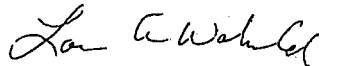
IN THE COURT OF COMMON PLEAS

CERTIFICATE OF SERVICE

C.A. No. 96-CP-23-2918

The undersigned, Lou Ann Wakeland, secretary of Ronald K. Wray, II, certifies that on the
30th day of December, 1997; she served the Answer to Third Amended Complaint on the attorney
for the plaintiff, by depositing in the United States mail, with due and proper postage affixed
thereto, copies of the same addressed to:

Mr. James G. Carpenter
Attorney at Law
205 East Broad Street
Greenville, SC 29601


Lou Ann Wakeland

) IN THE COURT OF COMMON PLEAS

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County respectfully submits that it is entitled to judgment in its favor and that Sloan's complaint should be dismissed with prejudice.

DISCUSSION

I. SLOAN'S COMPLAINT FAILS TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION INASMUCH AS IT FAILS TO ALLEGE ANY JUSTICIABLE CONTROVERSY EXISTS BETWEEN THE PARTIES.

As noted above, Sloan initiated this action pursuant to the Uniform Declaratory Judgment Act, South Carolina Code Ann. Sections 15-53-10 through 15-53-140 (1976). Like all other civil actions, cases brought under the Declaratory Judgment Act must involve an actual, justiciable controversy. South Carolina Elec. and Gas Co. v. South Carolina Pub. Serv. Authority, 215 S.C. 193, 54 S.E.2d 777 (1949). "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from this dispute of a contingent, hypothetical or abstract character." Notios Corp. v. Hanvey, 256 S.C. 275, 182 S.E.2d 55, 57 (1971).

In the present case, the only relief requested in the complaint is injunctive and declaratory relief. The allegations in the complaint, however, relate to disbursements made during the 1994-1995 and 1996-1997 fiscal years. Obviously, Sloan is not entitled to injunctive relief pertaining to disbursements already made.

To the extent Sloan's complaint seeks to enjoin the County from making future appropriations, County respectfully submits that Sloan is seeking nothing more than an advisory opinion from this Court. Sloan's complaint nowhere alleges any particularized appropriation proposed to be made, nor does it specify any distinct proposed disbursement that arguably might be in violation of any of the cited statutory or constitutional provisions. In effect, Sloan's complaint

requests this Court to enjoin County from making unidentified disbursements that might occur in the future and that might arguably violate one or more of the cited statutory provisions. Not only would it be inappropriate for the Court to rule upon such matters in the abstract, but such a ruling also would clearly violate the separation of power doctrine set forth at Article 1, Section 8 of the South Carolina Constitution. See S.C. Const. art. 1, sec. 8 ("In the government of this state, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the function of one of said departments shall assume or discharge the duties of any other.").

County respectfully submits that Sloan's request is nothing more than asking the Court to give an advisory opinion as to events that may or may not occur in the future. As stated by the South Carolina Supreme Court in Powers v. McNair, 255 S.C. 150, 177 S.E.2d 551, 553 (1970):

While it has been held that the Declaratory Judgment Statute should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships without awaiting a violation of the rights or a disturbance of the relationships, Williams Furniture Corporation v. Southern Coatings and Chemical Company, 216 S.C. 1, 56 S.E.2d 576, it is uniformly held that the Declaratory Judgment Act does not require the court to give a purely advisory opinion as to the issues sought to be raised. City of Columbia v. Sanders, 231 S.C. 61, 97 S.E.2d 210.

Thus, it has been held that while the Declaratory Judgment Act should be liberally construed and applied, "there is a limit beyond which the court should not go." Park v. Safeco Ins. Co. of America, 251 S.C. 410, 414, 162 S.E.2d 709, 711 (1968) (holding that no justiciable controversy existed regarding plaintiff's request to ask the court to determine which insurance company, if either, should pay a judgment when and if such judgment should be obtained).

Accordingly, County respectfully submits that this action should be dismissed for failure to state facts sufficient to constitute a cause of action inasmuch as there is no justiciable controversy between the parties. Consequently, the Court lacks subject matter jurisdiction over this action.

II. SLOAN'S CLAIMS ARE MOOT.

In addition to the fact that Sloan's claims should be dismissed because of the absence of any justiciable controversy, his complaint should also be dismissed since the claims asserted in the complaint are now moot. The mootness doctrine is closely related to the issue of whether a justiciable controversy exists. For example, in Wallace v. City of York, 276 S.C. 693, 281 S.E.2d 487, 488 (1981), the court noted that the function of courts "is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some parties to the litigation." Thus, it has been held that courts should "not pass on moot and academic questions or make an adjudication where there remains no actual controversy." Jones v. Dillon-Marion Human Resources Dev. Comm., 277 S.C. 533, 291 S.E.2d 195, 196 (1982).

The facts of this case are quite similar to those in Treasured Arts, Inc. v. Watson, 319 S.C. 560, 463 S.E.2d 90 (1995), in which the court held that the plaintiff's claims for injunctive relief were moot. In Treasured Arts, the plaintiff instituted an action seeking a declaratory judgment and injunctive relief to enjoin the circuit solicitor from taking any legal action to prevent it from engaging in a promotional campaign. The campaign, however, expired on September 30, 1994, long before the case reached the Supreme Court. Although the court concluded that the plaintiff's claim for declaratory judgment was not moot under the doctrine of "capable of repetition yet evading review," it held that the request for injunctive relief was moot since the promotion at issue had expired. In so holding, the court noted that injunctive relief would have no practical legal

affect upon the existing case. See also Matthis v. South Carolina State Highway Department, 260 S.C. 344, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal affect upon the existing controversy. This is true when some event occurs making it impossible for the reviewing court to grant effectual relief.").

As noted above, Sloan's complaint relates to disbursements made during the 1994-1995 and 1996-1997 fiscal years. Any ruling by the Court regarding these disbursements obviously would have no practical legal affect upon the parties.

Although Sloan apparently contends that this action is not moot because County's alleged actions allegedly are "capable of repetition yet evading review," this argument is without merit. In August, 1996, Council adopted guidelines for use of funds appropriated to Council Reserves. These guidelines provide that Council Reserves are to be used only for infrastructure purposes such as flooding and drainage, roads, lights, sewer, and public buildings and grounds.¹ Although Council did recently approve a proposal to approve the use of Council Reserves to fund a project to buy computers to assist welfare mothers in getting off welfare, this was done only after full discussion and debate by Council as a whole in a public meeting. There is no evidence of any disbursement being made outside the guidelines other than following submission to and approval by Council as a whole. Sloan's allegations regarding the disbursement of Council Reserve funds without full approval and submission of requests to Council as a body are therefore moot. As noted, the guidelines adopted in 1996 limit the purposes for which Council Reserves can be disbursed in the absence of approval by Council as a whole to go outside the guidelines. Thus, Sloan's objections to

¹ Although not a separate cause of action, Sloan asserts that Council's adoption of guidelines was procedurally illegal since the guidelines were adopted by resolution. However, the law is clear that Council may act by resolution. S.C. Code Ann. Section 4-9-25 (Counties may enact "regulations, resolutions and ordinances").

an alleged system that allows disbursements without full Council vote is not "capable of repetition, yet evading review," and this exception to the mootness doctrine therefore does not apply.

Accordingly, County respectfully submits that inasmuch as Sloan's claims are now moot, this action should be dismissed.

III. SLOAN LACKS STANDING TO PURSUE THIS ACTION.

Even assuming the Court concludes that a justiciable controversy exists and that Sloan's claims are not moot, this action still should be dismissed since Sloan lacks standing to pursue his claims. The law is clear that "a private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in danger of sustaining, prejudice therefrom." Florence Morning News v. Building Commission of the City and County of Florence, 265 S.C. 389, 218 S.E.2d 881, 884-85 (1975). Furthermore, it is not sufficient that the citizen "has merely a general interest common to all members of the public." Id. (quoting Ex parte Levitt, 302 U.S. 633 (1937)). See also Citizens for Lee County v. Lee County, 308 S.C. 23, 416 S.E.2d 641, 645 (1992) ("Moreover, such imminent prejudice must be of a personal nature to a party laying claim to standing and not merely of general interest to all members of the public.").

It is true that an exception to this rule has been found to exist when the act sought to be enjoined is an unlawful diversion of public funds, such as the expenditure of public funds under an allegedly unconstitutional statute. Shillito v. City of Spartanburg, 214 S.C. 11, 51 S.E.2d 95 (1948); Mevers v. Patterson, 315 S.C. 248, 433 S.E.2d 841 (1993). These cases appear to be limited, however, to controversies in which the plaintiff identified a specific statute or proposed expenditure that allegedly violated constitutional provisions. For example, in Shillito the plaintiff brought an action seeking to have declared unconstitutional a specific act passed by the general

assembly that provided for an annual tax levy in the City of Spartanburg for the benefit of the Spartanburg City Firemen's Pension Fund. Likewise, in Meyers, the plaintiff brought an action seeking to enjoin the transfer of funds from one account to another pursuant to a specific statute enacted by the South Carolina General Assembly.

As noted above, in the present case Sloan's complaint does not allege that County is illegally expending funds under an allegedly unconstitutional statute. Additionally, he fails to identify any specific, particularized disbursement proposed by County that allegedly violates any of the statutory or constitutional provisions cited in his complaint. The body of the complaint refers to expenditures and disbursements that have already occurred, and seeks to enjoin future expenditures that allegedly might violate statutory or constitutional provisions. County respectfully submits that such a generalized statement fails to meet the exception to the standing requirement recognized in Shillito and subsequent cases. Accordingly, County respectfully submits that Sloan lacks standing to pursue this action, and his claims should be dismissed.

IV. COUNTY'S ACTIONS ARE CONSISTENT WITH STATUTORY AND CONSTITUTIONAL LAW AS WELL AS COUNTY ORDINANCES.

Addressing the merits of Sloan's claims, it is apparent that County is entitled to judgment in its favor inasmuch as County's alleged actions are consistent with statutory and constitutional requirements.

The source of power and authority for County governments is found in Article 8 of the South Carolina Constitution. Article 8, Section 1 of the Constitution provides as follows: "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." The Constitution further provides that the "General Assembly shall provide by general law for the structure,

organization, powers, duties, functions, and responsibilities of counties” S.C. Const. art. 8, sec.

7.

Interpreting these constitutional provisions, the South Carolina Supreme Court has stressed that the intent of these provisions is “that home rule be given to the counties and that county government should function in the county seats rather than at the state capitol.” Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974). In Williams v. Town of Hilton Head Island, 311 S.C. 417, 429 S.E.2d 802, 805 (1993), the court discussed the extent of authority intended to be granted to local government by these constitutional provisions and statutes enacted pursuant thereto. The court stated:

We are persuaded that, taken together, article 8 and section 5-7-30 [which grants powers to municipal governments similar to those granted county governments by Section 4-9-25], bestow upon municipalities the authority to enact regulations for government services deemed necessary and proper for the security, general welfare and convenience of the municipality or for preserving health, peace, order and good government, obviating the requirement for further specific statutory authorization so long as such regulations are not inconsistent with the constitution and general law of the state.

Id.

In accordance with the authority granted in the constitution, the general assembly has enacted legislation to provide for the powers that may be exercised by county governments. These statutes include S.C. Code Ann. Section 4-9-25 (Supp. 1996), which grants county governments broad authority to enact legislative measures deemed by them necessary to promote peace, health, and order in the County. This section provides as follows:

All counties of the state, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject

as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of the county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

Additionally, and equally relevant to this case, S.C. Code Ann. Section 4-9-30 (1976 and Supp. 1996), provides that each county government "shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:

(5)(a) To assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above.

The law is clear that state and local governments are statutorily and constitutionally permitted to expend public funds for a "public purpose." In Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986), the court noted that public purpose is "a fluid concept which changes with time, place, population, economy and countless other circumstances. It is a reflection of changing needs of society." 351 S.E.2d at 160. Furthermore, the court agreed with other courts and legal scholars that have concluded that "a public purpose has for its objective the promotion of the public health, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division." Id.

"The consensus of modern legislative and judicial thinking is to broaden the scope of activities which may be classed as involving a public purpose." Id. Furthermore, legislation may be found to serve a public purpose even though it (1) benefits some more than others and (2) results in profit to individuals. Id. at 161. As stated by the court in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43, 47 (1975), "legislation does not have to benefit all of the people in order to serve a public purpose. At the same time legislation is not for a private purpose merely because some individual makes a profit as a result of the enactment."

The burden is upon the plaintiff to show that a particular enactment does not comply with the public purpose test. Moreover, the Nichols court emphasized that "the determination of public purpose is one for the legislative branch." Nichols, 351 S.E.2d at 161. As the cases cited and relied upon by the Nichols court attest, decisions by the South Carolina appellate courts in which public or corporate purposes have been held to pass constitutional muster have involved a wide variety of subjects. See Haesloop v. City Council of Charleston, 123 S.C. 272, 115 S.E.596 (1923) (hotel); Chapman v. Greenville Chamber of Commerce, 127 S.C. 173, 120 S.E. 584 (1923) (office building site); Battle v. Wilcox, 128 S.C. 500, 122 S.E. 516 (1924), and Cathcart v. City of Columbia, 170 S.C. 362, 170 S.E. 435 (1933) (stadium); Davis v. Saluda, 147 S.C. 498, 145 S.E. 412 (1928); Green v. Rockhill, 149 S.C. 234, 147 S.E. 346 (1929), and Roach v. City of Columbia, 172 S.C. 478, 174 S.E. 461 (1934) (waterworks and sewerage); South Carolina Farm Bureau Marketing Association v. South Carolina Ports Authority, 278 S.C. 198, 293 S.E.2d 854 (1982) (grain elevators).

A review of the disbursements at issue in the present case reveals that County's use of Council Reserves easily satisfies the public purpose test and the statutory and constitutional

requirements imposed upon county government. As noted above, Section 4-9-30 specifically authorizes counties to assess taxes and to make appropriations for numerous purposes including "social services," "recreation," "hospital and medical care," "libraries," and other listed purposes.

Sloan contends that Council's actions are in violation of the federal and state constitutional provisions prohibiting the establishment of religion, S.C. Const. Art. I, Section 2; U.S. Const. amendment 1, and the constitutional prohibition against pledging the credit of the state or any of its political subdivisions "for the direct benefit of any religious or other private educational institution." S.C. Const. Art. XI, Section 4. In analyzing such claims, courts focus upon the three part test set forth in Lemon v. Kurtzman, 403 U.S. 602 (1971). The Lemon test provides as follows: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion."

What is clear from those courts applying the Lemon test is that the mere fact that public funds may be disbursed to charitable or sectarian organizations does not in and of itself render the challenged action unconstitutional or in violation of statutory or constitutional provisions. Two recent decisions of the United States Supreme Court have made this clear. For example, in Zobrest v. Catalina Foothills School Dist., 509 U.S. 1 (1993), the Court held that the First Amendment's Establishment Clause did not prevent a public school district from using public funds to furnish a publicly employed interpreter to a disabled child enrolled in a Catholic school. The Court emphasized that it has "never said that 'religious institutions are disabled by the First Amendment from participating in publicly sponsored social welfare programs.'" Id. at 8 (quoting Bowen v. Kendrick, 487 U.S. 589, 609 (1988)). "For if the establishment Clause did bar religious groups

from receiving general government benefits, then 'a church could not be protected by the police and fire departments, or have its public sidewalk kept in repair.'" Id. (quoting Widmar v. Vincent, 454 U.S. 263 (1981)). The Court further noted that it has "consistently held that government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge just because sectarian institutions may also receive an attenuated financial benefit." Id. See also, Witters v. Washington Dep't of Servs. For Blind, 474 U.S. 481 (1986) (holding that Establishment Clause did not bar a State from issuing a vocational tuition grant to a blind person who wished to use the grant to attend a Christian college and become a pastor, missionary, or youth director).

More recently, in Agostini v. Felton, ___ U.S. ___, 117 S. Ct. 1997 (1997), the Court upheld a federally-funded program that provided supplemental remedial instruction to disadvantaged children on the premises of sectarian schools, even though the instruction was provided by government employees. The Court held that placing full-time employees on a parochial school campus did not as a matter of law have the impermissible effect of advancing religion through indoctrination. In so holding, the Court emphasized that "interaction between church and state is inevitable, and we have always tolerated some level of involvement between the two. Entanglement must be excessive before it runs afoul of the Establishment Clause." Id. at 2015.

The Supreme Court of South Carolina has reached similar conclusions. For example, in Hunt v. McNair, 258 S.C. 97, 187 S.E.2d 645 (1972), the court upheld the appropriation of funds to Baptist College at Charleston. The court applied the Lemon test and noted that since the statute at issue had a secular or legislative purpose, it neither advanced nor inhibited religion, and there was no fostering of an excessive governmental entanglement with religion, it was constitutionally valid.

See also Durham v. McLeod, 259 S.C. 409, 192 S.E.2d 202 (1972) (holding legislative act relating to student loans did not violate constitution since it was neutral and applied to all institutions of higher learning).

Likewise, there is no merit to Sloan's contentions that disbursement of funds to private entities or non-profit organizations is in and of itself unconstitutional or violative of statutory provisions. So long as the funds are being used for a public purpose and are fulfilling a responsibility that the county could do itself, there is no statutory or constitutional violation. See Bolt v. Cobb, 225 S.C. 408, 82 S.E.2d 789 (1954); Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (1976). As noted by the Court in South Carolina Pub. Serv. Authority v. Summers, 282 S.C. 148, 318 S.E.2d 113, 115 (1984), so long as the purpose for using the funds is public, the use of a private entity as the instrumentality of the government agency for the accomplishment of the purpose is not prohibited.

Additionally, there is no merit to Sloan's contention that County is acting in violation of statutory or constitutional provisions by disbursing funds to other political subdivisions. Indeed, Article X, Section 13 of the South Carolina Constitution specifically provides that "any county, incorporated municipality or other political subdivision may agree with the state or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of costs thereof." In a number of decisions, the South Carolina Supreme Court has upheld the authority of both a county and a municipality to assist one another in the building or construction of public institutions. For example, in Gray v. Vaigneur, 243 S.C. 604, 135 S.E.2d 229 (1964), the court upheld a county's decision to issue bonds to assist the school district in a school improvement program. In reaching its conclusion, the court stated:

Certainly, the county has an interest in promoting and providing for

the education of its citizens. Since both governmental units may issue bonds for educational purposes, and both have a common interest in doing so, the legislature has simply provided for the results to be accomplished, in effect, through a joint project. We agree with the defendants that there is no basic distinction in point of law in the contribution of the county here from that sustained in the case of Allen v. Adams, 66 S.C. 344, 44 S.E. 938, in which the Town of Edgefield issued bonds to help the school district of the Town of Edgefield build a school building; or in the case of Smith v. Robertson, 210 S.C. 99, 41 S.E.2d 641, where Charleston County was permitted to issue bonds to buy the site for the present State Medical College Hospital; or in the case of Cothran v. Mallory, 211 S.C. 387, 45 S.E.2d 599, where Spartanburg County and the City of Spartanburg jointly built a public auditorium; or in Shelor v. Pace, 151 S.C. 99, 148 S.E. 726, where Oconee County was permitted to issue bonds for school district purposes. As stated in the Smith case, 'we have nothing in our constitution which prohibits cooperation between two governmental entities, created under it, in doing what each of them might do alone.'

Finally, Sloan contends that County's appropriation and disbursement of funds from Council Reserves violates statutory and constitutional provisions as well as the Greenville County Code. Specifically, Sloan alleges that Council Reserves violates South Carolina Constitution Article X, Section 5 in that it allegedly fails to state the public purpose to which the proceeds of the tax shall be applied and also violates the requirement of Article X, Section 8 that money shall be drawn from the treasury in pursuit of appropriations made by law. He further contends that Council's actions violate Section 4-9-120 and Section 4-9-140 of the South Carolina Code, as well as Greenville County Ordinance Section 7-81. There is no basis, however, for any of these claims.

It is undisputed that Council Reserves are part of County's annual budget. There is no allegation, nor is there any evidence, that County's budgeting process itself is not consistent with statutory and constitutional provisions. In accordance with the annual budget adopted by County Council. Council reserves are established at .3 of one percent of estimated annual operating

revenue. Furthermore, County Council financial policies, which are included as part of the budget, specifically provide that Council reserves are "to allow the Council to address special community needs not normally falling within the operational purview of county government" and to "provide for non-recurring community requests." Finally, Council Reserves are to be suspending during times "when the contingency or fund balance have fallen below the set percentages."

There is no question but that these provisions easily satisfy the statutory and constitutional mandates. For example, in Meyers v. Patterson, 315 S.C. 248, 433 S.E.2d 841 (1993), the plaintiff argued that Article X, Section 5 of the Constitution had been violated by a legislative act allowing a diversion of gas tax revenue from a highway tax fund to hurricane relief. In rejecting the plaintiff's argument, the court noted that Article X, Section 5 did not prevent the legislature from appropriating revenues "as needed among legitimate government objectives." Rather, Article X, Section 5 only "requires the legislature to state the public purpose for which taxes are levied ... and does not prohibit the legislature from amending the public purpose to which tax proceeds may be applied." Id. at 833. Importantly, the court also limited the reach of Article X, Section 5 to tax levies. The court refused to extend the article to include legislation which "creates no new tax." Furthermore, the court emphasized that "legislation is said to levy a tax when it fixes the amount or rate to be imposed." The act of transferring funds did not do this, and accordingly was held to be beyond the purview of Article X, Section 5. Id. at 843.

Similarly, the court in Wolper v. City Council of City of Charleston, 287 S.C. 209, 336 S.E.2d 871 (1985) held that Article X, Section 5 "applies only to tax levies, and not to legislation which creates no new tax." Since the action at issue in Wolper, which involved the use of taxes for redevelopment purposes, did not create any new scheme of taxation, but only authorized the

increased increments of an existing tax to be designated for redevelopment purposes, the court held Article X, Section 5 had no application.

Applying these decisions to this case, it is clear that Article X, Section 5 has no application. Council Reserves does not create any new tax. Rather, like Meyers and Wolper, it merely involves the allocation of properly gathered taxes for public purposes designated by Council.

To the extent plaintiff's complaint relies upon S.C. Code Ann. Section 4-9-130 and 4-9-140, such reliance is misplaced. Sloan apparently contends that each disbursement from Council Reserves must be voted on and approved by Council as a whole following a public hearing regarding the proposed disbursement. S.C. Code Ann. Section 4-9-130(2) requires that after reasonable public notice a public hearing must be held before final Council action can be taken to "make appropriations, including supplemental appropriations." Section 4-9-140 then defines a supplemental appropriation as "an appropriation of additional funds which have become available during the fiscal year and which have not been previously obligated by the current operating or capital budget."

The appropriation at issue in this case is the appropriation made to the Council Reserves budget item as part of the County's annual budgeting process. As indicated above, this appropriation is made during the County's annual budgeting process and there is no allegation, nor is there any evidence, that this appropriation is not made consistent with the requirements of Section 4-9-130. Moreover, funds appropriated to Council Reserves are not "supplemental appropriations" as defined in Section 4-9-140 since Council reserves are part of County's annual operating budget. Thus, the notice requirement is satisfied when the budget is adopted and approved by Council as part of its annual budgeting process.

Last, there is no merit to Sloan's contentions that Council is violating its own County Code. Section 7-81 of the Greenville County Code provides that "appropriations of funds shall be made only by county council to departments and agencies to provide services to county citizens." The ordinance further provides that appropriations shall not be made to "private, nonprofit organizations and institutions to provide services." County Council is a department of County government that is a proper recipient of budget appropriations. There is no evidence in the record that appropriations have been made to "private, nonprofit organizations to provide services." The mere fact that disbursements may be made to such groups for a public purpose is not inconsistent with this provision. To hold otherwise would prohibit County government from ever retaining or employing a private firm or corporation to perform work for the County. Since Sloan's interpretation of the ordinance would lead to this absurd result, it must of necessity be rejected.

Thus, as a review of the statutory and constitutional provisions in Sloan's complaint makes clear, County's actions are consistent with South Carolina law. Thus, Sloan's complaint should be dismissed, and judgment entered in County's favor.

V. THE COMPLAINT FAILS TO ALLEGE FACTS ENTITLING SLOAN TO RELIEF PURSUANT TO 42 U.S.C. SECTION 1983.

In addition to his state law claims, Sloan has also asserted a cause of action pursuant to Section 1983 alleging that County's actions have deprived him of his constitutional rights guaranteed by the First Amendment. Although this claim is not entirely clear, presumably Sloan's contention is that County's actions have violated the Establishment Clause.

As discussed more fully above, Establishment Clause cases are decided using the Lemon test. Because this argument is fully developed above, County simply would add that the evidence in the record in this case falls far short of proving an Establishment Clause violation. As with any civil

case, the burden of proof is upon Sloan to prove his constitutional claim. There is no evidence, however, establishing that County's actions have been (1) for anything other than secular purposes, that (2) the principal or primary effect of County's actions have been to advance religion, or (3) that County's actions have fostered "excessive entanglement" in religion. As the cases cited above make clear, the mere disbursement of public funds to sectarian groups is not in and of itself violative of the Establishment Clause. Rather, Sloan must go further and prove that the funds were used for sectarian purposes, to promote religion, and resulted in excessive entanglement between church and state. Sloan's generalized allegations regarding alleged disbursements to religious groups clearly is insufficient to support his Section 1983 claim. Accordingly, this claim fails as a matter of law.

County further notes that Sloan's complaint is based primarily on alleged violation of State statutory and constitutional provisions. The law is clear that alleged violations of state law will not support a Section 1983 claim. Pennhurst State School & Hospital v. Halderman, 465 U.S. 89 (1984); Baker v. McCollan, 443 U.S. 137, 146 (1979) ("Section 1983 imposes liability for violations of rights protected by the Constitution [and federal statutes], not for violations of duties of care arising out of [state] tort law.").

Finally, as with his state law claims, Sloan lacks standing to pursue his Section 1983 claim for declaratory and injunctive relief. In City of Los Angeles v. Lyons, 461 U.S. 95 (1983), the Supreme Court addressed the issue of standing with respect to claims for declaratory and injunctive relief related to conduct of governmental officials. The Court concluded that the plaintiff did not have standing to pursue his claim for injunctive relief because in order to establish standing to pursue this claim, the plaintiff must demonstrate "a personal stake in the outcome." Id. at 101. "Abstract injury is not enough. The plaintiff must show that he has sustained or is immediately in

danger of sustaining some direct injury as a result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical." *Id.* at 101-02 (quoting *Golding v. Zwickler*, 394 U.S. 103, 104-10 (1969)).

In concluding that the plaintiff did not have standing to seek an injunction, the Court stressed that the fact that the plaintiff may have been illegally choked during the course of his arrest 'while presumably affording Lyons' standing to claim damages against the individual officers and perhaps against the City, does nothing to establish a real and immediate threat that he would again be stopped for a traffic violation, or for any other reason, by an officer or officers who would illegally choke him into unconsciousness without any provocation or resistance on his part." *Id.* at 105. Moreover, the Court stressed:

In order to establish an actual controversy in this case, Lyons would have had not only to allege that he would have another encounter with the police, but also to make the incredible assertion either (1) that all police officers in Los Angeles always choke any citizen with whom they happen to have an encounter, whether for the purpose of arrest, issuing a citation, or for questioning or (2) that the City ordered or authorized police officers to act in such manner.

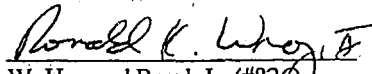
Id. at 105-06. In conclusion, the Court emphasized that "Lyons is no more entitled to an injunction than any other citizen of Los Angeles; and a federal court may not entertain a claim by any or all citizens who no more than assert that certain practices of law enforcement officers are unconstitutional."

The Court's decision in *Lyons* is consistent with prior decisions of the Court. For example, in *O'Shea v. Littleton*, 414 U.S. 488 (1974), the plaintiffs filed a lawsuit against a county magistrate and circuit court judge alleging that the defendants subjected them to discrimination in sentencing them to harsher sentences than those given white citizens. Concluding that the plaintiffs

lacked standing to seek an injunction and that therefore no case or controversy was presented, the Court stated that "past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief ... if unaccompanied by any continuing, present adverse effects." *Id.* at 495-96. See also Rizzo v. Goode, 423 U.S. 362 (1976) (holding that past wrongs do not in themselves amount to a real and immediate threat of injury necessary to satisfy the Article III case or controversy requirement).

As with the plaintiffs in Lyons, O'Shea, and Rizzo, Sloan lacks the "personal stake" in the outcome necessary to provide him with standing to seek injunctive relief. As emphasized above, Sloan's complaint identifies no proposed expenditure that allegedly would violate his constitutional rights. Rather, he is in effect asking this Court to rule that if in the future some expenditure is proposed that arguably would violate his rights, such expenditures should be enjoined and prohibited. Since such allegations clearly are insufficient to establish standing, Sloan's Section 1983 claim must be rejected on this basis as well. Accordingly, County is entitled to judgment on Sloan's Section 1983 claim.

Respectfully submitted,



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Greenville, SC

February 10, 1998

Attorneys for Defendant.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	
	)	
Edward D. Sloan, Jr., individually, and as a	)	
Citizen, Resident, Taxpayer and Registered	)	
Elector of Greenville County, and on behalf of	)	
all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
The County Council of Greenville County, as the	)	
Governing Body of Greenville County, a	)	
Political Subdivision of the State of South	)	
Carolina,	)	
	)	
Defendants.	)	

DEFENDANT'S BRIEF IN
OPPOSITION TO PLAINTIFF'S
MOTION TO RECONSIDER AND
FOR A NEW TRIAL OR
AMENDMENT OF JUDGMENT

C.A. No. 96-CP-23-2918

This matter is currently before the Court on a motion by the plaintiff, Edward D. Sloan, Jr. ("Sloan"), pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. Although captioned a "motion to reconsider and for a new trial or amendment of judgment," the relief requested in Sloan's motion is that the Court "amend the court's judgment against the plaintiff to base it solely on the procedural issues of ripeness, mootness, and justiciability," and that the Court amend the judgment entered in this case "to allow further consideration of an injunction abolishing Council Reserves." Thus, in essence, Sloan's motion is a motion to alter or amend the Court's judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

The defendant, Greenville County ("County"), respectfully submits that there is no bases upon which to grant the relief requested in Sloan's motion. County therefore requests that the Court affirm its prior judgment and deny Sloan's motion. County submits this brief in opposition to Sloan's motion.

DISCUSSION

Motions to reconsider, for new trial, and for amendment of judgment are governed by Rule 59 of the South Carolina Rules of Civil Procedure. Relief under this Rule is to be granted sparingly, and even then only upon adequate showing of substantial reason to do so. As legal commentators have noted: "A motion for a new trial in a non-jury case or a petition for rehearing should be based upon manifest error of law or mistake of fact, and a judgment should not be set aside except for substantial reasons." 11 Wright & Miller Federal Practice & Procedure Section 2804 at 53 (1995). See also 12 Moore's Federal Practice Section 59.13[3][a] (3d ed. 1997) ("A motion for new trial in a non-jury case should be based on a manifest mistake of fact or error of law; the court should find substantial reasons before setting aside a judgment.")

Although there is little South Carolina law regarding Rule 59 motions, those cases which have addressed the issue are clear that a party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial. Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995); Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990). Moreover, "a party may not seek a second trial on the basis of a theory not urged at the first trial," Wright & Miller, supra, Section 2805 at 58-59, nor may a new trial be granted "merely because the losing party may be able to present a better case in another trial." Moore's Federal Practice, supra, Section 59.13[4]. Finally, Rule 59 "may not be used to relitigate old matters or to raise arguments or present evidence that could have been raised prior to entry of judgment." Wright & Miller, supra, Section 2810.1 at 127-128.

In applying these principles to the facts of the present case, it is important to consider both the procedural history of this case along with the specific relief requested by Sloan in his

motion. Sloan initiated this action by filing a summons and complaint on October 14, 1996. Following a motion to dismiss filed by County, Sloan amended his complaint on three separate occasions. Finally, on February 10, 1998, this case came before the Court in a non-jury trial. Sloan did not request a continuance of the hearing prior to trial, and in fact the parties submitted the case on stipulated facts. At trial, both parties were given a full and fair opportunity to present all arguments regarding their respective positions. After careful consideration of the arguments and submissions by the parties, the Court entered judgment in County's favor.

Following entry of judgment, Sloan filed the present motion seeking the relief indicated above. Significantly, Sloan's motion and memorandum in support cite no alleged error in the Court's analysis or ruling based upon the issues presented to the Court at the trial on the merits. Rather, Sloan seeks to raise new and additional arguments not included in the trial brief he submitted to the Court, or argued before the Court at trial, as a basis for altering or amending the judgment entered in County's favor. Sloan's motion and memorandum are silent as to why these issues were not, or could not have been, raised previously. As the above authorities make clear, Rule 59 may not be used as a vehicle to allow a party to raise new or additional arguments that could have previously been raised. Accordingly, to the extent Sloan's motion seeks to raise new or additional arguments, such is not appropriate and Sloan's motion should be denied.

In addition to his attempt to proffer additional arguments following entry of judgment, Sloan's motion also requests that the Court amend its judgment to base its ruling on alleged procedural issues of ripeness, mootness and justiciability, "leaving all substantive issues of law relating to the Greenville County Code for the hearing on the merits." Sloan's argument in this respect is clearly misplaced. The non-jury trial held before the Court was the "hearing on the

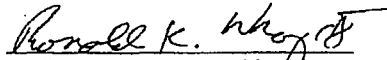
merits." No further hearing or trial on those issues previously litigated and ruled upon is necessary, nor would it be appropriate. The only hearing remaining concerns whether the temporary injunction entered by the Court regarding the proposed disbursement from Council Reserves to Crestwood Forest Village Committee should be made a permanent injunction. Thus, to the extent Sloan's motion and memorandum suggest that the Court requested further factual development concerning those issues previously litigated and lost by Sloan, this argument clearly is incorrect and misperceives the rulings made by the Court both during the bench trial and as set forth in the Court's orders. The Court clearly did not request nor rule that Sloan would be entitled to a second day in court to relitigate issues addressed at trial.

Finally, Sloan asserts that his motion should be granted because he proffered his trial brief before trial, but the Court did not accept his trial brief although the Court did accept defendant's trial brief. Again, it is significant that Sloan's submissions contain no assertion of prejudice allegedly sustained by him. More importantly, however, Sloan does not contend, as he certainly could not, that he was deprived of the opportunity to present any and all issues contained in his trial brief during the arguments heard by the Court. Additionally, the Court did accept Sloan's trial brief prior to issuing its written order. Thus, even assuming for purposes of argument that there was some error by the Court in not accepting or reading Sloan's trial brief prior to the beginning of trial, any alleged error certainly was harmless and cannot be the basis for granting the relief requested by Sloan.

In sum, Sloan has clearly failed to maintain the substantial burden imposed upon him in establishing his entitlement to relief pursuant to Rule 59. Dissatisfied with the Court's ruling against him, Sloan seeks to raise new and additional arguments that cannot be properly

considered by the Court in ruling on a Rule 59 motion. Accordingly, County respectfully submits that Sloan's motion should be denied, and the Court should reaffirm its prior judgment in County's favor.

Respectfully submitted,



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March 16, 1998

Attorneys for Defendant.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

)

) IN THE COURT OF COMMON PLEAS

)

Edward D. Sloan, Jr., individually, and as
a Citizen, Resident, Taxpayer and
Registered Elector of Greenville County,
and on behalf of all others similarly
situated,

Plaintiff,

vs.

The County Council of Greenville County
as the Governing Body of Greenville
County, a Political Subdivision of the
State of South Carolina,
Defendant.

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C.A. No. 96-CP-23-2918

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**MOTION FOR SUMMARY
JUDGMENT AND**

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION**

ENTERED COMPUTER

NOW COMES the Plaintiff, by his undersigned attorneys, and moves the court, pursuant to S.C.R.Civ.P. 56 for Summary Judgment, which would encompass Declaratory Relief under Rule 57, and Injunctive Relief under Rule 65. In support of the Motion, Plaintiff would show unto the Court, based on the pleadings, exhibits and stipulations entered in this case that the following facts are undisputed.

1. Plaintiff is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina, and brings this action individually on his behalf and on behalf of all others similarly situated.
2. Defendant Greenville County is a political subdivision of the State of South Carolina, vested with the power of governing the County in compliance with the Constitution and laws of South Carolina and with enacting ordinances consistent with the Constitution and statutory law.

3. In its Fiscal Year 1994-95 Annual Budget, Defendant established "County Council Reserves" of \$60,000, from which Defendant would, at the request of each member of County Council, disburse up to \$5,000 of county money, which is *public money*, to address special community needs. Budget, p G10. See Exhibit A.
4. On or about October 3, 1994, Defendant disbursed \$1,000 of discretionary funds to the Civil Air Patrol. See Exhibit B.
5. On or about October 3, 1994, Defendant disbursed \$3,790 to the Snickers Soccer Tournament, as "support for the Snickers Soccer Tournament." See Exhibit C.
6. On or about November 15, 1994, Defendant disbursed \$1,500 of discretionary funds to the March of Dimes, as a "donation to the March of Dimes." See Exhibit D.
7. On or about December 2, 1994, Defendant disbursed \$2,500 of discretionary funds to the Berea Branch Library, as discretionary funds "contributed to the Berea Branch Library." See Exhibit E.
8. On or about December 2, 1994, Defendant disbursed \$2,000 of discretionary funds to "Share" which was "given to SHARE out of . . . discretionary funds." See Exhibit F.
9. On or about January 31, 1995, Defendant disbursed \$1,000 of discretionary funds to the NAACP Youth Council as a "donation from [a council member] to G'vl-NAACP-Youth Council to come from the Council Reserve." See Exhibit G.

10. On or about February 8, 1995, Defendant disbursed \$5,000 of discretionary funds to "A Child's Haven (a private non-profit organization)" and noted that a council member "wish[ed] to donate \$5000 of his discretionary funds to A Child's Haven." See Exhibit H.
11. On or about February 17, 1995, Defendant disbursed \$300 of discretionary funds to Church & Community Human Relations, and noted that "Councilman [_____] wish[ed] to donate from the discretionary funds- \$300 to Church + Community Relations." See Exhibit I.
12. On or about March 6, 1995, Defendant disbursed \$982.82 of discretionary funds to the Greenville Water System and noted that this was "to cover 50% of cost for fire hydrant for the Glassy Mountain Fire District." See Exhibit J.
13. On or about March 13, 1995, Defendant disbursed \$500 of discretionary funds to the Phyllis Wheatley Assoc. as a "donation to Phyllis Wheatley Center per [a Council Member]" See Exhibit K.
14. On or about March 13, 1995, Defendant disbursed \$500 of discretionary funds to the Lean on Me Tutorial School, as a "donation to Lean on Me Tutorial School-- Broad St. per [a council member.]" See Exhibit L.
15. On or about April 25, 1995, Defendant disbursed \$5,000 of discretionary funds to the Greer Human Resources Center. See Exhibit M.
16. On or about May 16, 1995, Defendant disbursed \$5,000 of discretionary funds to the Greenville Tech Foundation, as a "Council Reserve Contribution." See Exhibit N.

24. On or about July 28, 1995, Defendant disbursed \$1,000 of discretionary funds to the South Greenville Fire District, "per [a council member's] request--funds to come from Council discretionary account." See Exhibit V.
25. On or about June 28, 1995, Defendant disbursed \$1,000 of discretionary funds to the Piedmont Fire District "per [a council member's] request--funds to come from Council discretionary account." See Exhibit W.
26. On or about June 28, 1995, Defendant disbursed \$1,000 of discretionary funds to the Dunklin Fire District "per [a council member's] request--funds to come from Council discretionary account." See Exhibit X.
27. On or about June 29, 1995, Defendant disbursed \$1,500 of discretionary funds to the Greenville County Library West Branch, as a "\$1500 donation . . . per Councilman _____ to come from discretionary acc't." See Exhibit Y.
28. On or about July 3, 1995, Defendant disbursed \$1,000 of discretionary funds to the Phyllis Wheatley Association, as a "donation of \$1000 . . . per request of [a council member] --funds to come from Council Discretionary Acct." See Exhibit Z.
29. On or about July 3, 1995, Defendant disbursed \$2,500 of discretionary funds to the Berea Branch Library, as a "donation of \$2500.00 . . . per request from Councilman _____ --funds to come from the Council Discretionary Acct." See Exhibit AA.

30. On or about July 3, 1995, Defendant disbursed \$1,500 of discretionary funds to the Greenville Zoo Board, as a "donation of \$1500 . . . per request of [a Council Member] --funds to come from the Council Discretionary Acct." See Exhibit BB.
31. On or about July 3, 1995, Defendant disbursed \$1,000 of discretionary funds to "Share" as a "donation of \$1000 . . . per request of [a Council Member] --funds to come from Council Discretionary Acct." See Exhibit CC.
32. On or about October 31, 1995, Defendant disbursed \$520 of discretionary funds to the G'ville Branch NAACP 13th Annual Freedom Fund Banquet, "for 2 tickets to NAACP banquet," and a table for 10 people, which came from County Administration, Operational Support, and County Council Operational Support. See Exhibit DD.
33. On or about November 2, 1995, Defendant disbursed \$450 of discretionary funds to the G'ville Branch NAACP 13th Annual Freedom Fund Banquet from County Council Operational Support, "for a second table [at the banquet]." See Exhibit EE.
34. On or about November 20, 1995, Defendant disbursed \$210 of discretionary funds to the G'ville Branch NAACP 13th Annual Freedom Fund Banquet for six more banquet tickets, from "Road and Bridge Operational Support," for a total of 28 people to attend the banquet. See Exhibit FF.
35. In its Fiscal Year 1996-97 Annual Budget, page G6, Defendant budgeted \$120,000 under "Non-Departmental" for "Council Reserves," from which

Defendant would, at the request of each member of County Council, disburse up to \$10,000 of county money. See Exhibit GG.

36. Defendant stated the purpose of the Council Reserves as to "allow the council to address special community needs *not normally falling within the operational purview* of County Government." Greenville County Fiscal Year 1996-97 Annual Budget, p. 195 (Emphasis added.) See Exhibit HH.
37. On or about July 8, 1996, Defendant disbursed \$358.00 to the Rotary Club of Greenville, "for . . . membership dues" out of planning commission funds. See Exhibit II.
38. On or about July 10, 1996, Defendant disbursed \$408.00 to the Rotary Club of Greenville for membership dues out of county administration funds. See Exhibit JJ.
39. On or about August 8, 1996, Defendant disbursed \$358.00 to the Rotary Club of Greenville membership dues, out of the Sheriff's funds. See Exhibit KK.
40. At an August 5, 1996, Finance Committee Meeting (minutes of which were approved August 19, 1996), a Council member "requested that the minutes reflect she believed Council should not dictate where the discretionary funds are spent; it should be decided by the individual Council member." See Exhibit LL at 1.
41. An attachment to the Committee Minutes (Exhibit LL) listed a guideline which had a strike out line through it and stated "use in designated county council district only." Id.

42. On August 19, 1996, the Finance Committee adopted "Guidelines for Discretionary Funds" as a guideline, rather than as an ordinance with the force of law. Id. at 2.
43. These guidelines allegedly limited use of Council Reserves "for infrastructure purposes such as: flooding, roads, lights, sewer, and public buildings and grounds." Id. at 2.
44. Council voted not to amend the motion to "add Human Service Projects to the uses listed by the Committee. Id. at 2.
45. On or about September 26, 1996, Defendant disbursed \$5,000 of to the Mauldin Library Building Fund from "[a Council Member's] discretionary funds." See Exhibit MM.
46. On or about September 25, 1996, Defendant disbursed \$5,000 to the Simpsonville Library Building Fund from "[a Council Member's] discretionary funds." See Exhibit NN.
47. On or about February 18, 1997, Defendant disbursed \$3,507.00 of discretionary funds to Sugar Creek Homeowners Association, "per Councilman _____ from discretionary fund payment for 22 additional street lights in Sugar Creek Subdivision for 1 year." See Exhibit OO.
48. On or about April 28, 1997, Defendant disbursed \$7,500 the City of Travelers Rest for the Hometown Program, from Council Discretionary funds, at the request of one Council Member. See Exhibit PP.

49. On or about June 27, 1997, Defendant disbursed \$10,000 to the City of Greer for the city's infrastructure improvements, from County Council Discretionary Funds. See Exhibit QQ.
50. On or about June 30, 1997, Defendant disbursed \$10,000 of discretionary funds to the Greenville Zoo Board. See Exhibit RR.
51. Charts produced by Defendant shows that \$223,759 was "appropriated" to the 1997-98 Council Reserve, including \$18,647 "appropriated" for each council member not including salary donations referenced below; \$120,000 was "appropriated" to the 1996-97 Council Reserve; and \$60,000 to the 1994-95 Council Reserve. (Defendants did not produce a chart for 1995-96.) See Exhibit SS.
52. Defendant has continued to draw upon Council Reserves without voting on each expenditure or appropriation.
53. A disbursement of \$2,000 was made from "non-departmental council reserve" to the City of Fountain Inn October 22, 1997. See Exhibit TT.
54. A disbursement of \$2,000 was made from "non-departmental council reserve" to the Mauldin Library November 18, 1997. See Exhibit UU.
55. A disbursement of \$2,605.84 was made from discretionary funds to Atlantic Supply and Equipment December 15, 1997. See Exhibit VV.
56. A disbursement of \$2,500.00 was made from a Councilman's "salary donation from 1997 to Sugar Creek Recreation Center. The check stub says "nondepartmental council reserve." See Exhibit WW.

