

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Withdrawn, Substituted, and Refiled January 23, 2013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 II

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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 II

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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

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Now come the Defendants, by their undersigned attorney, and move the Court for Summary Judgment pursuant to SCRPC 56. There are no genuine issues of material fact, and Defendants are entitled to judgment as a matter of law.

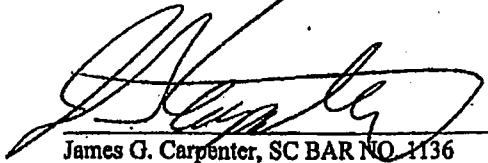
Plaintiffs' Complaint alleges that County Council's delegation of legislative power to an individual member is unconstitutional and illegal as described in the Complaint and attached Memorandum of Law in Support, and as explained in a South Carolina Attorney General opinion dated November 13, 2003.

WHEREFORE, Plaintiffs pray the Court for Summary Judgment,

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;

plus costs, attorneys' fees, and such other and further relief as the Court deems
just and proper.

Respectfully submitted
THE CARPENTER LAW FIRM, PC

A handwritten signature in black ink, appearing to read 'J. Carpenter', is written over a horizontal line.

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STATE OF SOUTH CAROLINA

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IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-23-4637

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Now come the plaintiffs, by their undersigned attorneys, and submit this Memorandum of
Law in Support of Motion for Summary Judgment.

BACKGROUND AND STATEMENT OF FACTS

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); *Cornellus 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. 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). This Court has jurisdiction pursuant to S.C. Code § 15-53-10, et seq., known as the Uniform Declaratory Judgment Act.

For at least ten years, Defendants have authorized and operated a fund variously known as the "Council District Expense Fund," "Council Reserves," "Discretionary Funds," or the "Slush Fund."

In 1998, Plaintiff Edward D. Sloan, Jr. brought an action challenging the "County Council Reserves," better known as the "County's Slush Fund of discretionary spending" by individual Council members. At the hearing for temporary restraining order and preliminary injunction, the Court considered (1) Mr. Sloan's challenge of the expenditure of Council Reserves to a tenant's association for computers in violation of Council Guidelines governing the Reserves; (2) whether some of Council members' donations to religious non-profit groups violated the First Amendment's Establishment Clause; and (3) whether the payment of Council members' Rotary dues was money that had been spent for a "public purpose" as required by the

S.C. Code. Mr. Sloan also challenged Council members' voting to circumvent the guidelines that they had established to govern expenditures from the funds.

The Court ruled that the Fund did not violate the First Amendment Establishment Clause; that claims related to the expenditures already made were moot (the public interest exception for mootness had not yet been ruled upon by the S.C. Supreme Court); and that County Council was enjoined from voting to circumvent its own guidelines (Order for Preliminary Injunction Exhibit A). The Court ruled that the Rotary Club dues were not paid from Council Reserves and dismissed the claims related to that issue. By separate order, also issued February 23, 1998, the Court ruled that the expenditure for the computers for a tenants' association required a temporary injunction barring the expenditure (Exhibit B).

At the hearing for permanent injunction on the computers and declaratory judgment that circumventing its own guidelines is illegal May 4, 1998, the Court made the preliminary injunction permanent and awarded attorneys' fees, but required that Mr. Sloan file a separate suit to challenge violations of the County Guidelines by other expenditures not addressed in the initial complaint.

A month later, June 4, 1998, the Court considered Mr. Sloan's Motion for Temporary Restraining Order and Preliminary Injunction challenging those new expenditures: (1) money to Slater Marietta Health & Human Services for renovations to a privately owned building which housed public agencies and (2) \$5000 for a night watchman's patrol car. By order issued June 15, 1998, the Court ruled that the issue regarding the expenditure for the renovations of the privately owned building was moot because the money had already been spent (six days after the complaint was filed but before the Motion for Temporary Restraining Order could be heard) (Order for Preliminary Injunction Exhibit C). (As earlier, the S.C. Supreme Court had not yet

ruled upon the public interest exception to the mootness doctrine.) The Court ruled that the controversy was not justiciable because the request for funds for the patrol car had been denied and the funds were therefore never disbursed.