57. January 19, 1998, Council disbursed \$1,000 from "non-departmental council reserve" to the Greenville Recreation Commission. See Exhibit XX.
58. At a meeting of the Council Finance Committee, January 19, 1998, the a motion carried to transfer a portion of a Council member's salary to Council Reserves. See Exhibit YY at 4.
59. At a meeting of County Council January 20, 1998, a verbatim transcript of a successful motion to waive the "guidelines" was requested. See Verbatim Transcript, Exhibit ZZ at 12.
60. A Councilman stated, "This wouldn't be a supplemental because it's coming from Discretionary Funds. This would be a transfer. Is that correct? O.K. Id. at 12.
61. A Councilman stated, "I voted against this in Committee. And the reason, when I came on Council 3 years ago, we had a thing called Discretionary Funds and I was amazed to find there were no rules in place governing how you could spend those funds. I began calling them "slush funds," because that's in fact what they were. Id. at 13.
62. The same Councilman stated, "We have since put guidelines on the use of these discretionary funds for the purpose of making sure they were used for those purposes: infrastructure, etc. . . Id. at 13.
63. The councilman continued, "I can't support this because it is not with the positions we have taken as a body. If we allow an exception for this item in the Discretionary Fund Account, then how can we justify not making other exceptions?" Id. at 13.

64. Another Councilman said, "I was not aware that we could waive these guidelines . . ." Id. at 14.
65. If we are I have had to not fund things that I would have liked to have funded out of my discretionary funds because of the guidelines that were established. If we are going to make exceptions, I think we need to make it in the form of an amendment, or whatever is required, in order to give everybody on this Council the opportunity to waive the guidelines that are in place for our individual needs that are within our district." Id. at 14.
66. At the January 20, 1998 Council Meeting, the minutes record that a Council member requested the County Attorney look into whether discretionary funds "may be used for human potential and not just infrastructure needs." Id. at 16.
67. The same minutes record a motion which carried, to transfer a portion of a Councilman's salary into the discretionary fund account. Id. at 16.
68. The 1997-98 Operating and Capital Budge Fund Overview: General Fund/Administrative Services, p. 87, states that Defendant's Office's budget Allowance is \$361,198 for 15.8 employees. Defendant's Office Budget does not include the Council Reserves. See Exhibit AAA.
69. On or about February 3, 1998, Council reconsidered the motion to waive the discretionary fund guidelines which passed at the January 20, 1998 Council Meeting. The motion to waive the guidelines passed once again, 7 to 5. (Minutes will be available February 17, 1998.)
70. All the foregoing expenditures were made with public money.

LEGAL DISCUSSION

Defendant's Council Reserve Funds have in some measure taken on the characteristics of a private "slush fund," as stated by some members of the County Council. As shown above in the statement of facts, it appears that some individual members have donated all or part of their salaries earned as council members to the Council Reserve Fund, and then they seem to find themselves free to do with that money--and the rest of the Council Reserve Funds--as they choose.

If a council member wishes to donate privately to the various worthy foundations and organizations, that is laudable. Incidentally, Mr. Sloan has donated money to some of the organizations who received money at issue in this lawsuit. These donations, however should be done with the council member's private funds. When the salary money is donated to the Council Reserve Fund, it again becomes public money. It must be treated as, and accounted for as, public money.

I. Some Council Reserve disbursements are constitutional violations.

Defendant has funded religious activity. Article 1, Section 4 of the S.C. Constitution and the First Amendment to the U.S. Constitution prohibit Defendant, as a governing arm of the state, from contributing money to religious organizations. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Constitution, Article I Amendment I. "The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof . . ." S.C. Constitution, Article I, Section 2.

The language of the first amendment to the Constitution of the United States and language of Article 1 Section 2 of the Constitution of South

Carolina are, for all intents and purposes, the same. Accordingly, our reasoning is applicable to both constitutional provisions. The establishment clauses are intended to afford protection against sponsorship, financial support and active involvement of the government in religious activity."

Hunt v. McNair, 258 S.C. 103, 187 S.E. 2d 645 (1972) *citing* Walz v. Tax Commission, 397 U.S. 664, 90 S. Ct. 1409, 25 L.Ed. 2d 697 (1970). The Budget Ordinance provides for these unconstitutional expenditures and has not been amended.

Defendant has disbursed discretionary funds to "Church and Community Human Relations" (Exhibit I) and the Salvation Army (Exhibit S). Both organizations are religious and Defendant must be enjoined from further disbursements to religious organizations.

II. All Council Reserve disbursements violate the Greenville County Code.

The South Carolina General Assembly has legislated restrictions upon county government appropriations to prevent these unconstitutional abuses. Defendant has enacted the Greenville County Code to comply with the General Assembly's requirements. However, the Defendant has attempted to circumvent these restrictions imposed on appropriations by the County Code and South Carolina Code by establishing "Council Reserves" to "address special community needs not normally falling within the operational purview of County Government." See Exhibit GG..

Section 4-9-130 of the South Carolina Code Ann. requires public hearings and reasonable notice whenever "council action" is taken to "make appropriations . . ." *Id.* The Greenville County Code, Article V, sets forth budget policies which bind Defendant. The Greenville County Code is a compilation of ordinances. "The council shall take

legislative action by ordinance. . . . As used herein the term "ordinance" shall be an ordinance have the force of law." Section 2-61. Greenville County Code.

A. Defendant has violated Section 7-81(a) of the Greenville County Code.

(a) Appropriation of funds shall be made only by county council to departments and agencies to provide public services to county citizens. Appropriation of funds to private, nonprofit organizations and institutions to provide services is prohibited.

First, Defendant must appropriate funds only to "departments and agencies to provide public services to county citizens." Id. As the statement of facts and Exhibits demonstrate, Defendant earmarks funds (more than \$200,000 this year) in each annual budget and deposit them in a non-departmental account called Council Reserve.

Second, Defendant is prohibited from appropriating funds to "private, non-profit organizations and institutions to provide services." Defendant appropriates these funds to "private, non-profit organizations and institutions to provide services" as recently January 20, 1998. See Exhibit ZZ.

B. Defendant has violated Sec. 7-81 (b) of the Greenville County Code.

(b) Requests for county funds will be submitted to council for review during the regular county budget process, and appropriations will be made only for specific line item purposes. As required by section 7-66 of this chapter, the annual report from departments and agencies to council shall verify that funds were expended in accordance with the purposes for which they were allocated.

First, all "requests for county funds will be submitted to council for review during the regular county budget process . . ." Rather than the entire council reviewing "requests for county funds" that are "submitted for council review during the regular county budget process," individual council members receive requests throughout the year and respond to them by submitting individual requisitions to the clerk of county council, Ms. Elizabeth

Hanzey, for amounts not exceeding their individual fund limits (more than \$18,000 per council member this year).

Second, Defendant appropriates county funds to the Council Reserve without "specific line item purposes." In the past, those purposes ultimately supported by the County Council Reserve range across the political spectrum. They encompass a wide variety of activities and purposes. The lack of a specific line item purpose makes it open to abuses of a variety of sorts. Lumping over \$200,000 into a fund, which has no "specific line item purposes" other than "special community needs *not normally falling within the operational purview* of County Government" violates this clear provision of the County Code.

Third, the agencies to which Defendant disburses money do not "verify that funds were expended in accordance with the purposes for which they were allocated." Section 7-66 of the Greenville County Code requires that "All county offices, departments, boards, commissions, or institutions receiving county funds *shall make* a full, detailed annual report to the county council at the end of the fiscal year." There is no indication that the wide variety of recipients which have received the Council Reserve funds have made any such reports to the county council or that there is any mechanism in place for them to do so. This whole method of funding is outside the manner contemplated and mandated by the Greenville County Code.

c. **Defendant has violated Sec. 7-81(c).**

(c) County funds will be disbursed to departments and agencies in one of the following ways:

(1) *Departments and agencies funded one hundred percent with county funds.* Departments and agencies are required to conform with the accounting, purchasing and personnel policies of the county. The

accounting department will be responsible for all fund disbursement through the county's accounting system.

(2) *Departments or agencies funded less than one hundred per cent by county funds.* Agencies will be subject to the county's purchasing and personnel policies if comparable policies do not exist. If feasible, the department or agency will receive county funds through the county's accounting system. If not feasible, departments or agencies will receive funds in accordance with a schedule prepared by the county administrator to include the following:

- a. The agency will estimate its first month's expense. The finance department will issue a check to the agency for this amount.
- b. Subsequent payment will be made on an estimated basis predicated on actual expenditures.

Defendant has disbursed funds through the county council clerk, rather than "through the county's accounting system." There has, to the knowledge of the plaintiff been no effort at all to comply with Section 7-81(c) of the Greenville County Code. Expenditures are made on a lump sum basis, almost like grants of money.

D. The "Guidelines" are not binding on County Council.

Defendant passed the Council Reserve "guidelines" limiting disbursements from the Council Reserve, but they were not passed as an ordinance, which has the force of law. Section 2-61, Greenville County Code. They were passed simply as a resolution. "Resolutions shall not have the force of law but shall be used to take administrative action or express the opinion of council." Section 2-61, Greenville County Code. Thus, Defendant may waive, and has waived these guidelines so each council member may disburse his more than \$18,000 of discretionary funds as he desires.

CONCLUSION

This system of appropriation has violated the establishment clauses of the S.C. and U.S. Constitutions. It has the potential of doing so again. This system also violates the Greenville County Code, enacted under the South Carolina Home Rule Act. The violations are so numerous that it seems that Defendant has done just about the opposite of what is required by the Greenville County Code. This Court should enjoin the illegal practices.

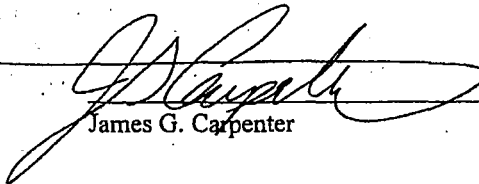
WHEREFORE, Plaintiff prays the Court for:

1. Declaratory relief under S.C.R.Civ.P. 57, that Defendant's appropriation, expenditure, disbursement, and donation of public funds to religious entities violated the *establishments clauses* of the United States and South Carolina Constitutions.
2. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds to entities which are *not departments and agencies* of the Greenville County Government, in violation of the Greenville County Code Section 7-81(a).
3. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds to entities which are "*private nonprofit organizations and institutions*," in violation of the Greenville County Code Section 7-81(a).
4. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds *when they are not made by County Council*, as a whole, but rather they are made by individuals, in violation of Section 7-81(a).
5. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds *when there had been no request to Council* in violation of Section 7-81(b).
6. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds to entities *when it was not submitted during the regular county budget process*, in violation of Section 7-81(b).
7. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds to entities *when there was no line item appropriation*, in violation of Section 7-81(b).
8. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds to entities *when there is no annual report* back to "verify

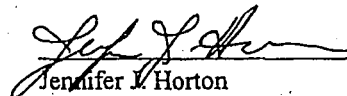
that funds were expended in accordance with the purposes for which they were allocated," in violation of Section 7-81(b).

9. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds to entities because funds must be *distributed to "departments and agencies* in one of the . . . ways" enumerated in Section 7-81(c).
10. An order enjoining the expenditure of money from Council Reserves which was approved by vote on January 17, and again on February 2, because it violates the Greenville County Code.
11. Costs and attorneys fees under 42 U.S.C. § 1988, and under the doctrine of *Shillito v. City of Spartanburg*, 214 S.C. 11, 51 S.E.2d 95 (1948).
12. Such other and further relief as the court deems just and proper.

Respectfully submitted,



James G. Carpenter



Jennifer A. Horton

JAMES G. CARPENTER, P.C.
205 East Broad Street
Greenville, SC 29601
(864) 235-1269
Attorneys for the Plaintiff

GREENVILLE COUNTY

Fiscal Year 1994-95 Annual Budget

ADMINISTRATIVE OFFICES HIGHLIGHTS

Budget Highlights

☆ County Council Reserve

In accordance with Revenue Policy #3, a County Council Reserve has been established within the County Council Office budget. A total of \$190,500, or 0.30%, of annual operating revenues was proposed to address special community needs. The appropriation was adjusted to \$60,000 during budget worksessions to provide \$5,000 per County Council member.

☆ Customer-Oriented Workforce

A strategic mindset has been established for the development of a government working for its citizens-customers in the most cost-effective and efficient manner.

☆ Deputy County Administrator Position

The proposed elimination of the Deputy County Administrator position results in annual savings of \$72,000, including fringe benefits.

☆ Effective Use of Technology

Automation enhancements and additions in all areas are improving professionalism, presentation, and response to citizens-customers.

☆ Assistant to Administrator Positions

Delivery of services and responses are being improved through enhanced information links through the Assistant to the Administrator positions.

☆ Internal Audit Reinstatement

The reinstatement of an Internal Auditor position was approved during the County Council budget worksession. A total of \$48,861 was appropriated to provide for the position and related equipment.

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GREENVILLE COUNTY

CHECK NO. 045573

67-776/532
01020

SOUTH CAROLINA

DATE

10/03/54

VENDOR NO.

01164200

ACCOUNTS PAYABLE

PAY EXACTLY

\$1,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602

ONE THOUSAND DOLLARS AND 00 CENTS *****

CIVIL AIR PATROL

NON-NEGOTIABLE

045573

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY					* P = PARTIAL F = FINAL C = CREDIT MEMO
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	
1,000.00	RECF			F COUNTY COUNCIL	COUNCIL RESERVE
1,000.00 TOTAL				VENDOR = 01164200	
ACCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON					

DETACH AND RETAIN THIS STATEMENT OF ITEMS PAID BY ATTACHED CHECK.
IF INCORRECT, PLEASE RETURN WITHOUT ALTERATION TO GREENVILLE COUNTY, TREASURERS OFFICE, GREENVILLE, S.C. 29601

MG

PLAINTIFF'S
EXHIBIT
B

10/3

NO 2164200

00291

County Council

DEPARTMENT

Civil Air Patrol
NAME AND LOCATION

NAME AND LOCATION

ASAP

9/22/94

DATE _____

41500-1-2-284

ITEM NUMBER

	DELIVERY DATE					PURCHASE ORDER #
						SHIP VIA
	CONFIRMING					FOB
	DATE	WITH				TERMS
	DO NOT WRITE IN SHADED AREA.					

[illegible]

UY.

OWN SUPPLIERS:

FUND BALANCE CERTIFICATE

I hereby certify that _____ Amount
was available as of _____ Date
in the appropriate account or Fund for purchase of items

CERTIFICATION

I Hereby Certify That: The Items Listed Above Are Needed
By This Department For The Sole Use And Benefit Of
Greenville County.

Dick Herdklotz
County Council

4557B

Date 9/20/94

To Kim ABRAMS

- ☐ For Your Information
- ☐ For Your Comments
- ☒ Please Handle
- ☐ Please Take Up With Me
- ☐ For Your Approval
- ☐ Please File
- ☐ Please Return
- ☐ As Per Your Request

RECEIVED
OCT 01 1994
A/P DEPT.
GREENVILLE COUNTY

Comments: I WOULD LIKE TO USE MY \$5,000

DISCRETIONARY ACCOUNT AS FOLLOWS:

\$1,000 - CIVIL AIR PATROL FOR A NEW ROOF
ON THEIR BUILDING - CONTACT

SKIP HUGHES IN THE SHERIFFS DEPT.

\$4,000 - SUPPORT FOR THE SNICKERS

\$3,790 SOCCER TOURNAMENT

THANKS,
Dick

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 045574

67-176/532
01020

SOUTH CAROLINA

DATE
10/03/74

VENDOR NO.
01164300

ACCOUNTS PAYABLE
PAY EXACTLY
\$3,790.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
045574

THREE THOUSAND SEVEN HUNDRED NINETY DOLLARS AND 00 CENTS *****

AY: STICKER SOCCER TOURNAMENT

OTHER
ORDER
IF

NON-NEGOTIABLE

No. 045574

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY					* P = PARTIAL F = FINAL C = CREDIT MEMO.
AMOUNT	INVOICE NO.	P.O. NO.	*		DESCRIPTION
3,790.00					FUNDS F COUNTY COUNCIL COUNCIL RESERVE
3,790.00 TOTAL					VENDOR = 01164300
Y DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON					

DETACH AND RETAIN THIS STATEMENT OF ITEMS PAID BY ATTACHED CHECK.
IF INCORRECT, PLEASE RETURN WITHOUT ALTERATION TO GREENVILLE COUNTY, TREASURERS OFFICE, GREENVILLE, S.C. 29601

mg

PLAINTIFF'S
EXHIBIT
C

TO: PURCHASING DEPARTMENT

REQUISITION 0116 4300
00292

FROM: County Council DEPARTMENT

DELIVER TO: Snickers Soccer Tournament
NAME AND LOCATION

DATE REQUESTED: ASXP

9/22/94

41500-1-2-284
ITEM NUMBER

	DELIVERY DATE					PURCHASE ORDER #
						SHIP VIA
	CONFIRMING					FOB
	DATE	WITH				TERMS
	DO NOT WRITE IN SHADED AREA.					

[illegible]

USER-
NO

SUPPLIERS:

FUND BALANCE CERTIFICATE

I hereby certify that

Amount

was available as of .

Date _____

In the appropriate account or Fund for purchase of items listed above.

CERTIFICATION

I Hereby Certify That The Items Listed Above Are Needed
By This Department For The Sole Use And Benefit Of
Greenville County

Signed Elizabeth M. Hansen

Dick Herdklotz
County Council

45574

Date 9/20/94

To Kim Abrams

- ☐ For Your Information
- ☐ For Your Comments
- ☒ Please Handle
- ☐ Please Take Up With Me
- ☐ For Your Approval
- ☐ Please File
- ☐ Please Return
- ☐ As Per Your Request

To: Jenny
From: Regina

RECEIVED
OCT 01 1994
A/P DEPT.
GREENVILLE COUNTY

Comments: I would like to use my \$5,000

DISCRETIONARY ACCOUNT AS FOLLOWS:

\$1,000 - CIVIL AIR PATROL FOR A NEW ROOF
ON THEIR BUILDING - CONTACT

SKIP HUGHES IN THE SHERIFFS DEPT.

~~\$4,000~~ - SUPPORT FOR THE SNICKERS
\$3790 SOCCER TOURNAMENT

THANKS,

Dick

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GREENVILLE COUNTY

CHECK NO. 050010

57-776/532
01020

SOUTH CAROLINA

DATE
11/12/94

VENDOR NO.
01180500

ACCOUNTS PAYABLE
PAY EXACTLY
*****1,500.00*****

FIRST UNION NATIONAL BANK
GREENVILLE-SOUTH CAROLINA 296

ONE THOUSAND FIVE HUNDRED DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
MARCH OF DIMES

NON-NEGOTIABLE

No. 050010

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY				* P = PARTIAL	F = FINAL	C = CREDIT MEMO.
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION		
1,300.00	GIBSON			F COUNTY COUNCIL COUNCIL RESERVE		
1,500.00 TOTAL				VENDOR = 09000000		

DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

DETACH AND RETAIN THIS STATEMENT OF ITEMS PAID BY ATTACHED CHECK.
IF INCORRECT, PLEASE RETURN WITHOUT ALTERATION TO GREENVILLE COUNTY, TREASURERS OFFICE, GREENVILLE, S.C. 29601

PLAINTIFF'S
EXHIBIT

REQUISITION

05816

ROM:

DEPARTMENT

ELIVER TO:

NAME AND LOCATION

DATE REQUESTED:

DATE _____

ITEM NUMBER

		DELIVERY DATE				PURCHASE ORDER #	
						SHIP VIA	
		CONFIRMING				FOB	
		DATE	WITH			TERMS	
DO NOT WRITE IN SHADED AREA.							
Quantity	Description	Estimated Cost		Quotations		Unit	Total Price
	Donation to the March of Dimes from Ms. Gibson's discretionary funds						\$1500. ⁰⁰
	<i>D. Gibson</i>						
	<i>JK</i>						
	<i>11/15/97</i>						
	<i>changed to permanent vendor #</i>						

PAID
 NOV 15 1994
 GREENVILLE COUNTY
 FINANCE DEPT.

304

INC. IN SUPPLIERS:

FUND BALANCE CERTIFICATE

I hereby certify that _____ Amount _____

was available as of _____ Date _____

in the appropriate account or Fund for purchase of items listed above.

CERTIFICATION

I Herby Certify That The Items Listed Above Are Needed
By This Department For The Sole Use And Benefit Of
Greenville County.

Minister M. A. L. L.

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 052677

67-276532
01020

SOUTH CAROLINA

DATE
12/02/94

VENDOR NO.
01182500

ACCOUNTS PAYABLE
PAY EXACTLY
*****2,500.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602
052677

TWO THOUSAND FIVE HUNDRED DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
BEREA BRANCH LIBRARY

NON NEGOTIABLE

No. 052677

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY					* P = PARTIAL F = FINAL C = CREDIT MEMO.
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	
2,500.00				COUNCIL	F COUNTY COUNCIL COUNCIL RESERVE
2,500.00 TOTAL					VENDOR = 01182500

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

DETACH AND RETAIN THIS STATEMENT OF ITEMS PAID BY ATTACHED CHECK
IF INCORRECT, PLEASE RETURN WITHOUT ALTERATION TO GREENVILLE COUNTY, TREASURERS OFFICE, GREENVILLE, S.C. 29601

PLAINTIFF'S
EXHIBIT

TO: PURCHASING DEPARTMENT

REQUISITION

01182500
05819

FROM:

County Council

DEPARTMENT

DELIVER TO:

Berea Branch Library

NAME AND LOCATION

DATE REQUESTED:

ASAP

11/22/94

DATE

41500-1-2-284

ITEM NUMBER

DELIVERY DATE		PURCHASE ORDER #	
CONFIRMING		SHIP VIA	
DATE	WITH	FOB	
DO NOT WRITE IN SHADED AREA			
Quantity	Description	Estimated Cost	Total Price
	Mr. Patterson has asked that \$2500 of his allocated discretionary funds be contributed to the Berea library branch		\$2500.00
		RECEIVED	
		DEC 11 1994	
		AVR DEPT. GREENVILLE COUNTY	
		PAID	
		DEC 2 1994	
		GREENVILLE COUNTY FINANCE DEPT.	

JYE

HOW SUPPLIERS:

FUND BALANCE CERTIFICATE

I hereby certify that _____ Amount _____
was available as of _____ Date _____
in the appropriate account or Fund for purchase of items listed above.

CERTIFICATION

I hereby certify that the items listed above are needed by this department for the sole use and benefit of Greenville County.

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 052691

67-776/532
61020

SOUTH CAROLINA

DATE

12/02/94

VENDOR NO.

06181300

ACCOUNTS PAYABLE

PAY EXACTLY

*****2,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602
052691

TWO THOUSAND DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
SHARE BOX 10804
GREENVILLE S C 29603

NON NEGOTIABLE

No. 052691

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY * P = PARTIAL F = FINAL C = CREDIT MEMO

AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION
2,000.00				COUNCIL
2,000.00 TOTAL				COUNTY COUNCIL COUNCIL RESERVE
Y DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON				
VENDOR = 06181300				

DETACH AND RETAIN THIS STATEMENT OF ITEMS PAID BY ATTACHED CHECK.
IF INCORRECT, PLEASE RETURN WITHOUT ALTERATION TO GREENVILLE COUNTY, TREASURERS OFFICE, GREENVILLE, S.C. 29601

mg

PLAINTIFF'S
EXHIBIT
F

TO: PURCHASING DEPARTMENT

REQUISITION

0618/300

05821

FROM:

County Council

DEPARTMENT

DELIVER TO:

SHARE

NAME AND LOCATION

DATE REQUESTED:

ASAP

DATE

11/28/94

ITEM NUMBER

41500-0-2-284

DELIVERY DATE		TERMS AND PRICE		PURCHASE ORDER #	
CONFIRMING		MATERIAL OR SERVICE RECEIVED		SHIP VIA	
DATE	WITH	ACCOUNT AND CODING		FOB	
DO NOT WRITE IN SHADED AREA				TERMS	
Quantity	Description	Estimated Cost	Final Payment Quotations	Unit	Total Price
	Ms Gibson has asked for a check in the amount of \$2000 be given to SHARE out of her discretionary funds -				2000.00
RECEIVED DEC 01 1994 A/P DEPT GREENVILLE COUNTY					
PAID DEC 2 1994 GREENVILLE COUNTY FINANCE DEPT.					

BY

TOWN SUPPLIERS:

FUND BALANCE CERTIFICATE

I hereby certify that _____ Amount
 was available as of _____ Date
 in the appropriate account or fund for purchase of items

CERTIFICATION

I hereby certify that the items listed above are needed
 by this department for the sole use and benefit of
 Greenville County

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 058632

67-776/532
01020

SOUTH CAROLINA

DATE
01/31/95

VENDOR NO.
01198800

ACCOUNTS PAYABLE
PAY EXACTLY
\$*****1,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
058632

ONE THOUSAND DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF NAACP
GREENVILLE YOUTH COUNCIL

NON NEGOTIABLE

No. 058632

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		* P = PARTIAL F = FINAL C = CREDIT MEMO			
AMOUNT	INVOICE NO.	P.O. NO.	*		DESCRIPTION
1,000.00					RESERV F COUNTY COUNCIL COUNCIL RESERVE
1,000.00 TOTAL					VENDOR = 01198800
DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON					

DETACH AND RETAIN THIS STATEMENT OF ITEMS PAID BY ATTACHED CHECK.
IF INCORRECT, PLEASE RETURN WITHOUT ALTERATION TO GREENVILLE COUNTY, TREASURERS OFFICE, GREENVILLE, S.C. 29601

PLAINTIFF'S
EXHIBIT

TO: PURCHASING DEPARTMENT

REQUISITION

01198800

05848

FROM:

County Council

DEPARTMENT

DELIVER TO:

Greenville NAACP Youth Council

NAME AND LOCATION

DATE

1/31/95

DATE REQUESTED:

X5AP

41500-1-2-284

ITEM NUMBER

Quantity	Description	Estimated Cost	Quotations	Unit	Total Price
	Donation from Fletcher Smith to Girl-NAACP Youth Council to come from the Council Reserve				1000.00
NAACP Greenville Youth Council Per Ruth B.					

DELIVERY DATE

PURCHASE ORDER #

CONFIRMING

DATE

WITH

SHIP VIA

FOB

TERMS

RECEIVED
JAN 31 1995

DO NOT WRITE IN SHADED AREA

A/P DEPT

GREENVILLE COUNTY

BY

VO... SUPPLIERS:

FUND BALANCE CERTIFICATE

I hereby certify that _____ Amount

was available as of _____ Date

in the appropriate account or Fund for purchase of items listed above

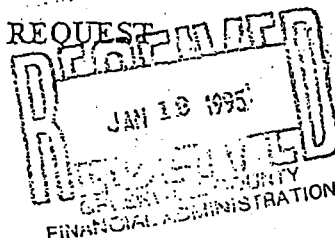
CERTIFICATION

I hereby Certify That The Items Listed Above Are Needed
By This Department For The Sole Use And Benefit Of
Greenville County

11 11 11

SS ☐
AR ☐

GREENVILLE COUNTY SERVICE REQUEST



REQUEST NUMBER: 95-1097

REQUEST CLASSIFICATION:

COUNCIL

☒

CITIZEN

☐

DISTRICT 23

REQUESTOR'S INFORMATION

RECEIVED FROM: Councilman Fletcher Smith

NAME:

STREET ADDRESS:

CITY:

STATE

ZIP CODE

HOME PHONE ()

WORK PHONE ()

SITE:

REQUEST: Wishes to donate \$1,000 of discretionary funds to Greenville NAACP - Youth Council. Contact person: Bertha Hudson 269-6453

ASSIGNMENT

DEPARTMENT/DIVISION: Finance + Admin. Svcs.

DATE RECEIVED: 1/9/95

RETURN BY: 1/18/95

ACTION TAKEN:

PAID

JAN 31 1995

DATE RESOLVED:

Return request to County Administrator's Office.

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 059687

87-76532
01020

SOUTH CAROLINA

DATE
02/08/95

VENDOR NO
00955900

ACCOUNTS PAYABLE
PAY EXACTLY
\$*****5,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
059687

FIVE THOUSAND DOLLARS AND 00 CENTS *****

AY
O THE
ORDER
OF
CHILD'S HAVEN (A)

NON NEGOTIABLE

No. 059687

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		* P = PARTIAL F = FINAL C = CREDIT MEMO			
AMOUNT	INVOICE NO.	P.O. NO.	*		DESCRIPTION

5,000.00

DONATE

F COUNTY COUNCIL

COUNCIL RESERVE

5,000.00 TOTAL

VENDOR = 00955900

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

DETACH AND RETAIN THIS STATEMENT OF ITEMS PAID BY ATTACHED CHECK
IF INCORRECT, PLEASE RETURN WITHOUT ALTERATION TO GREENVILLE COUNTY, TREASURERS OFFICE, GREENVILLE, S.C. 29601

PLAINTIFF'S
EXHIBIT

2/8

007559

GREENVILLE COUNTY SERVICE REQUEST

REQUEST NUMBER: 95-1122

REQUEST CLASSIFICATION:

COUNCIL

2

CITIZEN

C

DISTRICT 21

FUNDING

REQUESTOR'S INFORMATION

RECEIVED FROM: Councilman Bob LeachNAME: Eva Hunt - Contact Person 277-6918

STREET ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

HOME PHONE () _____ WORK PHONE () _____

SITE: _____

REQUEST: Wishes to contribute \$5,000 of discretionary funds to: A Child's Haven (a private non-profit organization?)

RECEIVED

FEB 07 1995

A/P DEPT.
GREENVILLE COUNTYSERVICE
RECEIVED

ACCOUNT

COUNCIL

RECEIVED

AND
DISCOUNTOK FOR
PAYMENT

ASSIGNMENT

DEPARTMENT/DIVISION: Finance & Administrative Svcs.DATE RECEIVED: 1/31/95RETURN BY: 2/8/95

ACTION TAKEN:

Eligibility ReviewThere's some expenditure from the Council's discretionary funds. To gain records & verification. Will not be checked the same day of request.Thank you
John 2/1/95

DATE RESOLVED: _____

Return request to County Administrator's Office.

AT YOUR SERVICE."

REQUISITION

FROM:

County Council
DEPARTMENT

DEPARTMENT

DELIVER TO:

A Child's Haven

NAME AND LOCATION

DATE REQUESTED:

ASAP

08902

2/6/95

DAI

41500-1-2-284

ITEM NUMBER

	DELIVERY DATE					PURCHASE ORDER
						SHIP VIA
	CONFIRMING					FOB
	DATE	WITH				TERMS
	DO NOT WRITE IN SHADED AREA.					

Quantity	Description	Estimated Cost	Quotations	Unit	Total Price
	Mr. Leach wishes to donate \$5000 of his discretionary funds to *Child's Haven.			#	\$5000
RECEIVED FEB 07 1995 A/P DEPT. GREENVILLE COUNTY					
BUYER:					

BUYER:

KN 'N SUPPLIERS:

FUND BALANCE CERTIFICATE

I hereby certify that

Amount

was available as of

Date _____

in the appropriate account or Fund for purchase of items listed above.

CERTIFICATION

I Herby Certify That The Items Listed Above Are Need
By This Department For The Sole Use And Benefit
Greenville County.

Signed Elizabeth M. Hax

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 060828

67-776/532
01020

SOUTH CAROLINA

DATE
02/17/95

VENDOR NO.
01086800

ACCOUNTS PAYABLE
PAY EXACTLY
\$*****300.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
060828

THREE HUNDRED DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
CHURCH & COMMUNITY
HUMAN RELATIONS
P O BOX 8701
GREENVILLE SC 29604

NON NEGOTIABLE

No. 060828

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY					* P = PARTIAL F = FINAL C = CREDIT MEMO.	
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION		
300.00				CONATE	F	COUNTY COUNCIL COUNCIL RESERVE
300.00 TOTAL						VENDOR = 01086800

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

DETACH AND RETAIN THIS STATEMENT OF ITEMS PAID BY ATTACHED CHECK.
IF INCORRECT, PLEASE RETURN WITHOUT ALTERATION TO GREENVILLE COUNTY, TREASURERS OFFICE, GREENVILLE, S.C. 29601

ms

PLAINTIFF'S
EXHIBIT
T

2/17

01086800

SS ☐
AR ☐

GREENVILLE COUNTY SERVICE REQUEST

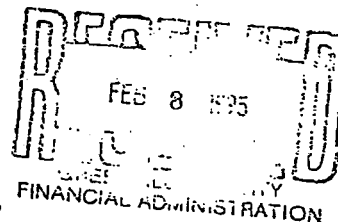
REQUEST NUMBER: 95-1126

REQUEST CLASSIFICATION:

COUNCIL ☒

CITIZEN ☐

DISTRICT 23



REQUESTOR'S INFORMATION

RECEIVED FROM: Councilman Fletcher Smith

NAME:

STREET ADDRESS:

CITY:

STATE

ZIP CODE

HOME PHONE ()

WORK PHONE ()

SITE:

REQUEST: Would like to donate \$300 of discretionary funds to the Church & Community Relations

Rev. Barry
Greenville, SC 29604

Contact: Rev. Barry, Chairperson 277-1220

FEB 10 1995

A/P DEPT

PAID

ASSIGNMENT FEB 17 1995

DEPARTMENT FINANCE & Admin. Svcs.

DATE RECEIVED: 2/15/95

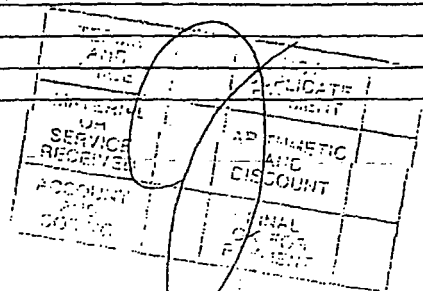
RETURN BY: 2/15/95

ACTION TAKEN:

ok - Forward to Elizabeth for processing

DATE RESOLVED:

Return request to County Administrator's Office.



REQUISITION

08904

2/10/95

41500-1-Z-284
ITEM NUMBER

YER:
 OW APPLIERS:

I hereby certify that _____ Amount
was available as of _____ Date
in the appropriate account or Fund for purchase of items
listed above.

I Heraby Certify That The Items Listed Above Are Needed
By This Department For The Sole Use And Benefit Of
Greenville County

Acidophiles W

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 062397

67-776-532
01020

SOUTH CAROLINA

DATE

03/06/95

VENDOR NO.

03137400

ACCOUNTS PAYABLE
PAY EXACTLY

*****982.82

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
062397

NINE HUNDRED EIGHTY-TWO DOLLARS AND 82 CENTS *****

PAY TO THE ORDER OF
G'VILLE WATER SYSTEM
P O BOX 687
GREENVILLE SC 29602-0687

NON NEGOTIABLE

No. 062397

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY

P = PARTIAL F = FINAL C = CREDIT MEMO

AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION
982.82	HYDRAN	F	COUNTY COUNCIL	COUNCIL RESERVE
982.82 TOTAL			VENDOR =	03137400

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON.

DETACH AND RETAIN THIS STATEMENT OF ITEMS PAID BY ATTACHED CHECK.
IF INCORRECT, PLEASE RETURN WITHOUT ALTERATION TO GREENVILLE COUNTY, TREASURERS OFFICE, GREENVILLE, S.C. 29601

MG

PLAINTIFF'S
EXHIBIT

3/3/95

031374 SS ☐
AR ☐

GREENVILLE COUNTY SERVICE REQUEST

REQUEST NUMBER: 95-1149

REQUEST CLASSIFICATION:

RECEIVED

COUNCIL L

CITIZEN ☐

DISTRICT

MAR 03 1995

GREENVILLE COUNTY

REQUESTOR'S INFORMATION

RECEIVED FROM: Councilman Rick Blackwell
NAME: Greenville Water System - Attn: Stan Himmiatis
STREET ADDRESS: P.O. Box 887
CITY: Greenville STATE SC ZIP CODE 29602
HOME PHONE () WORK PHONE () 241-6155
SITE:

REQUEST: Please allocate and check from discretionary fund for \$982.82 to Greenville Water System. This amt. is to cover 50% of cost for fire hydrant for the Glassy Mountain Fire District.

4015-01-41500-1-2284

ASSIGNMENT

DEPARTMENT/DIVISION: Finance & Admin. Svcs.
DATE RECEIVED: 3/3/95
RETURN BY: 3/10/95
ACTION TAKEN:

DATE RESOLVED:

Return request to County Administrator's Office.

ORIGINAL PRICE	DUPLICATE PAYMENT
MATERIAL	ARITHMETIC AND DISCOUNT
SERVICE RECEIVED	FINAL OK FOR PAYMENT



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GREENVILLE COUNTY

CHECK NO. 063012

67-776-202
01020

SOUTH CAROLINA

DATE
03/13/95

VENDOR NO.
00558300

ACCOUNTS PAYABLE
PAY EXACTLY
*****500.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29607
063012

FIVE HUNDRED DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
PHILLIS WHEATLEY ASSOC
335 GREENACRE ROAD
GREENVILLE SC 29607

NON NEGOTIABLE

No. 063012

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY					P = PARTIAL F = FINAL C = CREDIT MEMO.
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	
500.00	BLDGFD			F	COUNTY COUNCIL COUNCIL RESERVE
500.00 TOTAL				VENDOR =	00558300
ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON					

3/13

REQUISITION

0055830

08917

FROM:

County Council.

DEPARTMENT

DELIVER TO:

Phyllis Wheatley Cr.

NAME AND LOCATION

DATE REQUESTED:

9/5AP- RUSH

3/13/55

DATE

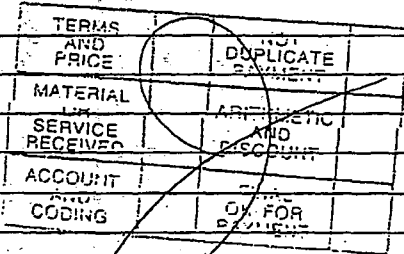
41500-1-2-284

ITEM NUMBER

	DELIVERY DATE					PURCHASE ORDER #
						SHIP VIA
	CONFIRMING					FOB
	DATE	WITH				TERMS
	DO NOT WRITE IN SHADED AREA.					

DO NOT WRITE IN SHADED AREA

Quantity	Description	Estimated Cost	Quotations	Unit	Total Price
	Bunfeling Fund, donation to Phillips Wheatley Center per Hollie Gibson				500.00



RECEIVED

MAR 13 1995

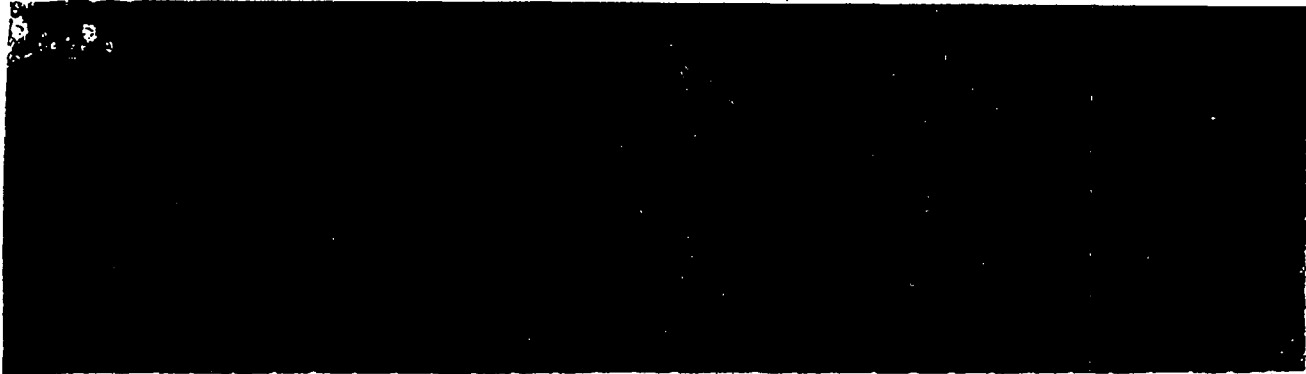
A/P DEPT
SPRINGVILLE COUNTY

RECEIVED

MAR 13 1995

A/P DEPT
GREENVILLE COUNTY

206



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GREENVILLE COUNTY

CHECK NO. 063029

67.776 B22
01020

DATE
03/13/95

SOUTH CAROLINA

VENDOR NO.
01212900

ACCOUNTS PAYABLE
PAY EXACTLY
*****500.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
063029

FIVE HUNDRED DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
LEAN ON ME
TUTORIAL SCHOOL
128 E BROAD STREET
GREENVILLE SC 29601

NON NEGOTIABLE

No. 063029

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY					
					* P = PARTIAL F = FINAL C = CREDIT MEMO.
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	

500.00	DONATE	F	COUNTY COUNCIL	COUNCIL RESERVE
500.00 TOTAL				VENDOR = 01212900

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

MENT ~~3/137~~

REQUISITION

FROM:

DELIVER TO:

DATE REQUESTED:

 0.8918

41500-1-2-284
ITEM NUMBER

Quantity		Description	Estimated Cost	Quotations	Unit	Total Price
		Donation to Lean On the - Integral School - Broad St- per Lottie Gibson				500.00

RECEIVED
 MAR 13 1995
 A/P DEPT.
 GREENVILLE COUNTY

TERMS AND PRICE
 MATERIAL
 SERVICE RECEIVED
 ACCOUNT

DUPLICATE
 PAYMENT
 PAYMENT
 AND DISCOUNT



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GREENVILLE COUNTY

CHECK NO. 067963

67-778-532
01020

SOUTH CAROLINA

DATE
04/25/95

VENDOR NO.
01224100

ACCOUNTS PAYABLE
PAY EXACTLY
*****5,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601

067963

FIVE THOUSAND DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
GREER HUMAN RESOURCES
CENTER

NON NEGOTIABLE

No. 067963

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY				* P = PARTIAL	F = FINAL	C = CREDIT MEMO
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION		

5,000.00

D/FUND

COUNTY COUNCIL

COUNCIL RESERVE

5,000.00 TOTAL

VENDOR = 01224100

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

04/19/1995 09:49

SA 179-7315

ASHMORE BROTHERS

PAGE 01

4/25

Richard Ashmore
County Council

01224100

Date 4-19-95

To Susan Gray

☐ For Your Information

☐ For Your Comments

☒ Please Handle

☐ Please Take Up With Me

☐ For Your Approval

☐ Please File

☐ Please Return

☐ As Per Your Request

RECEIVED
APR 24 1995
A/P DEPT.
GREENVILLE COUNTY

TERMS AND PRICE	NOT FOR CASH PAYMENT
MATERIAL OR SERVICE RECEIVED	ARITHMETIC AND DISCOUNT
ACCOUNT AND CODING	FINAL OK FOR PAYMENT

Comments: Would you make a check

210

REQUISITION

FROM:

FROM: County Council DEPARTMENT

DEPARTMENT

DELIVER TO:

FROM: Casey J. ... DEPARTMENT _____
DELIVER TO: Greer Human Resources Ctr. NAME AND LOCATION _____

NAME AND LOCATION

DATE REQUESTED:

ASAP

08935

4/21/95

DATE _____

41500-1-2-284

ITEM NUMBER

	DELIVERY DATE					PURCHASE ORDER #
						SHIP VIA
	CONFIRMING					FOB
	DATE	WITH				TERMS
	DO NOT WRITE IN SHADED AREA.					

DO NOT WRITE IN SHADED AREA

[illegible]

RECEIVED		

APR 24 1961



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GREENVILLE COUNTY

SOUTH CAROLINA

CHECK NO. 070118

67-776532
01020

DATE

05/16/95

VENDOR NO.

03112206

ACCOUNTS PAYABLE
PAY EXACTLY

\$*****5,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
070118

FIVE THOUSAND DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
G'VILLE TECH FOUNDATION
%G'VILLE TECH COLLEGE
P O BOX 5616
GREENVILLE SC 29606

NON NEGOTIABLE

No. 070118

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY

* P = PARTIAL F = FINAL C = CREDIT MEMO

AMOUNT

INVOICE NO.

P.O. NO.

*

DESCRIPTION

5,000.00

DIST27

F COUNTY COUNCIL

COUNCIL RESERVE

5,000.00 TOTAL

VENDOR = 03112206

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

5/16

03112206

14207

FROM:

County Council
DEPARTMENT

DEPARTMENT

DELIVER TO:

NAME AND LOCATION

DATE REQUESTED:

NAME ASAP

5/15/95

DATE

405014150012284

ITEM NUMBER

	DELIVERY DATE					PURCHASE ORDER #
						SHIP VIA
	CONFIRMING					FOB
	DATE	WITH				TERMS
	DO NOT WRITE IN SHADED AREA.					

Quantity	Description	Estimated Cost	Quotations	Unit	Total Price
	Council Reserve Contribution		1905		\$5,000
	Ch payable to: Greenwell Technical College Foundation, Inc.				
	<i>[Signature]</i>				

TERMS AND PRICE

MATERIAL

SERVICE RECEIVED

ACOUNT

COPYING

NOT DUPLICATE PAYMENT

ARITHMETIC AND DISCOUNT

FINAL OK FOR

213



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GREENVILLE COUNTY

SOUTH CAROLINA

CHECK NO. 070371

97-776-535
01020

DATE
05/12/95

VENDOR NO.
00579801

ACCOUNTS PAYABLE
PAY EXACTLY
*****500.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
070371

FIVE HUNDRED DOLLARS AND 00 CENTS *****

PAY
TO THE
ORDER
OF

GREENVILLE CULTURAL EXCHANGE

NON NEGOTIABLE

No. 070371

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY					* P = PARTIAL F = FINAL C = CREDIT MEMO.
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	
500.00				DISCRE	F COUNTY COUNCIL COUNCIL RESERVE
500.00 TOTAL					VENDOR = 00579801

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

5/18

00579801

County Council

DEPARTMENT

DEPARTMENT Greenville Cultural Exchange
NAME AND LOCATION

NAME AND LOCATION

ASAP

08949

5/12/95

DATE _____

41500-1-284

ITEM NUMBER

	DELIVERY DATE		RECEIVED			PURCHASE ORDER #
						SHIP VIA
	CONFIRMING					FOB
	DATE	WITH				TERMS
	DO NOT WRITE IN SHADED AREA.					

DO NOT WRITE IN SHADED AREA

[illegible]

ma: I check to:

TERMS AND PRICE	NOT DUPLICATE PAYMENT
MATERIAL OR SERVICE	ARITHMETIC AND



GREENVILLE COUNTY

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

CHECK NO. 070667

67-776532
01020

SOUTH CAROLINA

DATE

05/22/85

VENDOR NO.

01231000

ACCOUNTS PAYABLE

PAY EXACTLY

*****1,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601

070667

ONE THOUSAND DOLLARS AND 00 CENTS *****

PAY
TO THE
ORDER
OFJACK AND JILL
OF AMERICA
GREENVILLE CHAPTER

NON NEGOTIABLE

No. 070667

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		* P = PARTIAL F = FINAL C = CREDIT MEMO		
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION

1,000.00

D/FUND

F COUNTY COUNCIL

COUNCIL RESERVE

1,000.00 TOTAL

VENDOR = 01231000

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

5/22

0/23/000

SS ☐
AR ☐

GREENVILLE COUNTY SERVICE REQUEST

PAID

REQUEST NUMBER: 95-1244

MAY 22 1995

REQUEST CLASSIFICATION:

GREENVILLE COUNTY
FINANCE DEPT.

COUNCIL

k

CITIZEN

☐

DISTRICT

REQUESTOR'S INFORMATION

RECEIVED FROM:

Councilman Fletcher Smith

NAME:

Greenville

Chapter of Jack and Jill, Inc. (Zack or Judy Holmes)

STREET ADDRESS:

CITY:

STATE

ZIP CODE

HOME PHONE ()

WORK PHONE ()

SITE:

REQUEST:

Donate \$1,000 to Jack and Jill, Inc. (Greenville Chapter)

from discretionary fund.

ASSIGNMENT

DEPARTMENT/DIVISION:

Finance/Clerk to Council

DATE RECEIVED:

5/19/95



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GREENVILLE COUNTY

CHECK NO. 071438

87-776 535
01022

SOUTH CAROLINA

DATE
05/30/95

VENDOR NO.
00983300

ACCOUNTS PAYABLE
PAY EXACTLY
\$*****500.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
071438

FIVE HUNDRED DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
NEIGHBORHOODS IN ACTION
100 MALLARD ST RM 503
GREENVILLE SC 29601

NON NEGOTIABLE

No. 071438

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		P = PARTIAL F = FINAL C = CREDIT MEMO.		
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION

500.00	SMITH	F	COUNTY COUNCIL	COUNCIL RESERVE
500.00 TOTAL				VENDOR = 00983300

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

REQUISITION

9833

10157

FROM:

DELIVER TO:

DATE REQUESTED:

DEPARTMENT

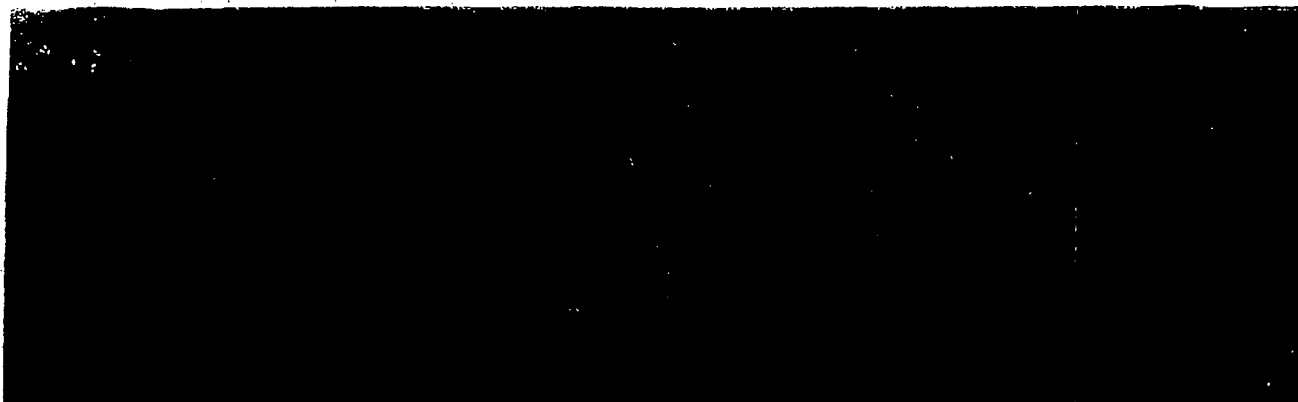
NAME AND LOCATION

DATE _____

ITEM NUMBER

	DELIVERY DATE					PURCHASE ORDER #
						SHIP VIA
	CONFIRMING					FOB
	DATE	WITH				TERMS
	DO NOT WRITE IN SHADED AREA.					

Quantity	Description	Estimated Cost	Quotations	Unit	Total Price
	Donation from Fletcher Smith to be taken from discretionary funds		PAID MAY 30 1995 GREENVILLE COUNTY FINANCE DEPT.		\$500-00
	(Please call me to be picked up)				
		TERMS AND FEES	POST SURFACE NUMBER		
		MATERIALS			
		LABOR			
		EQUIPMENT			
		TOTAL			
		ADDITIONAL NOTES			



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GREENVILLE COUNTY

CHECK NO. 071463

67-776/532
01020

DATE
05/30/95

SOUTH CAROLINA

VENDOR NO.
01232800

ACCOUNTS PAYABLE
PAY EXACTLY
\$*****1,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
071463

ONE THOUSAND DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
POSSUM KINGDOM FIRE DEPT

NON NEGOTIABLE

No. 071463

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		* P = PARTIAL F = FINAL C = CREDIT MEMO.		
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION
1,000.00	0000			COUNCIL RESERVE
1,000.00 TOTAL				VENDOR = 01232800

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

12328

10156

FROM:

County Council
DEPARTMENT

DEPARTMENT

DELIVER TO :

Passum Kingdom F.D

NAME AND LOCATION

5/26/95

DATE

41500-1-2-284

ITEM NUMBER

DATE REQUESTED:

2549

	DELIVERY DATE					PURCHASE ORDER #
						SHIP VIA
	CONFIRMING					FOB
	DATE	WITH				TERMS
	DO NOT WRITE IN SHADED AREA.					

Quantity	Description	Estimated Cost	Quotations	Unit	Total Price
	Donation from Bob Cook to be taken from discretionary funds				
					\$1000
			PAID		
			MAY 30 1995		
			GREENVILLE COUNTY FINANCE DEPT.		
	To Be Picked Up				



THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 071464

67-776-532
01020

SOUTH CAROLINA

DATE
05/30/95

VENDOR NO.
01232900

ACCOUNTS PAYABLE
PAY EXACTLY
*****1,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
071464

ONE THOUSAND DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
CANEBAKE FIRE DEPT

NON NEGOTIABLE

No. 071464

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY					* P = PARTIAL F = FINAL C = CREDIT MEMO.
AMOUNT	INVOICE NO.	P.O. NO.	*		DESCRIPTION

1,000.00

COOK

F COUNTY COUNCIL

COUNCIL RESERVE

1,000.00 TOTAL

VENDOR = 01232900

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

TO: PURCHASING DEPARTMENT

REQUISITION

- 123 29

10155

FROM: County Council
DEPARTMENT

5/26/95
DATE

DELIVER TO: Conebrake Fire Department
NAME AND LOCATION

46500-1-2-284
ITEM NUMBER

DATE REQUESTED: ASAP

DELIVERY DATE		PURCHASE ORDER =
CONFIRMING		
DATE	WITH	
SHIP VIA		
FOB		
TERMS		
DO NOT WRITE IN SHADED AREA.		

Quantity	Description	Estimated Cost	Quotations	Unit	Total Price
	Donation from Bob Cook ~~to be taken~~ from discretionary funds				\$1000
	To Be Picked Up				

PAID
MAY 30 1995
GREENVILLE COUNTY
FINANCE DEPT



THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 072062

07-776-532
01020

SOUTH CAROLINA

DATE
06/07/95

VENDOR NO.
00864401

ACCOUNTS PAYABLE
PAY EXACTLY
*****500.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602
072062

FIVE HUNDRED DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF: SALVATION ARMY/HOMELESS SHELTER
P O BOX 1237
GREENVILLE SC 29602

NON NEGOTIABLE

No. 072062

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY					
***** P = PARTIAL F = FINAL C = CREDIT MEMO *****					
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	
500.00				COUNCIL	F COUNTY COUNCIL COUNCIL RESERVE
500.00 TOTAL					VENDOR = 00864401

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

6/7

• REQUISITION

008644¹⁰¹⁶⁰₀₁

County Council

DEPARTMENT

Salvation Army Homeless Shelter

NAME AND LOCATION

June 5, 1995

DATE _____

41500-1-2-282

ITEM NUMBER

DATE REQUESTED:

ASAP

	DELIVERY DATE					PURCHASE ORDER #
						SHIP VIA
	CONFIRMING					FOB
	DATE	WITH				TERMS
	DO NOT WRITE IN SHADED AREA.					

DO NOT WRITE IN SHADED AREA

Quantity	Description	Estimated Cost	Quotations	Unit	Total Price
	Donation to the Salvation Army - Homeless Shelter per Councilman Smith				\$500
	mail to: Captain R.C. Freeman P.O. Box 1237 Greenville SC 29602				

RECEIVED
JUN 26 1995
AP DEPT.
GREENVILLE COUNTY

PAID

TERMS AND PRICE
MATERIAL
NOT
DUPLICATE
PERMIT
ARTIST

PAID

TERMS AND PRICE	NOT DUPLICATE PAYMENT
MATERIAL OF	ARTIST

GREENVILLE DEPT. OF SOCIAL SERVICES

RECEIVED

JUN 20 1995	

10/10/10

ARTK...

226



THE SALVATION ARMY
P. O. BOX 1237
GREENVILLE, S. C. 29602

00864401

☒ CHECK ☐ BILLS
☐ COIN ☐ MONEY ORDER

DATE 10-12-95

No 136933

RECEIVED

Five Hundred + 00/100 - \$ 500 100

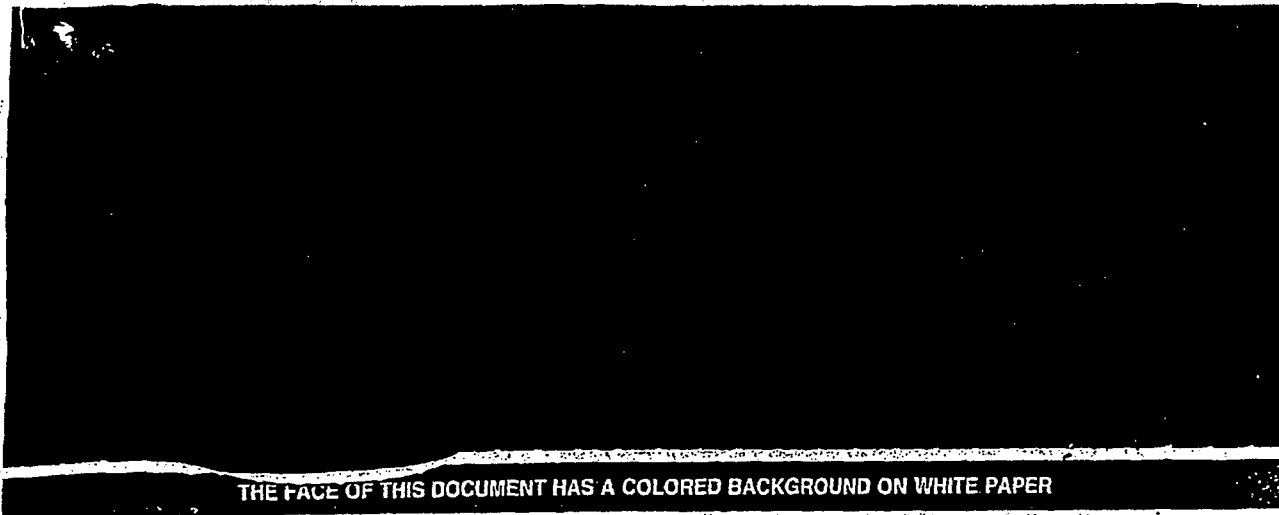
PURPOSE

UR ch# 72062

BY

The Salvation Army

Greenville County Dept. of Finance
Suite 200, 301 University Ridge
Greenville, S.C. 29601-3660



THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 072063

67-775 532
01020

DATE
06/07/95

SOUTH CAROLINA

VENDOR NO.
00910500

ACCOUNTS PAYABLE
PAY EXACTLY
\$*****500.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
072063

FIVE HUNDRED DOLLARS AND 00 CENTS *****

PAY
TO THE
ORDER
OF

FAMILY COUNSELING CENTER
(WOMENS SHELTER)

NON NEGOTIABLE

No. 072063

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY				* P = PARTIAL F = FINAL C = CREDIT MEMO	
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	

500.00 LIV/RM F COUNTY COUNCIL COUNCIL RESERVE
00.00 TOTAL VENDOR = 00910500
ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

TO: PURCHASING DEPARTMENT

6/7

REQUISITION

00910500
10161

FROM:

County Council

DEPARTMENT

DELIVER TO:

Family Counseling Center

NAME AND LOCATION

DATE REQUESTED:

ASAP

June 5, 1995

DATE

41500-1-2-284

ITEM NUMBER

DELIVERY DATE

PURCHASE ORDER #

CONFIRMING

DATE

WITH

PAID

JUN 07 1995

SHIP VIA

FOB

TERMS

DO NOT WRITE IN SHADED AREA

Quantity	Description	Estimated Cost	Quotations	Unit	Total Price
	Donation to the Family Counseling Center - for the Women's Shelter for Domestic Violence per Councilman Sm. 11				\$500
	(Please put on check: funds are to go towards Living Rm Decorations)				
	Send to: 301 University Bridge Suite 5500				

RECEIVED
JUN 07 1995
A/P DEPT
GREENVILLE COUNTY

TERMS AND PRICE

NOT DUPLICATE



THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 073848

67-776-532
01020

SOUTH CAROLINA

DATE

05/28/95

VENDOR NO.

00580701

ACCOUNTS PAYABLE
PAY EXACTLY

*****1,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602

073848

ONE THOUSAND DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF SOUTH GREENVILLE
FIRE DISTRICT

NON NEGOTIABLE

No. 073848

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY					
P = PARTIAL - F = FINAL C = CREDIT MEMO.					
AMOUNT	INVOICE NO.	P.O. NO.	*		DESCRIPTION

1,000.00

DISCRE

F COUNTY COUNCIL

COUNCIL RESERVE

1,000.00 TOTAL

VENDOR = 00580701

MY DISCO. IS ALLOWED HAVE BEEN DEDUCTED AND NET SHC HEREIN

TO: PURCHASING DEPARTMENT: 6/28

REQUISITION

0058070/

10167

FROM:

County Council

DEPARTMENT

DELIVER TO:

DEPARTMENT
S. Greenville Fire Dist
NAME AND LOCATION

NAME AND LOCATION

DATE REQUESTED:

ASAP

PURCHASE ORDER #

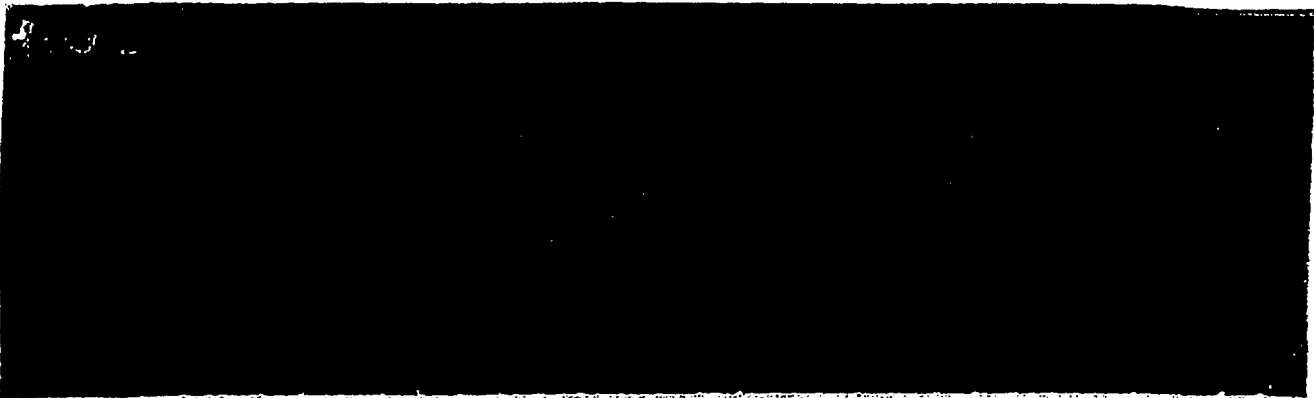
SHIP VIA

FOB

TERMS

DO NOT WRITE IN SHADED AREA.

Quantity	Description	Estimated Cost	Quotations	Unit	Total Price
	\$1000 to go to South Greenville Fire District per Mr. Cook's request - funds to come from Council discretionary account				\$1000



THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 073899

87-776 532
01020

SOUTH CAROLINA

DATE
06/28/95

VENDOR NO.
01242100

ACCOUNTS PAYABLE
PAY EXACTLY
*****1,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602
073899

ONE THOUSAND DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
PIEDMONT FIRE DISTRICT

NON NEGOTIABLE

No. 073899

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY					* P = PARTIAL F = FINAL C = CREDIT MEMO
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	

1,000.00

FUNDS

F COUNTY COUNCIL

COUNCIL RESERVE

1,000.00 TOTAL

VENDOR = 01242100

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

6/28

REQUISITION

0/242/α
10168

FROM:

FROM: County Council DEPARTMENT

DEPARTMENT

DELIVER TO :

DELIVER TO: Piedmont Ice District
NAME AND LOCATION

NAME AND LOCATION

DATE REQUESTED:

ASAP

1/22/95

DATE:

41500-1-2-284

ITEM NUMBER

	DELIVERY DATE					PURCHASE ORDER #
						SHIP VIA
	CONFIRMING					FOB
	DATE	WITH				TERMS
	DO NOT WRITE IN SHADED AREA.					

[illegible]

PAID

233



THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER.



GREENVILLE COUNTY

CHECK NO. 073900

67-775332
01023

SOUTH CAROLINA

DATE
06/29/95

VENDOR NO.
01242200

ACCOUNTS PAYABLE
PAY EXACTLY
*****1,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
073900

ONE THOUSAND DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
DUNKLIN FIRE DISTRICT

NON NEGOTIABLE

No. 073900

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		* P = PARTIAL F = FINAL C = CREDIT MEMO.			DESCRIPTION
AMOUNT	INVOICE NO.	P.O. NO.	*		

1,000.00

DISCRE

F COUNTY COUNCIL

COUNCIL RESERVE

1,000.00 TOTAL

VENDOR = 01242200

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

TO: PURCHASING DEPARTMENT

6/28

REQUISITION

01242200

10166

FROM:

County Council

DEPARTMENT

DELIVER TO:

Dunklin Fire District

NAME AND LOCATION

DATE REQUESTED:

6/28/95

6/22/95

DATE

41500-1-2-284

ITEM NUMBER

DELIVERY DATE

PURCHASE ORDER =

SHIP VIA

CONFIRMING

FOB

DATE

WITH

TERMS

DO NOT WRITE IN SHADED AREA.

Quantity	Description	Estimated Cost	Quotations	Unit	Total Price
	\$1000 to go to Dunklin Fire District per Mr. Cook's request - funds to come from Council discretionary account				\$1000
			JUN 27 1995		
			GREENVILLE COUNTY		
		TERMS AND PRICE	NOT DUPLICATE PAYMENT		
		MATERIAL OR SERVICE RECEIVED	ARITHMETIC AND DISCOUNT		
		ACCOUNT	FINAL		



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GREENVILLE COUNTY

CHECK NO. 074205

97-776 531
01020

DATE
06/29/95

SOUTH CAROLINA
VENDOR NO.
02962801

ACCOUNTS PAYABLE
PAY EXACTLY
*****1,500.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 296
074205

ONE THOUSAND FIVE HUNDRED DOLLARS AND 00 CENTS *****

PAY
TO THE
ORDER
OF
GREENVILLE COUNTY LIBRARY/
WEST BRANCH

NON NEGOTIABLE

No. 074205

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY					
* P = PARTIAL F = FINAL C = CREDIT MEMO					
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	

1,500.00	JOHNSO	F	COUNTY COUNCIL	COUNCIL RESERVE
1,500.00 TOTAL			VENDOR = 02962801	

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

6/29

10172 29628-0J

County Council
DEPARTMENT

DEPARTMENT

Greenville Co. Library - West Branch
NAME AND LOCATION

NAME AND LOCATION

6/26/95

DAT

41500-1-2-284

ITEM NUMBER

DATE REQUESTED:

ASAP

	DELIVERY DATE					PURCHASE ORDER #
						SHIP VIA
	CONFIRMING					FOB
	DATE	WITH				TERMS
	DO NOT WRITE IN SHADED AREA.					

[illegible]

237



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GREENVILLE COUNTY

CHECK NO. 074387

67-776-552
9:020

SOUTH CAROLINA

DATE
07/03/95

VENDOR NO.
00054000

ACCOUNTS PAYABLE
PAY EXACTLY
\$*****1,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
074387

ONE THOUSAND DOLLARS AND 00 CENTS *****

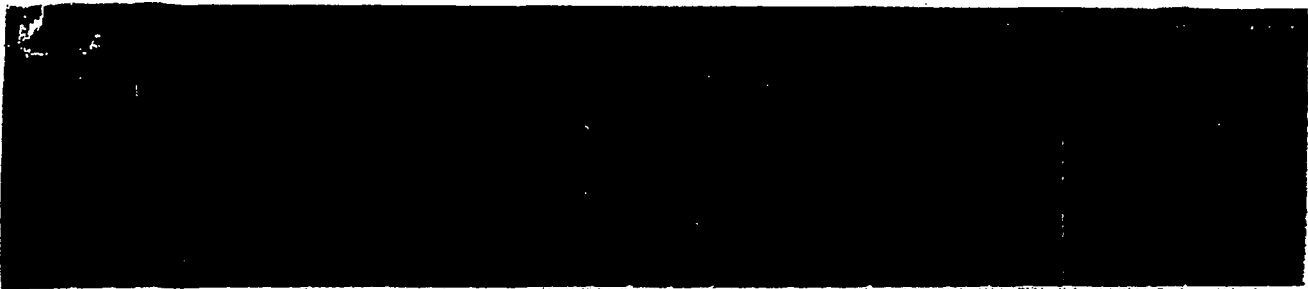
PAY WHEATLEY ASSOC PHILLIS
TO THE 335 GREENACRE RD
ORDER GREENVILLE SC 29607
OF

NON NEGOTIABLE

No. 074387

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY			* P = PARTIAL F = FINAL C = CREDIT MEMO		
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	
1,000.00	CAP/FU		F	401501415001228400 COUNCIL RESERVE	
1,000.00 TOTAL				VENDOR = 00054000	
ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON					



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GREENVILLE COUNTY

CHECK NO. 974388

67-776 535
01620

DATE
07/03/95

SOUTH CAROLINA
VENDOR NO.
01182500

ACCOUNTS PAYABLE
PAY EXACTLY
*****2,500.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
074388

TWO THOUSAND FIVE HUNDRED DOLLARS AND 00 CENTS *****

PAY
TO THE
ORDER
OF

BEREA BRANCH LIBRARY

NON NEGOTIABLE

No. 074388

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY				* P = PARTIAL F = FINAL C = CREDIT MEMO.	
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	

2,500.00 DISCRE F 401501415001225400 COUNCIL RESERVE
2,500.00 TOTAL VENDOR = 01182500
ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

239



THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 074389

67-776-531
01020

SOUTH CAROLINA

DATE
07/03/95

VENDOR NO
01198300

ACCOUNTS PAYABLE
PAY EXACTLY
*****1,500.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
074389

ONE THOUSAND FIVE HUNDRED DOLLARS AND 00 CENTS *****

PAY
TO THE
ORDER
OF

GREENVILLE ZOO BOARD
150 CLEVELAND PARK DRIVE
GREENVILLE SC 29601

NON NEGOTIABLE

No. 074389

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		* P = PARTIAL F = FINAL C = CREDIT MEMO.		
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION

1,500.00 DISCRE F 401501415001228400 COUNCIL RESERVE
1,500.00 TOTAL VENDOR = 01198300
ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

TO: PURCHASING DEPARTMENT

01198300
REQUISITION

10176

FROM:

FROM:

DEPARTMENT

DELIVER TO:

DELIVER TO:

NAME AND LOCATION

DATE REQUESTED:

DATE REQUESTED:

DELIVERY DATE

PURCHASE ORDER #

SHIP VIA

CONFIRMING

DATE _____

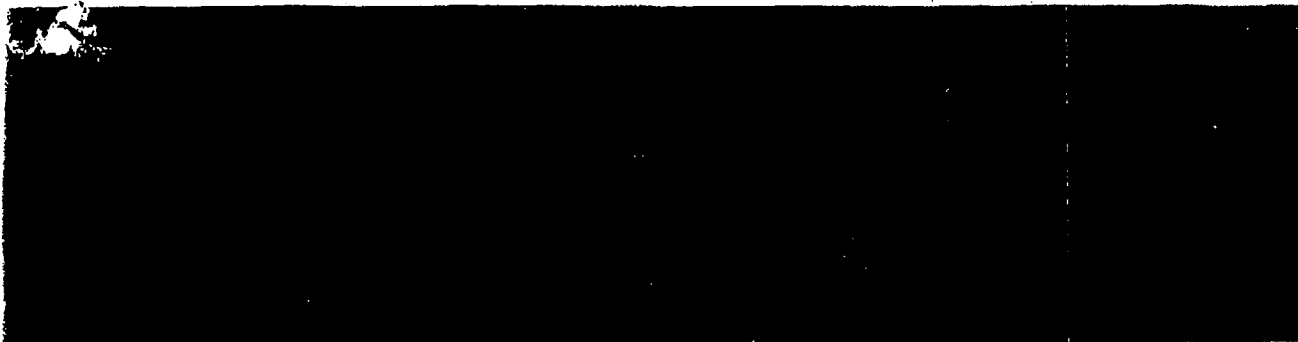
WITH

FOB

TERMS

DO NOT WRITE IN SHADED AREA.

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GREENVILLE COUNTY

CHECK NO. 074391

67-776/532
C1020

SOUTH CAROLINA

DATE

07/03/95

VENDOR NO.

06181300

ACCOUNTS PAYABLE

PAY EXACTLY

*****1,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601

074391

ONE THOUSAND DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
SHARE
BOX 10204
GREENVILLE S C 29603

NON NEGOTIABLE

No. 074391

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		* P = PARTIAL F = FINAL C = CREDIT MEMO.		
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION
1,000.00				DISCRE F 401501415001228400 COUNCIL RESERVE
1,000.00 TOTAL				VENDOR = 06181300

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 084774

67-776/532
01070

SOUTH CAROLINA

DATE

10/31/95

VENDOR NO.

00587100

ACCOUNTS PAYABLE
PAY EXACTLY

*****520.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602
084774

FIVE HUNDRED TWENTY DOLLARS AND 00 CENTS *****

THE
ER
GREENVILLE BRANCH NAACP
13TH ANNUAL FREEDOM
FUND BANQUET-PO BOX 0657
GREENVILLE SC 29604

NON NEGOTIABLE

084774

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		* P = PARTIAL F = FINAL C = CREDIT MEMO.			
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	
35.00	ABRAMS	F		COUNTY ADMINISTRAT OPERATIONAL SUPPOR	
35.00	GSEALS	F		COUNTY ADMINISTRAT OPERATIONAL SUPPOR	
450.00	COUNCI 0016769	F		COUNTY COUNCIL OPERATIONAL SUPPOR	
520.00 TOTAL				VENDOR = 00587100	

DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

DETACH AND RETAIN THIS STATEMENT OF ITEMS PAID BY ATTACHED CHECK;
IF INCORRECT, PLEASE RETURN WITHOUT ALTERATION TO GREENVILLE COUNTY, TREASURERS OFFICE, GREENVILLE, S.C. 29601

PURCHASING DEPARTMENT

REQUISITION

00587100

02609

FROM:

County Adm.

DEPARTMENT

DELIVER TO:

Same

NAME AND LOCATION

DATE REQUESTED:

10/26/95

10/26/95

DATE

4016-1-40300-1-2-029

ITEM NUMBER

		DELIVERY DATE				PURCHASE ORDER #	
						SHIP VIA	
		CONFIRMING				FOB	
		DATE	WITH			TERMS	
DO NOT WRITE IN SHADED AREA.							
Quantity	Description	Estimated Cost	Quotations	Unit	Total Price		
2	Tickets to NAACP banquet on 11-2-95 for Kim & Gerald				\$70.00		
make payable to:							
NAACP P.O. Box 8657 Greenville, SC 29604							

 RECEIVED
 OCT 30 1995
 COUNTY DEPT

4016-01 10/30
 10/27/95 Co. 41500-1 41500-1
 DATE DEPARTMENT ITEM NUMBER

R16769

TO: Greenville Branch / NAACP
 P.O. Box 8657

GREENVILLE COUNTY COUNCIL

ROUTINE SMALL PURCHASE ORDER

Greenville SC ZIP 29604

MAIL
INVOICE
TO

FINANCE DEPARTMENT — ACCOUNTS PAYABLE
 Suite 200 - 301 University Ridge
 GREENVILLE, S.C. 29601

VENDOR NUMBER: 0587100

QUANTITY	DESCRIPTION	UNIT PRICE	DISC	NET TOTAL
1	Table for 10 at NAACP Banquet	450		450 00
TOTAL				450 00

PAID

OCT 31 1995

RECEIVED

GREENVILLE COUNTY
FINANCE DEPT.

S. C. SALES TAX

SALES ORDER
OR INVOICE NO.

DATE
RECEIVED

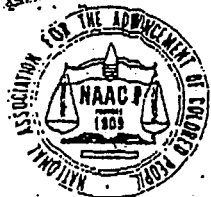
OCT 30 1995
A/P DEPT.
GREENVILLE COUNTY

Received By

Approved By

Signa Hudson
Elizabeth M. Hargis

ACCOUNTS PAYABLE



47 ID:ALLSTATE 1 3 PAGE 3

GREENVILLE BRANCH, NAACP

POST OFFICE BOX 8657 • GREENVILLE, SOUTH CAROLINA 29604

Greenville Branch, NAACP
13TH Annual Freedom Fund Banquet
Thursday, November 2, 1995

Ticket Requisition

Name Greenville County Council ~~Admission Office~~
Address 301 University Ridge, Suite 100
Greenville SC 29601

Attn: _____

Tickets Requested _____

Individual: _____ \$35/person

RSVP Seating _____ \$350 (8 people/table)

1 \$450 (10 people/ Table)

Total Cost of Tickets

\$ 450.00 **PATD**

Please (Check one)

OCT 31 1995
GREENVILLE

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 085111

67-776/532
01020

SOUTH CAROLINA

DATE
11/02/95

VENDOR NO.
00587100

ACCOUNTS PAYABLE
PAY EXACTLY
*****450.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602
085111

FOUR HUNDRED FIFTY DOLLARS AND 00 CENTS *****

BY
OTHER
ORDER
=

GREENVILLE BRANCH NAACP
13 TH ANNUAL FREEDOM
FUND BANQUET-PO BOX 8657
GREENVILLE SC 29604

NON NEGOTIABLE

249

No. 085111

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY				* P = PARTIAL F = FINAL C = CREDIT MEMO
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION
450.00				COUNCIL 0016770 F. COUNTY COUNCIL OPERATIONAL SUPPOR
450.00 TOTAL				VENDOR = 00587100
ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON				

DETACH AND RETAIN THIS STATEMENT OF ITEMS PAID BY ATTACHED CHECK.
IF INCORRECT, PLEASE RETURN WITHOUT ALTERATION TO GREENVILLE COUNTY, TREASURERS OFFICE, GREENVILLE, S.C. 29601



GREENVILLE BRANCH, NAACP

POST OFFICE BOX 8657 • GREENVILLE, SOUTH CAROLINA 29604

Greenville Branch, NAACP
13TH Annual Freedom Fund Banquet
Thursday, November 2, 1995

Ticket Requisition

Name: Greenville County Council
Address: 301 University Ridge, Suite 100
Greenville SC 29601

Attn: _____

Tickets Requested _____

Individual: _____ \$35/person

RSVP Seating _____ \$350 (8 people/table)

1 \$450 (10 people/ Table)

Total Cost of Tickets \$ 450.00

Please (Check one)

☒ Please forward tickets immediately

TERMS AND PRICE	NOT DUPLICATE PAYMENT
MATERIAL Or SERVICE RECEIVED	ARITHMETIC AND DISCOUNT
ACCOUNT	

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GREENVILLE COUNTY

CHECK NO. 086775

87-778/532
01020

SOUTH CAROLINA

DATE
11/20/95

VENDOR NO.
00587100

ACCOUNTS PAYABLE
PAY EXACTLY
*****210.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602
086775

TWO HUNDRED TEN DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
GREENVILLE BRANCH NAACP
13TH ANNUAL FREEDOM
FUND BANQUET-PO BOX 8657
GREENVILLE SC 29604

NON NEGOTIABLE

No.086775

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY					* P = PARTIAL F = FINAL C = CREDIT MEMO.
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	
210.00		RD/BRI		F ROAD AND BRIDGE	OPERATIONAL SUPPOR
210.00 TOTAL					VENDOR = 00587100

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

DETACH AND RETAIN THIS STATEMENT OF ITEMS PAID BY ATTACHED CHECK.
IF INCORRECT, PLEASE RETURN WITHOUT ALTERATION TO GREENVILLE COUNTY, TREASURERS OFFICE, GREENVILLE, S.C. 29601

12P.
please
pay #

Stark
Smith

11/20

INVOICE

00587100

\$661.20 AON

BELOW IS THE COMPLETE LIST OF THOSE ATTENDING THE NAACP BANQUET

See
table

✓ ABRAMS, KIM

X BLACKWELL, RICK

✓ ADAMS, JULIA

CLEVELAND, WADE

✓ BRADSHAW, JOE

GIBSON, LOTTIE

✓ BURNETT, CAROL

X JOHNSON, MR. AND MRS. BUNK ✓

✓ HEMBERGER, DEANA

X KINGSBURY, MR. AND MRS. MARK

✓ LYNCH, CHARLOTTE

X SMITH, MR. AND MRS. FLETCHER ✓

✓ PACE, LE ROY

WICKENSIMER, PAUL

✓ PARKS, ALFREDA

FRUITT, BEVERLY

SEALS, GERALD

I APPRECIATE YOUR HELP. THANK YOU

TERMS AND DUPLICATE PAYMENT	
MATERIAL OR SERVICE RECEIVED	ARITHMETIC AND DISCOUNT
ACCOUNT AND CODING	FINAL OK FOR PAYMENT

Call - reminder

6:30 P.M.

I hereby certify that on 11/16 to 25
the quantity and quality
have been verified with the customer for 11/16 to 25

GREENVILLE COUNTY

FISCAL YEAR 1996-97 ANNUAL BUDGET

PLAINTIFF'S
EXHIBIT

GG

ADMINISTRATIVE SERVICES

☆ Customer-Oriented Workforce

Continuation of a strategic mind set has been established for the development of a government working for its citizens/ customers in the most cost-effective and efficient manner. Customer service training will be done in the new year reinforcing the County's commitment to quality service.

☆ C.O.T.E.

In FY96, Greenville County implemented an Employee Recognition Team to focus on high performance, citizen centered government. With the use of this team, a program was developed to recognize and celebrate the achievement of individuals and teams who demonstrate a commitment to excellence. The C.O.T.E. award represents Confidence, Optimism, Tenacity, and Enthusiasm in Greenville County employees. This year the program will expand to seek customer service initiatives among the employees. An appropriation of

for an intern program to provide youth opportunities to learn more about government operations and benefit the county through the research and projects each complete.

☆ Overall Savings - Budget Status

The cost effective, high performance government mind set has contributed to the successful return of an estimated \$1,431,929 in General Fund for FY95-96. Finance and Administrative Services, Human Resources and Services, Public Services and Facilities and Community Services are projecting a combined return of \$700,532. The remaining \$731,397 is comprised of an expected return of \$300,000 in Non-Departmental salaries and lease/purchase, \$201,283 through Judicial Services savings, and \$230,114 from a combination of other areas.

☆ Filing System Upgrade

The County Council office has upgraded the filing system to a Tennsco Open Shelf Filing system. This system can also be used as a tab colored coding system. The new

GREENVILLE COUNTY

FISCAL YEAR 1996-97 ANNUAL BUDGET

ADMINISTRATIVE SERVICES (Continued)

annual operating revenues to address the special community needs was revised to provide \$120,000, or \$10,000 per Council member.

☆ Consolidated Information Line

In February 1996, the City of Greenville and the County of Greenville formed a team and are in the process of researching the feasibility of an information phone line for all governmental services. The line will be to provide information to citizens and to direct their calls to the proper governmental entity, both county wide and city wide. The plan was completed in May 1996, and was presented to both the City of Greenville and the County of Greenville's Administration. The part of the plan that provides easier access for directory assistance in the telephone book will be implemented in September 1996. In addition the plan calls for reviewing the viability of an information line within the next year

the County to fund capital needs generated as a result of our continuing growth trend. Through the issuance of special source revenue bonds, the County will have the ability to fund \$60 million in projects (downtown parking garage, communications system, roads, drainage and landfill) thru the year 2003 without an associated millage increase. (Refer to Public Services & Facilities highlights for breakdown of projects.) The infrastructure Bank Ordinance and policies and documents relating to issuance of the first series of special source revenue bonds (communications and downtown parking) are scheduled for approval in September, 1996.

GREENVILLE COUNTY

Fiscal Year 1994-95 Annual Budget

ADMINISTRATIVE OFFICES HIGHLIGHTS

Budget Highlights

☆ County Council Reserve

In accordance with Revenue Policy #3, a County Council Reserve has been established within the County Council Office budget. A total of \$190,500, or 0.30%, of annual operating revenues was proposed to address special community needs. The appropriation was adjusted to \$60,000 during budget worksessions to provide \$5,000 per County Council member.

☆ Customer-Oriented Workforce

A strategic mindset has been established for the development of a government working for its citizens-customers in the most cost-effective and efficient manner.

☆ Deputy County Administrator Position

☆ Effective Use of Technology

Automation enhancements and additions in all areas are improving professionalism, presentation, and response to citizens-customers.

☆ Assistant to Administrator Positions

Delivery of services and responses are being improved through enhanced information links through the Assistant to the Administrator positions.

☆ Internal Audit Reinstatement

The reinstatement of an Internal Auditor position was approved during the County Council budget worksession. A total of \$48,861 was appropriated to provide for

NON-DEPARTMENTAL DETAIL (Continued):

TECHNICAL & PROFESSIONAL SERVICES

DHEC/Simpsonville Landfill	\$ 30,000	
Drug Testing Program	15,000	
County Wide Intern Program	12,000	
Poinsette Highwayt Cleanup	15,000	
Detection and Tank Registration	8,500	
Project Requests	<u>50,000</u>	\$ 130,500

COUNCIL RESERVES

Per Revenue Policy #3 to allow the Council to address special community needs not normally falling within the operational purview of County Government.		\$ 120,000

STORM WATER FEES

County owned properties within Greenville City Limits.		\$ 17,850

CONTRACTUAL

MAINTENANCE

Central Maintenance - Covers equipment maintenance not on contract and emergency replacement county-wide.		\$ 40,000

PROF. CONTRACT

Communications Integrator	\$ 250,000	
Aerial Photography - GIS	<u>238,536</u>	\$ 488,536

CAPITAL

EQUIPMENT

County wide office furniture and equipment replacements.		\$ 40,000

FINANCIAL SAVINGS INCENTIVE

Per Financial Policy #8. Amount estimated to be allocated to those departments which expended less than 96% of budgeted funds for the fiscal year. An amount equal to 10% of the savings, not to exceed \$25,000; will be allocated to the department to spend in support of their department activities, for any purpose other than the employment of additional regular personnel or

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

SOUTH CAROLINA

CHECK NO. 221886

67-776/532
91020

DATE

07/07/96

VENDOR NO.

00556301

ACCOUNTS PAYABLE

PAY EXACTLY

*****358.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602

VOID AFTER 120 DAYS

THREE HUNDRED FIFTY-EIGHT DOLLARS AND 00 CENTS

PAY
TO THE
ORDER
OF

ROTARY CLUB OF GREENVILLE
3507 PINE BLVD
GREENVILLE, SC 29602

NON-NEGOTIABLE

221886# 105330776242710000094693#

No. 221886

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY.				* P = PARTIAL F = FINAL C= CREDIT MEMO	
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	
358.00	FORBES			F PLANNING COMMISSION MEMBERSHIPS DUES	
358.00 TOTAL				VENDOR = 00556301	
MY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON					

RECEIVED

JUL 8 1996

ACCOUNTING DEPT.
GREENVILLE COUNTY

PAID

JUL 08 1996

GREENVILLE COUNTY
FINANCE DEPT.

DETACH AND RETAIN THIS STATEMENT OF ITEMS PAID BY ATTACHED CHECK.
IF INCORRECT, PLEASE RETURN WITHOUT ALTERATION TO GREENVILLE COUNTY, TREASURERS OFFICE, GREENVILLE, S.C. 29601

COMMITTEE ON FINANCE

MINUTES

County Council Committee on Finance held its regular meeting of August 19, 1996 at 4:00 P.M. in Conference Room A - County Square. All members were present with the exception of Councilman Case. Councilman Bomar gave the invocation.

Approval of Minutes - Regular Meeting of August 5, 1996:

In the minutes from the last Finance Committee meeting of August 5, 1996, the heading should have read **Approval of Minutes - Regular Meeting of June 17, 1996 instead of Approval of Minutes - Regular Meeting of February 19, 1996**. Councilman Bomar moved to approve the minutes of the regular meeting of August 5, 1996. The motion carried.

Guidelines for Discretionary Fund:

This guidelines for the discretionary fund were discussed in the last Finance Committee meeting of August 5, 1996 where it was referred to full council on August 6, 1996 and returned to the Finance Committee.

After some discussion, Councilwoman Gibson moved to add Other Community Activities to the list of discretionary fund uses, which in her opinion, would address the needs of county citizens. The motion failed with a 1-3 vote. Councilwoman Gibson requested that the minutes reflect she believed Council should not dictate where the discretionary funds are spent; it should be decided by the individual councilmember. She also planned to carry a minority recommendation to full council expressing this concern.

Councilman Kingsbury requested to add drainage to the list of infrastructure purposes.

Councilman Bomar moved to approve the guidelines for the discretionary fund as presented in the agenda. The motion carried a vote of 3-1. Councilwoman Gibson was opposed.

Probate Court Budget Request:

Finance Minutes**Page 2****August 5, 1996****Executive Session - Contractual Matter:**

Councilwoman Gibson moved to go into executive session at 5:15 to discuss a contractual matter

Councilwoman Gibson moved to go out of executive session at 5:40.

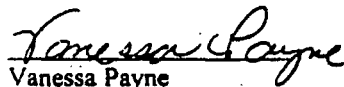
Councilman Kingsbury moved to approve and forward to full council a resolution and inducement agreement for Greenville Parts Inc. The motion carried.

Guidelines for Discretionary Fund:

Chairman Leach handed out information on the discretionary fund and opened the floor for discussion. Councilwoman Gibson requested to strike out **(Use in designated County Council District only)**. The committee requested that flooding, roads, lights, sewer and **public buildings and grounds** be included in the list of infrastructure purposes. The motion carried. Councilwoman Gibson moved to add Human Service Agencies. There was no action from the committee.

There being no further business to come before the Finance Committee, the meeting adjourned at 5:55.

Respectfully submitted,


Vanessa Payne
Administrative Assistant

GUIDELINES FOR DISCRETIONARY FUNDS

1. ~~USE IN DESIGNATED COUNTY COUNCIL DISTRICT ONLY~~
2. FOR INFRASTRUCTURE PURPOSES SUCH AS:
 - A. FLOODING
 - B. ROADS
 - C. LIGHTS
 - D. SEWER
 - E. PUBLIC BUILDINGS AND GROUNDS

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GREENVILLE COUNTY

CHECK NO. 228860

67-776532
01020

SOUTH CAROLINA

DATE
09/25/96

VENDOR NO.
01387300

ACCOUNTS PAYABLE
PAY EXACTLY
*****5,000.00
VOID AFTER 120 DAYS

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602
228860

FIVE THOUSAND DOLLARS AND 00 CENTS *****

PAY- MAULDIN LIBRARY
TO THE BLDG FUND
ORDER
OF

NON-NEGOTIABLE

⑈ 228860 ⑈ ⑆053207766⑆ 2010000094693⑈

No. 228860

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		P = PARTIAL F = FINAL C = CREDIT MEMO			
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	
5,000.00				FUNDS	F NONDEPARTMENTAL COUNCIL RESERVE
5,000.00 TOTAL				VENDOR =	01387300
Y DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON					



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GREENVILLE COUNTY

CHECK NO. 228866

07-776.537
01029

SOUTH CAROLINA

DATE
09/25/96

VENDOR NO.
01388400

ACCOUNTS PAYABLE
PAY EXACTLY
*****5,000.00
VOID AFTER 120 DAYS

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
228866

FIVE THOUSAND DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
SIMPSONVILLE LIBRARY
BLDG FUND

NON-NEGOTIABLE

⑈ 228866 ⑈ ⑆053207766⑆2010000094693⑈

No. 228866

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		P = PARTIAL F = FINAL C = CREDIT MEMO		
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION
5,000.00	FUNDS		F	NONDEPARTMENTAL / COUNCIL RESERVE
5,000.00	TOTAL			VENDOR 01388400
ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON				

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GREENVILLE COUNTY

CHECK NO. 244737

67-776-532
91020

SOUTH CAROLINA

DATE

02/18/97

VENDOR NO.