Mr. Sloan had also argued that the County Council should be enjoined from voting to circumvent or waive its own guidelines because the County Administrator had testified that he would issue a check within twenty-four hours for an expenditure violating the Guidelines if the Council voted to disburse the money. The Court then granted Mr. Sloan's Motion for Preliminary Injunction to enjoin the County from voting to circumvent the Guidelines for Discretionary Funds (Order for Preliminary Injunction Exhibit C).

The Motion for a Permanent Injunction and Declaratory Judgment did not receive a hearing until September 20, 1999, more than a year later. The Court again ruled that the patrol car expenditure was not a justiciable controversy and the expenditure for renovating the private building was moot because the check was issued before the hearing (Order for Permanent Injunction and Declaratory Judgment Exhibit D). The Court made permanent the preliminary injunction enjoining circumvention of the Guidelines and awarded attorneys fees. (Order for Permanent Injunction Exhibit D). The Court also ordered a review of the County's compliance two years after this order (which was not issued until December 18, 2000, two and a half years after the action was initially filed). Two years after the order was issued, later in 2002, the Court reviewed the County's compliance with their own Guidelines, and Plaintiff presented no evidence of violations.

On August 19, 2004, under the S.C. FOIA, counsel for Mr. Sloan requested copies of the Guidelines for Expenditures of County Council Discretionary Funds from the County (Exhibit E). The day before, August 18, 2004, *The Greenville News* reported that a Council member had

mailed a newsletter at taxpayer expense for \$9,273. Other Council members also used discretionary funds for mailings, according to the article. "Council members spread good word to constituents at taxpayer expense," By Anna B. Brutzman, *The Greenville News*, August 19, 2004. The County responded September 2, 2004, with a letter explaining that they would provide documents regarding "Council District Expense Funds," as they had been renamed (Exhibit F). September 14, 2004, the County delivered a letter (Exhibit G) enclosing a copy of the current County guidelines (Exhibit H), but no documentation of expenditures

March 6, 2006, counsel for Mr. Sloan submitted a second FOIA request for: "(1) Legislation governing standards or guidelines for such expenditures and any changes to that legislation; (2) All councilors' requests for expenditures; (3) All documents showing expenditures made pursuant to these requests; (4) All documents refusing or rejecting those requests" (Exhibit I). March 23, 2006, the County wrote and said, "We have determined that the costs associated with your request are estimated to be \$237.55," and requested prepayment before delivery of the copies and denied Mr. Sloan's request for a waiver of the fees under S.C. Code Ann. § 30-4-30(b). March 31, 2006, the County faxed note that identified the current policy's source as "the accounts definition as adopted and modified by County Council" (Exhibit D).

July 20, 2006, The South Carolina Public Interest Foundation ("Foundation") and Mr. Sloan filed a Complaint for Declaratory Judgment and Injunctive Relief, more specifically a "Constitutional Challenge to Council District Expense" (Exhibit J). The Complaint alleges that on August 2, 2005, Defendants enacted Ordinance No. 3940 (Exhibit K), which appropriated funds "for the operation of county government for the fiscal year beginning July 1, 2006 and ending June 30, 2007," and which, included an appropriation for an account called "Council

District Expense."

Pursuant to the "Council District Expense" account definition (Exhibit L), 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. The Complaint then alleges, "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 M).

August 21, 2006, Defendants then filed a Motion to Dismiss based on *Res Judicata*, Collateral Estoppel, and lack of standing. Mr. Sloan filed an affidavit February 21, 2007 (Exhibit N) testifying that the Foundation paid Greenville County property taxes in 2006. Defendants filed an Answer August 10, 2007 including a General Denial and Defenses of Failure to State a Claim, *Res Judicata*, Collateral Estoppel, and Lack of Standing. Defendants also filed a Motion for Summary Judgment based on the same reasons in the Motion to Dismiss. August 20, 2007, Defendants filed a Supplemental Memorandum in Support of Motion to Dismiss. The Motion was heard August 21, 2007 and denied from the bench. (Counsel has yet to agree on the wording of the Order and another hearing has been scheduled to settle those differences).

I. THE ATTORNEY GENERAL'S OPINION AND ITS CITED AUTHORITY SUPPORT A RULING OF SUMMARY JUDGMENT FOR PLAINTIFFS.

Defendants have continued to utilize these unconstitutional "slush funds" in the years following the Court's ruling that Council must follow its own guidelines. Defendants have continued to use these funds after the Attorney General's opinion in 2003 found a similar ordinance unconstitutional (Exhibit M (2003 WL 22862787 (S.C.A.G.) November 13, 2003)). 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.