01411600

ACCOUNTS PAYABLE

PAY EXACTLY

\$*****3,507.00

VOID AFTER 120 DAYS

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601

244737

THREE THOUSAND FIVE HUNDRED SEVEN DOLLARS AND 00 CENTS *****

PAY
TO THE
ORDER
OF

SUGAR CREEK HOMEOWNERS ASSN

NON-NEGOTIABLE

⑈244737⑈ ⑆053207766⑆ 2010000094693⑈

No. 244737

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY

* P = PARTIAL F = FINAL C = CREDIT MEMO

AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION
3,507.00				FUND F NONDEPARTMENTAL COUNCIL RESERVE
3,507.00 TOTAL				VENDOR = 01411600

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

$$2 \mid 18$$

04010

FROM:

DEPARTMENT

DELIVER TO:

NAME AND LOCATION

2412

DATE REQUESTED:

ASAP

ITEM NUMBER

[illegible]



County of Greenville

"... At Your Service"

Gerald Seals, County Administrator
Phone: (864) 447-7105

January 27, 1997

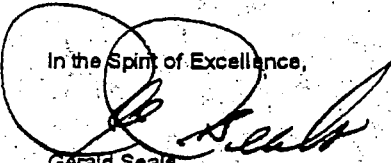
Mr. Stewart Vaughan
117 Sugar Creek Lane
Greer, SC 29650

Dear Mr. Vaughan:

During 1996, former Council member Robert W. Leach allocated \$3,507 of the County Council's discretionary fund for Council District 21 as payment for an additional 22 street lights in the Sugar Creek subdivision for one year. The County's Finance and Administrative Services Department will complete the appropriate paperwork to forward this amount to the Sugar Creek Homeowners Association. It is the County's understanding that the Sugar Creek Homeowners Association will work with Duke Power to secure a contract for the street lights.

If there are any questions or further assistance, please do not hesitate to call.

In the Spirit of Excellence,


Gerald Seals
County Administrator

cc: Councilman Dana Sullivan
Judy Burk, County Attorney
Joe Bradshaw, Director, Public Services and Facilities
Department of Finance and Administrative Services

CHECK NO. 252459

67-77653
01030

DATE
04/28/97

VENDOR NO. 01513200

ACCOUNTS PAYABLE

PAY EXACTLY

*****7,500.00

VOID AFTER 120 DAYS

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 296

252459

SEVEN THOUSAND FIVE HUNDRED DOLLARS AND 00 CENTS. *****

PAY. TRAVELERS REST CITY CF
TO THE P O BOX 598
ORDER TRAVELERS REST S C 29690
OF

SECRET-UNCLASSIFIED

№ 25 24 59 № 1:053 20 7 7 6 6 № 20 1 0 0 0 0 0 9 4 6 9 3 №

No. 252459

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY

P = PARTIAL F = FINAL C = CREDIT MEMO

AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION
7,500.00	BLACKH			F. NONDEPARTMENTAL COUNCIL RESERVE
7,500.00 TOTAL				VENDOR = 01513800
ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON				

*Hadine,
Please call
audit & forward
for processing.
Thank you
4/21/97*

RECEIVED
APR 22 1997
GREENVILLE COUNTY
FINANCIAL ADMINISTRATION

RECEIVED
APR 17 1997
GREENVILLE COUNTY

TO: Gerald Seals, Greenville County Administrator
FROM: Hometown Program for Northern Greenville County
DATE: April 16, 1997

*A/P:
Acct #: 4017-09 486001228400
Decript: Blackwell - T. Rest Hometown
Project
VC 4/25/97*

Mr. Seals:

Enclosed is an invoice in the amount of \$7,500.00 for the Hometown Program in the Northern Area of Greenville County.

Rick Blackwell has indicated that we should forward this invoice to your attention for approval and payment.

Upon your approval please forward a check to:

Charles Garrett, Administrator
City of Travelers Rest
6711 State Park Rd.
Travelers Rest, SC 29690

Please contact me should you have any questions or need additional information.

RECEIVED

APR 28 1997

A/P DEPT.
GREENVILLE COUNTY

Sincerely,

Charles Garrett
Charles Garrett
Administrator
City of Travelers Rest

*Blackwell
of Secretariat*

*made
Travelers*

Garrett

*12
Travelers
Rest*

Invoice

HOMETOWN PROJECT

Start-Up Costs and Implementation of the Hometown Program.

\$7,500.00



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GREENVILLE COUNTY

SOUTH CAROLINA

CHECK NO. 258065

67-776-532
01020

DATE
06/27/97

VENDOR NO.
01503000

ACCOUNTS PAYABLE
PAY EXACTLY
\$*****10,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602
258065

VOID AFTER 120 DAYS

TEN THOUSAND DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
GREER CITY OF
106 S MAIN ST
GREER S C 29651

NOT-NEGOTIABLE

⑈ 258065 ⑈ ⑆ 053207766 ⑆ 2010000094693 ⑈

258065

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY				* P = PARTIAL F = FINAL C = CREDIT MEMO	
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	
0,000.00	SELBY			F	NONDEPARTMENTAL COUNCIL RESERVE
0,000.00	TOTAL				VENDOR = 01503000
ANY ACCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON					

6/27

00253

County Council
DEPARTMENT

DEPARTMENT

NAME AND LOCATION

DATE REQUESTED:

6/25/97

QAI

09-48600-1-2-284-00
ITEM NUMBER

ITEM NUMBERS

[illegible]

272



County of Greenville

"... At Your Service"

Gerald Seals, County Administrator
Phone: (864) 467-7105

MEMORANDUM

TO: John Hansley
Finance and Administrative Services

FROM: Gerald Seals, County Administrator

DATE: June 18, 1997

RE: Council Reserves

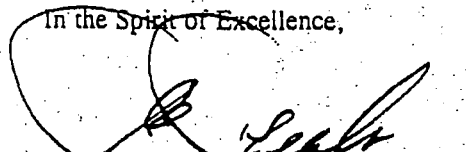
*Madam,
Each time I left
for the North, we
are to review the
requests against the policy
procedures for usage. I have
checked it all of it ~~6/18/97~~
completed. If it done, please review
Thank!*

*John
6/18/97*

Council Member Steve Selby, District 18, would like to allocate all of the remaining funds in his Council Reserve Fund to the City of Greer for infrastructure improvements. Please take the appropriate and necessary actions to respond to his request.

Thank you.

In the Spirit of Excellence,


Gerald Seals, County Administrator

RECEIVED
JUN 26 1997
A/P DEPT.
GREENVILLE COUNTY

/cec



THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

SOUTH CAROLINA

CHECK NO. 258170

DATE
06/30/97

VENDOR NO.
01198300

ACCOUNTS PAYABLE
PAY EXACTLY
\$*****10,000.00
VOID AFTER 120 DAYS

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29601
258170

TEN THOUSAND DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
GREENVILLE ZOO BOARD
150 CLEVELAND PARK DRIVE
GREENVILLE SC 29601

NOT-NEGOTIABLE

⑈ 258170 ⑆ ⑆ 053207766 ⑆ 2010000094693 ⑆

No. 258170

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		P = PARTIAL F = FINAL C = CREDIT MEMO			
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	
10,000.00	DISCRE		F	NONDEPARTMENTAL	COUNCIL RESERVE
10,000.00	TOTAL			VENDOR =	01198300

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

REQUISITION <i>05335</i> <i>0119 8300</i> <i>6/30/97</i> DATE <i>4017-09-48600-1-2-284-00</i> ITEM NUMBER		DEPARTMENT <i>County Council</i> DEPARTMENT <i>Return to Mr. Cleveland</i> NAME AND LOCATION <i>6/30/97</i> REQUESTED:		
DELIVERY DATE		PURCHASE ORDER #		
CONFIRMING		SHIP VIA		
DATE	WITH	FOB		
DO NOT WRITE IN SHADED AREA.		TERMS		
Quantity	Description	Estimated Cost	Unit	Total Price
	Make payable to:			
	Greenville Zoo			\$10,000.00
	from Wade Cleveland's			
	Discretionary Acct.			
TERMS AND PRICE		NOT DUPLICATE PAYMENT		RECEIVED JUN 30 1997 A/P DEPT. GREENVILLE COUNTY



County of Greenville

"... At Your Service"

☐ Admin Report
☐ SS

GREENVILLE COUNTY SERVICE REQUEST

REQUEST NUMBER: 97-1910
REQUEST CLASSIFICATION:

COUNCIL ☒ CITIZEN ☐ DISTRICT 24

REQUESTOR'S INFORMATION

RECEIVED FROM: Wade Cleveland
NAME: _____
STREET ADDRESS: _____
CITY: _____ STATE: _____ ZIP CODE: _____
HOME PHONE: (____) _____ WORK PHONE: (____) _____
SITE: _____

REQUEST: Wants \$10,000 of discretionary funds sent to Greenville Zoo for their capital improvement program

ASSIGNMENT

DEPARTMENT/DIVISION: Finance
DATE RECEIVED: 6-30-97
RETURN BY: 7-7-97
ACTION TAKEN: _____

FY1997-98 COUNCIL RESERVE	
Total Appropriation \$223,759	Per Council Member \$18,647
Disbursements	
City of Fountain Inn	2,000
Mauldin Library	2,000
Atlantic Supply & Equip	871
Sugar Creek Rec Center, Inc.	2,500
G'ville Recreation Comm	1,000
TOTAL DISBURSEMENTS	\$8,371

FY1996-97	
Total Appropriation \$120,000	Per Council Member \$10,000
Disbursements	
Mauldin Library	5,000
Simpsonville Library	5,000
Metromont Materials	290
Greer Septic Tank, Inc.	3,840
Dobson True Value Hardware	81
Contech Construction Co.	1,922
Contech Construction Co.	1,080
Gossett Pipe Co	726
Contech Construction Co.	656
Sugar Creek Homeowners Assn	3,507
City of Travelers Rest	7,500
Contech Construction Co.	2,041
Greenville Water System	4,250
Contech Construction Co.	2,042
City of Greer	10,000
Contech Construction Co.	967
Greenville Zoo	10,000
TOTAL DISBURSEMENTS	\$58,902

FY1994-95	
Total Appropriation	\$60,000
Per Council Member	\$5,000
Disbursements	
Civil Air Patrol	1,000
Snickers Soccer Tournament	3,790
Libertarian Education	220
March of Dimes	1,500
Berea Branch Library	5,000
SHARE	3,000
NAACP	1,000
Child's Haven	5,000
Church & Community	300
Greenville Water System	983
Phillis Wheatley Association	1,500
Lean On Me	500
Greer Human Resources	5,000
Greenville Tech Foundation	5,000
Greenville Cultural Exchange	500
Jack and Jill of America	1,000
Neighborhoods in Action	500
Possum Kingdom Fire Department	1,000
Canebrake Fire Department	1,000
Salvation Army/Homeless	500
Family Counseling Center	500
South Greenville	1,000
Piedmont Fire District	1,000
Dunklin Fire District	1,000
Greenville County Library	1,500
Greenville Zoo Board	1,500
Human Relations	1,500
TOTAL DISBURSEMENTS	\$46,293

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GREENVILLE COUNTY

CHECK NO. 268185

67-776/532
01020

DATE

10/22/97

SOUTH CAROLINA

VENDOR NO.

00419100

ACCOUNTS PAYABLE

PAY EXACTLY

\$2,000.00

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602
268185

VOID AFTER 120 DAYS

TWO THOUSAND DOLLARS AND 00 CENTS

PAY
TO THE
ORDER
OF

CITY OF FOUNTAIN INN
200 NORTH MAIN STREET
FT INN SC 29644

NOT-NEGOTIABLE

⑈268185⑈ ⑆053207766⑆ 2010000094653⑈

No. 268185

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		* P = PARTIAL F = FINAL C = CREDIT MEMO			
AMOUNT	INVOICE NO.	P.O. NO.	*		DESCRIPTION
2,000.00					DRAINAGE COUNCIL RESERVE
2,000.00					TOTAL VENDOR = 00419100
ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON					



THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 270534

67-776/532
01020

DATE
11/18/97

SOUTH CAROLINA

VENDOR NO.
01387300

ACCOUNTS PAYABLE

PAY EXACTLY

\$*****2,000.00

VOID AFTER 120 DAYS

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602
270534

TWO THOUSAND DOLLARS AND 00 CENTS

PAY
TO THE
ORDER
OF

MAULDIN LIBRARY
GLOC FUND

NOT-NEGOTIABLE

⑈270534⑈ ⑆053207766⑆ 2010000094693⑈

No. 270534

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		* P = PARTIAL F = FINAL C = CREDIT MEMO		
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION

2,000.00 RGOF F NONDEPARTMENTAL COUNCIL RESERVE
2,000.00 TOTAL VENDOR = 01387300
NY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

SOUTH CAROLINA

CHECK NO. 272888

67-776-532
01020

DATE

12/15/97

VENDOR NO.

01363000

ACCOUNTS PAYABLE

PAY EXACTLY

*****2,605.84*****

VOID AFTER 120 DAYS

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602
272888

TWO THOUSAND SIX HUNDRED FIVE DOLLARS AND 84 CENTS *****

NOT-NEGOTIABLE

PAY
TO THE
ORDER
OF

ATLANTIC SUPPLY & EQUIPMENT
505 WEST GEORGIA ROAD
SIMPSONVILLE SC 29681

⑈272888⑈ ⑆053207766⑆ 2010000094693⑈

No. 272888

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY				P = PARTIAL F = FINAL C = CREDIT MEMO	
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION	
1,735.10		136926	5975100 F	LANDFILL	
870.74		137065	5982600 F	NONDEPARTMENTAL	
2,605.84				PATCHING MATERIAL	
TOTAL				COUNCIL RESERVE	
				VENDOR = 01363000	

NY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON



Atlantic Supply &
Equipment Company, Inc.

INVOICE

Remit to: **01363000**
505 West Georgia Rd.
Simpsonville, S.C. 29680
Telephone (864) 967-3033
FAX# (864) 963-7314

Branch Office
1628 Barton Chapel Rd.
Augusta, GA 30909
Telephone (706) 737-3705
FAX# (706) 733-3136

INVOICE NO.	137065
PAGE	1
DATE	10/23/97

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000211
GREENVILLE COUNTY COUNCIL
FINANCE DEPT/ACCTS PAYA
301 UNIVERSITY SUITE 200
GREENVILLE, SC 29601

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TEMP
CENTRAL MAINTENANCE
RUTHERFORD RD.

CUSTOMER P.O. NO.	INVOICED	SLSP.	TERMS	TAX CODE	
59826	10/23/97	01	NET 30	SC	
ITEM DESCRIPTION	ORDERED	SHIPPED	BACKORDERED	PRICE	EXTENSION
12" N-12 HDPE PIPE	140.0	140.0	.0	5.680	795.2
12" BANDS	5.0	6.0	.0	5.680	34.0

RECEIVED

OCT 27 1997

ACCOUNTING DEPT.
GREENVILLE COUNTY



Atlantic Supply &
Equipment Company, Inc.

INVOICE

Remit to:
505 West Georgia Rd.
Simpsonville, S.C. 29680
Telephone (864) 967-3033
FAX# (864) 963-7314

Branch Office
1628 Barton Chapel Rd.
Augusta, GA 30909
Telephone (706) 737-3705
FAX# (706) 733-3136

INVOICE NO.	137065
PAGE	1
DATE	10/23/97

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0000311
GREENVILLE COUNTY COUNCIL
FINANCE DEPT/ACCTS PAYA
301 UNIVERSITY SUITE 200
GREENVILLE, SC 29601

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TEMP
CENTRAL MAINTENANCE
RUTHERFORD RD.

CUSTOMER P.O. NO.	INVOICED	SLSP.	TERMS	TAX CODE	
0000311	10/23/97	01	NET 30	SC	
ITEM DESCRIPTION	ORDERED	SHIPPED	BACKORDERED	PRICE	EXTENSION
12" N-12 HDPE PIPE	140.0	140.0	.0	5.680	795.20
12" BANDS	6.0	6.0	.0	5.680	34.08

10/31/97

MLP

RECEIVED

OCT 27 1997

ACCOUNTING DEPT.

RECEIVED

NOV 3 1997

ACCOUNTING DEPT.

GREENVILLE COUNTY

PURCHASE ORDER

GREENVILLE COUNTY COUNCIL

Greenville County Square
301 University Ridge, Suite 3900
Greenville, South Carolina 29601-3660
(803) 467-7300
TELEFAX (803) 467-7304

SEND ALL INVOICES TO:

Finance Department - Accounts Payable
Greenville County Square
301 University Ridge, Suite 200
Greenville, South Carolina 29601-3660

RECEIVED
OCT 17 1997

ACCOUNTS PAYABLE
GREENVILLE COUNTY

THIS PO NUMBER MUST APPEAR ON
ALL PACKAGES AND INVOICES

No. 59826-00

PURCHASE ORDER

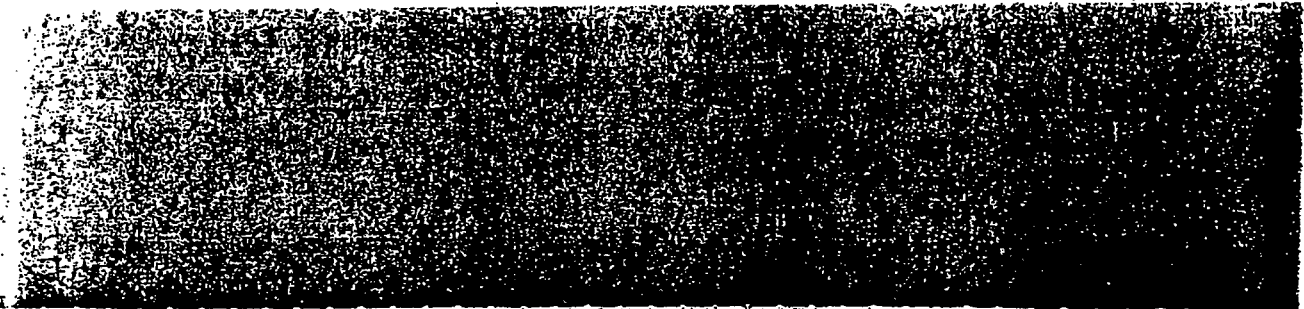
TO ATLANTIC SUPPLY & EQUIPMENT
505 WEST GEORGIA ROAD
SIMPSONVILLE SC 29681

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NON-DEPARTMENTAL PURCHASE
FOR: COUNCILPERSON NORRIS

VENDOR NO.	DATE	REQUISITION NUMBER	Item Number
01343000	10/15/97	02537	09-48600-1-2-254
DELIVERY DATE	SHIP VIA	FOB	TERMS
10/21/97	YOUR TRUCK	DESTINATION	N/30

ITEM	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENSION
	140.0	LF; 12" HDPE PIPE	5.66	795.20
	6.0	EA; 12" BANDS & HARDWARE FOR HDPE PIPE	5.69	34.05
		SHIP TO: GREENVILLE COUNTY ROAD & BRIDGE CENTRAL MAINTENANCE FACILITY 635 RUTHERFORD ROAD GREENVILLE SC 29603		
		**** FOR OFF RIGHT OF WAY PROJECT AT **** **** JEFF CIRCLE (I-120) FOR **** **** COUNCILPERSON NORRIS ****		
		SALES TAX		41.47



THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

SOUTH CAROLINA

CHECK NO. 273651

57-776:532
-01020

DATE
12/24/97

VENDOR NO.
01494300

ACCOUNTS PAYABLE
PAY EXACTLY
\$*****2,500.00
VOID AFTER 120 DAYS

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602
273651

TWO THOUSAND FIVE HUNDRED DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF
SUGAR CREEK REC CTR INC

NOT-NEGOTIABLE

⑈273651⑈ ⑆053207766⑆ 2010000094653⑈

No. 273651

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		* P = PARTIAL F = FINAL C = CREDIT MEMO		
AMOUNT	INVOICE NO.	P.O. NO.	*	DESCRIPTION

2,500.00	LIGHTS	F	NONDEPARTMENTAL	COUNCIL RESERVE
2,500.00 TOTAL			VENDOR = 01494300	

Y DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

TO: PURCHASING DEPARTMENT

01494300

REQUISITION

09712

FROM:

County Council
DEPARTMENT

DEPARTMENT

DELIVER TO:

DEPARTMENT

Sugar Creek Recreational

NAME AND LOCATION

NAME AND LOCATION

Candler Inc

4018-~~75~~-48600-1-2-286

ITEM NUMBER

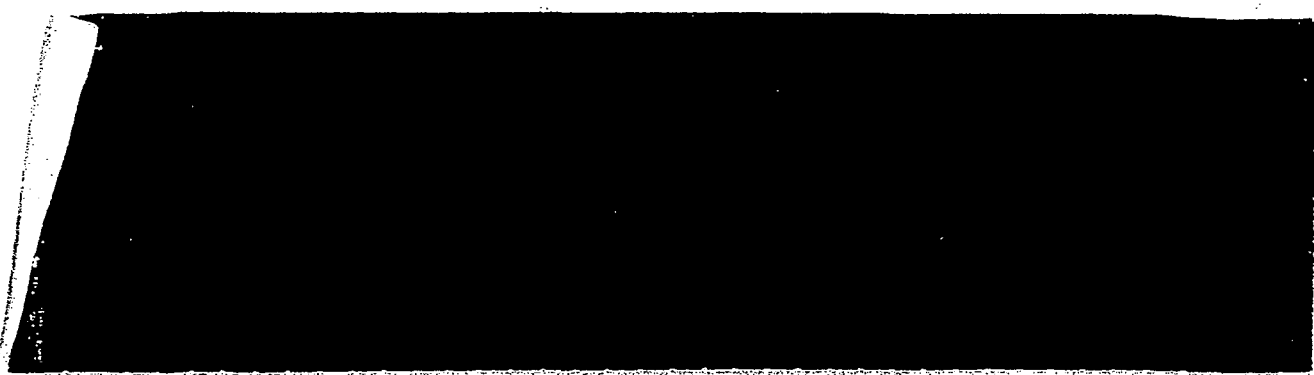
DATE REQUESTED:

	DELIVERY DATE					PURCHASE ORDER #
						SHIP VIA
	CONFIRMING					FOB
	DATE	WITH				TERMS
	DO NOT WRITE IN SHADED AREA.					

DO NOT WRITE IN SHADED AREA

Quantity	Description	Estimated Cost	Quotations	Unit	Total Price
	a check for \$2500 ⁰⁰ to be paid to Sugar Creek Lbr Co from Mr. Sullivan's Salary donation from 1997.				2500 ⁰⁰
	for Street lights per Mr. Sullivan 12/24/97 by phone.				

287



THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



GREENVILLE COUNTY

CHECK NO. 275310

67-776/532
01020

DATE
01/19/92

SOUTH CAROLINA

VENDOR NO.
02955600

ACCOUNTS PAYABLE
PAY EXACTLY
\$1,000.00
VOID AFTER 120 DAYS

FIRST UNION NATIONAL BANK
GREENVILLE, SOUTH CAROLINA 29602
275310

ONE THOUSAND DOLLARS AND 00/100 CENTS

PAY TO THE ORDER OF
GREENVILLE RECREATION COMM
RT. 2, ROPER MOUNTAIN RD.
GREENVILLE, SC 29607

NOT-NEGOTIABLE

⑈ 275310⑈ ⑆ 053207766⑆ 2010000094693⑈

No. 275310

GREENVILLE COUNTY, SOUTH CAROLINA

DISTRIBUTION SUMMARY		* P = PARTIAL F = FINAL C = CREDIT MEMO			DESCRIPTION
AMOUNT	INVOICE NO.	P.O. NO.	*		
1,000.00					POINSE F NONDEPARTMENTAL COUNCIL RESERVE
1,000.00 TOTAL					VENDOR = 02955600

ANY DISCOUNTS ALLOWED HAVE BEEN DEDUCTED AND NET SHOWN HEREON

ADMINISTRATIVE SERVICES

Administrative Services
% of General Fund Budget



The Administrative Services budget includes the County Administrator's Office, County Attorney's Office, the County Council Office and the Internal Audit

function. The total budget for the Administrative Services area is \$948,828 which represents an increase of 32% from FY1996-97. This increase is attributed to the inclusion of cost of living and merit adjustments to salaries, as well as the addition of a public relations position to the County Council Office and the addition of the Internal Audit function. The number of full time equivalent positions increased 4.39% to 23.80 for the department. This increase is attributed to the addition of the public relations position to the County Council Office.

County Council

Mission

The County Council Office's mission is to provide protection of each citizen's right to life, health and safety through the passage of legislation in accordance to the authority given to County Council by State Act 283; and to insure fluid execution of County Council activity through proper maintenance and preparation of all County legislative materials.

Services include, but are not limited to, holding public meetings to consider ordinances, resolutions, bids, contracts, zoning changes, road maintenance, and to review any and all matters relating to County business; levying taxes and raising/lowering tax millage; adopting

an annual County budget; setting policies and procedures; classifying and storing legislative materials for reference and review; responding to citizens' questions, requests, and need for information.

FY1996-97 Key Service Accomplishments

Accomplishments for the County Council Office for FY1996-97 include the attraction of three new industries; the approved expansion of seven existing industries; the renovation of the County Courthouse and construction of a judicial wing; the creation of two joint industrial/business parks; and the creation of two special tax districts.

Goals and Objectives

The goals of the Council Office are to provide essential services to county residents in the most cost-effective way and to achieve maximum efficiency through proper maintenance and preparation of all county legislative materials.

Divisional objectives include:

- meeting the public's need for safety and services
- classifying and storing incoming information
- maintaining up-to-date records and files

Budget Allowance Explanation

The FY1997-98 budget for the County Council Office is \$361,198 which is \$45,610 or 14.00% greater than FY1996-97. This increase is mainly attributable to the inclusion of cost of living and salary adjustments and the addition of the community relations position.

The FY1997-98 budget allows for 15.80 full-time equivalent positions. This represents an increase of 7.00% from FY1996-97 due to the inclusion of the new community relations position.

Expenditure and Position Summary

	96-97	97-98
Oper		
Ex	\$315,588	\$361,198
Total Positions	14.80	15.80

Administrative Services

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 96 - CP - 23 - 2918

Edward D. Sloan, Jr.

County Council

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other- _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other- _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Declaratory Judgment was heard in open court on the record pursuant to a stipulation of fact. Formal written orders to follow.

Dated at Greenville
19 98

ENTERED COMPUTER

South Carolina, this 10th day of February

Tom R
PRESIDING JUDGE

This judgment was entered on the 11th day of February, 1998, and a copy mailed first class this 11th day of February, 1998 to attorneys of record or to parties (when appearing pro se) as follows:

James Carpenter 205 E. B Street
Jennifer Horton 29601

Ronald Wray

D.C. Box 10584

29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC FORM 4
(Rev. 2/96)

Fletcher G. Manning
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 96 - CP - 23 - 2918

Sloan

County

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other- _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Other- _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

ENTERED COMPUTER

Dated at Greenville, South Carolina, this _____ day of _____, 19 98.

PRESIDING JUDGE

This judgment was entered on the 2 day of March, 19 98, and a copy mailed first class this 2 day of March, 19 98, to attorneys of record or to parties (when appearing pro se) as follows:

James G. Carpenter 205 E. Broad St. 29601
Jennifer Horton 407 Library Dr. 29609

Ronald K. Wray, II P.O. Box 10589 FS 29603
W. Howard Boyd, Jr. P.O. 10589 FS 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP FORM 4
(Rev. 2/96)

Fletcher G. Marmey, Jr.
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Edward D. Sloan, Jr., individually, and as a
Citizen, Resident, Taxpayer and Registered
Elector of Greenville County, and on behalf of
all others similarly situated,

Plaintiff,

v.

The County Council of Greenville County, as the
Governing Body of Greenville County, a
Political Subdivision of the State of South
Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

ORDER

C.A. No. 96-CP-23-2918

MAR 2 10 53 AM '98

This non-jury matter came before me for a bench trial on February 10, 1998. Both parties were represented by their respective counsel at trial. James G. Carpenter and Jennifer J. Horton of James G. Carpenter, P.C. appeared on behalf of the plaintiff, Edward D. Sloan, Jr. ("Sloan"). Ronald K. Wray, II of Gibbes, Gallivan, White & Boyd, P.A. appeared on behalf of the defendant, Greenville County ("County").

The parties submitted this action to the Court on stipulated facts with agreed-upon exhibits. Based upon the record before me, for the reasons set forth below, I conclude that County is entitled to judgment in its favor. I hereby enter the following findings of fact and conclusions of law.

FINDINGS OF FACT

The parties submitted this action to the Court on stipulated facts with agreed-upon exhibits. Accordingly, the Court adopts the facts stipulated to by the parties as its findings of fact in this matter.

In fiscal year 1994-95, as part of its annual budgeting process, Greenville County Council established "County Council Reserves" as an item in the County's annual operating budget. Council Reserves has remained an item in the annual operating budget since 1994-95, although Council appropriated only one dollar to Council Reserves in fiscal year 1995-96. According to Council's financial policies for the 1997-98 fiscal year, Council Reserves are to "allow the Council to address special community needs not normally falling with [sic] the operational purview of County government" and to provide for "nonrecurring community requests." The amount that may be appropriated to Council Reserves is set at a maximum of .3% of estimated annual operating revenue. However, as noted, a lesser amount may be, and has been appropriated by Council.

By stipulation, the parties introduced as exhibits records setting forth the disbursements that have been made from Council Reserves. The parties further stipulated that in August, 1996, Council adopted by resolution guidelines that limit the use of Council Reserves to infrastructure purposes such as flooding and drainage, roads, lights, sewer, and public buildings and grounds.

CONCLUSIONS OF LAW

Sloan initiated this action as a citizen, resident, taxpayer, and registered elector of Greenville County pursuant to the South Carolina Uniform Declaratory Judgment Act and 42 U.S.C. Section 1983. Sloan contends that County's establishment of Council Reserves as part of its annual operating budget is in violation of various statutory and constitutional provisions. Sloan brought this action seeking a temporary, preliminary, and permanent injunction against County's further appropriations which he alleges "are not for legitimate governmental purposes." Sloan also requested declaratory relief. I find and conclude that this Court has jurisdiction over

this matter and that venue is proper.

Although Sloan's complaint cites a number of statutory and constitutional provisions that Sloan alleges County is violating, at trial and in his trial brief he argued only two bases in support of his claim. First, he contended that some Council Reserve disbursements are constitutional violations because they allegedly violate the United States and South Carolina constitutions in that they allegedly have resulted in the funding of religious activity. Sloan alleges and argued that these alleged disbursements violate U.S. Constitution, Article I, Amendment I, and South Carolina Constitution, Article I, Section 4. Second, Sloan alleged and argued that disbursements from Council Reserves violate Section 7-81 of the Greenville County Code. Based upon my careful review of the record and evidence submitted before me, I find and conclude that Sloan is not entitled to relief on either of these bases and I further conclude that County is entitled to judgment in its favor.

Initially, I note that the only relief requested in the complaint is injunctive and declaratory relief. The allegations in the complaint, however, relate to disbursements already made by Greenville County Council from Council Reserves. I find and conclude that Sloan is not entitled to declaratory and injunctive relief pertaining to disbursements already made since these claims do not present a justiciable controversy and, in any event, the disbursement of these funds makes these claims moot.

As noted above, Sloan initiated this action pursuant to the Uniform Declaratory Judgment Act, South Carolina Code Ann. Sections 15-53-10 through 15-53-140 (1976). Like all other civil actions, cases brought under the Declaratory Judgment Act must involve an actual, justiciable controversy. South Carolina Elec. and Gas Co. v. South Carolina Pub. Serv. Authority, 215 S.C.

193, 54 S.E.2d 777 (1949). "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from this dispute of a contingent, hypothetical or abstract character." Notios Corp. v. Hanvey, 256 S.C. 275, 182 S.E.2d 55, 57 (1971).

Sloan's request for declaratory and injunctive relief relating to funds already disbursed seeks nothing more than an advisory opinion from this Court. Providing such an opinion clearly would be inappropriate. As stated by the South Carolina Supreme Court in Powers v. McNair, 255 S.C. 150, 177 S.E.2d 551, 553 (1970):

While it has been held that the Declaratory Judgment Statute should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships without awaiting a violation of the rights or a disturbance of the relationships, Williams Furniture Corporation v. Southern Coatings and Chemical Company, 216 S.C. 1, 56 S.E.2d 576, it is uniformly held that the Declaratory Judgment Act does not require the court to give a purely advisory opinion as to the issues sought to be raised. City of Columbia v. Sanders, 231 S.C. 61, 97 S.E.2d 210.

Thus, it has been held that while the Declaratory Judgment Act should be liberally construed and applied, "there is a limit beyond which the court should not go." Park v. Safeco Ins. Co. of America, 251 S.C. 410, 414, 162 S.E.2d 709, 711 (1968) (holding that no justiciable controversy existed regarding plaintiff's request to ask the court to determine which insurance company, if either, should pay a judgment when and if such judgment should be obtained). Accordingly, I find and conclude that County is entitled to judgment in its favor since Sloan's allegations regarding disbursements already made fail to present a justiciable controversy.

In addition to the fact that Sloan's claims fail to present a justiciable controversy, I further find and conclude that County is entitled to judgment on the ground that Sloan's claims relating

to disbursements already made are moot. In Treasured Arts, Inc. v. Watson, 319 S.C. 560, 463 S.E.2d 90 (1995), the South Carolina Supreme Court held that claims for injunctive relief should be dismissed as moot when granting injunctive relief would have no practical legal effect upon the existing case. See also Matthis v. South Carolina State Highway Department, 260 S.C. 344, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. This is true when some event occurs making it impossible for the reviewing court to grant effectual relief."). Since Sloan's complaint relates to disbursements already made by County, any ruling by the Court regarding these disbursement obviously would have no practical legal effect upon the parties. Thus, I find and conclude that these claims should be dismissed as moot.

Addressing the merits of Sloan's claims seeking declaratory relief relating to disbursements made by County allegedly to support religious activities, I find and conclude that the record before me fails to support these claims. In analyzing such claims, courts focus upon the three-part test set forth in Lemon v. Kurtzman, 403 U.S. 602 (1971). The Lemon test provides as follows: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion."

Based upon the record before me, I find and conclude that Sloan has failed to maintain his burden of proving that County has inappropriately used tax revenue in order to further religious purposes. Sloan argues that exhibits showing County's disbursement of funds to "Church and Community Human Relations" and to the Salvation Army establishes his entitlement to relief as a matter of law. However, what is clear from those courts applying the

Lemon test is that the mere fact that public funds may be disbursed to charitable or sectarian organizations does not in and of itself render the challenged action unconstitutional or in violation of statutory or constitutional provisions. Rather, the burden is upon the plaintiff to show that the disbursement of such funds has been used to advance religion. See, e.g., Zobrest v. Catalina Foothills School Dist., 509 U.S. 1 (1993) (no establishment clause violation in using public funds to furnish a publicly employed interpreter to a disabled child enrolled in a Catholic school); Witters v. Washington Dep't of Servs. For Blind, 474 U.S. 481 (1986) (holding that Establishment Clause did not bar a State from issuing a vocational tuition grant to a blind person who wished to use the grant to attend a Christian college and become a pastor, missionary, or youth director); Agostini v. Felton, ___ U.S. ___, 117 S. Ct. 1997 (1997) (upholding federally-funded program that provided supplemental remedial instruction to disadvantaged children on the premises of sectarian schools, even though the instruction was provided by government employees); Hunt v. McNair, 258 S.C. 97, 187 S.E.2d 645 (1972) (upholding the appropriation of public funds to Baptist College at Charleston); Durham v. McLeod, 259 S.C. 409, 192 S.E.2d 202 (1972) (holding legislative act relating to student loans did not violate constitution since it was neutral and applied to all institutions of higher learning).

In the present case, there is no evidence that Council Reserves have been used to further sectarian purposes. Absent such proof and with no evidence of what the funds were used for, the Court is left to guess or speculate. Sloan, as the party seeking affirmative relief, has the burden of showing the Court that County's disbursement of funds showed a legislative intent to promote religion. Because I find and conclude that Sloan has failed to maintain his burden of proof on this issue, I conclude as a matter of law that the appropriations by County were valid and not in

violation of the Constitution, and judgment is therefore entered in County's favor as to these claims.

I also disagree with Sloan's contention that County is violating Greenville County Code

Section 7-81. Section 7-81 of the Greenville County Code provides as follows:

Sec. 7-81. Appropriations and disbursements generally.

(a) Appropriations of funds shall be made only by county council to departments and agencies to provide services to county citizens. Appropriation of funds to private, nonprofit organizations and institutions to provide services is prohibited.

(b) Requests for county funds will be submitted to council for review during the regular county budget process, and appropriations will be made only for specific line-item purposes. As required by section 7-66 of this chapter, the annual report from departments and agencies to council shall verify that funds were expended in accordance with the purposes for which they were allocated.

(c) County funds will be disbursed to departments and agencies in one of the following ways:

- (1) *Departments and agencies funded one hundred percent with county funds.* Departments and agencies are required to conform with the accounting, purchasing and personnel policies of the county. The accounting department will be responsible for all fund disbursement through the county's accounting system.
- (2) *Department or agencies funded less than one hundred percent by county funds.* Agencies will be subject to the county's purchasing and personnel policies if comparable policies do not exist. If feasible, the department or agency will receive county funds through the county's accounting system. If not feasible, departments or agencies will receive funds in accordance with a schedule prepared by the county administrator to include the following:
 - a. The agency will estimate its first month's expense. The finance department will issue a check to the agency for this amount.
 - b. Subsequent payment will be made on an estimated basis predicated on actual expenditures.

In the present case, the parties stipulated that Council Reserves are an item in the County's annual operating budget. The parties further stipulated that County Council is a department of Greenville County government. Sloan made no challenge to the budgeting process itself, and offered no evidence that County's budget ordinance was not adopted consistent with South Carolina statutory and constitutional provisions. I find and conclude that Council's appropriation of funds to the Council Reserves budget item as an item in County's annual budget ordinance is in compliance with Section 7-81. I further find and conclude that there is nothing in the record that would support a finding that County's actions rise to the level of illegality in violation of the County Code.

Additionally, I find and conclude that County's actions have been consistent with the constitutional and statutory power granted county governments. Specifically, S.C. Code Ann. Section 4-9-30 (1976 and Supp. 1996) provides that each county government "shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:

(5)(a) To assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above.

The law is clear that state and local governments are statutorily and constitutionally permitted to expend public funds for a "public purpose." In Nichols v. South Carolina Research

Authority, 290 S.C. 415, 351 S.E.2d 155 (1986), the court noted that public purpose is "a fluid concept which changes with time, place, population, economy and countless other circumstances. It is a reflection of changing needs of society." 351 S.E.2d at 160. Furthermore, the court agreed with other courts and legal scholars that have concluded that "a public purpose has for its objective the promotion of the public health, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division." Id.

"The consensus of modern legislative and judicial thinking is to broaden the scope of activities which may be classed as involving a public purpose." Id. Furthermore, legislation may be found to serve a public purpose even though it (1) benefits some more than others and (2) results in profit to individuals. Id. at 161. As stated by the court in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43, 47 (1975), "legislation does not have to benefit all of the people in order to serve a public purpose. At the same time legislation is not for a private purpose merely because some individual makes a profit as a result of the enactment."

The burden is upon the plaintiff to show that a particular enactment does not comply with the public purpose test. Moreover, the Nichols court emphasized that "the determination of public purpose is one for the legislative branch." Nichols, 351 S.E.2d at 161. As the cases cited and relied upon by the Nichols court attest, decisions by the South Carolina appellate courts in which public or corporate purposes have been held to pass constitutional muster have involved a wide variety of subjects. See Haesloop v. City Council of Charleston, 123 S.C. 272, 115 S.E.596 (1923) (hotel); Chapman v. Greenville Chamber of Commerce, 127 S.C. 173, 120 S.E. 584 (1923) (office building site); Battle v. Wilcox, 128 S.C. 500, 122 S.E. 516 (1924), and Cathcart v. City of Columbia, 170 S.C. 362, 170 S.E. 435 (1933) (stadium); Davis v. Saluda, 147 S.C. 498, 145 S.E. 412 (1928),

Green v. Rockhill, 149 S.C. 234, 147 S.E. 346 (1929), and Roach v. City of Columbia, 172 S.C. 478, 174 S.E. 461 (1934) (waterworks and sewerage); South Carolina Farm Bureau Marketing Association v. South Carolina Ports Authority, 278 S.C. 198, 293 S.E.2d 854 (1982) (grain elevators).

Based upon these statutory and constitutional provisions and in reliance upon the numerous cases from the South Carolina Supreme Court, I find and conclude that Sloan has not sustained his burden of proving that County has engaged in any illegal acts. As noted, Council Reserves are approved during County's annual budgeting process and Council Reserves has been an item in the County's annual budget ordinance since 1994-1995. Furthermore, since Council Reserves are part of the County's annual budget, I reject Sloan's argument that each disbursement is a supplemental appropriation as defined by S.C. Code Ann. Section 4-9-140. Rather, I find that the notice requirement is satisfied by County's adoption of its annual budget with Council Reserves being an item in the budget. Thus, I find and conclude that County is entitled to judgment in its favor on this claim as well.

Finally, at trial Sloan presented two other matters which must be addressed. First, Sloan argued that County's payment of Rotary Club dues for various County officials is in violation of statutory and constitutional provisions. Second, Sloan argued that County's proposed disbursement of \$1,907.00 from Council Reserves for the purpose of buying computers and related supplies to be used in a computer learning lab sponsored by Crestwood Forest Village Committee is not moot and should be enjoined.

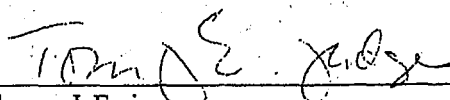
For the reasons stated on the record during the hearing, I conclude that Sloan's claims relating to Rotary Club dues should be dismissed without prejudice. Sloan's complaint in this

action clearly is premised upon County's alleged statutory and constitutional violations relating to Council Reserves. Both parties agreed at the hearing that the Rotary Club dues were not paid from Council Reserves. Accordingly, I find and conclude that Sloan's allegations relating to Rotary Club dues should be dismissed without prejudice. Because Sloan's claims relating to the proposed disbursement of funds to Crestwood Forest Village Committee involve funds that have been approved to be disbursed, but the funds have not yet been disbursed, I find that it would be more appropriate to address that issue in a separate order.

Accordingly, for the reasons stated above, it is hereby ordered, adjudged, and decreed as follows:

1. The plaintiff's claims relating to Rotary Club dues are dismissed without prejudice;
2. The plaintiff's claims relating to the proposed disbursement to Crestwood Forest Village Committee will be addressed in a separate order;
3. All other claims are dismissed with prejudice, and judgment is hereby entered in County's favor as to these claims.

IT IS SO ORDERED.


Thomas J. Ervin

Dated this 23rd day of
February, 1998.

) IN THE COURT OF COMMON PLEAS

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J.R.# 98-2901

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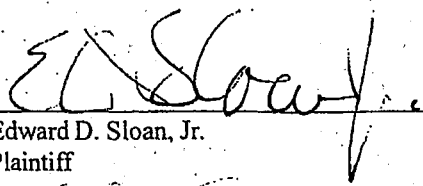
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COUNTY OF LOS ANGELES
JUL 10 1963

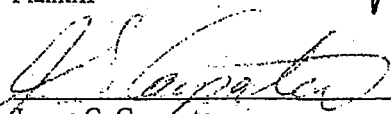
AUG 31 4 28 PM '98

Perh.

Verified

NOW, THEREFORE, take notice that Judgment Roll No. 98-2901 has this 26th day of August, 1998, been satisfied and cancelled of record in the Clerk of Court's office of Greenville County, the State of South Carolina.


Edward D. Sloan, Jr.
Plaintiff


James G. Carpenter
Attorney for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 96 - CP - 23 - 2918

Edward D. Sloan, Jr.

The County Council of Greenville
County, etc.

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other- _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other- _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

ENTERED COMPUTER

Dated at Greenville, South Carolina, this _____ day of _____, 19 98.

PRESIDING JUDGE

This judgment was entered on the 18 day of March, 19 98, and a copy mailed first class this 18 day of March, 19 98 to attorneys of record or to parties (when appearing pro se) as follows:

James Carpenter 205 E. Broad St.
29601
Jennifer J. Horton

Ronald Wray P.O. 10589 TS
29603
Russell B. Christenson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC FORM 4
(Rev. 2/96)

Fletcher C. Marmey Jr.
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Edward D. Sloan, Jr., individually, and
as a Citizen, Resident, Taxpayer, and
Registered Elector of Greenville County,
and on behalf of all others similarly
situated,

PLAINTIFF

vs.

The County Council of Greenville
County, as the Governing Body of
Greenville County, a Political
Subdivision of the State of South
Carolina,

DEFENDANTS

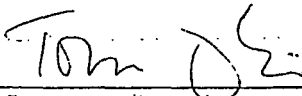
IN THE COURT OF COMMON PLEAS
96-CP-23-2918

ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER AND
FOR A NEW TRIAL OR
AMENDMENT OF JUDGMENT

This matter is currently before the Court on a motion by the plaintiff, Edward D. Sloan, Jr. (Sloan), pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. Although captioned a "motion to reconsider and for a new trial or amendment of judgment," the relief requested in Sloan's motion is that the Court "amend the Court's judgment against the plaintiff to base it solely on the procedural issues of ripeness, mootness, and justiciability," and that the Court amend the judgment entered in this case "to allow further consideration of an injunction abolishing Council Reserves." Thus, Sloan's motion is a motion to alter or amend the court's judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

There is no basis upon which to grant the relief requested in Sloan's motion. Further oral argument would not assist the Court in its ruling. The Court affirms its prior judgment and denies Sloan's motion.

IT IS SO ORDERED.



Tom J. Ervin, Presiding Judge
Thirteenth Judicial Circuit

March 17, 1998
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

JR98-2901
JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 96-CP-23-2918

Edward D. Sloan, Jr.

County Council, etc

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other-_____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other-_____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

A Hearing was held on the Plaintiff's Request for Permanent Injunction on the expenditure of Council Reserves of \$1,907.00 to the Chestwood Forest Village Committee. After considering the testimony and evidence presented, this expenditure does not meet the County Council guidelines. The injunction, therefore, is now permanent. Defendant

Dated at Greenville, South Carolina, this 4 day of May, 1998.

Court, is permanently restrained and enjoined from disbursing the \$1,907.00 in question. Don X. Judge PRESIDING JUDGE

Since it does not meet the County Council guidelines. This judgment was entered on the 4 day of May, 1998, and a copy mailed first class this 4 day of May, 1998 to attorneys of record or to parties (when appearing pro se) as follows:

James G. Carpenter
205 East Broad Street
Greenville, S.C. 29601

Ronald Wray
W. Howard Boyd Jr.
P.O. Box 10589

Ronald Boyd Livingston Horton 5-14-98
ATTORNEY(S) FOR THE PLAINTIFF(S)

Greenville, S.C. 29603
ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC FORM 4
(Rev. 2/96)

Fletcher G. Manna
CLERK OF COURT

Chk # 070627 dated 5-11-98
amt - \$250.00
transferable To: Edward D. Sloan, Jr.

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 96-CP-23-2918

EDWARD P. SLOAN, JR.

COUNTY COUNCIL G'VILLE

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other-_____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Other-_____

IT IS ORDERED AND ADJUDGED: ☐ Sec. attached order; ☐ Statement of Judgment by the Court: *in part*

PLAINTIFF MOTION FOR ATTORNEY'S FEES IS GRANTED MR. CARPENTER TO PREPARE FORMAL ORDER. DEFENDANT'S MOTION FOR SANCTIONS DENIED.

*Total attorneys fees granted to Plaintiff: \$4,793.75.
Request for costs were denied under SCRCP Rule 54.*

Dated at Greenville, South Carolina, this 20 day of JULY
19 98.

ENTERED

JUDGE

Tom [Signature]
PRESIDING JUDGE

This judgment was entered on the 21 day of July, 1998, and a copy mailed first class this 21 day of July, 1998 to attorneys of record or to parties (when appearing pro se) as follows:

JAMES CARPENTER

205 East Broad St.

Greenville, SC 29601

RONALD WRAY

P.O. Box 10589

Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP FORM 4
(Rev. 2/96)

[Signature]
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

IN THE COURT OF COMMON PLEAS

Edward D. Sloan, Jr, etc.

PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

JR # 98-290,

CASE NO. 96 - CP - 23-2918

The County Council of
Greenville County, etc.

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other-_____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other-_____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this _____ day of _____
19 98.

PRESIDING JUDGE

This judgment was entered on the 3 day of August, 1998, and a copy mailed first class this 3 day of August, 1998, to attorneys of record or to parties (when appearing pro se) as follows:

James Carpenter
205 E. Dixie St. 29601

Ronald K. Wray
P.O. Box 10589 ES, 29603

Verified

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC FORM 4
(Rev. 3/96)

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 96-CP-23-2918

Edward D. Sloan, Jr., Individually,)
as a Citizen, Resident, Taxpayer,)
and Registered Elector of)
Greenville County, and on behalf)
of all others similarly situated,)
Plaintiff,)

vs.)

ORDER AWARDING ATTORNEYS FEES

The County Council of Greenville)
County as the Governing Body of)
Greenville County, a Political)
Subdivision of the State of South)
Carolina,)
Defendant.)

This action came before the court on July 20, 1998, upon Plaintiff's Motion for Attorneys Fees and Costs, and upon Defendant's Motion for Sanctions for filing the Motion for Attorneys Fees and Costs. For the reasons stated below Plaintiff's Motion for Attorneys Fees is granted in part and denied in part; Plaintiff's Motion for Costs is denied; and Defendant's Motion for Sanctions is denied.

Based on the pleadings and evidence before the Court, the Court finds as follows:

FINDING OF FACTS

1. Plaintiff filed and served the final Complaint in this action December 15, 1997.
2. At the bench trial, February 10, 1998, this Court issued a preliminary injunction prohibiting Defendant Greenville County from making an expenditure from the Council Reserves to the Crestwood Forest Village Community because there was a substantial likelihood that the expenditure would violate the County's "Guidelines for Discretionary Funds."

2. This litigation failed to establish a common fund from which attorneys fees could be paid under the common fund doctrine.
3. S.C. Code Ann. § 15-77-300 gives this Court discretion to "allow the prevailing party to recover reasonable attorneys fees to be taxed as court costs against the appropriate agency if: (1) the court finds that the agency acted without substantial justification in pressing its claim against the party; and (2) the court finds that there are no special circumstances that would make the award of attorneys fees unjust."
4. Mr. Sloan is the prevailing party upon the issuance of preliminary and permanent injunctions prohibiting an expenditure for Crestwood Forrest Village Community from Defendant's Council Reserve Funds.
5. From the preliminary injunction hearing through the hearing on permanent injunction, Defendant acted without substantial justification in pressing this claim.
6. The court finds no special circumstances that would make an award of attorneys fees unjust.
7. The court agrees with Defendant's argument in its Brief in Opposition to Plaintiff's Motion for Attorneys Fees and Costs: "Limiting the awards to those fees incurred in prosecuting claims on which the plaintiff prevailed is consistent with the general rules regarding the determination of a reasonable attorney fee." Defendant's Brief at p. 9, citing *McDowell v. South Carolina Department of Social Services*, 304 S.C. 539, 405 S.E.2d 830 (1991); *Utilities Construction v. Wilson*, 321 S.C. 244, 468 S.E.2d 1 (Ct. App. 1996); and *Cedar Creek Properties v. Cantelou Assoc. Inc.*, 320 S.C. 483, 465 S.E.2d 774 (Ct. App. 1995). Defendant's Brief at pp. 9-10.
8. In determining the amount of reasonable attorneys fees, the Court should consider the following six factors: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 243 S.E.2d 443 (1978).

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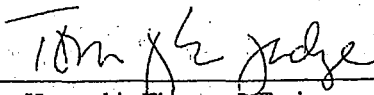
9. The undersigned Circuit Judge, having presided at three hearings in this matter and reviewed the pleadings and papers, finds, based on the *Hegler* factors, that Mr. Carpenter's hourly rate should be \$100, and Ms. Horton's hourly rate should be \$75.
10. Finally, S.C. R. Civ. P. 54(d) allows a prevailing party to file a motion for costs "within 10 days of the receipt of written notice of the entry of final judgment."

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff's Motion for costs pursuant to S.C. R. Civ. P. 54 is denied for failure to file the motion within 10 days of written notice of final judgment.
2. Plaintiff's Motion for attorneys fees under the common fund doctrine set forth in *Shillito v. City of Spartanburg*, 214 S.C. 11, 51 S.E.2d 95 (1948), is denied because it is distinguishable from the case at bar and because the litigation failed to establish a common fund from which the fees could be paid.
3. Plaintiff's Motion for Attorney Fees pursuant to S.C. Code Ann. § 15-77-300 is granted as to the issue upon which Plaintiff prevailed in the amount of \$4,793.75, comprising \$843.75 for 11.25 hours of Jennifer J. Horton's time at \$75.00 per hour, and \$3,950.00 for 39.5 hours of James G. Carpenter's time at \$100.00 per hour.
4. Defendant's Motion for Sanctions is denied.

AND IT IS SO ORDERED.

Greenville, South Carolina
July 27, 1998


The Honorable Thomas J. Ervin
Circuit Judge Presiding

See 474

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-23-4637

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

Plaintiffs,)

v.)

Greenville County, a Political)
Subdivision of the State of South)
Carolina, Herman G. Kirven, Jr.,)
Judy Gilstrap, Eric Beddingfield,)
Jim Burns, Scott Case, Joseph Dill,)
Cort Flint, Lottie Gibson, Mark)
Kingsbury, Xanthe Norris,)
Robert Taylor, and Tony Trout,)

Defendants.)

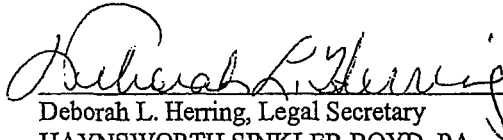
CERTIFICATE OF SERVICE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
DALE R. WICKFORS

2006 AUG 21 P 4:51

This is to certify that the foregoing Motion to Dismiss was served in the above-referenced case via hand delivery on this the 21st day of August, 2006, addressed as follows:

James G. Carpenter, Esquire
The Carpenter Law Firm, PC
819 East North Street, Suite 230
Greenville, SC 29601


Deborah L. Herring, Legal Secretary
HAYNSWORTH SINKLER BOYD, PA
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-4567

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

The South Carolina Public Interest Foundation, et al.
☐ Plaintiff

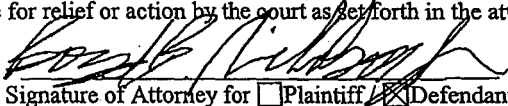
v.

Greenville County, Et Al.
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2006-CP-23-4637

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: James G. Carpenter, Bar No. Address: The Carpenter Law Firm, PC 819 East North St., Ste. 230, Greenville, SC 29601 phone: 864.235.1269 fax: 864.331.3058 e-mail: other:		Defendant's Attorney: Boyd B. Nicholson, Jr., Bar No. 65387 Address: Haynsworth Sinkler Boyd, P.A. Post Office Box 2048, Greenville, SC 29602-2048 phone: 864.240.3247 fax: 864.240.3336 e-mail: nnicholson@hsblawfirm.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Dismiss Estimated Time Needed: 1 Hr. Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant August 21, 2006 Date submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO. 06-CP-23-4637
	)	
The South Carolina Public Interest	)	
Foundation, and Edward D. Sloan,	)	
Jr., individually, and on behalf of	)	
all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	MOTION TO DISMISS
	)	
Greenville County, a Political	)	
Subdivision of the State of South	)	
Carolina, Herman G. Kirven, Jr.,	)	
Judy Gilstrap, Eric Beddingfield,	)	
Jim Burns, Scott Case, Joseph Dill,	)	
Cort Flint, Lottie Gibson, Mark	)	
Kingsbury, Xanthene Norris,	)	
Robert Taylor, and Tony Trout,	)	
	)	
Defendants.	)	

Pursuant to Rules 12(b)(1) and 12(b)(6), SCRCP, the Defendants Greenville County and Greenville County Council (collectively the "County") hereby move that the Court dismiss the Plaintiffs' complaint. This motion is made in lieu of providing an answer to Plaintiffs' complaint, and it is based upon the following:

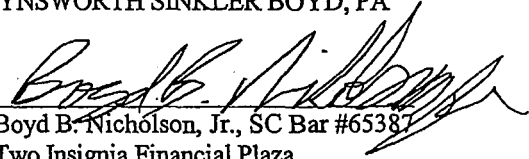
(1) The Plaintiffs' complaint is barred by the doctrines of res judicata and collateral estoppel. In the case of Sloan v. Greenville County, C.A. No. 96-CP-23-2918 (hereinafter "Sloan I"), Plaintiff Edward Sloan has already litigated or could have litigated the same issues raised in the present case. Thus, Plaintiffs' claims are barred.

(2) The South Carolina Public Interest Foundation has no standing to bring this action, as it is not a taxpayer of Greenville County. Mr. Sloan likewise has no standing to bring

this action, as he has previously litigated or could have litigated in Sloan I all the issues that he raises in his present complaint. Thus, he has no direct interest in the current action.

The County bases its motion on the attached pleadings from Sloan I, the memorandum of law that the County will file prior to a hearing in this matter, and such other materials as may be presented to the Court.

HAYNSWORTH SINKLER BOYD, PA

By: 

Boyd B. Nicholson, Jr., SC Bar #65387
Two Insignia Financial Plaza
Eleventh Floor
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-3200
Attorneys for Defendants

Dated: August 21, 2006
Greenville, South Carolina
DOC #554859

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-23-4637

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

Plaintiffs,

v.

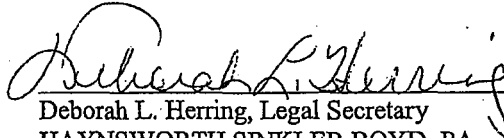
CERTIFICATE OF SERVICE

Greenville County, a Political)
Subdivision of the State of South)
Carolina, Herman G. Kirven, Jr.,)
Judy Gilstrap, Eric Beddingfield,)
Jim Burns, Scott Case, Joseph Dill,)
Cort Flint, Lottie Gibson, Mark)
Kingsbury, Xanthene Norris,)
Robert Taylor, and Tony Trout,)

Defendants.

This is to certify that the foregoing Motion to Dismiss was served in the above-referenced case via hand delivery on this the 21st day of August, 2006, addressed as follows:

James G. Carpenter, Esquire
The Carpenter Law Firm, PC
819 East North Street, Suite 230
Greenville, SC 29601


Deborah L. Herring, Legal Secretary
HAYNSWORTH SINKLER BOYD, PA
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-4567

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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

v.

Greenville County, a Political Subdivision
of the State of South Carolina, Herman G.
Kirven, Jr., Judy Gilstrap, Eric
Beddingfield, Jim Burns, Scott Case,
Joseph Dill, Cort Flint, Lottie Gibson,
Mark Kingsbury, Xanthene Norris, Robert
Taylor, and Tony Trout,
Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-23-4637

**MEMORANDUM IN RESPONSE TO
MOTION TO DISMISS**

BACKGROUND AND STATEMENT OF FACTS

Plaintiffs submit this Memorandum of Law in opposition to the Defendants' Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6), SCRPC dated August 21, 2006 and its Memorandum in Support ("Defendants' Memo").

Plaintiff South Carolina Public Interest Foundation ("the Foundation") is a not-for-profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the proper application and implementation of the South Carolina Constitution and laws. The Foundation also owns property on which it pays taxes to Greenville County. Plaintiff Edward D. Sloan Jr. is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina.

Defendant Greenville County is a political subdivision of the State of South Carolina. The individual Defendants are members of the Greenville County Council, the

governing body of the County, and are named in their official capacities. Venue is properly placed in Greenville County.

This Court has jurisdiction under the common law of South Carolina as set out in *Sloan v. Hardee*, Opinion No. 26242 S.C. Supreme Court, (January 8, 2007); *Cornelius v. Oconee County*, 369 S.C. 531, 633 S.E.2d 492, S.C., (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005). *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005), *Sloan v. Sunford*, 357 S.C. 431, 593 S.E.2d 470 (2004), *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), and *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997). This Court has jurisdiction pursuant to S.C. Code § 15-53-10, et seq., known as the Uniform Declaratory Judgment Act.

For several years, Defendants have authorized and operated a fund variously known as the Council District Expense Fund, Council Reserves, Discretionary Funds, or the Slush Fund. On August 2, 2005, Defendants enacted Ordinance No. 3940 (Exhibit A), which appropriated funds "for the operation of county government for the fiscal year beginning July 1, 2006 and ending June 30, 2007," which, upon information and belief, included an appropriation for an account called "Council District Expense."

Upon information and belief, pursuant to the "Council District Expense" account definition (Exhibit B), the account includes an annual appropriation of more than \$23,000 per council member in "Funds for a Council Member to address," among other things: costs associated with special, nonrecurring community requests for infrastructure

purposes such as: flooding; roads; lights; sewer and drainage; public buildings and grounds; infrastructure related studies.

Plaintiffs contend that Defendants' delegation of legislative power to an individual member, as described herein, is unconstitutional and illegal, as explained in a South Carolina Attorney General opinion dated November 13, 2003 (Exhibit C).

ARGUMENT

I. A MOTION TO DISMISS IS NOT THE PROPER VEHICLE TO RAISE RES JUDICATA OR COLLATERAL ESTOPPEL, AND DEFENDANTS FAIL TO MEET THE BURDEN OF RULE 12(b)(6).

A motion to dismiss is not the proper vehicle with which to challenge an action based on *res judicata* and collateral estoppel because the Court must necessarily look beyond the pleadings of the present litigation back to pleadings in earlier litigation in order to rule on the matter. "When considering the motion to dismiss for failure to state a claim, the trial court must base its ruling solely upon the allegations made on the face of the complaint." *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). Thus, the Court should treat this as a motion for summary judgment and allow the Plaintiffs the procedural opportunities commensurate with SCRCP 56, including but not limited to full discovery and motion hearing.

Even if the Court should consider this a motion to dismiss, the court should apply the standard of review under Rule 12(b)(6). SCRCP and may dismiss only if the defendant demonstrates the plaintiff has failed "to state facts sufficient to constitute a cause of action" in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499 (Ct.App.2001) (quoting Rule 12(b)(6), SCRCP). "If the

facts and inferences drawn from the facts alleged on the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987); *McCormick v. England*, 328 S.C. 627, 494 S.E.2d 431 (Ct.App.1997). Finally, "The facts and inferences alleged on the complaint are viewed in the light most favorable to the plaintiff." *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987); *Cowart v. Poore*, 337 S.C. 359, 523 S.E.2d 182 (Ct.App.1999); *Mr. G. v. Mrs. G.*, 320 S.C. 305, 465 S.E.2d 101 (Ct.App.1995). In the case at bar, Defendants cannot demonstrate that Plaintiff fails to state facts sufficient to constitute a cause of action as presented below.

II. BOTH SLOAN AND THE FOUNDATION POSSESS STANDING.

A. The Public Interest Foundation Possesses Both Public Interest Standing and Taxpayer Standing.

Defendants argue that the South Carolina Public Interest Foundation does not possess standing to bring an action against Defendants because the Foundation itself does not pay Greenville County taxes. However, the Foundation possesses standing both because of the public importance of the issues raised and because the Foundation owns title to realty in Greenville County on which the Foundation paid property taxes for 2006 (Exhibit A, Affidavit of Edward D. Sloan, Jr.).

B. Mr. Sloan Possesses Both Public Interest and Taxpayer Standing, Despite the Defendant's *Res Judicata* and Collateral Estoppel Challenges.

Defendants also argue that Mr. Sloan does not possess standing because the doctrines of *res judicata* and collateral estoppel bar him from bringing an action litigating these issues because he has sued Defendants in the past regarding similar expenditures.

A challenge to illegal expenditures many years ago does not preclude a challenge to new expenditures, which are also illegal.

The doctrine of *res judicata* originates from the principles that public interest requires an end to litigation and that no one should be sued twice for the same cause of action. *Hayes v. Hayes*, 312 S.C. 141, 439 S.E.2d 305 (Ct.App.1993). The *res judicata* defense requires a showing of three essential elements: (1) the prior judgment must be final, valid and on the merits; (2) the parties in the subsequent action must be identical to those in the first; and (3) the second action must involve matters properly included in the first action. *Owenby v. Owens Corning Fiberglas*, 313 S.C. 181, 437 S.E.2d 130 (Ct.App.1993). Under the doctrine of *res judicata*, a final judgment on the merits in a prior action will preclude the parties from relitigating any issues actually litigated or those that might have been litigated in the first action. *Foran v. USAA Casualty Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct.App.1993).

Wright v. Marlboro County School District, 317 S.C. 160, 452 S.E.2d 12 (Ct. App. 1994). However, in the case at bar, these doctrines do not prevent a grant of standing to Mr. Sloan because the expenditures are different expenditures, and they are alleged to be illegal for different reasons.

Second, exceptions to the doctrines of *res judicata* and collateral estoppel apply, so that they do not bar this action.

There are numerous exceptions to the application of *res judicata* and collateral estoppel. In *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997)], this court adopted the Restatement (Second) of Judgments section 28, which states:

Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances:

(1) The party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action; or

(2) The issue is one of law and (a) the two actions involve claims that are substantially unrelated, or (b) a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws; or

(3) A new determination of the issue is warranted by differences in

the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them; or

(4) The party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action; the burden has shifted to his adversary; or the adversary has a significantly heavier burden than he had in the first action; or

(5) *There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or (c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.*

Id., quoting *Pye*, 325 S.C. at 437-38, 480 S.E.2d at 460-61. As detailed below, both exceptions emphasized above support granting standing to Sloan in the case at bar.

1. The application of *res judicata* would contravene important public policies.

Mr. Sloan possesses standing because the issues at bar are distinguishable from the issues raised in the prior action, and because the public importance of the issues raised outweighs the public interest of *res judicata* in this case. As the Attorney General quoted,

The members of the governing body are chosen by the people to represent the municipality and they are charged with a public trust and the faithful performance of their duties and *the public is entitled to the judgment and discretion of each member* although the governing body may refer matters coming before it to a committee for examination and fact-finding.

(Exhibit C to Complaint, 2003 WL 22862787 (S.C.A.G.) (quoting 56 Am.Jur.2d, Municipal Corporations, § 134) (emphasis added)). The expenditures from the individual slush funds of individual council members, at the discretion of individual council members deprives the citizens and taxpayers of the collective judgment of the council as

a whole. The members as a group represent the citizens as a whole. The collective judgment is one of the strengths of a county council system of government and something the citizens have a right to expect from their government.

2. **Compelling circumstances make the case at bar appropriate for litigation.**

Another exception to *res judicata* is when "[o]ther compelling circumstances make it appropriate that the party be permitted to relitigate the issue." *Id.* citing *Beall v. Doe*, 281 S.C. at 371, 315 S.E.2d at 190-91. After the decision in the earlier *Sloan* case addressing Defendants' failure to follow their own discretionary funds guidelines, the S.C. Attorney General published an opinion that ordinances like this one are unconstitutional and illegal when they give individual council members discretionary public funds to use as they wish without a decision by the council as a whole (Exhibit C to Complaint, 2003 WL 22862787 (S.C.A.G.)).

In his opinion, the Attorney General reasoned that Florence County's ordinance was unconstitutional because, "it is well established that a municipal council may not delegate discretionary duties to individual members of council." *Id.* at 3 citing 56 Am.Jur.2d, Municipal Corporations. The Attorney General noted that the South Carolina Supreme Court has supported this principal and cited *Pettiford v. S.C. State Bd. Of Ed.*, for the proposition that:

[a]n administrative board or body, when acting in a quasi-judicial capacity, must itself consider all the evidence before rendering a decision. In the Supreme Court's opinion, while the Board of Education could delegate to Board members the authority to take testimony and hear witnesses, the Board could not subdelegate its decision-making authority.

Id. at 218 S.C. 322, 62 S.E.2d 780 (1950). The Attorney General also quoted *Dawson v. State Law Enforcement Division*.

[w]e further conclude the Grievance Committee, as the final administrative authority, may not delegate its role as final decision-maker to the Personnel Director. See *Bradley v. State Human Affairs Comm'n*, 293 S.C. 376, 360 S.E.2d 537 (Cl. App. 1987). Once an appeal is forwarded to the Grievance Committee, the Committee has exclusive jurisdiction to decide all issues.

Id. at 304 S.C. 59, 403 S.E.2d 124, 125 (1991). This legal development is a compelling circumstance that renders the case at bar appropriate for litigation.

C. The Public Interest Outweighs Collateral Estoppel Considerations.

Defendants also argue that the doctrine of collateral estoppel bars Mr. Sloan's standing in the case at bar. However, when a governmental body continues to violate the law, each violation is a new incident for which a citizen may file an action challenging the violation, and the public interest in requiring the governmental bodies to follow the law outweighs the public policy considerations of collateral estoppel.

In establishing exceptions to the general application of the preclusion doctrines, we have identified several factors to consider, including: (1) *whether another public policy interest outweighs the interest of finality served by the preclusion doctrines; see, e.g., Stratford v. International Assn. of Firefighters, AFL-CIO, Local 998*, supra, at 127-28, 728 A.2d 1063; (2) whether the incentive to litigate a claim or issue differs as between the two forums; *Isaac v. Truck Service, Inc.*, supra, at 428-29, 752 A.2d 509; *Delahunty v. Massachusetts Mutual Life Ins. Co.*, supra, at 594, 674 A.2d 1290; (3) whether the opportunity to litigate the claim or issue differs as between the two forums; *see, e.g., Connecticut Natural Gas Corp. v. Miller*, supra, at 323, 684 A.2d 1173; *Genovese v. Gallo Wine Merchants, Inc.*, supra, at 489, 628 A.2d 946; and (4) whether the legislature has evinced an intent that the doctrine should not apply. *See, e.g., Genovese v. Gallo Wine Merchants, Inc.*, supra, at 487-88, 628 A.2d 946.

Cumberland Farms, Inc. v. Town of Groton, 262 Conn. 45, 808 A.2d 1107 (Conn., 2002) (emphasis added).

In the case at bar, this first exception applies. The public policy interest of enforcement of the laws governing local government outweighs the interest in finality.

Defendants have continued to utilize these unconstitutional "slush funds" in the years following Mr. Sloan's first litigation on the subject in which the Court ruled that Council must follow its own guidelines in administering these funds. Defendants have continued to use these funds even after the Attorney General's opinion in 2003 found unconstitutional ordinances such as the one authorizing this discretionary spending. Ideally, Defendants should police themselves and conform their ordinances to the S.C. Constitution. When they do not, a citizen such as Mr. Sloan bears the burden of monitoring local government and bringing these actions. He should not be precluded by an abstract need for finality. This line of thinking simply perpetuates illegal conduct by Defendants who should be vigilant about upholding the law. The better analysis allows finality by insisting that local governments follow the law.

D. The Claims and Issues in the Two Actions Are Distinguishable.

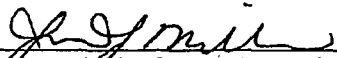
Furthermore, it is doubtful that claim or issue preclusion even applies in the case at bar because the new claims are distinguishable. The current action alleges that the Greenville County Ordinance allowing these discretionary accounts is an unconstitutional delegation of power to an individual member, based on the Attorney General's opinion released since Mr. Sloan's last action addressing violations of the discretionary funds ordinance. That is the only claim in the present litigation, and it was not present in the earlier litigation. In the first action, Mr. Sloan alleged that Defendants were not following their own guidelines. In this action, Mr. Sloan alleges that the operation of the slush fund is unconstitutional.

CONCLUSION

Defendants' Motion to Dismiss should be denied because it is not the proper vehicle to raise *res judicata* or collateral estoppel. Furthermore, Defendants fail to meet their burden under Rule 12(b)(6). Finally, important public policies and compelling circumstances warrant the grant of standing to both Plaintiff Public Interest Foundation and Plaintiff Sloan in spite of claims of *res judicata* and collateral estoppel.

WHEREFORE, Plaintiff's pray the Court to deny the Motion to Dismiss; grant Petitioners costs and attorneys' fees; and award such other and further relief as the Court deems just and proper.

Respectfully submitted
THE CARPENTER LAW FIRM, PC


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Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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

v.

Greenville County, a Political Subdivision
of the State of South Carolina, Herman G.
Kirven, Jr., Judy Gilstrap, Eric
Beddingfield, Jim Burns, Scott Case,
Joseph Dill, Cort Flint, Lottie Gibson,
Mark Kingsbury, Xanthene Norris, Robert
Taylor, and Tony Trout,
Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-23-4637

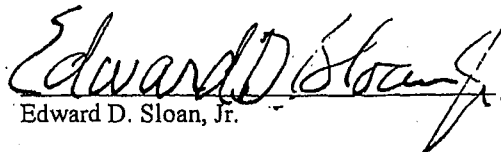
EDWARD D. SLOAN JR'S
AFFIDAVIT IN SUPPORT
OF MEMORANDUM IN RESPONSE
TO MOTION TO DISMISS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKEN

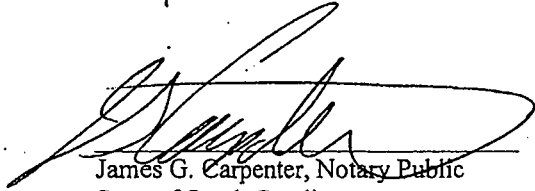
Plaintiff Edward D. Sloan, Jr., being first duly sworn on oath, deposes and states
as follows:

1. My name is Edward D. Sloan, Jr. I am one of the plaintiffs in the above-captioned
action. I submit this affidavit in support of my Memorandum in Response to Motion
to Dismiss.
2. I am the Chairman of the Board of Directors and President of the South Carolina
Public Interest Foundation ("Foundation").
3. The Foundation paid Greenville County property taxes in 2006 via Connector
Holdings LLC, of which the Foundation is a member.

Further the Affiant saith naught.


Edward D. Sloan, Jr.

Subscribed and sworn to before me
This 19th day of February 2007.

A handwritten signature in black ink, appearing to read 'James G. Carpenter', is written over a horizontal line.

James G. Carpenter, Notary Public
State of South Carolina
My commission expires October 16, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-23-4637

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

Plaintiffs,)

v.)

Greenville County, a Political)
Subdivision of the State of South)
Carolina, Herman G. Kirven, Jr.,)
Judy Gilstrap, Eric Beddingfield,)
Jim Burns, Scott Case, Joseph Dill,)
Cort Flint, Lottie Gibson, Mark)
Kingsbury, Xanthene Norris,)
Robert Taylor, and Tony Trout,)

Defendants.)

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**

FILED CLERK OF COURT
GREENVILLE COUNTY
PAUL B. WICKERHORN

2009 JUL 23 A 11:49

INTRODUCTION AND BACKGROUND

In the current action, Plaintiff Edward D. Sloan, Jr. seeks to challenge establishment of the "Council District Expense Fund" (hereinafter referred to as "Council Reserves") as a violation of the constitutional non-delegation principle. See Complaint, ¶¶ 8, 11.¹ The Council Reserves is an item in the Greenville County Budget whereby a certain amount of money is allocated to each individual member to distribute at his or her discretion for certain limited purposes (i.e., it is not unfettered discretion). Those limited purposes include "[c]osts associated with special, nonrecurring community requests for infrastructure purposes such as . . . flooding, roads, lights, sewer and drainage, public buildings and grounds, and infrastructure related

¹ While the South Carolina Public Interest Foundation is also nominally a Plaintiff in this action, an Affidavit of record in this matter establishes that Mr. Sloan is the Chairman and President of that organization. Thus, it is clearly Mr. Sloan who is driving this litigation.

studies.” Complaint, ¶ 10; see also Complaint at Exhibit B. Sloan contends that this “delegation of discretionary spending authority” to individual Council members, rather than having the whole Council consider and vote on every request for funds, violates the non-delegation principle of the S.C. Constitution. Sloan bases this challenge entirely on an opinion issued by the South Carolina Attorney General’s office on November 13, 2003. See Plaintiff’s Memo in Opposition to Motion to Dismiss, p. 3 (“Plaintiffs contend that Defendants’ delegation of legislative power to an individual member, as described herein, is unconstitutional and illegal, as explained in a South Carolina Attorney General opinion dated November 13, 2003.”). This claim represents, however, nothing more than a new theory for an identical non-delegation argument Sloan pressed in a previous lawsuit. Since Sloan’s new constitutional twist on a previously raised argument is the only claim advanced in this lawsuit, this case is barred by res judicata and should be dismissed.

ARGUMENT

- I. In light of a prior lawsuit between these parties, which was filed in 1996 and resolved in 1998 and which centered on numerous legal challenges to the same budget item at issue in this lawsuit, res judicata bars the only claim advanced in this case.

“Under the doctrine of res judicata, ‘a litigant is barred from raising any issues which were adjudicated in [a] former suit and any issues which might have been raised in [a] former suit.’” Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). In light of a prior action filed in 1996 between Sloan and Greenville County styled Sloan v. Greenville County, C.A. No. 96-CP-23-2918 (the “Prior Action”), res judicata bars Sloan’s constitutional non-delegation theory in this case, as that theory certainly could have been raised in the Prior Action.

In the Prior Action, Sloan brought numerous legal challenges to the Council Reserves – the very same budget item he seeks to challenge as unconstitutional in this lawsuit. Despite Sloan's effort to portray the Prior Action as relatively limited in scope, see Plaintiff's Memo in Opposition to Motion to Dismiss, p. 9 (claiming that "Mr. Sloan's last action . . . alleged that Defendants were not following their own guidelines"), the Third Amended Complaint in the Prior Action contained eleven causes of action, including several causes of action under the separate heading entitled "Procedural Illegality by Defendant." See Third Amended Complaint from Prior Action (attached hereto as Exhibit 1) at ¶¶ 73-103. Furthermore, as this Court recounted in its Order resolving the Prior Action, Sloan contended that the "County's establishment of Council Reserves as part of its annual operating budget is in violation of various statutory and constitutional provisions" and his "complaint cite[d] a number of statutory and constitutional provisions that Sloan allege[d] the County [was] violating." See Order from Prior Action (attached hereto as Exhibit 2) at pp. 2-3. Thus, the Prior Action was not nearly so circumscribed as Sloan suggests.

Indeed, Sloan actually argued in the Prior Action that establishment of the Council Reserves constituted an unlawful delegation of authority. He based his non-delegation theory on an ordinance in the County Code. Under the "Procedural Illegality" section of the Third Amended Complaint, Sloan alleged that, by allowing individual Council Members to distribute funds on a discretionary basis, "Defendant has continued to draw upon Council Reserves without voting on each expenditure or appropriation." Exhibit 1, ¶ 74. The Prior Action's Sixth Cause of Action (the first cause of action in the "Procedural Illegality" section of the Third Amended Complaint) asserted that the County violated the law by "disburs[ing] funds at the requests of individual members rather than collectively as the 'county council' for 'public services.'"

Exhibit 1, ¶ 81. Sloan alleged that this fact violated Greenville County Code, Division 2, § 7-81, which provides that “[a]ppropriation of funds shall be made only by county council . . .” and that “[r]equests for county funds will be submitted to council for review” Exhibit 1, ¶ 80. The Sixth Cause of Action expressly sought an injunction of “Defendant’s expenditures, disbursements, appropriations at the request of individual member of County Council” on the grounds that the “Greenville County taxpayers will suffer irreparable harm and levying of taxes for illegal expenditures.” Exhibit 1, ¶ 82. Thus, it is unmistakably clear that Sloan did in fact raise a non-delegation argument in the Prior Action.

Notably, while Sloan premised his “non-delegation” argument on the County Code, the legal challenges to the Council Reserves in the Prior Action were not limited to violations of that Code. Rather, Sloan expressly based some of his challenges on the S.C. Constitution. Specifically, the Tenth Cause of Action in the Third Amended Complaint asserted that establishment of the Council Reserves violated Article X, § 5 of the S.C. Constitution, which provides that “[a]ny tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.” Exhibit 1, ¶ 96. In support of his cause of action in this regard, Sloan further alleged that “Defendant disbursed proceeds of taxes that were budgeted only as ‘County Reserves’” and “Defendant has not ‘distinctly stated each public purpose’ for which Council Reserves funds would be spent.” Exhibit 1, ¶¶ 97-98. Like the Sixth Cause of Action discussed above, this cause of action requested an injunction of such expenditures to save the taxpayers from unlawful action.

The prayer for relief further bears out that Sloan painted with a broad stroke in the Prior Action, challenging the Council Reserves on numerous legal theories that included constitutional challenges. The prayer sought, among other things “[a] declaratory judgment that Defendant’s

establishing 'Council Reserves' and appropriating, spending, disbursing, and donating public funds as described above (i.e., in a discretionary manner by individual Council members) violates the applicable statutes, Constitutions, ordinances and policies." Exhibit 1, p. 13, ¶ 2 (emphasis added). The prayer further sought "[t]emporary, preliminary, and permanent injunctions enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds from the 1996-97 'Council Reserves' in violation of the S.C. Constitution and Code and the Greenville County Codes regarding procedures for appropriation and expenditures." (emphasis added).

While Sloan ultimately abandoned several of the theories raised in the Complaint in the Prior Action, he continued to push the non-delegation argument, contending that it was unlawful to delegate discretion for budget allocations to individual members of County Council. Sloan's summary judgment motion and memorandum in support in the Prior Action bears this point out. After describing the parties in the first two paragraphs of the Motion, the Third Paragraph states that: "[i]n its fiscal year 1994-95 Annual Budget, Defendant established 'County Council Reserves' of \$60,000, from which Defendant would, at the request of each member of County Council, disburse up to \$5000 of county money, which is public money, to address special community needs." See Plaintiff's Motion and Supporting Memorandum for Summary Judgment in Prior Action (attached hereto as Exhibit 3)² at p. 2. The next 31 numbered paragraphs list particular expenditures made from the Council Reserves from the 94-95 budget, and to highlight the non-delegation legal theory, each of those paragraphs repeatedly labels the expenditures as "discretionary funds." Exhibit 3; cf. with Prayer for Relief in the Complaint from the current action (contesting the "delegation of the discretionary spending authority" (emphasis added)). The remainder of the Motion contains numerous other similar allegations, some related to other

² The voluminous exhibits to this Motion are not included.

budget years, and continues to highlight the fact that funds were being spent in a discretionary manner as directed by individual Council members. Paragraph 52 of that motion contains the charge that "Defendant has continued to draw upon Council Reserves without voting on each expenditure or appropriation." Exhibit 3.

By the time the "Facts" section of the Sloan's summary judgment motion from the Prior Action is complete, there are some 70 numbered paragraphs, the vast majority of which explicitly reference the discretionary spending being allocated to individual Council Members. Thus the non-delegation argument (or at least one variation of that argument) figured prominently in the Prior Action. Indeed, the first sentence of the Legal Discussion in Sloan's summary judgment motion and memorandum from the Prior Action stated that "Defendant's Council Reserve funds have in some measure taken on the characteristics of a private 'slush fund,'" Exhibit 3 at p. 12, which is nearly identical to the language he is using in this lawsuit. See Complaint, ¶ 8 (referring to the Council Reserves fund as a "Slush Fund").

Furthermore, Sloan actually dedicated a separate section of his summary judgment motion and memorandum in the Prior Action to arguing that the Council Reserves violated a non-delegation principle evidenced by the County Code. Quoting the County Code Section he relied on, Sloan argued that the Code required "all 'requests for county funds [to] be submitted to council for review during the regular county budget process" Exhibit 3 at p. 14 (ellipsis in original). He then argued that, "[r]ather than the entire council reviewing 'requests for county funds' that are 'submitted for council review during the regular county budget process,' individual council members receive requests throughout the year and respond to them by submitting individual requisitions to the clerk of county council, Mrs. Elizabeth Hanzey, for amounts not exceeding their individual fund limits (more than \$18,000 per council member this

year)." Exhibit 3 at 14-15 (parenthetical in original). In the conclusion to the Motion, Sloan requested "[a]n order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds when they are not made by County Council, as a whole, but rather they are made by individuals, in violation of [the County Code]." Exhibit 3 at p. 17, ¶ 4; cf. with Complaint in the Current Action, ¶ 3 (complaining of "County Council's delegation of legislative power to an individual member"). These pleadings from the Prior Action make it unmistakably clear that Sloan pled and actively pursued a non-delegation argument in the Prior Action, just as he is doing now.

After a hearing on the merits in the Prior Action, this Court entered an Order finding in favor of Greenville County. As the Court recounted in its Order, "Sloan contend[ed] that County's establishment of Council Reserves as part of its annual operating budget is in violation of various statutory and constitutional provisions." Exhibit 2 at p. 2 (emphasis added). As the Court further noted, "[a]lthough Sloan's complaint cite[d] a number of statutory and constitutional provisions that Sloan alleges County is violating, at trial and in his trial brief he argued only two bases in support of his claim." Exhibit 2 at p. 3. One of the claims Sloan continued to press was the claim that "disbursements from Council Reserves violate Section 7-81 of the Greenville County Code." Exhibit 2 at p. 3. It is this Code Section that formed the basis of Sloan's non-delegation argument in the Prior Action, see Exhibit 1 (Third Amended Complaint in Prior Action) at ¶ 53-56, and this Court expressly held "that Council's appropriation of funds to the Council Reserves budget item as an item in County's annual budget . . . is in compliance with Section 7-81." Exhibit 2 at p. 8. This Court further held that "County's actions (including establishment of Council Reserves) have been consistent with the

constitutional and statutory power granted county governments.” Exhibit 2 at p. 8 (parenthetical added).

Given these proceedings from the Prior Action, it is clear that Sloan’s only claim in this lawsuit, which is premised on the constitutional non-delegation theory, is barred by the doctrine of res judicata. That claim is, as previously noted, nothing more than a constitutional twist on a theory that was actually pled, pursued, and litigated in the Prior Action.

II. Sloan’s arguments that this case is not precluded by res judicata lack merit.

Sloan has already filed his Memorandum in Opposition to the Motion to Dismiss. In that Memorandum he argues that res judicata should not bar his claim for several reasons. His arguments lack merit and are addressed seriatim below.

Sloan argues that the doctrine of res judicata should not bar this lawsuit because “the expenditures are different expenditures, and they are alleged to be illegal for different reasons.” Opposition Memo., p. 5. But the expenditures themselves are irrelevant to this action. The only material fact, according to Sloan’s own theory, is the fact that individual Council members are given some discretion in directing the disbursement of certain funds. That fact was just as present the last time Sloan challenged discretionary spending as it is in this case, see Argument Section I above recounting Sloan’s summary judgment motion from the Prior Action, which repeatedly labeled numerous expenditures as “discretionary.” The fact that the discretion was just as present at the time the parties litigated the prior suit underscores the fact that Sloan could have brought this very same constitutional challenge earlier. Furthermore, the fact that “the expenditures are alleged to be illegal for different reasons” (i.e., Sloan has now thought up a new legal theory for contesting the Counsel Expenses fund) does not matter. This is precisely the type of approach res judicata is meant to prevent, namely, bringing a lawsuit challenging some

action under a number of legal theories and, when those prove unsuccessful, bringing another lawsuit with a new legal theory that was available the first time around. See, e.g., Plum Creek, 334 S.C. at 34, 512 S.E.2d at 108 (“Res Judicata ends litigation, promotes judicial economy, and avoids the harassment of relitigation of the same issues.”); Norfolk S. Corp. v. Chevron U.S.A., Inc., 371 F.3d 1285, 1290-91 (11th Cir. 2004) (“A major function of the doctrine of res judicata is to prevent piecemeal litigation . . .”).