After the decision in the earlier case addressing Defendants' failure to follow their own discretionary funds guidelines, the S.C. Attorney General published an opinion that an ordinance like this one is unconstitutional and illegal because it gives individual council members discretionary public funds to use as they wish without a decision by the council as a whole.

It is an unlawful delegation of legislative power to an individual member (South Carolina Attorney General opinion dated November 13, 2003 (Exhibit M)). The Attorney General addressed the question, "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." The council members in the case at bar possess the same discretion. The Attorney General's description of the Florence County "discretionary fund" is strikingly similar to the Greenville County fund:

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 funds appropriated are to be spent.

Id. at 5.

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 principle 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 (Ct. 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). He further quoted an Attorney General opinion dated April 4, 1996, that recognized that "strictly governmental powers ... cannot be conferred upon a corporation or individual."

The Attorney General explained, "Courts have held that one of the most fundamental legislative powers bestowed upon a municipal council is the spending power. *Id.* (citing *Vermont Dept. of Public Service v. Massachusetts Municipal Wholesale Electric Co.*, 151 Vt. 73, 558 A.2). The Attorney General noted that the S.C. Supreme Court has ruled that the power to spend "C" funds in the county may not be delegated to the legislative delegations by the General

Assembly. *Id.* (citing *Tucker v. South Carolina Dept. of Highways and Public Transportation*, 309 S.C. 395, 424 S.E.2d 468 (1992) and *State ex rel. McLeod v. McInnis*, 278 S.C. 307, 295 S.E.2d 633 (1982) (ruling that the General Assembly may not delegate its spending power to a committee)). The Attorney General noted that these two decisions expressly addressed separation of powers, but also instructed, "legislative power resides in the hands of the General Assembly and may not be delegated to a committee of the Legislature." *Id.*

Furthermore, the Attorney General quoted an earlier opinion dated January 11, 1985, summarizing Article X, Section 7(b) of the S.C. Constitution which sets out the process by which counties may spend and appropriate funds:

"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 adequate revenue is generated to meet expenses lies with ... County Council.

Id. at 5-6. The Attorney General also cited S.C. Code Ann. § 4-9-30(6) in an opinion dated January 17, 1990, concluding that "'only county council' could properly allocate county funds (gambling proceeds) to pay a county employee's moving expenses" and in an opinion dated July 20, 1981, concluding 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." *Id.* at 6.

The Attorney General noted that there is "no statute which authorizes a county council to delegate spending authority to its individual members." *Id.* The opinion notes, While S.C. Code Ann. § 4-9-100 authorizes additional administrative duties to be delegated to the chairman and to receive additional compensation thereof, 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.

Id. at 6. Another statute that fails to authorize this kind of spending by individual council members is S.C. Code Ann. § 4-9-30(6), according to the opinion. *Id.* This section authorizes county councils to establish agencies and departments, and ostensibly, Council could argue, "allowing individual members of county council to possess the sole discretion to determine how these county funds are spent is not different from the creation of county agencies with the accompanying discretion necessary to implement the County Council's appropriations." But as the Attorney General explains, "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." *Id.* The Florence County Council had labeled the fund the "Infrastructure Improvement Fund" and used the funds for "capital purchases."

However, only after this Attorney General's Opinion was issued did the Council revise its Guidelines to include a requirement that, "Any and all expenditures from the infrastructure funds and paving funds shall be voted on by Council at a duly called meeting and subject to approval by the majority of Florence County Council (Florence County Council Guidelines, Exhibit O). In the case at bar, Greenville County Council Guidelines limit expenditures to a broader list of purposes, and yet contain no requirement that County Council vote as a whole. Accordingly, Defendants have violated the requirement of Article X, Section 7(b) of the S.C. Constitution that 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 ... and S.C. Code Ann. § 4-9-140, that requires 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." As the Attorney General noted, although the General Assembly has granted exceptions to this requirement to adopt budgets before the fiscal year in S.C. Code Ann. § 4-9-100 (authorizing additional administrative duties to be delegated to the chairman and to receive additional compensation), they have refrained from granting any other exceptions. *Id.* at 6, citing *McInnis*, *supra*.