Sloan effectively asks the Court to make an exception to res judicata for constitutional challenges. His request is not supported by the case law. A wealth of cases, including a recent case from the U.S. Court of Appeals for the Ninth Circuit, have refused to carve out an exception to res judicata for constitutional issues. As the Ninth Circuit recounted in its case on point, a party to that proceeding asked the court “to announce an exception to res judicata when the claim involves a statute’s unconstitutionality.” Gospel Missions of Am. v. City of L.A., 328 F.3d 548, 556 (9th Cir. 2003). The court responded that “[t]here is no such exception, nor should there be one.” Id. Numerous other state and federal courts, including the U.S. Supreme Court, have employed similar reasoning to reach the same holding that there is no exception to res judicata for constitutional claims. See, e.g., Migra v. Warren City School Dist. Bd. of Education, 465 U.S. 75, 87 (1984) (holding that when in a prior injunction action brought to enjoin the defendant landowner’s violation of a zoning law, the defendant asserts the affirmative defense of non-conforming use, but does not assert the unconstitutionality of the law, the landowner is, on the principle of res judicata, barred from later bringing a declaratory judgment action alleging such law to be unconstitutional); Keating v. Rhode Island, 785 F. Supp. 1094, 1098 (D.R.I. 1992) (citing Migra case and stating that the res judicata bar applies to all matters that could have been raised and determined in the original action, including federal constitutional and civil rights

questions, even if they were not actually raised); Vandenplas v. Muskego, 797 F.2d 425, 429 (7th Cir. 1986) (agreeing with district court's conclusion that "the Vandenplases' claims that section 66.05 was unconstitutional both on its face and as applied were barred as res judicata since they could have been raised in the state proceeding regarding the reasonableness of the raze order); Shults v. Texas, 762 F.2d 449, 451 (5th Cir. 1985) (affirming the district court's ruling that "the doctrine of res judicata bars the plaintiffs from arguing that the forfeiture provisions are unconstitutional on their face"); Blankner v. Chicago, 504 F.2d 1037, 1042 (7th Cir. 1974) (holding that "the doctrine of res judicata bars plaintiff from raising the unconstitutionality of the Act against the same defendants"); Lawrence v. Bd. of Election Comm'rs, 2007 U.S. Dist. LEXIS 13351 (E.D. Ill. February 7, 2007) (failure to raise constitutional issues in previous suit effected res judicata of those issues); Coppoletta v. California, 2006 U.S. Dist. LEXIS 68861 (N.D. Cal.) (failure to raise constitutional issue in previous suit effected res judicata of those issues); Jamison v. Hart Realty, 2005 U.S. Dist. LEXIS 20503 (S.D. Ohio) (noting that "[a] prior adjudication serves to settle all issues between the parties that could have been properly litigated in the case as well as those issues which were actually raised and decided" and noting further that "the Ohio Supreme Court has held that a suit alleging unconstitutional enforcement of state laws was barred by res judicata where the constitutional issues raised by the second suit could have been raised as defenses in the earlier state action"); Word v. Croce, 230 F. Supp. 2d 504, 511 (S.D.N.Y. 2002) (because plaintiff could have brought claim that statute was unconstitutional as applied to him in prior proceeding, plaintiff was barred by res judicata from making such claim in a second action); El-Bey v. City of New York, 151 F. Supp. 2d 285, 294-95 (S.D.N.Y. 2001) (recounting holding from an earlier case that "res judicata fully dispose[d]" of plaintiff's claim of "facial unconstitutionality" and finding that res judicata also barred the

facial challenges at issue in the El-Bey case); Goya De P.R., Inc. v. Munoz-Munoz, 136 F. Supp. 2d 9 (D.P.R. 2001) (rejecting reliance on the Restatement in an effort to carve out an exception to usual res judicata rules in the context of constitutional claims); County of Lancaster v. Philadelphia Electric Co., 386 F. Supp. 934, 938 (E.D. Pa. 1975) (recounting holding from a federal appellate tribunal that a constitutional issue not raised in a prior lawsuit is res judicata); Hunt v. Perry, 138 S.W.3d 656, 662 (Ark. 2003) (failure to argue in prior lawsuit that statute was unconstitutional on its face effected res judicata of that issue); Scalzo v. Danbury, 617 A.2d 440, 444 n.7 (Conn. 1992) (noting that if the plaintiff had not raised the issue of an unconstitutional taking in the administrative process, he would have been precluded from doing so in a subsequent civil proceeding);³ Allen v. People, 131 N.E.2d 28, 30-31 (Ill. 1955) (criminal defendant's failure in prior appeal to raise issue of sufficiency of evidence to justify search and seizure and to present the contention that a particular state statute was unconstitutional effected res judicata as to those issues); Hudson v. Moon, 732 So. 2d 927, 934 (Miss. 1999) (holding that where constitutional claim could have been raised in prior lawsuit but was not, res judicata barred efforts to raise it in a subsequent proceeding); Merrilees v. Treasurer, 618 A.2d 1314 (Vt. 1992) (noting case law from Vermont holding that executors who had paid probate distribution fees when closing estates and then later sought to bring a class action to recover the fees on the ground they were unconstitutional taxes could not do so because this attempt was barred by res judicata because each class member could have raised the constitutional issue in the prior probate proceeding.). In summary, the overwhelming weight of authority demonstrates that there is no exception to res judicata for constitutional claims.

³ Notably, one of the primary cases Sloan relies on to suggest that there should be an exception to res judicata for his constitutional claim is a Connecticut case. See Plaintiff's Memorandum in Opposition to Motion to Dismiss, p. 8. The case cited in the text, *supra*, shows that Connecticut law does not actually support his request.

Furthermore, Sloan's suggestion that res judicata should not bar this case because of the compelling public importance of the issue merely begs the question of why it was not raised in the Prior Action. As the trial court itself remarked in that action, Sloan essentially took a kitchen sink approach to his complaint in that case, including numerous challenges to the Council Reserves under the U.S. Constitution, S.C. Constitution, the statutes of this State, and various County Ordinances. Exhibit 2 at pp. 2-3 (noting that Sloan contended in the Prior Action that "County's establishment of Council Reserves as part of its annual operating budget is in violation of various statutory and constitutional provisions;" that Sloan sought "a temporary, preliminary, and permanent injunction" as well as "declaratory relief;" and that "Sloan's complaint cites a number of statutory and constitutional provisions that Sloan allege[d] the County [was] violating"). Given the history of litigation between these parties, this case does not present a sympathetic or compelling situation for crafting exceptions to the law of res judicata, especially considering that any such exception would have to be cut from whole cloth as a new creation by this Court and would be contrary to the immense body of case law that has developed around the issue. See cases cited *supra*. pp. 9-11.

Sloan's request is also directly contrary to the doctrine of res judicata. As recounted by the Restatement "the law of res judicata now reflects the expectation that parties who are given the capacity to present their 'entire controversies' shall in fact do so." Restat 2d of Judgments, § 24, comment a; see also cases cited, *supra* pp. 9-11, establishing that there is no exception to res judicata for constitutional claims. Sloan could have argued the constitutional non-delegation theory in the prior case when he brought a non-delegation theory under the County Code and also raised numerous constitutional challenges to the Council Reserves under both the federal and state constitutions. The current constitutional theory did not emerge from recent or

unforeseeable changes in the law. The Attorney General opinion that quite obviously prompted the filing of this lawsuit cites several cases for the non-delegation principle, the vast majority of which predate the Prior Action (1996), and at least one of which dates back to the 1800's. See Complaint at Exhibit C, p. 3.⁴

While the County questions whether that opinion reflects a correct non-delegation analysis and whether the ordinance at issue in the Attorney General opinion bears any resemblance to the ordinance that Sloan challenges in this case, those points need not be addressed in detail at this juncture. A few points, however, bear noting. First, the Attorney General opinion is not law and does not purport to be. It expressly purports to be nothing more than a prediction of what a court might do in the face of a legal challenge to a budget practice followed by Florence County. See Exhibit C to the Complaint, p. 2 ("while this Office may comment upon constitutional problems, only a court may declare an ordinance void as in conflict with the constitution"); id. at p. 9 (reiterating that "only a court could declare such an ordinance to be unconstitutional"). Moreover, the Attorney General opinion actually further reinforces the argument that Sloan's claim in this lawsuit should be barred by res judicata. As already noted, in conducting its constitutional analysis, the Attorney General opinion cites numerous cases for the constitutional non-delegation principle, the vast majority of which pre-date the prior lawsuit between Sloan and the County over the Council Reserves, and at least one of which dates back to the 1800's. See Authorities cited throughout Complaint Exhibit C, most of which pre-date 1996, the year that the Prior Action was instituted. Finally, Sloan's assertions of illegality to prevent

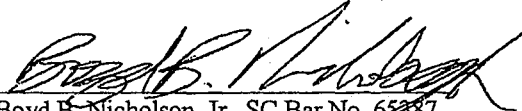
⁴ Sloan relies heavily on Section 28 of the Restatement (Second) of Judgments in an effort to suggest that this case should be allowed to go forward. See Plaintiff's Memorandum in Opposition to Motion to Dismiss, p. 5. That Section of the Restatement, however, addresses only collateral estoppel (i.e., issue preclusion), not res judicata (i.e., claim preclusion). As is evident from the language quoted in Sloan's Opposition Memorandum, Section 28 deals with the times when an issue that was actually previously litigated can be litigated again. It does not deal with claim preclusion, which is the basis upon which Sloan's claim in this case should be barred.

the application of res judicata lack merit. Sloan makes the blanket assertion that the County has been acting illegally for the past several years with respect to the Council Reserves Fund. The fact remains, however, that the County has been making these expenditures pursuant to a policy that this Court held to be valid.

CONCLUSION

The only claim Sloan raises in this lawsuit is that Greenville County's practice of allocating and distributing funds from Council Reserves violates the non-delegation principle of the S.C. Constitution. That claim merely puts a constitutional twist on an argument Sloan raised in a prior lawsuit and does so on the basis of law that existed well before the prior lawsuit. As such, Sloan's constitutional non-delegation claim is barred by res judicata, as it was raised or certainly could have been raised in the prior lawsuit. The County asks that this case be dismissed.

HAYNSWORTH SINKLER BOYD, P.A.



Boyd B. Nicholson, Jr., SC Bar No. 65287

Joel M. Bondurant, Jr., SC Bar No. 70641

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Attorneys for Defendants Greenville County
and Greenville County Council

July 19, 2007
Greenville, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Edward D. Sloan, Jr., individually, and as)
a Citizen, Resident, Taxpayer and)
Registered Elector of Greenville County,)
and on behalf of all others similarly)
situated.)

Plaintiff,)

vs.)

The County Council of Greenville County)
as the Governing Body of Greenville)
County, a Political Subdivision of the)
State of South Carolina,)
Defendant.)

C.A. No. 96-CP-23-2918

THIRD AMENDED COMPLAINT

Dec 15 1 03 PM '97

Plaintiff, complaining of the Defendant would show unto the Court:

JURISDICTION and VENUE

1. This action is brought pursuant to 42 U.S.C. § 1983, S.C. R. Civ. P. 57 and 65, and S.C. Code Ann. §15-53-10, known as the Uniform Declaratory Judgment Act.
2. Plaintiff is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina, and brings this action individually on his behalf and on behalf of all others similarly situated.
3. Defendant is a political subdivision of the State of South Carolina.
4. Defendant is vested with the power of governing the County in compliance with the Constitution and laws of South Carolina and with enacting ordinances consistent with the Constitution and statutory law.
5. Venue is proper in Greenville County, South Carolina.
6. Defendant's actions as alleged are capable of repetition, yet evading review.

DEFENDANT'S
EXHIBIT

DONATIONS BY DEFENDANT

7. In its Fiscal Year 1994-95 Annual Budget, Defendant established "County Council Reserves" of \$60,000 from which Defendant would, at the request of each member of County Council, donate or spend up to \$5,000.
8. Defendant stated the purpose of the Council Reserves as to "address special community needs not normally falling within the operational purview of County Government." Greenville County Fiscal Year 1996-97 Annual Budget, p. 195 (emphasis added).
9. Defendant has donated at least \$71,593.82 to religious charities, private educational institutions, non-profit organizations, and political subdivisions from 1994 through September, 1997.
10. On or about October 3, 1994, Defendant donated \$1,000 to the Civil Air Patrol.
11. On or about October 3, 1994, Defendant donated \$3,790 to the Snickers Soccer Tournament.
12. On or about October 5, 1994, Defendant donated \$210 to the Libertarian Education Institute.
13. On or about November 15, 1994, Defendant donated \$1,500 to the March of Dimes.
14. On or about December 2, 1994, Defendant donated \$2,500 to the Berea Branch Library.
15. On or about December 2, 1994, Defendant donated \$2,000 to "Share."
16. On or about January 31, 1995, Defendant donated \$1,000 to the National Association for the Advancement of Colored People (NAACP).
17. On or about February 8, 1995, Defendant donated \$5,000 to "A Child's Haven (a private non-profit organization)."

18. On or about February 17, 1995, Defendant donated \$300 to Church & Community Human Relations.
19. On or about March 6, 1995, Defendant donated \$982.82 to the Glassy Mountain Fire District.
20. On or about March 13, 1995, Defendant donated \$500 to the Phyllis Wheatley Assoc.
21. On or about March 13, 1995, Defendant donated \$500 to the Lean on Me Tutorial School.
22. On or about April 25, 1995, Defendant donated \$5,000 to the Greer Human Resources Center.
23. On or about May 16, 1995, Defendant donated \$5,000 to the Greenville Tech Foundation.
24. On or about May 18, 1995, Defendant donated \$500 to the Greenville Cultural Exchange.
25. On or about May 22, 1995, Defendant donated \$1,000 to Jack and Jill of America.
26. On or about May 30, 1995, Defendant donated \$500 to Neighborhoods in Action.
27. On or about May 30, 1995, Defendant donated \$1,000 to the Possum Kingdom Fire Department.
28. On or about May 30, 1995, Defendant donated \$1,000 to the Canebrake Fire Department.
29. On or about June 7, 1995, Defendant donated \$500 to the Salvation Army.
30. On or about June 7, 1995, Defendant donated \$500 to the Family Counseling Center.
31. On or about July 28, 1995, Defendant donated \$1,000 to the South Greenville Fire District.
32. On or about June 28, 1995, Defendant donated \$1,000 to the Piedmont Fire District.
33. On or about June 28, 1995, Defendant donated \$1,000 to the Dunklin Fire District.

34. On or about June 29, 1995, Defendant donated \$1,500 to the Greenville County Library West Branch.
35. On or about July 3, 1995, Defendant donated \$1,000 to the Phyllis Wheatley Association.
36. On or about July 3, 1995, Defendant donated \$2,500 to the Berea Branch Library.
37. On or about July 3, 1995, Defendant donated \$1,500 to the Greenville Zoo Board.
38. On or about July 3, 1995, Defendant donated \$1,000 to "Share."
39. On or about October 31, 1995, Defendant donated \$520 to the National Association for the Advancement of Colored People (NAACP) "for 2 tickets to NAACP banquet."
40. On or about November 2, 1995, Defendant donated \$450 to the National Association for the Advancement of Colored People (NAACP) "for a second table [at the banquet]."
41. On or about November 20, 1995, Defendant donated \$210 to the National Association for the Advancement of Colored People (NAACP) which "paid for 28 to attend [the banquet]."
42. In its Fiscal Year 1996-97 Annual Budget, Defendant budgeted \$120,000 for "Council Reserves," from which Defendant would, at the request of each member of County Council, donate or spend up to \$10,000.
43. On or about July 8, 1996, Defendant donated \$358.00 to James Forbes, III "for Rotary Club of Gvl. . . . membership dues."
44. On or about July 10, 1996, Defendant donated \$408.00 to Gerald Seals "for [Rotary Club of Greenville] dues."
45. On or about August 8, 1996, Defendant donated \$358.00 to Johnny Mack Brown "for Sheriff's FY97 [Rotary Club of Greenville] dues."

46. On or about September 26, 1996, Defendant donated \$5,000 to the Mauldin Library Building Fund.
47. On or about September 25, 1996, Defendant donated \$5,000 to the Simpsonville Library Building Fund.
48. On or about February 18, 1997, Defendant donated \$3,507.00 to Sugar Creek Homeowners Association.
49. On or about April 28, 1997, Defendant donated \$7,500 the City of Travelers Rest.
50. On or about June 27, 1997, Defendant donated \$10,000 to the City of Greer.
51. On or about June 30, 1997, Defendant donated \$10,000 to the Greenville Zoo Board.
52. Upon information and belief, Defendant continues to make donations (payments not in exchange for any tangible consideration) to private non-profit organizations, political subdivisions, and other private entities.

FIRST CAUSE OF ACTION

53. Plaintiff incorporates all preceding paragraphs by reference.
54. Defendant has violated and continues to violate Greenville County Code, Division 2, § 7-81(a). "Appropriation of funds shall be made only by county council to departments and agencies to provide public services to county citizens. Appropriation of funds to private, nonprofit organizations and institutions to provide services is prohibited. *Id.* (emphasis added).
55. Defendant continues to donate to private, nonprofit organizations, and other private entities.

56. If the Court does not enjoin Defendant's appropriations, expenditures, disbursements, and other actions violating Greenville County Code, Division 2, § 7-81. County taxpayers will suffer irreparable harm including, but not limited to, levying of taxes for illegal expenditures.

SECOND CAUSE OF ACTION

57. Plaintiff incorporates all preceding paragraphs by reference.
58. Defendant has violated Article I, § 2 of the Constitution of South Carolina. "The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof . . ." *Id.*
59. Defendant has financially supported sectarian religious activity.
60. If the Court does not enjoin Defendant's appropriations, expenditures, disbursements, and other actions violating Article I, § 2 of the Constitution of South Carolina, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

THIRD CAUSE OF ACTION

61. Plaintiff incorporates all preceding paragraphs by reference.
62. Plaintiff complains under 42 U.S.C. § 1983 that Defendant has violated the First Amendment of the United States Constitution, which is applicable to the States by the Fourteenth Amendment to the United States Constitution.
63. Defendant has financially supported religious activity.
64. If the Court does not enjoin Defendant's expenditures, appropriations, disbursements, and other actions violating the First Amendment of the United States Constitution, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

FOURTH CAUSE OF ACTION

65. Plaintiff incorporates all preceding paragraphs by reference.
66. Defendant violated South Carolina Code Annotated § 4-9-30 which allows county governments "to . . . make appropriations for functions and operations of the county . . ." (emphasis added).
67. Defendant continues to disburse funds for purposes other than county functions and operations.
68. If the Court does not enjoin Defendant's appropriations, expenditures, disbursements, and other actions violating South Carolina Code Annotated § 4-9-30, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

FIFTH CAUSE OF ACTION

69. Plaintiff incorporates all preceding paragraphs by reference.
70. Defendant violated Article XI, § 4 of the South Carolina Constitution, which states, "No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution." *Id.*
71. Defendant donated funds to religious or other private educational institutions.
72. If the Court does not enjoin Defendant's appropriations, expenditures, disbursements, and other actions violating Article XI, § 4 of the South Carolina Constitution, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

PROCEDURAL ILLEGALITIES BY DEFENDANT

73. On August 20, 1996, the Defendant adopted "Guidelines for Discretionary Funds" as a resolution, rather than as an ordinance, which continues to allow use of Council Reserves "for infrastructure purposes such as: flooding, roads, lights, sewer, and public buildings and grounds." Greenville County Finance Minutes, Page 2, August 5, 1996 and Page 14, August 20, 1996.
74. Defendant has continued to draw upon Council Reserves without voting on each expenditure or appropriation.
75. On or about June 30, 1997, Defendant donated \$10,000 to the Greenville Zoo Board at the request of an individual member of County Council, an unappropriated transaction.

76. Defendant has directed Council Reserves funds to municipalities such as Greer and Traveler's Rest and to subdivisions.
77. Contech Construction, Inc. (a Georgia corporation), Metromont Materials, Eddie Underwood, Dobson True Value Hardware, and Gossett Pipe Company have received public funds from the Defendant.
78. Upon information and belief, Defendant will continue to appropriate, disburse, and spend Council Reserves funds unless the Court orders cessation.

SIXTH CAUSE OF ACTION

79. Plaintiff incorporates all preceding paragraphs by reference.
80. Defendant has violated and continues to violate Greenville County Code, Division 2, § 7-81. "(a) Appropriation of funds shall be made only by county council to departments and agencies to provide public services to county citizens. Appropriation of funds to private, nonprofit organizations and institutions to provide services is prohibited. (b) Requests for county funds will be submitted to council for review during the regular county budget process, and appropriations will be made only for specific line item purposes." *Id.* (emphasis added).
81. Defendant disbursed funds at the requests of individual members rather than collectively as the "county council" for "public services."
82. If the Court does not enjoin Defendant's expenditures, disbursements, appropriations at the request of individual members of County Council, and other actions violating Greenville County Code, Division 2, § 7-81, Greenville County taxpayers will suffer irreparable harm and levying of taxes for illegal expenditures

SEVENTH CAUSE OF ACTION

83. Plaintiff incorporates all preceding paragraphs by reference.
84. Defendant violated South Carolina Code Annotated § 4-9-140 which states, "The procedure for approval of supplemental appropriations shall be the same as that prescribed for enactment of ordinances."
85. Defendant, at the requests of members of Greenville County Council, made "appropriations of additional funds which had come available" after the budget ordinance had been enacted.
86. If the Court does not enjoin expenditures, disbursements, appropriations by Defendant at the request of individual members of County Council, and other actions violating South Carolina Code Annotated § 4-9-140, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

EIGHTH CAUSE OF ACTION

87. Plaintiff incorporates all preceding and following paragraphs by reference.
88. Defendant violated South Carolina Code Annotated § 4-9-130 which requires public hearings and reasonable notice whenever "council action" is taken to "make appropriations, including supplemental appropriations."
89. Defendant, at the request of individual members of County Council, made supplemental appropriations after budget ordinances had already been enacted and did not hold public hearings or give reasonable notice.
90. If the Court does not enjoin expenditures, disbursements, appropriations by Defendant at the request of individual members of County Council, and other actions violating South

Carolina Code Annotated § 4-9-130, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

NINTH CAUSE OF ACTION

91. Plaintiff incorporates all preceding and following paragraphs by reference.
92. Defendant has violated South Carolina Code Annotated § 4-9-120 which states, "All ordinances shall be read at three public meetings of council on three separate days with an interval of not less than seven days between the second and third meetings."
93. Defendant has made supplemental appropriations without reading ordinances aloud at three public meetings of council on three separate days with an interval of less than seven days before the final reading.
94. If the Court does not enjoin expenditures, disbursements, appropriations by Defendant at the request of individual members of County Council, and other actions violating South Carolina Code Annotated § 4-9-120, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

TENTH CAUSE OF ACTION

95. Plaintiff incorporates all preceding paragraphs by reference.
96. Defendant has violated Article X, § 5 of the Constitution of South Carolina. "No tax, subsidy or charge shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied." *Id.* (emphasis added).

97. Defendant disbursed proceeds of taxes that were budgeted only as "County Reserves."
98. In the last three budgets, Defendant has not "distinctly state[d] [each] public purpose" for which Council Reserves funds would be spent.
99. If the Court does not enjoin expenditures, disbursements, appropriations by Defendant at the request of individual members of County Council, and other actions violating Article X, § 5 of the Constitution of South Carolina, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

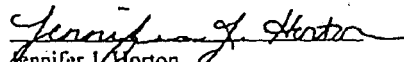
ELEVENTH CAUSE OF ACTION

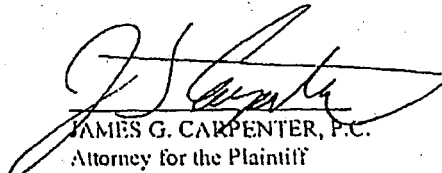
100. Plaintiff incorporates all preceding paragraphs by reference.
101. Defendant has violated Articles I, §§ 1, 2, 3, and 23; X §§ 7, 8, and 11; and XII, § 1 of the South Carolina Constitution and § 11-1-40 of the South Carolina Code Annotated.
102. Defendant has acted *ultra vires* and in excess of its authority and in violation of Plaintiff's constitutional rights.
103. If the Court does not enjoin Defendant's expenditures, disbursements, appropriations at the request of individual members of County Council, and other actions violating Articles I, §§ 1, 2, 3, and 23; X §§ 7, 8, and 11; and XII, § 1 of the South Carolina Constitution and § 11-1-40 of the South Carolina Code Annotated, Greenville County taxpayers will suffer irreparable harm, including but not limited to levying of taxes for illegal expenditures.

WHEREFORE, Plaintiff prays the Court for:

1. Temporary, preliminary, and permanent injunctions Defendant's appropriation, expenditure, disbursement, and donation of public funds which are not for legitimate governmental purposes.
2. A declaratory judgment that Defendant's establishing "Council Reserves" and appropriating, spending, disbursing, and donating public funds as described above violates the applicable statutes, Constitutions, ordinances, and policies.
3. Temporary, preliminary, and permanent injunctions enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds from the 1996-97 "Council Reserves" in violation of the S.C. Constitution and Code and the Greenville County Codes regarding procedures for appropriation and expenditures.
4. Costs and attorneys fees under 42 U.S.C. § 1988.
5. Such other and further relief as the court deems just and proper.

Respectfully submitted.


Jennifer J. Horton


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STATE OF SOUTH CAROLINA
COUNTY OF Greenville

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 96 - CP - 23 - 2918

Sean

County

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other- _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Other- _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order, ☐ Statement of Judgment by the Court:

ENTERED COMPUTER

Dated at Greenville, South Carolina, this _____ day of _____, 19 98.

PRESIDING JUDGE

This judgment was entered on the 2 day of March, 19 98, and a copy mailed first class this _____ day of _____, 19 98, to attorneys of record or to parties (when appearing pro se) as follows:

For Plaintiff:
Sean
Horton

For Defendant:
Donald K. Wilson, Jr.
W. Howard Smith, Jr.

ATTORNEY FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRIPED BY
1998-1-24

DEFENDANT'S
EXHIBIT

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CLERK OF COURT

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

)

Edward D. Sloan, Jr., individually, and as a
Citizen, Resident, Taxpayer and Registered
Elector of Greenville County, and on behalf of
all others similarly situated,

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Plaintiff,

ORDER

C.A. No. 96-CP-23-2918

v.

The County Council of Greenville County, as the
Governing Body of Greenville County, a
Political Subdivision of the State of South
Carolina,

Defendants.

This non-jury matter came before me for a bench trial on February 10, 1998. Both parties were represented by their respective counsel at trial. James G. Carpenter and Jennifer J. Horton of James G. Carpenter, P.C. appeared on behalf of the plaintiff, Edward D. Sloan, Jr. ("Sloan"). Ronald K. Wray, II of Gibbs, Gallivan, White & Boyd, P.A. appeared on behalf of the defendant, Greenville County ("County").

The parties submitted this action to the Court on stipulated facts with agreed-upon exhibits. Based upon the record before me, for the reasons set forth below, I conclude that County is entitled to judgment in its favor. I hereby enter the following findings of fact and conclusions of law.

FINDINGS OF FACT

The parties submitted this action to the Court on stipulated facts with agreed-upon exhibits. Accordingly, the Court adopts the facts stipulated to by the parties as its findings of fact in this matter.

In fiscal year 1994-95, as part of its annual budgeting process, Greenville County Council established "County Council Reserves" as an item in the County's annual operating budget. Council Reserves has remained an item in the annual operating budget since 1994-95, although Council appropriated only one dollar to Council Reserves in fiscal year 1995-96. According to Council's financial policies for the 1997-98 fiscal year, Council Reserves are to "allow the Council to address special community needs not normally falling within [sic] the operational purview of County government" and to provide for "nonrecurring community requests." The amount that may be appropriated to Council Reserves is set at a maximum of .3% of estimated annual operating revenue. However, as noted, a lesser amount may be, and has been appropriated by Council.

By stipulation, the parties introduced as exhibits records setting forth the disbursements that have been made from Council Reserves. The parties further stipulated that in August, 1996, Council adopted by resolution guidelines that limit the use of Council Reserves to infrastructure purposes such as flooding and drainage, roads, lights, sewer, and public buildings and grounds.

CONCLUSIONS OF LAW

Sloan initiated this action as a citizen, resident, taxpayer, and registered elector of Greenville County pursuant to the South Carolina Uniform Declaratory Judgment Act and 42 U.S.C. Section 1983. Sloan contends that County's establishment of Council Reserves as part of its annual operating budget is in violation of various statutory and constitutional provisions. Sloan brought this action seeking a temporary, preliminary, and permanent injunction against County's further appropriations which he alleges "are not for legitimate governmental purposes."

Sloan also requested declaratory relief. I find and conclude that this Court has jurisdiction over

this matter and that venue is proper.

Although Sloan's complaint cites a number of statutory and constitutional provisions that Sloan alleges County is violating, at trial and in his trial brief he argued only two bases in support of his claim. First, he contended that some Council Reserve disbursements are constitutional violations because they allegedly violate the United States and South Carolina constitutions in that they allegedly have resulted in the funding of religious activity. Sloan alleges and argued that these alleged disbursements violate U.S. Constitution, Article I, Amendment I, and South Carolina Constitution, Article I, Section 4. Second, Sloan alleged and argued that disbursements from Council Reserves violate Section 7-81 of the Greenville County Code. Based upon my careful review of the record and evidence submitted before me, I find and conclude that Sloan is not entitled to relief on either of these bases and I further conclude that County is entitled to judgment in its favor.

Initially, I note that the only relief requested in the complaint is injunctive and declaratory relief. The allegations in the complaint, however, relate to disbursements already made by Greenville County Council from Council Reserves. I find and conclude that Sloan is not entitled to declaratory and injunctive relief pertaining to disbursements already made since these claims do not present a justiciable controversy and, in any event, the disbursement of these funds makes these claims moot.

As noted above, Sloan initiated this action pursuant to the Uniform Declaratory Judgment Act, South Carolina Code Ann. Sections 15-53-10 through 15-53-140 (1976). Like all other civil actions, cases brought under the Declaratory Judgment Act must involve an actual, justiciable controversy. South Carolina Elec. and Gas Co. v. South Carolina Pub. Serv. Authority, 215 S.C.

193, 54 S.E.2d 777 (1949). "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from this dispute of a contingent, hypothetical or abstract character." Notios Corp. v. Hanvey, 256 S.C. 275, 182 S.E.2d 55, 57 (1971).

Sloan's request for declaratory and injunctive relief relating to funds already disbursed seeks nothing more than an advisory opinion from this Court. Providing such an opinion clearly would be inappropriate. As stated by the South Carolina Supreme Court in Powers v. McNair, 255 S.C. 150, 177 S.E.2d 551, 553 (1970):

While it has been held that the Declaratory Judgment Statute should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships without awaiting a violation of the rights or a disturbance of the relationships, Williams Furniture Corporation v. Southern Coatings and Chemical Company, 216 S.C. 1, 56 S.E.2d 576, it is uniformly held that the Declaratory Judgment Act does not require the court to give a purely advisory opinion as to the issues sought to be raised. City of Columbia v. Sanders, 231 S.C. 61, 97 S.E.2d 210.

Thus, it has been held that while the Declaratory Judgment Act should be liberally construed and applied, "there is a limit beyond which the court should not go." Park v. Safeco Ins. Co. of America, 251 S.C. 410, 414, 162 S.E.2d 709, 711 (1968) (holding that no justiciable controversy existed regarding plaintiff's request to ask the court to determine which insurance company, if either, should pay a judgment when and if such judgment should be obtained). Accordingly, I find and conclude that County is entitled to judgment in its favor since Sloan's allegations regarding disbursements already made fail to present a justiciable controversy.

In addition to the fact that Sloan's claims fail to present a justiciable controversy, I further find and conclude that County is entitled to judgment on the ground that Sloan's claims relating

to disbursements already made are moot. In Treasured Arts, Inc. v. Watson, 319 S.C. 560, 463 S.E.2d 90 (1995), the South Carolina Supreme Court held that claims for injunctive relief should be dismissed as moot when granting injunctive relief would have no practical legal effect upon the existing case. See also Matthis v. South Carolina State Highway Department, 260 S.C. 344, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. This is true when some event occurs making it impossible for the reviewing court to grant effectual relief."). Since Sloan's complaint relates to disbursements already made by County, any ruling by the Court regarding these disbursement obviously would have no practical legal effect upon the parties. Thus, I find and conclude that these claims should be dismissed as moot.

Addressing the merits of Sloan's claims seeking declaratory relief relating to disbursements made by County allegedly to support religious activities, I find and conclude that the record before me fails to support these claims. In analyzing such claims, courts focus upon the three-part test set forth in Lemon v. Kurtzman, 403 U.S. 602 (1971). The Lemon test provides as follows: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion."

Based upon the record before me, I find and conclude that Sloan has failed to maintain his burden of proving that County has inappropriately used tax revenue in order to further religious purposes. Sloan argues that exhibits showing County's disbursement of funds to "Church and Community Human Relations" and to the Salvation Army establishes his entitlement to relief as a matter of law. However, what is clear from those courts applying the

Lemon test is that the mere fact that public funds may be disbursed to charitable or sectarian organizations does not in and of itself render the challenged action unconstitutional or in violation of statutory or constitutional provisions. Rather, the burden is upon the plaintiff to show that the disbursement of such funds has been used to advance religion. See, e.g., Zobrest v. Catalina Foothills School Dist., 509 U.S. 1 (1993) (no establishment clause violation in using public funds to furnish a publicly employed interpreter to a disabled child enrolled in a Catholic school); Witters v. Washington Dep't of Servs. For Blind, 474 U.S. 481 (1986) (holding that Establishment Clause did not bar a State from issuing a vocational tuition grant to a blind person who wished to use the grant to attend a Christian college and become a pastor, missionary, or youth director); Agostini v. Felton, ___ U.S. ___, 117 S. Ct. 1997 (1997) (upholding federally-funded program that provided supplemental remedial instruction to disadvantaged children on the premises of sectarian schools, even though the instruction was provided by government employees); Hunt v. McNair, 258 S.C. 97, 187 S.E.2d 645 (1972) (upholding the appropriation of public funds to Baptist College at Charleston); Durham v. McLeod, 259 S.C. 409, 192 S.E.2d 202 (1972) (holding legislative act relating to student loans did not violate constitution since it was neutral and applied to all institutions of higher learning).

In the present case, there is no evidence that Council Reserves have been used to further sectarian purposes. Absent such proof and with no evidence of what the funds were used for, the Court is left to guess or speculate. Sloan, as the party seeking affirmative relief, has the burden of showing the Court that County's disbursement of funds showed a legislative intent to promote religion. Because I find and conclude that Sloan has failed to maintain his burden of proof on this issue, I conclude as a matter of law that the appropriations by County were valid and not in

violation of the Constitution; and judgment is therefore entered in County's favor as to these claims.

I also disagree with Sloan's contention that County is violating Greenville County Code

Section 7-81. Section 7-81 of the Greenville County Code provides as follows:

Sec. 7-81. Appropriations and disbursements generally.

(a) Appropriations of funds shall be made only by county council to departments and agencies to provide services to county citizens. Appropriation of funds to private, nonprofit organizations and institutions to provide services is prohibited.

(b) Requests for county funds will be submitted to council for review during the regular county budget process, and appropriations will be made only for specific line-item purposes. As required by section 7-66 of this chapter, the annual report from departments and agencies to council shall verify that funds were expended in accordance with the purposes for which they were allocated.

(c) County funds will be disbursed to departments and agencies in one of the following ways:

- (1) *Departments and agencies funded one hundred percent with county funds.* Departments and agencies are required to conform with the accounting, purchasing and personnel policies of the county. The accounting department will be responsible for all fund disbursement through the county's accounting system.
- (2) *Department or agencies funded less than one hundred percent by county funds.* Agencies will be subject to the county's purchasing and personnel policies if comparable policies do not exist. If feasible, the department or agency will receive county funds through the county's accounting system. If not feasible, departments or agencies will receive funds in accordance with a schedule prepared by the county administrator to include the following:
 - a. The agency will estimate its first month's expense. The finance department will issue a check to the agency for this amount.
 - b. Subsequent payment will be made on an estimated basis predicated on actual expenditures.

In the present case, the parties stipulated that Council Reserves are an item in the County's annual operating budget. The parties further stipulated that County Council is a department of Greenville County government. Sloan made no challenge to the budgeting process itself, and offered no evidence that County's budget ordinance was not adopted consistent with South Carolina statutory and constitutional provisions. I find and conclude that Council's appropriation of funds to the Council Reserves budget item as an item in County's annual budget ordinance is in compliance with Section 7-81. I further find and conclude that there is nothing in the record that would support a finding that County's actions rise to the level of illegality in violation of the County Code.

Additionally, I find and conclude that County's actions have been consistent with the constitutional and statutory power granted county governments. Specifically, S.C. Code Ann. Section 4-9-30 (1976 and Supp. 1996) provides that each county government "shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:

(5)(a) To assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above.

The law is clear that state and local governments are statutorily and constitutionally permitted to expend public funds for a "public purpose." In Nichols v. South Carolina Research

Authority, 290 S.C. 415, 351 S.E.2d 155 (1986), the court noted that public purpose is "a fluid concept which changes with time, place, population, economy and countless other circumstances. It is a reflection of changing needs of society." 351 S.E.2d at 160. Furthermore, the court agreed with other courts and legal scholars that have concluded that "a public purpose has for its objective the promotion of the public health, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division." Id.

"The consensus of modern legislative and judicial thinking is to broaden the scope of activities which may be classed as involving a public purpose." Id. Furthermore, legislation may be found to serve a public purpose even though it (1) benefits some more than others and (2) results in profit to individuals. Id. at 161. As stated by the court in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43, 47 (1975), "legislation does not have to benefit all of the people in order to serve a public purpose. At the same time legislation is not for a private purpose merely because some individual makes a profit as a result of the enactment."

The burden is upon the plaintiff to show that a particular enactment does not comply with the public purpose test. Moreover, the Nichols court emphasized that "the determination of public purpose is one for the legislative branch." Nichols, 351 S.E.2d at 161. As the cases cited and relied upon by the Nichols court attest, decisions by the South Carolina appellate courts in which public or corporate purposes have been held to pass constitutional muster have involved a wide variety of subjects. See Haesloop v. City Council of Charleston, 123 S.C. 272, 115 S.E. 596 (1923) (hotel); Chapman v. Greenville Chamber of Commerce, 127 S.C. 173, 120 S.E. 584 (1923) (office building site); Battle v. Wilcox, 128 S.C. 500, 122 S.E. 516 (1924), and Catheart v. City of Columbia, 170 S.C. 362, 170 S.E. 435 (1933) (stadium); Davis v. Saluda, 147 S.C. 498, 145 S.E. 412 (1928).

Green v. Rockhill, 149 S.C. 234, 147 S.E. 346 (1929), and Roach v. City of Columbia, 172 S.C. 478, 174 S.E. 461 (1934) (waterworks and sewerage); South Carolina Farm Bureau Marketing Association v. South Carolina Ports Authority, 278 S.C. 198, 293 S.E.2d 854 (1982) (grain elevators).

Based upon these statutory and constitutional provisions and in reliance upon the numerous cases from the South Carolina Supreme Court, I find and conclude that Sloan has not sustained his burden of proving that County has engaged in any illegal acts. As noted, Council Reserves are approved during County's annual budgeting process and Council Reserves has been an item in the County's annual budget ordinance since 1994-1995. Furthermore, since Council Reserves are part of the County's annual budget, I reject Sloan's argument that each disbursement is a supplemental appropriation as defined by S.C. Code Ann. Section 4-9-140. Rather, I find that the notice requirement is satisfied by County's adoption of its annual budget with Council Reserves being an item in the budget. Thus, I find and conclude that County is entitled to judgment in its favor on this claim as well.

Finally, at trial Sloan presented two other matters which must be addressed. First, Sloan argued that County's payment of Rotary Club dues for various County officials is in violation of statutory and constitutional provisions. Second, Sloan argued that County's proposed disbursement of \$1,907.00 from Council Reserves for the purpose of buying computers and related supplies to be used in a computer learning lab sponsored by Crestwood Forest Village Committee is not moot and should be enjoined.

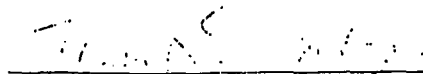
For the reasons stated on the record during the hearing, I conclude that Sloan's claims relating to Rotary Club dues should be dismissed without prejudice. Sloan's complaint in this

action clearly is premised upon County's alleged statutory and constitutional violations relating to Council Reserves. Both parties agreed at the hearing that the Rotary Club dues were not paid from Council Reserves. Accordingly, I find and conclude that Sloan's allegations relating to Rotary Club dues should be dismissed without prejudice. Because Sloan's claims relating to the proposed disbursement of funds to Crestwood Forest Village Committee involve funds that have been approved to be disbursed, but the funds have not yet been disbursed, I find that it would be more appropriate to address that issue in a separate order.

Accordingly, for the reasons stated above, it is hereby ordered, adjudged, and decreed as follows:

1. The plaintiff's claims relating to Rotary Club dues are dismissed without prejudice;
2. The plaintiff's claims relating to the proposed disbursement to Crestwood Forest Village Committee will be addressed in a separate order;
3. All other claims are dismissed with prejudice, and judgment is hereby entered in County's favor as to these claims.

IT IS SO ORDERED.


Thomas J. Ervin

Dated this day of
February, 1998.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE:)

Edward D. Sloan, Jr., individually, and as) C.A. No. 96-CP-23-2918
a Citizen, Resident, Taxpayer and)
Registered Elector of Greenville County,)
and on behalf of all others similarly)
situated,)

Plaintiff,)

vs.)

The County Council of Greenville County)
as the Governing Body of Greenville)
County, a Political Subdivision of the)
State of South Carolina,)

Defendant.)

MOTION FOR SUMMARY
JUDGMENT AND
MEMORANDUM OF LAW IN
SUPPORT OF MOTION

ENTERED COMPUTER

NOW COMES the Plaintiff, by his undersigned attorneys, and moves the court, pursuant to S.C.R.Civ.P. 56 for Summary Judgment, which would encompass Declaratory Relief under Rule 57, and Injunctive Relief under Rule 65. In support of the Motion, Plaintiff would show unto the Court, based on the pleadings, exhibits and stipulations entered in this case that the following facts are undisputed.

1. Plaintiff is a citizen, resident, taxpayer, and registered elector of Greenville County, South Carolina, and brings this action individually on his behalf and on behalf of all others similarly situated.
2. Defendant Greenville County is a political subdivision of the State of South Carolina, vested with the power of governing the County in compliance with the Constitution and laws of South Carolina and with enacting ordinances consistent with the Constitution and statutory law.

DEFENDANT'S
EXHIBIT

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3. In its Fiscal Year 1994-95 Annual Budget, Defendant established "County Council Reserves" of \$60,000, from which Defendant would, at the request of each member of County Council, disburse up to \$5,000 of county money, which is *public money*, to address special community needs. Budget, p G10. See Exhibit A.
4. On or about October 3, 1994, Defendant disbursed \$1,000 of discretionary funds to the Civil Air Patrol. See Exhibit B.
5. On or about October 3, 1994, Defendant disbursed \$3,790 to the Snickers Soccer Tournament, as "support for the Snickers Soccer Tournament." See Exhibit C.
6. On or about November 15, 1994, Defendant disbursed \$1,500 of discretionary funds to the March of Dimes, as a "donation to the March of Dimes." See Exhibit D.
7. On or about December 2, 1994, Defendant disbursed \$2,500 of discretionary funds to the Berea Branch Library, as discretionary funds "contributed to the Berea Branch Library." See Exhibit E.
8. On or about December 2, 1994, Defendant disbursed \$2,000 of discretionary funds to "Share" which was "given to SHARE out of . . . discretionary funds." See Exhibit F.
9. On or about January 31, 1995, Defendant disbursed \$1,000 of discretionary funds to the NAACP Youth Council as a "donation from [a council member] to CIVIL-NAACP-Youth Council to come from the Council Reserve." See Exhibit G.

10. On or about February 8, 1995, Defendant disbursed \$5,000 of discretionary funds to "A Child's Haven (a private non-profit organization)" and noted that a council member "wish[ed] to donate \$5000 of his discretionary funds to A Child's Haven." See Exhibit H.
11. On or about February 17, 1995, Defendant disbursed \$300 of discretionary funds to Church & Community Human Relations, and noted that "Councilman [_____] wish[ed] to donate from the discretionary funds- \$300 to Church + Community Relations." See Exhibit I.
12. On or about March 6, 1995, Defendant disbursed \$982.82 of discretionary funds to the Greenville Water System and noted that this was "to cover 50% of cost for fire hydrant for the Glassy Mountain Fire District." See Exhibit J.
13. On or about March 13, 1995, Defendant disbursed \$500 of discretionary funds to the Phyllis Wheatley Assoc. as a "donation to Phyllis Wheatley Center per [a Council Member]" See Exhibit K.
14. On or about March 13, 1995, Defendant disbursed \$500 of discretionary funds to the Lean on Me Tutorial School, as a "donation to Lean on Me Tutorial School-- Broad St. per [a council member.]" See Exhibit L.
15. On or about April 25, 1995, Defendant disbursed \$5,000 of discretionary funds to the Greer Human Resources Center. See Exhibit M.
16. On or about May 16, 1995, Defendant disbursed \$5,000 of discretionary funds to the Greenville Tech Foundation, as a "Council Reserve Contribution." See Exhibit N.

24. On or about July 28, 1995, Defendant disbursed \$1,000 of discretionary funds to the South Greenville Fire District, "per [a council member's] request--funds to come from Council discretionary account." See Exhibit V.
25. On or about June 28, 1995, Defendant disbursed \$1,000 of discretionary funds to the Piedmont Fire District "per [a council member's] request--funds to come from Council discretionary account." See Exhibit W.
26. On or about June 28, 1995, Defendant disbursed \$1,000 of discretionary funds to the Dunklin Fire District "per [a council member's] request--funds to come from Council discretionary account." See Exhibit X.
27. On or about June 29, 1995, Defendant disbursed \$1,500 of discretionary funds to the Greenville County Library West Branch, as a "\$1500 donation . . . per Councilman _____ to come from discretionary acc't." See Exhibit Y.
28. On or about July 3, 1995, Defendant disbursed \$1,000 of discretionary funds to the Phyllis Wheatley Association, as a "donation of \$1000 . . . per request of [a council member] --funds to come from Council Discretionary Acct." See Exhibit Z.
29. On or about July 3, 1995, Defendant disbursed \$2,500 of discretionary funds to the Berea Branch Library, as a "donation of \$2500.00 . . . per request from Councilman _____ --funds to come from the Council Discretionary Acct." See Exhibit AA.

30. On or about July 3, 1995, Defendant disbursed \$1,500 of discretionary funds to the Greenville Zoo Board, as a "donation of \$1500 . . . per request of [a Council Member] --funds to come from the Council Discretionary Acct." See Exhibit BB.
31. On or about July 3, 1995, Defendant disbursed \$1,000 of discretionary funds to "Share" as a "donation of \$1000 . . . per request of [a Council Member] --funds to come from Council Discretionary Acct." See Exhibit CC.
32. On or about October 31, 1995, Defendant disbursed \$520 of discretionary funds to the G'ville Branch NAACP 13th Annual Freedom Fund Banquet, "for 2 tickets to NAACP banquet," and a table for 10 people, which came from County Administration, Operational Support, and County Council Operational Support See Exhibit DD.
33. On or about November 2, 1995, Defendant disbursed \$450 of discretionary funds to the G'ville Branch NAACP 13th Annual Freedom Fund Banquet from County Council Operational Support, "for a second table [at the banquet]." See Exhibit EE.
34. On or about November 20, 1995, Defendant disbursed \$210 of discretionary funds to the G'ville Branch NAACP 13th Annual Freedom Fund Banquet for six more banquet tickets, from "Road and Bridge Operational Support," for a total of 28 people to attend the banquet. See Exhibit FF.
35. In its Fiscal Year 1996-97 Annual Budget, page G16, Defendant budgeted \$120,000 under "Non-Departmental" for "Council Reserves," from which

Defendant would, at the request of each member of County Council, disburse up to \$10,000 of county money. See Exhibit GG.

36. Defendant stated the purpose of the Council Reserves as to "allow the council to address special community needs *not normally falling within the operational purview* of County Government." Greenville County Fiscal Year 1996-97 Annual Budget, p. 195 (Emphasis added.) See Exhibit HH.
37. On or about July 8, 1996, Defendant disbursed \$358.00 to the Rotary Club of Greenville. "for . . . membership dues" out of planning commission funds. See Exhibit II.
38. On or about July 10, 1996, Defendant disbursed \$408.00 to the Rotary Club of Greenville for membership dues out of county administration funds. See Exhibit JJ.
39. On or about August 8, 1996, Defendant disbursed \$358.00 to the Rotary Club of Greenville membership dues, out of the Sheriff's funds. See Exhibit KK.
40. At an August 5, 1996, Finance Committee Meeting (minutes of which were approved August 19, 1996), a Council member "requested that the minutes reflect she believed Council should not dictate where the discretionary funds are spent; it should be decided by the individual Council member." See Exhibit LL at 1.
41. An attachment to the Committee Minutes (Exhibit LL) listed a guideline which had a strike out line through it and stated "use in designated county council district only." Id.

42. On August 19, 1996, the Finance Committee adopted "Guidelines for Discretionary Funds" as a guideline, rather than as an ordinance with the force of law. Id. at 2.
43. These guidelines allegedly limited use of Council Reserves "for infrastructure purposes such as: flooding, roads, lights, sewer, and public buildings and grounds." Id. at 2.
44. Council voted not to amend the motion to "add Human Service Projects to the uses listed by the Committee. Id. at 2.
45. On or about September 26, 1996, Defendant disbursed \$5,000 of to the Mauldin Library Building Fund from "[a Council Member's] discretionary funds." See Exhibit MM.
46. On or about September 25, 1996, Defendant disbursed \$5,000 to the Simpsonville Library Building Fund from "[a Council Member's] discretionary funds." See Exhibit NN.
47. On or about February 18, 1997, Defendant disbursed \$3,507.00 of discretionary funds to Sugar Creek Homeowners Association, "per Councilman _____ from discretionary fund payment for 22 additional street lights in Sugar Creek Subdivision for 1 year." See Exhibit OO.
48. On or about April 28, 1997, Defendant disbursed \$7,500 to the City of Travelers Rest for the Hometown Program, from Council Discretionary funds, at the request of one Council Member. See Exhibit PP.

40. On or about June 27, 1997, Defendant disbursed \$10,000 to the City of Greer for the city's infrastructure improvements, from County Council Discretionary Funds. See Exhibit QQ.
50. On or about June 30, 1997, Defendant disbursed \$10,000 of discretionary funds to the Greenville Zoo Board. See Exhibit RR.
51. Charts produced by Defendant shows that \$223,759 was "appropriated" to the 1997-98 Council Reserve, including \$18,647 "appropriated" for each council member not including salary donations referenced below; \$120,000 was "appropriated" to the 1996-97 Council Reserve; and \$60,000 to the 1994-95 Council Reserve. (Defendants did not produce a chart for 1995-96.) See Exhibit SS.
52. Defendant has continued to draw upon Council Reserves without voting on each expenditure or appropriation.
53. A disbursement of \$2,000 was made from "non-departmental council reserve" to the City of Fountain Inn October 22, 1997. See Exhibit TT.
54. A disbursement of \$2,000 was made from "non-departmental council reserve" to the Mauldin Library November 18, 1997. See Exhibit UU.
55. A disbursement of \$2,605.84 was made from discretionary funds to Atlantic Supply and Equipment December 15, 1997. See Exhibit VV.
56. A disbursement of \$2,500.00 was made from a Councilman's "salary donation from 1997 to Sugar Creek Recreation Center. The check stub says "non-departmental council reserve." See Exhibit WW.

57. January 19, 1998, Council disbursed \$1,000 from "non-departmental council reserve" to the Greenville Recreation Commission. See Exhibit XX.
58. At a meeting of the Council Finance Committee, January 19, 1998, the a motion carried to transfer a portion of a Council member's salary to Council Reserves. See Exhibit YY at 4.
59. At a meeting of County Council January 20, 1998, a verbatim transcript of a successful motion to waive the "guidelines" was requested. See Verbatim Transcript, Exhibit ZZ at 12.
60. A Councilman stated, "This wouldn't be a supplemental because it's coming from Discretionary Funds. This would be a transfer. Is that correct? O.K. Id. at 12.
61. A Councilman stated, "I voted against this in Committee. And the reason, when I came on Council 3 years ago, we had a thing called Discretionary Funds and I was amazed to find there were no rules in place governing how you could spend those funds. I began calling them "slush funds." because that's in fact what they were. Id. at 13.
62. The same Councilman stated, "We have since put guidelines on the use of these discretionary funds for the purpose of making sure they were used for those purposes: infrastructure, etc. . . Id. at 13.
63. The councilman continued, "I can't support this because it is not with the positions we have taken as a body. If we allow an exception for this item in the Discretionary Fund Account, then how can we justify not making other exceptions?" Id. at 13.

64. Another Councilman said, "I was not aware that we could waive these guidelines . . ." Id. at 14.
65. If we are I have had to not fund things that I would have liked to have funded out of my discretionary funds because of the guidelines that were established. If we are going to make exceptions, I think we need to make it in the form of an amendment, or whatever is required, in order to give everybody on this Council the opportunity to waive the guidelines that are in place for our individual needs that are within our district." Id. at 14.
66. At the January 20, 1998 Council Meeting, the minutes record that a Council member requested the County Attorney look into whether discretionary funds "may be used for human potential and not just infrastructure needs." Id. at 16.
67. The same minutes record a motion which carried, to transfer a portion of a Councilman's salary into the discretionary fund account. Id. at 16.
68. The 1997-98 Operating and Capital Budget Overview: General Fund/Administrative Services, p. 87, states that Defendant's Office's budget Allowance is \$361,198 for 15.8 employees. Defendant's Office Budget does not include the Council Reserves. See Exhibit AAA.
69. On or about February 3, 1998, Council reconsidered the motion to waive the discretionary fund guidelines which passed at the January 20, 1998 Council Meeting. The motion to waive the guidelines passed once again, 7 to 5. (Minutes will be available February 17, 1998).
70. All the foregoing expenditures were made with public money.

LEGAL DISCUSSION

Defendant's Council Reserve Funds have in some measure taken on the characteristics of a private "slush fund," as stated by some members of the County Council. As shown above in the statement of facts, it appears that some individual members have donated all or part of their salaries earned as council members to the Council Reserve Fund, and then they seem to find themselves free to do with that money--and the rest of the Council Reserve Funds--as they choose.

If a council member wishes to donate privately to the various worthy foundations and organizations, that is laudable. Incidentally, Mr. Sloan has donated money to some of the organizations who received money at issue in this lawsuit. These donations, however should be done with the council member's private funds. When the salary money is donated to the Council Reserve Fund, it again becomes public money. It must be treated as, and accounted for as, public money.

I. Some Council Reserve disbursements are constitutional violations.

Defendant has funded religious activity. Article 1, Section 4 of the S.C. Constitution and the First Amendment to the U.S. Constitution prohibit Defendant, as a governing arm of the state, from contributing money to religious organizations. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Constitution, Article 1 Amendment 1. "The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." S.C. Constitution, Article 1, Section 2.

"The language of the first amendment to the Constitution of the United States and language of Article 1 Section 2 of the Constitution of South

Carolina are, for all intents and purposes, the same. Accordingly, our reasoning is applicable to both constitutional provisions. The establishment clauses are intended to afford protection against sponsorship, financial support and active involvement of the government in religious activity."

Hunt v. McNair, 258 S.C. 103, 187 S.E. 2d 645 (1972) citing Walz v. Tax Commission, 397 U.S. 664, 90 S. Ct. 1409, 25 L.Ed. 2d 697 (1970). The Budget Ordinance provides for these unconstitutional expenditures and has not been amended.

Defendant has disbursed discretionary funds to "Church and Community Human Relations" (Exhibit I) and the Salvation Army (Exhibit S). Both organizations are religious and Defendant must be enjoined from further disbursements to religious organizations.

II. All Council Reserve disbursements violate the Greenville County Code.

The South Carolina General Assembly has legislated restrictions upon county government appropriations to prevent these unconstitutional abuses. Defendant has enacted the Greenville County Code to comply with the General Assembly's requirements. However, the Defendant has attempted to circumvent these restrictions imposed on appropriations by the County Code and South Carolina Code by establishing "Council Reserves" to "address special community needs not normally falling within the operational purview of County Government." See Exhibit GG.

Section 4-9-150 of the South Carolina Code Ann. requires public hearings and reasonable notice whenever "council action" is taken to "make appropriations." *Id.* The Greenville County Code, Article V, sets forth budget policies which bind Defendant. The Greenville County Code is a compilation of ordinances. "The council shall take

legislative action by ordinance. . . . As used herein the term "ordinance" shall be an ordinance have the force of law " Section 2-61. Greenville County Code.

A. Defendant has violated Section 7-81(a) of the Greenville County Code.

(a) Appropriation of funds shall be made only by county council to departments and agencies to provide public services to county citizens. Appropriation of funds to private, nonprofit organizations and institutions to provide services is prohibited.

First, Defendant must appropriate funds only to "departments and agencies to provide public services to county citizens." Id. As the statement of facts and Exhibits demonstrate, Defendant earmarks funds (more than \$200,000 this year) in each annual budget and deposit them in a non-departmental account called Council Reserve.

Second, Defendant is prohibited from appropriating funds to "private, non-profit organizations and institutions to provide services." Defendant appropriates these funds to "private, non-profit organizations and institutions to provide services" as recently January 20, 1998. See Exhibit ZZ.

B. Defendant has violated Sec. 7-81 (b) of the Greenville County Code.

(b) Requests for county funds will be submitted to council for review during the regular county budget process, and appropriations will be made only for specific line item purposes. As required by section 7-66 of this chapter, the annual report from departments and agencies to council shall verify that funds were expended in accordance with the purposes for which they were allocated.

First, all "requests for county funds will be submitted to council for review during the regular county budget process. . . ." Rather than the entire council reviewing "requests for county funds" that are "submitted for council review during the regular county budget process," individual council members receive requests throughout the year and respond to them by submitting individual responses to the clerk of county council, Ms. Elizabeth

Hanzy, for amounts not exceeding their individual fund limits (more than \$18,000 per council member this year).

Second, Defendant appropriates county funds to the Council Reserve without "specific line item purposes." In the past, those purposes ultimately supported by the County Council Reserve range across the political spectrum. They encompass a wide variety of activities and purposes. The lack of a specific line item purpose makes it open to abuses of a variety of sorts. Lumping over \$200,000 into a fund, which has no "specific line item purposes" other than "special community needs *not normally falling within the operational purview* of County Government" violates this clear provision of the County Code.

Third, the agencies to which Defendant disburses money do not "verify that funds were expended in accordance with the purposes for which they were allocated." Section 7-66 of the Greenville County Code requires that "All county offices, departments, boards, commissions, or institutions receiving county funds *shall make* a full, detailed annual report to the county council at the end of the fiscal year." There is no indication that the wide variety of recipients which have received the Council Reserve funds have made any such reports to the county council or that there is any mechanism in place for them to do so. This whole method of funding is outside the manner contemplated and mandated by the Greenville County Code.

c. Defendant has violated Sec. 7-81(c).

(c) County funds will be disbursed to departments and agencies in one of the following ways:

(1) *Departments and agencies bonded one hundred percent with county funds.* Departments and agencies are required to conform with the accounting, purchasing and personnel policies of the county. The

accounting department will be responsible for all fund disbursement through the county's accounting system.

(2) *Departments or agencies funded less than one hundred per cent by county funds.* Agencies will be subject to the county's purchasing and personnel policies if comparable policies do not exist. If feasible, the department or agency will receive county funds through the county's accounting system. If not feasible, departments or agencies will receive funds in accordance with a schedule prepared by the county administrator to include the following:

- a. The agency will estimate its first month's expense. The finance department will issue a check to the agency for this amount.
- b. Subsequent payment will be made on an estimated basis predicated on actual expenditures.

Defendant has disbursed funds through the county council clerk, rather than "through the county's accounting system." There has, to the knowledge of the plaintiff been no effort at all to comply with Section 7-81(c) of the Greenville County Code. Expenditures are made on a lump sum basis, almost like grants of money.

D. The "Guidelines" are not binding on County Council.

Defendant passed the Council Reserve "guidelines" limiting disbursements from the Council Reserve, but they were not passed as an ordinance, which has the force of law. Section 2-61, Greenville County Code. They were passed simply as a resolution. "Resolutions shall not have the force of law but shall be used to take administrative action or express the opinion of council." Section 2-61, Greenville County Code. Thus, Defendant may waive, and has waived these guidelines so each council member may disburse his more than \$18,000 of discretionary funds as he desires.

CONCLUSION

This system of appropriation has violated the establishment clauses of the S.C. and U.S. Constitutions. It has the potential of doing so again. This system also violates the Greenville County Code, enacted under the South Carolina Home Rule Act. The violations are so numerous that it seems that Defendant has done just about the opposite of what is required by the Greenville County Code. This Court should enjoin the illegal practices.

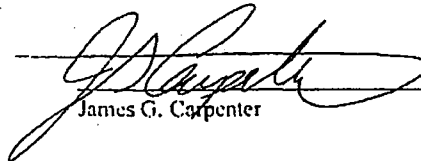
WHEREFORE, Plaintiff prays the Court for:

1. Declaratory relief under S.C.R.Civ.P. 57, that Defendant's appropriation, expenditure, disbursement, and donation of public funds to religious entities violated the *establishments clauses* of the United States and South Carolina Constitutions.
2. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds to entities which are *not departments and agencies* of the Greenville County Government, in violation of the Greenville County Code Section 7-81(a).
3. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds to entities which are "*private nonprofit organizations and institutions*," in violation of the Greenville County Code Section 7-81(a).
4. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds *when they are not made by County Council*, as a whole, but rather they are made by individuals, in violation of Section 7-81(a).
5. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds *when there had been no request to Council* in violation of Section 7-81(b).
6. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds to entities *when it was not submitted during the regular county budget process*, in violation of Section 7-81(b).
7. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds to entities *when there was no line item appropriation*, in violation of Section 7-81(b).
8. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds to entities *when there is no annual report back to verify*

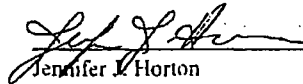
that funds were expended in accordance with the purposes for which they were allocated." in violation of Section 7-81(b).

9. An order enjoining Defendant's appropriation, expenditure, disbursement, and donation of public funds to entities because funds must be *distributed to "departments and agencies* in one of the . . . ways" enumerated in Section 7-81(c).
10. An order enjoining the expenditure of money from Council Reserves which was approved by vote on January 17, and again on February 2, because it violates the Greenville County Code.
11. Costs and attorneys fees under 42 U.S.C. § 1988, and under the doctrine of *Shillito v. City of Spartanburg*, 214 S.C. 11, 51 S.E.2d 95 (1948).
12. Such other and further relief as the court deems just and proper.

Respectfully submitted,



James G. Carpenter



Jennifer L. Horton

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(864) 235-1269
Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-23-4637

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

Plaintiffs,)

v.)

ANSWER

Greenville County, a Political)
Subdivision of the State of South)
Carolina, Herman G. Kirven, Jr.,)
Judy Gilstrap, Eric Beddingfield,)
Jim Burns, Scott Case, Joseph Dill,)
Cort Flint, Lottie Gibson, Mark)
Kingsbury, Xanthene Norris,)
Robert Taylor, and Tony Trout,)

Defendants.)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS

2007 AUG 14 A 9 10

Defendants Greenville County and Greenville County Council, answering the
Complaint of the Plaintiffs above-named, would respectfully allege and show as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Defendants admit paragraph 1 of the Plaintiffs' Complaint upon information and belief.
2. Defendants admit paragraph 2 of the Plaintiffs' Complaint.
3. Defendants admit paragraph 3 of the Plaintiffs' Complaint.
4. Defendants admit paragraph 4 of the Plaintiffs' Complaint.
5. Defendants admit paragraph 5 of the Plaintiffs' Complaint.
6. Defendants deny paragraph 6 of the Plaintiffs' Complaint.

7. Defendants deny paragraph 7 of the Plaintiffs' Complaint.

8. Responding to paragraph 8 of the Plaintiffs' Complaint, Defendants admit that it maintains funds in its budget designated as "Council District Expense," and that the policy behind these funds, which have had various names, has been in existence for several years. To the extent that any allegations of paragraph 8 conflict with the foregoing, those allegations are denied.

9. The Defendants admit so much of paragraph 9 of Plaintiffs' Complaint that is consistent with the ordinance cited therein, and the Defendants crave reference to that ordinance. The Defendants deny all allegations that are inconsistent with this ordinance.

10. The Defendants admit so much of paragraph 10 of Plaintiffs' Complaint that is consistent with the ordinance cited therein, and the Defendants crave reference to that ordinance. The Defendants deny all allegations that are inconsistent with this ordinance.

11. The Defendants deny paragraph 11 of the Plaintiffs' Complaint.

12. Each and every allegation of the Plaintiffs' Complaint not expressly admitted, modified or explained is denied.

FOR A SECOND DEFENSE
(Failure to State a Claim)

13. Defendants incorporate herein the relevant and consistent allegations of the preceding paragraphs.

14. The Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action against Defendants; therefore, the Plaintiffs' Complaint should be dismissed.

FOR A THIRD DEFENSE
(Res Judicata)

15. Defendants incorporate herein the relevant and consistent allegations of the preceding paragraphs.

16. The Plaintiffs' Complaint is barred by res judicata; therefore, the Plaintiffs' Complaint should be dismissed with prejudice.

FOR A FOURTH DEFENSE
(Collateral Estoppel)

17. Defendants incorporate herein the relevant and consistent allegations of the preceding paragraphs.

18. The Plaintiffs' Complaint is barred by collateral estoppel; therefore, the Plaintiffs' Complaint should be dismissed with prejudice.

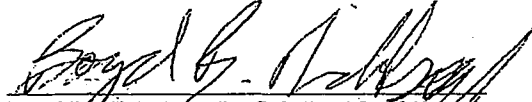
FOR A FIFTH DEFENSE
(Lack of Standing)

19. Defendants incorporate herein the relevant and consistent allegations of the preceding paragraphs.

20. The Plaintiffs lack standing to bring this lawsuit; therefore, the Plaintiffs' Complaint should be dismissed.

WHEREFORE, having answered the Plaintiffs' Complaint herein, Defendants request that the Court dismiss the Complaint with prejudice; that the Court award the Defendants their costs and attorneys' fees in this action; and that the Court grant such other and further relief as the Court deems just and proper.

HAYNSWORTH SINKLER BOYD, P.A.



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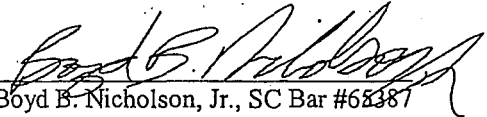
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Attorneys for Greenville County and
Greenville County Council

Dated: August 10, 2007
Greenville, South Carolina

HAYNSWORTH SINKLER BOYD, PA

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Dated: August 10, 2007
Greenville, South Carolina

preclusion). As is evident from the language quoted in Sloan's Opposition Memorandum, Section 28 deals with the times when an issue that was actually previously litigated can be litigated again. It does not deal with claim preclusion, which is the basis upon which Sloan's claim in this case should be barred.

The County hereby submits this Supplemental Memorandum further addressing this point.

ARGUMENT

- I. Defendants have raised claim preclusion as a defense to this lawsuit, and Plaintiff should therefore not be able to rely on the exceptions to issue preclusion in his attempt to defeat Defendants' res judicata defense.

It is well-recognized under South Carolina that res judicata (i.e., claim preclusion) and collateral estoppel (i.e., issue preclusion) are separate concepts. See, e.g., Stone v. Roadway Express, 367 S.C. 575, 580, 627 S.E.2d 695, 697-98 (2006) (discussing each doctrine and setting out the elements of each); Nelson v. OHG of South Carolina, Inc., 354 S.C. 290, 305, 580 S.E.2d 171, 179 (Ct. App. 2003) (quoting other South Carolina authority for the proposition that "[t]he doctrines of res judicata and collateral estoppel are . . . two different concepts" (interior quotation marks omitted)). To establish claim preclusion as a defense, the defendant must show: (1) a final and valid judgment on the merits from a prior lawsuit; (2) an identity of parties between the prior action and the subsequent action; and (3) the subsequent action involves matters that were or could properly have been included in the prior action. See, e.g., Stone, 367 S.C. at 580, 627 S.E.2d at 697. Issue preclusion, by contrast, "prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action." Stone, 367 S.C.

at 580, 627 S.E.2d at 698 (internal quotation marks omitted).¹ The differences between the two doctrines will be further highlighted as relevant herein.

It is also obvious from the case law that the doctrine of issue preclusion has a much broader preclusive sweep than the doctrine of claim preclusion. Whereas claim preclusion is a defensive doctrine that can only be used where there is an identity of parties from one suit to the next, see, e.g., Stone, 367 S.C. at 580, 627 S.E.2d at 697 (noting that claim preclusion requires, *inter alia*, an identity of parties from the prior action and finding that the defense did not apply because the parties to the subsequent action were different), issue preclusion can be used offensively or defensively and there is no requirement that there be an identity of parties. See, e.g., Doe v. Doe, 346 S.C. 145, 551 S.E.2d 257 (2001) (noting that “mutuality is no longer a requirement of collateral estoppel” and that the doctrine may be invoked “offensively or

¹ While the South Carolina authorities have repeatedly recognized and affirmed the distinction between claim preclusion and issue preclusion, some confusion could result from the fact that the South Carolina case law has not always been consistent in its use of the term “res judicata” – sometimes using that term in a more general sense as an umbrella term for claim and issue preclusion, and sometimes using it in accord with the more modern trend of meaning only claim preclusion. See, e.g., Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 216, 493 S.E.2d 826, 834 (1997) (recognizing the difference between claim preclusion and issue preclusion, but stating that “[t]he term res judicata encompasses two types of preclusion: claim preclusion and issue preclusion” before stating that “[f]or the sake of simplicity, this Court will use the terms issue preclusion and claim preclusion”); Price v. City of Georgetown, 297 S.C. 185, 375 S.E.2d 335 (Ct. App. 1988) (observing that “[t]he appealed order used the words res judicata and collateral estoppel interchangeably,” observing that “[t]he modern trend is to refer to collateral estoppel as issue preclusion and to res judicata as claim preclusion,” and concluding that “the trial judge . . . mistakenly used the terms res judicata and collateral estoppel as interchangeable terms”); see also Migra v. Warren County Sch. Dist., 465 U.S. 75, 77 n.1 (1984) (“The preclusive effects of former adjudication are discussed in varying and, at times, seemingly conflicting terminology, attributable to the evolution of preclusion concepts over the years. These effects are referred to collectively by most commentators as the doctrine of res judicata. Res judicata is often analyzed further to consist of two preclusion concepts: issue preclusion and claim preclusion. . . . res judicata becomes virtually synonymous with claim preclusion.” (internal quotation marks and citations omitted)). For the sake of simplicity and clarity, the County also will emphasize use of the terms issue preclusion and claim preclusion. The County’s defense to Plaintiff’s action is one of claim preclusion, and thus the analysis should focus on that concept to the exclusion of issue preclusion. See Wright v. Marlboro County School Dist., 317 S.C. 160, 163 n.4, 452 S.E.2d 12, 14 n.4 (Ct. App. 1994) (“Because the District did not argue issue preclusion or collateral estoppel as a basis for affirmance in its brief or during oral argument, we focus exclusively on the applicability of claim preclusion or res judicata to the Board’s decision.”).

defensively”).² Rather, South Carolina recognizes the applicability of offensive non-mutual collateral estoppel. Suffice it to say that issue preclusion is a doctrine of significantly broader application than claim preclusion.

Because of the potentially broad and sweeping effect of issue preclusion, courts became concerned that the doctrine could have the effect of freezing the development of the law and began to adopt exceptions to the rule. The United States Supreme Court addressed exceptions to collateral estoppel in Montana v. United States, 440 U.S. 147 (1979). The legal principles set out in Montana are of particular relevance to this case because Montana discusses exceptions to collateral estoppel in the context of adjudicating constitutional claims. The exception to collateral estoppel that allows parties to contest legal conclusions in subsequent lawsuits, the Supreme Court said, “is of particular importance in constitutional adjudication.” Id. at 162-63. “Unreflective invocation of collateral estoppel against parties with an ongoing interest in constitutional issues could freeze doctrine in areas of the law where responsiveness to changing patterns of conduct or social mores is critical.” Id. at 163.

In response to these principles, several observations are in order. First, the County has raised claim preclusion, not issue preclusion, as a defense to Plaintiff’s claim in this case. Thus, the exceptions to issue preclusion are simply irrelevant. Second, the concerns that have given rise to exceptions to issue preclusion simply do not present themselves in the context of claim preclusion. There is no reason, for example, to be concerned that the doctrine of claim preclusion will have the effect of freezing the law in place. Claim preclusion simply has a

² See also South Carolina Property & Cas. Ins. Guar. Assoc. v. Wal-Mart Stores, Inc., 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991) (discussing when party who was not party to prior suit may invoke collateral estoppel offensively in a second action); Roberts v. Smith, 316 S.C. 492, 497-98, 450 S.E.2d 616, 619-20 (Ct. App. 1994) (discussing the circumstances under which a stranger to the prior litigation may nonetheless invoke offensive non-mutual collateral estoppel); Beall v. Dog, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984) (discussing law of collateral estoppel at length, including offensive use of the doctrine by strangers to the prior litigation).

considerably more limited reach than issue preclusion. That fact explains why numerous courts have concluded that there is no exception to claim preclusion for constitutional questions, even though there may well be such an exception to issue preclusion in any given case. See County's Initial Memorandum (long string cite of cases standing for the proposition that there is no exception to claim preclusion for constitutional questions).³ In short, preventing a single party from re-litigating a single claim that that party previously had the opportunity to litigate will not freeze the development of the law. For purposes of the current dispute, for example, claim preclusion would not prevent any of the thousands upon thousands of taxpayers in Greenville County (or anyone else who could establish standing, which is fairly easy to do under the jurisprudence of this State) from coming to court and challenging the constitutionality of the Council Reserves Fund. Plaintiff, however, cannot bring this challenge, and should not be allowed to under the law of claim preclusion, because he previously had an opportunity to litigate this claim in an earlier lawsuit.⁴

In accord with the fact that claim preclusion is a much more limited doctrine than issue preclusion, the recognized exceptions to the former are much more narrow than the exceptions to

³ Compare the bright line rule regarding exceptions to claim preclusion made by the authorities in the County's initial Memorandum with what the authorities say about potential exceptions to issue preclusion: "[E]ven if all the requirements of issue preclusion are met, when unfairness or injustice results or public policy requires it, the doctrine's application may be precluded." State v. Bacote, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998). It is just such statements that Plaintiff relies on in this case, but since those statements are made in the context of exceptions to issue preclusion, they are entirely beside the point of the County's defense of claim preclusion.

⁴ It also bears noting that in Montana the Court made clear that its concern was for issues that had previously arisen but were later being brought up in the context of "successive actions involving unrelated subject matter." Montana, 440 U.S. at 162. Citing the applicable sections of the Restatement (which themselves rely on the Montana case), the United States Court of Appeals for the Eleventh Circuit has observed that when, as in the instant case, the subsequent action "arise[s] out of the same subject matter, . . . preclusion as to issues of law serves to prevent unnecessary harassment of the adverse party and undue burden on the courts." North Georgia Elec. Member. Corp. v. City of Calhoun, 989 F.2d 429, 435 (11th Cir. 1993). Thus, even if it were proper to analyze this case from the standpoint of issue preclusion principles, Plaintiff still would not be entitled to claim an exception.

the latter. There are, for example, no statements in the law about making exceptions to claim preclusion on public policy grounds. Rather, (drawing from the authority that Plaintiff himself draws on), the Restatement (Second) of Judgments states that the exceptions to claim preclusion as follows:

Section 20 Judgment for Defendant – exceptions to the General Rule of Bar⁵

(1) A personal judgment for the defendant, although valid and final, does not bar another action by the plaintiff on the same claim:

(a) When the judgment is one of dismissal for lack of jurisdiction, for improper venue, or for nonjoinder or misjoinder of parties; or

(b) When the plaintiff agrees to or elects a nonsuit (or voluntary dismissal) without prejudice or the court directs that the plaintiff be nonsuited (or that the action be otherwise dismissed) without prejudice; or

(c) When by statute or rule of court the judgment does not operate as a bar to another action on the same claim, or does not so operate unless the court specifies, and no such specification is made.

(2) A valid and final personal judgment for the defendant, which rests on the prematurity of the action or on the plaintiff's failure to satisfy a precondition to suit, does not bar another action by the plaintiff instituted after the claim has matured, or the precondition has been satisfied, unless a second action is precluded by operation of the substantive law.

It is evident that none of the exceptions to claim preclusion apply here (and, just as importantly, Plaintiff has never argued that any of them apply). The prior action was not dismissed for lack of jurisdiction, for improper venue, or for nonjoinder or misjoinder of parties. The prior action did not result in a nonsuit or voluntary dismissal. There is no statute or rule of court that stands for the proposition that the prior action has no preclusive effect on the current lawsuit. And the judgment for the County in the prior action did not rest on the prematurity of

⁵ The Restatement (Second) of Judgments breaks claim preclusion down into its two historical components, one involving the preclusive effect of a prior judgment for the Defendant (the rule of Bar) and the preclusive effect of a prior judgment for the Plaintiff (the rule of Merger). Since the County won the prior lawsuit against Plaintiff with regard to the Council Reserves Fund and thus the rule of Bar is applicable.

Plaintiff's action or Plaintiff's failure to satisfy a condition precedent to suit. As recounted in the County's initial Memorandum, Plaintiff filed an extensive lawsuit invoking numerous theories including but not limited to numerous constitutional theories and a theory that the Council Reserves Fund violated certain non-delegation principles. After that litigation ran its full course, the County won on the merits. That judgment should preclude Plaintiff's effort to now recast his previous non-delegation arguments with a new constitutional twist – especially when that effort is being motivated by nothing more than an intervening Attorney General opinion that relies almost exclusively on case law that pre-dates the prior action.

Furthermore, not only does scope of the respective doctrines justify a broader approach to exceptions in the context of issue preclusion than in claim preclusion, but the justifications for each doctrine also justifies such an approach. Specifically:

The doctrine of res judicata is founded on the principle that the public interest requires an end to litigation and that no one should be twice sued for the same cause of action. Under the doctrine of res judicata, a final judgment on the merits in a prior action will preclude the parties and their privies from re-litigating any issues actually litigated or those that might have been litigated in the first action.

* * *

The doctrine of collateral estoppel, or issue preclusion, on the other hand, rests generally on equitable principles.

Town of Sullivan's Island v. Felger, 318 S.C. 340, 457 S.E.2d 626 (Ct. App. 1995). Given this difference in the theoretical underpinnings of the two distinct doctrines, the approach the authorities have taken to exceptions from those doctrines is not surprising. Specifically, the exceptions to claim preclusion (the primary aim of which is to end litigation) are much more narrow, much more straight-forward, and much more limited. The exceptions to claim preclusion, however, since it is a doctrine founded in equity, take into consideration such factors as "fairness" and "public policy."

II. The only authority Defendants could find that could even remotely be construed as supporting Plaintiff's arguments does not support them for several reasons.

The only authority Defendants could find that could even remotely be construed as supporting Plaintiff's arguments regarding exceptions to claim preclusion is Nelson v. OHG of South Carolina, Inc., 354 S.C. 290, 580 S.E.2d 171 (Ct. App. 2003). In that case, Judge Ralph King Anderson, writing for the Court, stated that "[t]here are numerous exceptions to the application of res judicata and collateral estoppel" and then followed that statement with extended discussion of some authorities. See id. at 306, 580 S.E.2d at 179. It is this case that Plaintiff relies on here to establish exceptions to the claim preclusion defense raised by Defendants. For the reasons that follow, Nelson does not support Plaintiff's effort.

First, to the extent that Judge Anderson's opinion could be read to suggest that the exceptions to both doctrines (claim preclusion and issue preclusion) are identical or co-extensive, that discussion is proven to be dicta by the ensuing Supreme Court case. Even though Judge Anderson had discussed policy considerations and policy exceptions to both res judicata (claim preclusion) and collateral estoppel (issue preclusion), the Supreme Court limited its discussion to policy exceptions to collateral estoppel. Cf. Nelson, 354 S.C. at 314-16, 580 S.E.2d at 184 ("Nelson asserts public policy considerations should bar [defendants] from invoking doctrines of collateral estoppel and res judicata.") with Nelson v. OHG of South Carolina, Inc., 362 S.C. 421, 427, 608 S.E.2d 855, 859 (2005) ("Grandfather argues the Court of Appeals erred by failing to find that policy considerations should bar the application of collateral estoppel. . . . [T]he Court of Appeals did not err by failing to find policy considerations bar the application of collateral estoppel." (emphases added)).

Second, to the extent that Judge Anderson's opinion could be read to suggest that the exceptions to both doctrines (claim preclusion and issue preclusion) are identical or co-extensive,

the authorities demonstrate otherwise, which likely explains why the Supreme Court limited its discussion of policy exceptions to the doctrine of collateral estoppel. For one thing, all the cases and the Restatement sections Judge Anderson cites in his discussion are issue preclusion cases and issue preclusion sections of the Restatement. In his initial discussion, for example, Judge Anderson discusses Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997) and Beall v. Doe, for the fact that those cases adopted Sections 28 and 29 of the Restatement (Second) of Judgments. Both of those Sections deal with issue preclusion. Furthermore, all of the cases cited by Judge Anderson later in his discussion are issue preclusion cases. In fact, it is evident from his citation of the cases that they deal with issue preclusion, not claim preclusion. See 354 S.C. at 314-15, 580 S.E.2d at 184. The opinion contains the following cites with the following parenthetical explanations:

- State v. Bacote, 331 S.C. 228, 331, 503 S.E.2d 161, 163 (1998) (declining to give collateral estoppel effect to proceedings which occur during an administrative hearing for a driver's license revocation)
- Shelton v. Oscar Mayer Foods Corp., 325 S.C. 248, 481 S.E.2d 706 (1997) (finding that giving administrative hearings held in front of the Employment Security Commission collateral estoppel effect would frustrate the purposes of the Employment Security Commission)
- Johns v. Johns, 309 S.C. 199, 203, 420 S.E.2d 856, 859 (Ct. App. 1992) (refusing to apply consent order entered by the family court finding husband and wife married at common law because giving the order collateral estoppel effect would violate the State's policy finding bigamous marriages void as mandated by statute)

Furthermore, the only case cited by Judge Anderson for which he does not provide a parenthetical explanation was also an issue preclusion case. See Carrigg v. Cannon, 347 S.C. 75, 79-80, 552 S.E.2d 767, 770 (Ct. App. 2001) (discussing "collateral estoppel or issue preclusion" and making no mention of res judicata or claim preclusion).

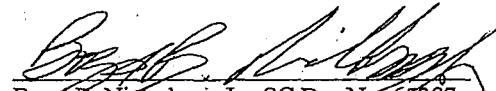
As is evident from the discussion above, the exceptions to claim preclusion are different from and much more limited than the exceptions to issue preclusion. The Restatement (Second)

of Judgments (the authority from which the Courts of this State have derived the law of collateral estoppel) makes this point clearly, and the Supreme Court of this State has never intimated otherwise. To the contrary, the Supreme Court has limited its discussion of the issue in accord with the Restatement. To the extent Judge Anderson's Nelson opinion could be read to suggest otherwise, it is no longer good law.

CONCLUSION

Issue preclusion and claim preclusion are different concepts and different defenses. The exceptions to the former are broader than the exceptions to the latter, and for good reason. In this case, where the County has raised claim preclusion as a defense, Plaintiff should not be able to rely on exceptions to issue preclusion in an effort to resuscitate his barred claim. The County respectfully requests that the Court grant the County's Motion to Dismiss.

HAYNSWORTH SINKLER BOYD, P.A.



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August 20, 2007
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-23-4637

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

Plaintiffs,)

v.)

Greenville County, a Political)
Subdivision of the State of South)
Carolina, Herman G. Kirven, Jr.,)
Judy Gilstrap, Eric Beddingfield,)
Jim Burns, Scott Case, Joseph Dill,)
Cort Flint, Lottie Gibson, Mark)
Kingsbury, Xanthe Norris,)
Robert Taylor, and Tony Trout,)

Defendants.)

DEFENDANTS'

**MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT AND CROSS- MOTION AND
MEMORANDUM IN SUPPORT OF CROSS-
MOTION FOR SUMMARY JUDGMENT**

FILED CLERK OF COURT
GREENVILLE CO. S.C.
DALE B. WICKENSHER

2008 SEP 29 A 11:24

INTRODUCTION

In this lawsuit Plaintiffs Edward D. Sloan, Jr. and the South Carolina Public Interest Foundation ("Plaintiffs" or "Sloan") challenge one portion of a budget line item called the "Council District Expense Fund" (hereinafter the "Fund" or "Funds"). The Fund provides monies "for a Council Member to address" several costs associated with their office. From the Fund a Council Member may also address "[c]osts associated with special, nonrecurring community requests for infrastructure purposes such as . . . flooding, roads, lights, sewer and drainage, public buildings and grounds, and infrastructure related studies." Complaint, ¶ 10; see also Complaint at Exhibit B. Mr. Sloan contends that this constitutes an unconstitutional delegation of legislative power. He bases this challenge entirely on an opinion issued by the South Carolina Attorney General's office issued on November 13, 2003, found at 2003 S.C. AG

LEXIS 179 (hereinafter "AG Opinion"). See Complaint, ¶¶ 8 and 11. All that State law requires, however, is that the County Council pass a budget, which it has done. Nothing in the Constitution or general statutes, moreover, expressly prohibit the Fund. Given these points and given the liberal construction that Home Rule provides to County ordinances, Mr. Sloan's claims fail and his lawsuit should be dismissed.

FACTS

The Greenville County General Fund Budget (the "Budget") contains several departments, one of them being Department 1, Legislative and Administrative Services. See portions of Budget File, Exhibit 2. This department has three divisions: County Administrator, County Attorney, and County Council (Division 41500). The County Council Division, much like the other two, is divided into three categories: salaries, operating expense and contractual. Operating expense includes copy expense, postage, printing, awards, advertising, membership and dues, publications, operational support, transportation, training and conferences, office supplies and photo supplies. Exhibit 2. Expenses of County Council members, however, do not come from these line items. Instead, the Operating Expense section of the County Council Division also includes the Funds, which provide "Funds for a Council Member to address" the following:

- Cost of general business supplies such as pens, paper, stationary, business cards, postage for district mailings, and ink cartridges;
- Cost of special documents, incentives and awards given either to the public or county employees for outstanding service or special recognition and the cost of framing by outside vendors of special documents;
- Cost of periodicals, professional journals, and reference books;
- Cost of per diem and mileage involved in the conduct of county business;
- Costs associated with community functions, conferences and training seminars such as food, gas, mileage, automobile rental, accommodations, tuition, and materials;

- Costs associated with special, non recurring community requests for infrastructure purposes such as:
 - Flooding
 - Roads
 - Lights
 - Sewer and drainage
 - Public buildings and grounds
 - Infrastructure related studies
- Contributions to local governments in Greenville County for community projects.

See Exhibit 3.

The amount of the Fund for the Council members varies: \$26,946 for the Chairman; \$24,251 for the Vice-Chairman; and \$21,828 for all other Council members. Exhibit 2. For those Council members who are standing for re-election or those who are not running for re-election in an election year, they may only spend one-half of their Fund during the first half of the year. Exhibit 3. Finally, Council Members may not "carry over" Funds. Id.

The only expenditures that Mr. Sloan complains of are those "[c]osts associated with special, nonrecurring community requests for infrastructure purposes such as . . . flooding, roads, lights, sewer and drainage, public buildings and grounds, and infrastructure related studies." Complaint, ¶ 10; see also Complaint at Exhibit B. Mr. Sloan bases this challenge entirely on the AG Opinion. See Complaint, ¶ 11 ("County Council's delegation of legislative power to an individual member, as described herein, is unconstitutional and illegal, as explained in a South Carolina Attorney General opinion dated November 13, 2003 (Exhibit C).").

ARGUMENT

I. THE AG OPINION FAILS TO GIVE DUE REGARD TO THE DISCRETION THAT HOME RULE PROVIDES TO THE COUNTY.

Under Home Rule, the powers of County government are broad and sweeping. Article VIII of the South Carolina Constitution provides that "all laws concerning local government shall be liberally construed" in the local government's favor. S.C. Constitution, Art. VIII, § 17. Statutory law provides similarly that:

All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

S.C. Code Ann. § 4-9-25. Thus, as long as it is "not inconsistent with the Constitution and general law of this State," the County may adopt any ordinance that "appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them." This power "must be liberally construed in favor of the county." Moreover, the "specific mention of particular powers may not be construed as limiting in any manner the general powers" of a county.

The AG Opinion that Mr. Sloan relies on ignores Section 4-9-25 and runs counter to the liberal construction that Home Rule affords County ordinances. Indeed, the problem with the AG's Opinion is that it looks to find express authority to allow County Council to take action, instead of finding constitutional or statutory provisions that prohibit it. The AG Opinion states:

Just as the latter opinion suggests, there appears to be no statute which authorizes a county council to delegate spending authority to its individual members. While § 4-9-100 authorizes additional administrative duties to be delegated to the

chairman and to receive additional compensation therefor, no state law appears to authorize subdelegation to individual Council members such broad discretion as is present here to determine how the funds in question are to be spent. **The fact that the General Assembly authorized subdelegation to a specific council member (chairman) in the limited circumstances defined by § 4-9-100 (administrative duties) strongly suggests that the subdelegation of authority to individual council members to expend funds from the so-called "discretionary fund" is not present.** Absent such statutory authority being expressly provided by the General Assembly, it is our opinion that a court would conclude, just as the July 20, 1981 opinion so concluded, that this authority is lacking.

AG Opinion at **23-24. This is the wrong analysis. As long as an ordinance does not conflict with the Constitution or general law, the County Council can do whatever it feels necessary to preserve, among other things, order and good government. The AG Opinion, however, states there must be some state law that expressly authorizes a county action. Moreover, according to the bolded language above, by providing for subdelegation in one "limited instance" in one statute, the General Assembly must have intended that this power not be present elsewhere. This is the exact opposite of what Section 4-9-25 says: "specific mention of particular powers may not be construed as limiting in any manner the general powers."

The AG Opinion also runs counter to Home Rule and contradicts the Supreme Court's holding in McSherry v. Spartanburg County Council, 371 S.C. 586, 589-90, 641 S.E.2d 431, 433-34 (S.C. 2007). In McSherry, the issue was whether Spartanburg County Council had validly enacted a road maintenance fee ordinance. State law requires county councils to take legislative action by ordinance and states that generally "all ordinances shall be read at three public meetings of council on three separate days." McSherry, 371 S.C. at 588, 641 S.E.2d at 432-33. Spartanburg County Council's own operating procedures allowed an ordinance to be introduced for first reading by title only, and did not require a draft to be circulated until before the second reading. 371 S.C. at 589, 641 S.E.2d at 433. McSherry challenged the road maintenance ordinance on the grounds that "there was no ordinance in existence at the time of

the first reading." 371 S.C. at 588, 641 S.E.2d at 432. The Supreme Court responded that although it was "disconcerted by the methodology utilized by Council in this matter," it was constrained to uphold the ordinance. 371 S.C. at 590-91, 641 S.E.2d at 433. In so doing, the Court made several points relevant to this case:

[I]n reviewing the discretionary decision of a legislative body, our courts have been loath to substitute their judgment for that of elected representatives. Such decisions should not be upset on appeal unless [they are] arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power. . . . **Importantly, nothing in the Code or in Article VIII of the South Carolina Constitution, which authorizes and establishes Home Rule, requires that an ordinance be in written form when it receives a first reading.** Thus, there is neither a constitutional provision nor a statutory requirement on which this Court could base an invalidation of Council's rules and procedures. . . . Although the better practice may have been for the title to be in writing at the time of the first reading, we cannot say that this alone caused the ordinance's enactment to be invalid.

371 S.C. at 590-91, 641 S.E.2d at 433-34 (emphasis added). By virtue of Home Rule, the County has a great deal of autonomy and discretion in enacting its budget. Furthermore, just as was the case in McSherry, nothing in the Code or in the Constitution requires that County Council vote as a body to approve every expenditure. In McSherry, all that was required of Spartanburg County Council was that it passed an ordinance by three readings. The details of preparing these ordinances were left to Spartanburg County Council as long as they were not in conflict with express Constitutional or Statutory requirements. McSherry also demonstrates that the proper statutory analysis in light of Home Rule is to resolve all doubt in favor of local autonomy. 371 S.C. at 590, 641 S.E.2d at 433 ("[i]n reviewing the discretionary decision of a legislative body, our courts have been loath to substitute their judgment for that of elected representatives. Such decisions "should not be upset on appeal unless [they are] arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power.") (quoting Sloan v. Greenville

County, 356 S.C. 531, 555-56, 590 S.E.2d 338, 351 (Ct. App. 2003) and Smith v. Georgetown County Council, 292 S.C. 235, 238-39, 355 S.E.2d 864, 866 (Ct. App. 1987)).

S.C. Code Ann. § 4-9-140 requires that County Council "adopt annually and prior to the beginning of the fiscal year operating and capital budgets for the operation of county government and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted." County Council did this by duly enacted ordinance. In light of the great deference given to an ordinance enacted by a county, and the fact that there is no express prohibition for creating budget allocations to individual council members to cover their office expenses, travel expenses, and if they so choose, small infrastructure projects, the Court should hold that the County has not abused its statutory or constitutional authority and that the Fund comports with State law.

II. LEGISLATIVE POWERS HAVE NOT BEEN DELEGATED.

Numerous South Carolina Attorney General opinions have stated that County Council has full control over the budgeting process. See Op. S.C. Atty. Gen., January 11, 1985 ("the ultimate responsibility for adopting and maintaining the annual budgets and insuring that adequate revenue is generated to meet expenses lies with . . . County Council."); Op. S.C. Atty. Gen., March 31, 1997, (recognizing that the "county council has 'general authority over the county treasury.'"); and Op. S.C. Atty. Gen., October 22, 1996, (noting that "it goes without saying that the decision to spend money by a county council involves considerable discretion."). There is no debate about this statement. As discussed above, Section 4-9-140 of the Code requires County Council to adopt a budget. Article X, § 7(b) of the Constitution of South Carolina likewise mandates that a County must "prepare and maintain annual budgets which

provide for a sufficient income to meet its estimated expenses for each year" Again, the County has prepared and adopted a budget.

The AG Opinion provides that "generally, it is recognized that unless a statute specifically provides otherwise, legislative powers vested in the governing body of a municipality cannot be delegated to administrative officials of the municipality." AG Opinion at **4-5. However, "purely administrative, ministerial, or executive powers may be delegated by a municipal governing body to the appropriate officer." *Id.* at 5. County Councils, unlike State Government, typically exercise the powers of all three branches of government. *See* AG Opinion at 21 (citing Op. S.C. Atty. Gen., September 10, 1973.). Thus, "[t]he constitutional principle of separation of powers applicable to state government by Article I, § 8 of the Constitution has been held inapplicable to local political subdivisions of the State." *Id.* (citing Gaud v. Walker, 214 S.C. 451, 53 S.E.2d 316 (1949)).

The allocation of money to the Funds is a legislative act performed by Council as a body in a duly enacted ordinance. The spending of those funds, however, is a ministerial/administrative function. The role an individual council member has in deciding how to spend the money allocated to him or her, within the guidelines of the Fund, is administrative in nature, and such spending decisions made within these guidelines implement the greater Council's policy to spend the Funds on those items explicitly enumerated in the budget ordinance. This limited decision making authority, if any, of each member is no different than any other County administrative personnel's ability to make decisions within the scope the Council has prescribed by ordinance. County Council has not delegated its right and responsibility to adopt a budget.

This position is consistent with South Carolina law. In South Carolina Highway Department v. Harbin, the court noted that “[a] statute which in effect reposes an absolute, unregulated, and undefined discretion in an administrative body bestows arbitrary powers and is an unlawful delegation of legislative powers.” 226 S.C. 585, 595, 86 S.E.2d 466, 471 (1955). Unlike Harbin, where the court found that no standards or limitations were placed on the administrative body, the Council has placed limitations on the ability of the Council to spend the Fund by specifically enumerating those items to which the Fund may be spent. Harbin further noted that “while the legislature may not delegate its power to make laws, in enacting a law complete in itself, it may authorize an administrative agency or board ‘to fill up the details’ by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose.” Id. (citing Davis v. Query, 209 S.C. 41, 39 S.E.2d 117 (1946) and State v. Taylor, 223 S.C. 526, 77 S.E.2d 195 (1953)). Each Council member is “filling in the details” when he or she chooses how to use the monies from the Fund.

The ordinance at issue “clearly establish[es] primary standards for carrying it out . . . [and] . . . lay[s] down an intelligible principle to which” each Council member must conform. Id. Recognizing the difficulty in the application of these principles, the South Carolina Supreme Court noted in Harbin:

that there is no fixed formula for determining the powers which must be exercised by the legislature itself and those which may be delegated to an administrative agency. The degree to which a legislative body must specify its policies and standards in order that the administrative authority granted may not be an unconstitutional delegation of its own legislative power is not capable of precise definition. ‘There are many instances where it is impossible or impracticable to lay down criteria or standards without destroying the flexibility necessary to enable the administrative officers to carry out the legislative will; especially may such a contingency arise when the discretion conferred relates to police regulations.’

Id. (citing Matz v. J. L. Curtis Cartage Co., 132 Ohio St. 271, 7 N.E.2d 220, 225 (1937)). This point was made again by the South Carolina Supreme Court in Joytime Distribs. & Amusement Co. v. State, where the Court in reviewing a legislative delegation matter, stated

this Court has held that the power to legislate cannot be delegated to private persons or corporations. See State v. Watkins, 259 S.C. 185, 191 S.E.2d 135 (1972). Although the legislature may delegate its authority to create rules and regulations to carry out a law, the legislature may not delegate its power to make the law. DeLoach v. Scheper, 188 S.C. 21, 198 S.E. 409 (1938); State ex rel. Richards v. Moorner, 152 S.C. 455, 150 S.E. 269 (1929). In discussing the distinction between making and carrying out the law, the Court in Moorner quoted J. G. Sutherland, Sutherland on Statutory Construction, § 68 (1891) for the following:

[The distinction] is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done. To the latter, no valid objection can be made.

338 S.C. 634, 643-644, 528 S.E.2d 647, 652 (1999) (citing Moorner, 152 S.C. at 479, 150 S.E. at 297 (internal citations omitted)).

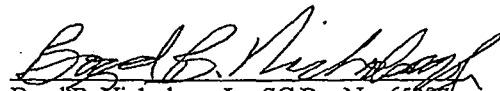
Under the present facts, the Council has merely delegated the authority to execute the law and has not delegated the authority to make the law. Thus, the Fund is a constitutional delegation of the Council's authority. Of course, all reasonable doubt must be resolved in favor of the ordinance, S.C. Constitution, Article VIII, § 17, and if a constitutional construction is possible, it should be followed. Davis v. County of Greenville, 322 S.C. 73, 470 S.E.2d 94 (1996). See also Westvaco Corp. v. South Carolina Department of Revenue, 321 S.C. 59, 476 S.E.2d 739 (1995) ("A legislative act will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond a reasonable doubt. ... A legislative act will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the Constitution."). Even the AG Opinion agrees "that a county ordinance is

entitled to a presumption of constitutionality." AG Opinion (Exhibit 1) at *4 (citing Rothchild v. Richland County Bd. of Adjustment, 309 S.C. 194, 420 S.E.2d 883, 856 (1992)). In light of this presumption of constitutional validity and the fact the ordinance does not delegate legislative powers, the ordinance is legal and does not violate the South Carolina Constitution or statutory law.

CONCLUSION

For the foregoing reasons the County respectfully submits that the Court should dismiss the Plaintiffs' claims with prejudice and grant judgment to the County.

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September 29, 2008
Greenville, South Carolina

2003 S.C. AG LEXIS 179, *

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA

[NO NUMBER IN ORIGINAL]

2003 S.C. AG LEXIS 179

November 13, 2003

CORE TERMS: county council, delegated, delegation, delegate, ordinance, discretionary, municipal, spent, governing body, expenditure, quasi-judicial, appropriation, municipality, budget, legislative power, subdelegation, dwelling, legislative authority, authorize, spending, ministerial, so-called, unlawfully, quorum, appropriated, regulations, expended, delegation of legislative power, legislative policy, school district

REQUESTBY:

[*1]

The Honorable Dean Fowler, Jr.
Florence County Treasurer
180 North Irby Street MSC-Z
Florence, South Carolina 29501

The Honorable Thomas E. Smith, Jr.
Member, Florence County Council
Post Office Box 308
Pamplico, South Carolina 29583

OPINIONBY:

Henry McMaster

OPINION:

By a letter dated July 7, 2003, **Mr. Fowler requested an opinion** of this Office as to the use of what he terms "Discretionary Funds, which have been created by the County Council of Florence County." In his letter, Mr. Fowler states that separate funds have been created for each individual district of Florence County, to be spent at the discretion of the council member for each respective district. He further indicates that the surplus funds for each district are annually carried over in the individual district's account to the next fiscal year. Mr. Fowler notes that there is collectively \$ 1.7 million dollars in funds which currently are available for the nine council districts.

In response to Mr. Fowler's July 7 letter, Councilman Smith wrote to this Office in a letter dated July 14, 2003 to clarify the situation and provide additional facts regarding the nature of the funds which Mr. Fowler referred to as "discretionary." Mr. Smith [*2] stated that the funds of the 2003-2004 budget in dispute were appropriated by the Council following "every procedural and statutory requirement, including public hearings and the required three readings." Mr. Smith informs us that the funds in question were appropriated as follows in the 2003-2004 budget:



- (1) On page 50 of the budget ordinance there is appropriated to Fund 10, Department 439 (Public Works) the sum of \$ 420,000 for road paving.
- (2) On page 108 of the budget ordinance there is appropriated to the Fund 37 (Capital Improvement) the sum of \$ 450,000 for Infrastructure Improvements.

It appears from information provided by Mr. Fowler that these appropriations were allocated equally among the nine council districts in Florence County. Mr. Smith has indicated that during the hearings no one argued or moved to eliminate these appropriations, nor was any motion made to eliminate the application of the "carry over" funds from the previous year for the same purposes in the current year. Mr. Smith states that the term "discretionary funds" is Mr. Fowler's term of reference for these funds, not the County Council's description. Moreover, it is Mr. Smith's position that the [*3] funds have been consistently spent in each of the nine districts for public purposes according to the policies and procedures of Florence County. He notes that these funds have been used in his district for "road improvements, public recreation, feasibility studies for water and sewer services, assistance to municipalities for their building or water projects, and for rural fire districts." He further states that the amounts and uses of these funds are matters of public record, subject to the Freedom of Information Act requests as well as internal and external audits.

In response to Councilman Smith's July 14 letter, Mr. Fowler wrote a letter dated July 22, 2003 which he copied to this Office. Mr. Fowler defended the use of the term "discretionary funds" in lieu of "infrastructure funds" in that the money is dedicated to each individual council district and is spent at "the will of each individual councilperson, for whatever project, for whomever, and whenever it is deemed appropriate by that council person." Accordingly, Mr. Fowler argues that the term "discretionary" is appropriate.

Mr. Fowler has also provided a September 3 newspaper article dealing with these funds. This article [*4] describes "discretionary funds" as being used for municipalities, charities, festivals, beautification projects, baseball teams, schools, associations as well as other entities.

Based upon the information provided, the primary question raised in this dispute can be summarized as follows:

Does the County Council of Florence County possess the legal authority to structure particular appropriations of public funds where individual council members are given discretion as to how the funds are specifically expended within their respective council districts?

Law / Analysis

It should be noted at the outset that a county ordinance is entitled to a presumption of constitutionality. See, Rothchild v. Richland County Bd. of Adjustment, 309 S.C. 194, 420 S.E.2d 883, 856 (1992). Accordingly, while this Office may comment upon constitutional problems, only a court may declare an ordinance void as in conflict with the Constitution.

On the other hand, we have previously stated that

generally, it is recognized that unless a statute specifically provides otherwise, legislative powers vested in the governing body of a municipality cannot [*5] be delegated to administrative officials of the municipality. However, purely administrative, ministerial, or executive powers may be delegated by a municipal governing body to the appropriate officer.

Op. S.C. Atty. Gen., October 8, 1985. And, in an opinion dated April 4, 1996, we recognized that "strictly governmental powers ... cannot be conferred upon a corporation or individual."

Moreover, in another opinion, dated March 6, 1980, we recognized that "it has long been the law in this State that no municipality may by contract part with the authority delegated it by the State to exercise the police power." Likewise, in Op. S.C. Atty. Gen., January 7, 1985, we stated that while "duties which are purely ministerial and executive and do not involve the exercise of discretion may be delegated" by a municipal corporation or a county governing board to an agent, employee or servant, by contrast, "powers involving the exercise of judgment and discretion are in the nature of public trusts and cannot be delegated" Quoting 20 C.J.S., Counties, § 89. As was noted in that opinion, "the law has always recognized and emphasized the distinction between instances in which [*6] a discretion must be exercised by the officer or department or governing body in which the power is vested, and the performance of merely ministerial duties by subordinates or agents." Citing, McQuillin, Municipal Corporations, § 10.41.

These principles have also been adopted by our own Supreme Court. In G. Curtis Martin Investment Trust v. Clay, 274 S.C. 608, 266 S.E.2d 82 (1980), for example, the Court recited the rule that "[a] municipal corporation or other corporate political entity created by state law, to which police power has been delegated, may not divest itself of such power by contract or otherwise." 266 S.E.2d at 85. See also, City of Bft. v. Bft.-Jasper County Water and Sewer Auth., 325 S.C. 174, 480 S.E.2d 728 (1997) [contested clause in contract represents an unlawful delegation of governmental power by water authority]; see also, Op. S.C. Atty. Gen., Op. No. 85-81 (August 8, 1985) [administrative body cannot delegate quasi-judicial, discretionary functions].

In this same regard, it is well established that a municipal council [*7] may not delegate discretionary duties to individual members of council. It has thus been recognized as the governing rule that [a] municipal governing body cannot delegate to a municipal officer or even to one of its own committees the power to decide legislative matters properly resting in the judgment and discretion of that body or to one member of the governing body. Thus, acts by individual members of a public body cannot bind the municipality unless officially sanctioned in accordance with a statute. The members of the governing body are chosen by the people to represent the municipality and they are charged with a public trust and the faithful performance of their duties and the public is entitled to the judgment and discretion of each member although the governing body may refer matters coming before it to a committee for examination and fact-finding.

56 Am.Jur.2d, Municipal Corporations, § 134^{Shepardize}.

In addition, as we emphasized in Op. S.C. Atty. Gen., Op. No. 84-111 (September 6,

1984), "it is a well established rule in this State, as well as other States, that where the Legislature has committed a matter [*8] to a board, bureau or commission on other administrative agency, such ... must act thereon as a body at a stated meeting, or one properly called, and of which all the members of such board have notice, or of which they are given an opportunity to attend Agreement by the individual members acting separately, and not as a body ... is not sufficient." See, Gaskin v. Jones, 198 S.C. 509, 18 S.E.2d 454 (1942) [in the absence of statute or other controlling provision, the common law rule that a majority of a whole body is necessary applies]. In Abbeyville v. McMillan, 52 S.C. 60, 72 (1897), our Supreme Court quoted with approval the language used by the United States Supreme Court in Cooley v. O'Connor, 12 Wall. 391 at 398 (1871):

It is true that when an authority is given jointly to several persons, they must generally act jointly or their acts are invalid ... The commissioners were public agents, clothed with public authority. They were created to perform a governmental function, and it is a familiar principle that an authority given to several for public purposes may be [*9] executed by a majority of their number.

Several cases support the foregoing legal principles. For example, in Northern Boiler Co. v. David, 105 N.E.2d 451 (Ohio 1952), *affd.*, 106 N.E.2d 620 (1952) the Ohio Court held that an ordinance which provided that no permit shall be granted to the Director of Public Service to cut the curb within any ward of the city over the objection of the council member for that ward was unconstitutional. Referencing the general rule cited above, the Court found that such ordinance unlawfully delegated the legislative power of the municipal council to a single member thereof: there is no doubt that the council of a municipal corporation is authorized ... to regulate the streets and highways of such municipal corporation. But in exercising that right they cannot act in an arbitrary manner. So, in delegating the right to grant or effectively prevent a property owner to cut the curb as a necessary step in constructing a driveway to provide ingress and egress to a public highway from such abutting property, the rule or policy in determining the basis on which such permit will be granted or [*10] withheld must be determined by the Council. Such a matter is legislative in character. The ordinance under consideration, as above indicated, fails to provide such legislative policy and in delegating the right to one of its members, to prevent a property owner of cutting the curb, so that ingress or egress may be provided from his property to the public thoroughfare upon which it abuts, for whatever reasons he deems sufficient, without spelling out the legislative policy with regard thereto, constitutes the delegation of legislative authority to such councilman, and such ordinance is, for that reason, unconstitutional and of no legal effect.

105 N.E.2d at 453. (emphasis added).

On appeal, the Supreme Court of Ohio noted that "an uncontrolled discretion has invariably been held to be a delegation of legislative power." 106 N.E.2d at 623. The Court rejected the contention that appeal could ultimately be had to the council for review and that, therefore, no unlawful delegation was present. Referencing 9 McQuillin, Municipal Corporations, § 26.203, the Court upheld the lower court's ruling that the ordinance in question [*11] unlawfully delegated authority to the single member of council, observing that "an ordinance conferring upon officials

unrestricted discretion in the granting or refusal of building permits is a denial both of equal protection and due process of law." 106 N.E.2d at 624.

Likewise, our own courts have generally not been supportive of a subdelegation of discretionary functions to individual members of a public body or to agents or employees of that body. In Pettiford v. S.C. State Bd. of Ed., 218 S.C. 322, 62 S.E.2d 780 (1950), our Supreme Court held that an administrative board or body, when acting in a quasi-judicial capacity, must itself consider all the evidence before rendering a decision. In the Supreme Court's opinion, while the Board of Education could delegate to Board members the authority to take testimony and hear witnesses, the Board could not subdelegate its decision-making authority.

Moreover, in Dawson v. State Law Enforcement Division, 304 S.C. 59, 403 S.E.2d 124 (1991), the Supreme Court articulated the following reasoning: we further conclude the [*12] Grievance Committee, as the final administrative authority, may not delegate its role as final decision-maker to the Personnel Director. See Bradley v. State Human Affairs Comm'n., 293 S.C. 376, 360 S.E.2d 537 (Ct. App. 1987). Once an appeal is forwarded to the Grievance Committee, the Committee has exclusive jurisdiction to decide all issues.

403 S.E.2d at 125.

In Bradley, the Court of Appeals held that the State Employee Grievance Committee chairperson could not delegate quasi-judicial powers of the Committee to the Committee's attorney, notwithstanding that a specific statute provided that the attorney could assist the Committee in preparation of its findings of fact, statements of policy and conclusions of law. The Court of Appeals concluded:

[a] reading of the statute makes it clear that the job of a committee attorney is only advisory to the committee. (Not all committee members are lawyers and as such are not familiar with procedural and evidentiary matters.) However, the role of decision maker cannot be delegated. Kerr-McGee Nuclear Corporation v. New Mexico Environmental Improvement Board, 97 N.M. 88, 97, 637 P.2d 38, 47 (1981) [*13] (administrative bodies cannot delegate power, authority and functions which under the law may be exercised only by them, which are quasi-judicial in character or which require the exercise of judgment). Cf. South Carolina Department of Social Services v. Bacot, 280 S.C. 485, 489, 313 S.E.2d 45, 48 (Ct. App. 1984) (family court's duty to decide issue of paternity cannot be delegated to expert or anyone else). Here, the committee chairman took it upon himself to delegate decision making to the attorney. This was error, 360 S.E.2d at 539....

In addition, Carll v. South Carolina Jobs-Economic Development Authority (JEDA), 284 S.C. 438, 327 S.E.2d 331 (1985) is instructive. In Carll, it was contended that the Act creating JEDA constituted an unlawful delegation of legislative power. The Court, rejecting the argument, analyzed the Act as follows:

according to the provisions of the Act the Authority may delegate the implementation of the loan programs to lending institutions, but retains ultimate responsibility for the programs through regulations [*14] and contractual agreements with the institutions, and the Authority must provide proper oversight for implementation of the programs. Each loan made by the lending institution must be to someone in the beneficiary class and must comply with all of the Authority's regulations. Further, the

lending institution must submit evidence satisfactory to the Authority that all loans satisfy the conditions and regulations of the Authority.

A careful review of these provisions shows the Authority maintains final control over the implementation and management of loan programs. Given the Authority's control over and involvement in the implementation of these programs, the Authority's power to delegate ministerial responsibility by contract pursuant to the Act and the Authority's regulations constitutes a constitutionally permissible delegation.

327 S.E.2d at 336-337. (emphasis added).

The previous opinions of this Office are also in accord with the above-referenced South Carolina court decisions. In Op. Atty. Gen., 89-45 (April 13, 1989), the question addressed was whether the administrative functions of a town's water and sewer department [*15] could be lawfully delegated to a single commissioner of public works. In concluding that such subdelegation was not authorized we stated:

the general law, applicable in this situation, is that authority vested in a board or commission for public purposes may be exercised by a majority of the members if all have had notice and opportunity to act and a quorum, or the number fixed by statute, are present. The presence and vote of a quorum is necessary, and the action of less than a quorum of a public body is void. 1 Am.Jur.2d Administrative Law Sec. 196. Unless otherwise provided by statute, the authority of a commission may not be exercised by a single member of such body, or less than a majority. 73 C.J.S. Public Administrative Law and Procedure Sec. 20. Therefore, the response to your question is that the elected commissioner has no individual authority to single-handedly make decisions concerning direction and control of the water and sewer department. Instead, all such decisions must be made by a majority vote of a quorum of the commissioners of public works, except where the Town ordinance provides otherwise. See [*16] also, Pettiford v. S.C. State Board of Education, supra, as to what constitutes an unlawful delegation of power. (emphasis added).

And in an Opinion, dated April 6, 1989, we addressed the issue of the Workers' Compensation Commissioners' authority to delegate the approval of settlement agreements. We referenced previous opinions, dated August 2, 1985 and December 1, 1986. In the April 6, 1989 Opinion, we stated:

we believe that the August 2, 1985, Opinion made clear that the approval of workers' compensation settlements is a quasi-judicial function involving an exercise of discretion by an official who maintains quasi-judicial power under the Compensation Act and is non-delegable in the absence of express statutory authority. In the event that any doubt remains, I reference a recent State court decision [which recognized that] ... administrative bodies cannot delegate power, authority and functions which under the law may be exercised only by them, which are quasi-judicial in character or which require the exercise of judgement ... Bradley v. State Human Affairs Comm., 296 S.C. 376, 360 S.E.2d 537, 539 (S.C. App. 1987). [*17]

Furthermore, in an Opinion dated August 25, 1983, we said that "it would appear, then, that the Director of SLED has the authority to delegate the responsibilities for conducting hearing to a separate hearing officer so long as the final decision on the matter is made by him."

Also pertinent to the issue here is the case of Gunter v. Blanton, 259 S.C. 436, 192 S.E.2d 473 (1972). In Gunter, our Supreme Court struck down as unconstitutional a statute which delegated to the county legislative delegation the authority to approve or disapprove any tax increase adopted by the board of trustees of the school district. The Court's reasoning is pertinent to the present situation. Concluding that the General Assembly possessed no constitutional authority to delegate the approval or disapproval of tax increases to the delegation, the Gunter Court's reasoning may be summarized as follows:

under Act No. 685, the Board of Trustees was granted the general power to levy taxes for school purposes in the district. After conferring this power on the Board, the Legislature passed Act No. 542 which attempted to amend the previous Act by granting [*18] to the Cherokee County Legislative Delegation the authority to approve or disapprove any tax increase adopted by the Board. This in effect, constituted the County Legislative Delegation a committee of the Legislature to determine not only when a tax increase was proper but also to take such action with regard to the increase as that committee might deem proper.

That the determination of the amount of the tax levy in the school district may be a legislative function delegable to the corporate authorities of the School District under Article X, Section 5 of the Constitution is beside the point. The Act does not and cannot authorize the members of the delegation to participate in this determination as legislators, for they may exercise legislative power only as members of the General Assembly. (emphasis added).

192 S.E.2d at 474.

We turn now to the application of the foregoing principles to the so-called "discretionary fund" presently being used in Florence County. It appears that the principal dispute concerning these funds surrounds the fact that the funds are placed in separate accounts, are expended at the virtually uncontrolled discretion [*19] of each individual member of Florence County Council, and may be carried forward each year. Council members are apparently authorized to expend these funds with virtually absolute discretion so long as they are expended for the general purposes established by county council as part of the appropriations process, i.e. for road paving or infrastructure improvement. n1

n1 There is evidently some dispute as to whether all expenditures are for a public purpose, however. We have been provided a news article appearing in the News Journal, dated September 3, 2003 which presents certain information that some expenditures may have been for private purposes. An opinion of the Attorney General cannot determine factual disputes. See, Op. S.C. Atty. Gen, December 12, 1983. Thus, we make no conclusion regarding whether or not all expenditures from this fund have been for a public purpose.

However, the central problem here is the redelegation or subdelegation by Florence County Council to each individual member of Council to determine in that member's discretion how his or her share of the funds appropriated are to be spent. In our opinion, a court would likely conclude that such discretionary [*20] decisions may not be delegated to individual members of county council.

Courts have held that one of the most fundamental legislative powers bestowed upon a municipal council is the spending power. Vermont Dept. of Public Service v. Massachusetts Municipal Wholesale Electric Co., 151 Vt. 73, 558 A.2d 215, 220 (1988). Moreover, as was stated in Syrte Building, Inc. v. City of Syracuse, 78 Misc. 780, 358 N.Y.S.2d 627, 630 (1974) ^{Shepardize} "where the exercise of judgment and discretion and the power to burden the public treasury have been so vested by the Legislature, they may not be delegated wholesale."

In this same regard, our own Supreme Court has determined that the Legislature may not delegate authority to members of the legislative delegations to determine how so-called "C" funds may be spent in the county. Tucker v. South Carolina Dept. of Highways and Public Transportation, 309 S.C. 395, 424 S.E.2d 468 (1992). Likewise, the Court has held that the delegation of the spending power to a committee made up of members of the General Assembly unlawfully [*21] delegated legislative power to a committee of the Legislature, State ex rel. McLeod v. McInnis, 278 S.C. 307, 295 S.E.2d 633 (1982). While the express rationale of the Court in Tucker and McInnis is that the delegation of the power to make the expenditures constituted a violation of the separation of powers requirements of Article I, § 8 of the State Constitution, these cases are also instructive with respect to the situation at hand. The decisions also stand for the proposition that legislative power resides in the hands of the General Assembly and may not be delegated to a committee of the Legislature. McInnis, supra. n2 Similarly, the legislative authority bestowed upon county council to determine how taxpayers' monies are spent may not be subdelegated to individual members of county council.

n2 The constitutional principle of separation of powers applicable to state government by Article I, § 8 of the Constitution has been held inapplicable to local political subdivisions of the State. Gaud v. Walker, 214 S.C. 451, 53 S.E.2d 316 (1949). County Councils typically exercise the powers of all three branches of government. See, Op. S.C. Atty. Gen., September 10, 1973. Nevertheless, the legislative and discretionary decision-making authority may not be delegated. [*22]

In an opinion dated January 11, 1985, we analyzed the role of the county administrator and county council in the budget process. We emphasized in that opinion the broad discretion which county council possesses in the spending and appropriation of county funds. We summarized the process this way:

Article X, Section 7(b) of the Constitution of South Carolina mandates that a county, as a political subdivision, "prepare and maintain annual budgets which provide for a sufficient income to meet its estimated expenses for each year Section 4-9-140, Code of Laws of South Carolina ... provides additionally, in part:

County Council shall adopt annually and prior to the beginning of the fiscal year operating and capital budgets for the operation of county government ...

Clearly, the ultimate responsibility for adopting and maintaining the annual budgets and insuring that adequate revenue is generated to meet expenses lies with ... County Council.

In another opinion dated March 31, 1997, we recognized that "county council has 'general authority over the county treasury.'" Thus, an agreement whereby the Sheriff's Department might sell certain weapons with the proceeds going directly [*23] to the Sheriff's Office could not restrict county council in the appropriations and spending process. And in Op. S.C. Atty. Gen., October 22, 1996, we noted that "it goes without saying that the decision to spend money by a county council involves considerable discretion." Citing, State ex rel. Snyder v. State Controlling Board, 464 N.E.2d 617 (Ohio 1983). Finally, in Op. S.C. Atty. Gen., Op. No. 90-8 (January 17, 1990), we emphasized that any expenditure of proceeds by a law enforcement agency for an item that would have a recurring expense "must be approved by the governing body before the purchase."

Moreover, in the January 17, 1990 opinion we referenced § 4-9-30(6), further concluding that "only county council" could properly allocate county funds (gambling proceeds) to pay a county employee's moving expenses. In that same vein, an opinion dated July 20, 1981 found that Aiken County Council is not authorized to allocate monies "from the county general fund for distribution and disbursement by individual members" of County Council.

Just as the latter opinion suggests, there appears to be no statute which authorizes a county council to delegate [*24] spending authority to its individual members. While § 4-9-100 authorizes additional administrative duties to be delegated to the chairman and to receive additional compensation therefor, no state law appears to authorize subdelegation to individual Council members such broad discretion as is present here to determine how the funds in question are to be spent. The fact that the General Assembly authorized subdelegation to a specific council member (chairman) in the limited circumstances defined by § 4-9-100 (administrative duties) strongly suggests that the subdelegation of authority to individual council members to expend funds from the so-called "discretionary fund" is not present. Absent such statutory authority being expressly provided by the General Assembly, it is our opinion that a court would conclude, just as the July 20, 1981 opinion so concluded, that this authority is lacking.

It is true that § 4-9-30(6) authorizes county councils to establish such agencies and departments as are necessary and proper. Thus, it could perhaps be argued that the Florence County system allowing individual members of county council to possess the sole discretion to determine how these county [*25] funds are spent is no different from the creation of county agencies with the accompanying discretion necessary to implement the County Council's appropriations.

This argument, in our judgment, fails for the simple reason that Florence County Council may not delegate legislative or such broad discretionary power whether it be to an agency of the county or to individual members of Council itself. McInnis, supra. State law requires county council as a body, not individual members thereof, to

determine how county funds are expended. Moreover, as we recognized in *Op. S.C. Atty. Gen.*, June 24, 1997 a statute (or ordinance) "which in effect reposes an absolute, unregulated and undefined discretion in another body bestows arbitrary powers and is an unlawful delegation of legislative powers." Citing, South Carolina State Highway Dept. v. Harbin, 226 S.C. 585, 86 S.E.2d 466 (1955); State v. Watkins, 259 S.C. 185, 191 S.E.2d 135 (1972); Schryver v. Schirmer, 171 N.W.2d 634 (S.D. 1969). And, as the Supreme Court recently [*26] stressed in Condon v. Hodges, 349 S.C. 232, 562 S.E.2d 623 (2002), a law or enactment must "declare [] a legislative policy, establish [] primary standards for carrying it out, it lay [] down an intelligible principle to which the administrative officer must conform, with a proper regard for the protection of the public interests" See also, Bauer v. S.C. State Housing Authority, 271 S.C. 219, 246 S.E.2d 869 (1978); Cole v. Manning, 240 S.C. 160, 125 S.E.2d 621 (1962).

In Richards v. City of Columbia, 227 S.C. 538, 88 S.E.2d 683 (1955), the Supreme Court applied this test to a municipal ordinance, declaring that such ordinance unlawfully delegated legislative power. There, consistent with an Act of the General Assembly, the City Council of Columbia delegated to the Commission for Urban Rehabilitation and/or the Rehabilitation Director the authority to determine whether a dwelling "is unfit for human habitation if conditions existing in such dwelling or dwelling unit are dangerous or injurious to the [*27] health, safety or morals of the occupants of such dwelling or dwelling unit, the occupants of neighboring dwellings, or other residents of the City" Certain minimal conditions were specified in the ordinance to make a dwelling fit for human habitation. Other conditions were enumerated which would make a dwelling unfit. Nevertheless, the Court struck down this portion of the ordinance as constituting an unlawful delegation of legislative authority. The Court reasoned as follows:
the sixth point is that the statute and ordinance contain an unconstitutional delegation of legislative authority. The recent case of *South Carolina State Highway Department v. Harbin*... sustains appellants with respect to the portions of section 9 of the ordinance which are italicized in the quotation of it hereinabove and those provisions must be stricken down as unconstitutional. They do not contain a sufficiently definite standard or yardstick, just as in the *Harbin* case it was held that the attempted delegation of authority to the Highway Department to suspend or revoke a driver's license for cause satisfactory to it was invalid.

88 S.E.2d at 691. [*28] In *Harbin*, the Court, in striking down the statute in question, noted that "... In the grant of this authority [to Highway Department to revoke or suspend driver's license for cause satisfactory to the Department], there is no standard except the personal judgment of the administrative officers of the Department." 226 S.C. at 596.

Likewise, the only apparent standard here regarding the expenditure of the funds in question by individual members of Florence County Council is that such funds be for road paving or infrastructure improvements. Otherwise, such expenditures lie within the sole discretion or the "personal judgment" of the member of Florence County Council. *Harbin, supra*. In our opinion, based upon the foregoing authorities, a court would likely determine that such constitutes an unconstitutional delegation of the legislative power.

Conclusion

Of course, the Florence County Ordinance creating the so-called "discretionary fund" would be entitled to a presumption of validity. Only a court could declare such ordinance to be unconstitutional. However, it is our opinion that the [*29] delegation of discretion to individual members of County Council to determine how such funds may be spent in their district constitutes an unlawful delegation of legislative power. Rather than this being a delegation of mere administrative or ministerial functions, Florence County Council has delegated legislative authority without the necessary governing standards or guidelines to avoid serious constitutional questions regarding these expenditures. As our Supreme Court recognized in *Harbin v. S.C. Highway Dept.*, supra, "an absolute, unregulated, and undefined discretion in an administrative body bestows arbitrary power and is an unlawful delegation of legislative powers."

In our opinion, the so-called "discretionary fund" most likely falls into this category. A previous opinion of this Office concluded that the authority to make distribution of funds could not be delegated by County Council to individual council members. We reaffirm this conclusion today. Accordingly, in our opinion, a court would likely conclude that the delegation of discretion to individual members of county council to determine how these funds are spent is unconstitutional.

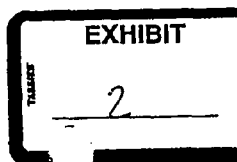
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GREENVILLE COUNTY
BUDGET FILE
05/09/2007

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FISCAL YEAR: 2009
FUND: 01 GENERAL FUND
DEPARTMENT: 01 LEGISLATIVE & ADMIN. SERVICES
DIVISION: 40300 COUNTY ADMINISTRATOR
PRIOR YEAR

	BASE BUDGET	EXPANSION	TOT REQUESTED	ADJUSTMENTS	TOT RECOMEND
SALARIES	378,436		378,436	61,800	440,236
11101 SALARIES- FULL TIME					
11102 SALARIES- PART TIME					
11103 SALARIES- FT OVERTIME					
11104 SALARIES- PT OVERTIME	28,950		28,950	4,728	33,678
11110 FICA					
11111 POLICE RETIREMENT	31,638		31,638	5,377	37,015
11112 SC RETIREMENT	1,232		1,232	308	1,540
11113 DENTAL INSURANCE	375		375	125	500
11114 LIFE INSURANCE	1,950		1,950	650	2,600
11115 WORKERS COMPENSATION	560		560	140	700
11116 UNEMPLOYMENT INSURANC	31,624		31,624	7,906	39,530
11127 HEALTH INSURANCE	474,765		474,765	81,034	555,799
SALARIES					
OPERATING EXP	1,835		1,835		1,835
12001 COPY EXPENSE	414		414		414
12003 PRINTING & BINDING	5,381		5,381		5,381
12009 MEMBERSHIPS & DUES	518		518		518
12010 PUBLICATIONS	2,094		2,094		2,094
12011 GAS/OIL/LUBE	2,672		2,672		2,672
12029 OPERATIONAL SUPPORT	2,284		2,284		2,284
12201 GENERAL TRANSPORTATIO	8,498		8,498		8,498
12202 TRAINING/TRAVEL/CONFE	2,070		2,070		2,070
12221 OFFICE SUPPLIES					
12253 AUTO REPAIRS	2,539		2,539		2,539
12271 TECHNICAL/PROFESSIONA	28,305		28,305		28,305
OPERATING EXP					
CONTRACTUAL					
13373 OPERATING LEASE AGREE					
CONTRACTUAL	503,070		503,070	81,034	584,104
DIVISION TOT					



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GREENVILLE COUNTY
BUDGET FILE
05/09/2007

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FISCAL YEAR: 2009
FUND: 01 GENERAL FUND
DEPARTMENT: 01 LEGISLATIVE & ADMIN. SERVICES
DIVISION: 40600 COUNTY ATTORNEY
PRIOR YEAR

	BASE BUDGET	EXPANSION	TOT REQUESTED	ADJUSTMENTS	TOT RECOMEND
SALARIES					
11101 SALARIES- FULL TIME	375,562		375,562	72,100	447,662
11102 SALARIES- PART TIME					
11103 SALARIES- FT OVERTIME					
11104 SALARIES- PT OVERTIME					
11110 FICA	28,731		28,731	5,516	34,247
11111 POLICE RETIREMENT					
11112 SC RETIREMENT	32,674		32,674	6,273	38,947
11113 DENTAL INSURANCE	1,540		1,540	308	1,848
11114 LIFE INSURANCE	625		625	125	750
11115 WORKERS COMPENSATION	3,250		3,250	650	3,900
11116 UNEMPLOYMENT INSURANC	700		700	140	840
11127 HEALTH INSURANCE	39,530		39,530	7,906	47,436
SALARIES	482,612		482,612	93,018	575,630
OPERATING EXP					
12001 COPY EXPENSE	300		300		300
12003 PRINTING & BINDING	200		200		200
12007 ADVERTISING	100		100		100
12009 MEMBERSHIPS & DUES	3,000		3,000		3,000
12010 PUBLICATIONS	12,000		12,000		12,000
12201 GENERAL TRANSPORTATIO	1,000		1,000		1,000
12202 TRAINING/TRAVEL/CONFE	15,000		15,000		15,000
12221 OFFICE SUPPLIES	4,000		4,000		4,000
12271 TECHNICAL/PROFESSIONA	22,944	17,056	40,000	17,056-	22,944
OPERATING EXP	58,544	17,056	75,600	17,056-	58,544
CONTRACTUAL					
13370 SERVICE CONTRACTUAL A					
CONTRACTUAL					
CAPITAL OUTLAY					
14454 CAPITAL EQUIPMENT					
CAPITAL OUTLAY					
DIVISION TOT	541,156	17,056	558,212	75,962	634,174

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GREENVILLE COUNTY
BUDGET FILE
05/09/2007

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FISCAL YEAR: 2009
FUND: 01 GENERAL FUND
DEPARTMENT: 01 LEGISLATIVE & ADMIN. SERVICES
DIVISION: 41500 COUNTY COUNCIL
PRIOR YEAR

	BASE BUDGET	EXPANSION	TOT REQUESTED	ADJUSTMENTS	TOT RECOMMEND
SALARIES	432,226		432,226		432,226
11101 SALARIES- FULL TIME	20,526		20,526		20,526
11102 SALARIES- PART TIME					
11103 SALARIES- FT OVERTIME					
11104 SALARIES- PT OVERTIME	34,636		34,636		34,636
11110 FICA					
11111 POLICE RETIREMENT	39,389		39,389		39,389
11112 SC RETIREMENT	4,866		4,866		4,866
11113 DENTAL INSURANCE	1,975		1,975		1,975
11114 LIFE INSURANCE	10,270		10,270		10,270
11115 WORKERS COMPENSATION	2,240		2,240		2,240
11116 UNEMPLOYMENT INSURANC	118,590		118,590		118,590
11127 HEALTH INSURANCE	664,718		664,718		664,718
SALARIES					
OPERATING EXP	1,024		1,024		1,024
12001 COPY EXPENSE	49		49		49
12002 POSTAGE	5,325		5,325		5,325
12003 PRINTING & BINDING	1,521		1,521		1,521
12004 INCENTIVES & AWARDS	3,014		3,014		3,014
12007 ADVERTISING	58,444		58,444		58,444
12009 MEMBERSHIPS & DUES	503		503		503
12010 PUBLICATIONS	6,065	5,000	11,065	5,000-	6,065
12029 OPERATIONAL SUPPORT	1,979		1,979		1,979
12201 GENERAL TRANSPORTATIO	2,987		2,987	5,000	7,987
12202 TRAINING/TRAVEL/CONFE	1,587		1,587		1,587
12221 OFFICE SUPPLIES	1,205		1,205		1,205
12228 PHOTO/MICROFILM SUPPL	21,828		21,828		21,828
12260 COUNCIL DIST. EXP.DIS	21,828		21,828		21,828
12261 COUNCIL DIST. EXP.DIS	21,828		21,828		21,828
12262 COUNCIL DIST. EXP.DIS	21,828		21,828		21,828
12263 COUNCIL DIST. EXP.DIS	21,828		21,828		21,828
12264 COUNCIL DIST. EXP.DIS	21,828		21,828		21,828
12265 COUNCIL DIST. EXP.DIS	21,828		21,828		21,828
12266 COUNCIL DIST. EXP.DIS	21,828		21,828		21,828
12267 COUNCIL DIST. EXP.DIS	21,828		21,828		21,828
12268 COUNCIL DIST. EXP.DIS	24,251		24,251		24,251
12269 COUNCIL DIST. EXP.DIS	143,449		143,449	80,250-	63,199
12271 TECHNICAL/PROFESSIONA	26,946		26,946		26,946
12284 COUNCIL DIST. EXP.DIS	21,828		21,828		21,828
12286 COUNCIL DIST. EXP.DIS	496,629	5,000	501,629	80,250-	421,379
OPERATING EXP					
CONTRACTUAL	7,053		7,053		7,053
13370 SERVICE CONTRACTUAL A					
13373 OPERATING LEASE AGREE	7,053		7,053		7,053
CONTRACTUAL	1,168,400	5,000	1,173,400	80,250-	1,093,150
DIVISION TOT					

PROG:FIBR001C

GREENVILLE COUNTY
BUDGET FILE
05/09/2007

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FISCAL YEAR: 2009

FUND: 01 GENERAL FUND

DEPARTMENT: 01 LEGISLATIVE & ADMIN. SERVICES

DEPARTMENT TOT

2,212,626

22,056

2,234,682

76,746

2,311,428

Account Name

Council District Expense

Description

Funds for a Council Member to address:

- Cost of general business supplies such as pens, paper, stationary, business cards, postage for district mailings, and ink cartridges;
- Cost of special documents, incentives and awards given either to the public or county employees for outstanding service or special recognition and the cost of framing by outside vendors of special documents;
- Cost of periodicals, professional journals, and reference books;
- Cost of per diem and mileage involved in the conduct of county business;
- Costs associated with community functions, conferences and training seminars such as food, gas, mileage, automobile rental, accommodations, tuition, and materials;
- Costs associated with special, non recurring community requests for infrastructure purposes such as:
 - Flooding
 - Roads
 - Lights
 - Sewer and drainage
 - Public buildings and grounds
 - Infrastructure related studies
- Contributions to local governments in Greenville County for community projects;
- In a fiscal year that a general election is to be held, funds will be made available to council members running contested races or not seeking re-election in two semi-annual allotments: 1) one-half of the appropriation on July 1; and 2) the remaining one-half of the appropriation on January 1;
- Funds may be encumbered for viable projects only and will lapse at the end of a council member's term.

EXHIBIT

3

COUNTY COUNCIL

Greenville County Council has twelve members, each elected in single member district contests for four year staggered terms. County Council meets the 1st and 3rd Tuesday of each month in Council Chambers.

Summary of Services

Services include, but are not limited to, holding public meetings to consider ordinances, resolutions, bids, contracts, zoning changes, road maintenance, and to review any and all matters relating to County business; levying taxes and raising/lowering tax millage; adopting an annual County budget; setting policies and procedures; classifying and storing legislative materials for reference and review; responding to citizens' questions, requests, and need for information.

Budget Highlights

The two-year budget for the County Council Office for FY2008 and FY2009 is \$2,192,957 and is 0.7% greater than the previous two-year budget. Increases in the budget can be attributed to the inclusion of merit adjustments to salaries and funding for health insurance costs as well as budget enhancements noted below. The FY2008 and FY2009 budgets allow for 15.80 full-time equivalent positions. Budget enhancements for the County Council include:

- ☐ Additional operating funds for SCAC and NACo memberships
- ☐ Additional operating funds for lobbyist
- ☐ Elimination of public relations contractual funds

COUNTY COUNCIL	FY2006 ACTUAL	FY2007 PROJECTION	FY2008 BUDGET	FY2009 BUDGET	TOTAL BUDGET
PERSONNEL SERVICES	\$ 579,715	\$ 607,654	\$ 649,375	\$ 664,718	\$ 1,314,093
OPERATING EXPENSES	538,575	496,629	443,379	421,379	864,758
CONTRACTUAL CHARGES	3,753	6,441	7,053	7,053	14,106
CAPITAL OUTLAY					
TOTALS	\$ 1,122,043	\$ 1,110,724	\$ 1,099,807	\$ 1,093,150	\$ 2,192,957
POSITION SUMMARY	16.0	16.0	16.0	16.0	
FTE SUMMARY	15.8	15.8	15.8	15.8	

FY2006/FY2007 Accomplishments

- ☐ Completed scanning and imaging project for Council items
- ☐ Added the capability to County webpage to electronically submit applications for Boards and Commissions

FY2008/FY2009 Key Action Steps

- ☐ Adopt fair and competent legislation for the citizens of Greenville County
- ☐ Intercede between Council and the citizens concerning information and requests