The Attorney General finally states that the Florence County Infrastructure Fund ordinance would be declared unconstitutional because it "unlawfully delegates legislative power," and relies upon a S.C. Supreme Court opinion, *Richards v. City of Columbia*. *Id.* citing *Richards*, 227 S.C. 538, 88 S.E.2d 683 (1955). In *Richards*, the Columbia City Council delegated authority to a commission to determine whether a dwelling "is unfit for human habitation..." even though "certain minimal conditions were specified in the ordinance to make the dwelling fit for human habitation [and ...] [o]ther conditions were enumerated which would make the dwelling unfit." *Id.* at 6-7. The Court ruled that the ordinance in question did "not contain a sufficiently definite standard or yardstick [...and] there is no standard except the personal judgment of the administrative officers of the Department." *Id.* quoting *Richards*, *supra* (citing *South Carolina State Highway Department v. Harbin*, 226 S.C. 585, 596, 86 S.E.2d 466 (1955)). The Attorney General noted,

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. In our opinion, based upon the foregoing authorities, a court would likely determine that such constitutes an unconstitutional delegation of the legislative power.

Id. at 7, citing *Harbin*.

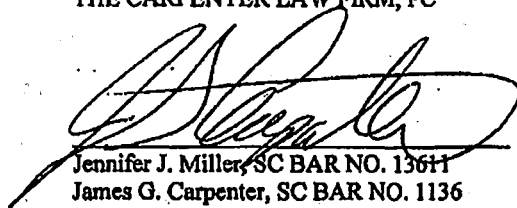
In the case at bar, as in *Richards*, and Florence County's ordinance, council members may determine individually, without the vote of Council, what deserves funding and how much it deserves. Accordingly, the Greenville County Council's discretionary fund is an unlawful delegation of legislative power.

CONCLUSION

Important public policies and compelling circumstances warrant the grant of summary judgment to both Plaintiffs in this matter.

WHEREFORE, Plaintiffs pray the Court to award Plaintiff summary judgment; grant Petitioners costs and attorneys' fees; and award such other and further relief as the Court deems just and proper.

Respectfully submitted
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A

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, ~~in his complaint Sloan argues only two bases in support of his claims.~~ 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

782 p. 6 of 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.

Re p. 7 of 11

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 Hagaloop 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); Barle 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

7/2 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
Thomas J. Ervin

Dated this 23rd day of
February, 1998.

A Certified Copy
Patricia M. Smith Clerk of Court O.P. & O.S.
Ex-Officio Clerk County Court
Greenville County, S.C.
Filed 3-2-98

B

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
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This matter came before me in a non-jury trial on February 10, 1998. 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").

Sloan's complaint seeks declaratory and injunctive relief relating to Greenville County Council's establishment of "County Council Reserves" as part of its annual operating budget. By separate order, I have granted judgment to the County as to most of Sloan's claims. However, I do find and conclude that Sloan is entitled to a temporary injunction regarding a proposed disbursement approved by Greenville County Council to be made from Council Reserves to the Crestwood Forest Village Committee. Greenville County Council approved this disbursement on January 20, 1998, but no funds have yet been disbursed.

The parties submitted this matter to the Court on stipulated facts. These facts indicate that in fiscal year 1994-1995, as part of its annual budgeting process, Greenville County Council established "County Council Reserves" as an item in the County's annual operating budget. Pursuant to a resolution adopted by Council in August, 1996, Council Reserves are to be used only

NE p. 1 of 2

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.

Tom J. Ervin
Thomas J. Ervin

Dated this 23rd day of
February, 1998.

2

Net 29 2

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

C

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,)

Civil Action No. 98-CP-23-1610

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.)

ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
FLETCHER T. SAMPSON, JR.

JUN 15 11 13 AM '98

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. 105 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. ~~Council~~ I find that ~~the~~ 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;

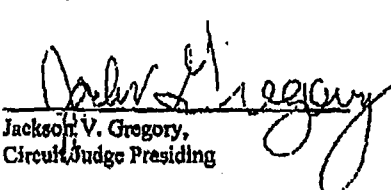
(2) Sloan's motion to enjoin the County's disbursing money to the Slater/Marietta Health and Human Services organization for renovation of the organization's building is denied, as moot; and

(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.

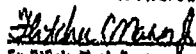
PRELIMINARY INJUNCTION

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


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

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JAN 15 2001 3:43PM

No. 4972 P. 3/7

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,)

Civil Action No. 98-CP-23-1610

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.)

ORDER GRANTING PERMANENT
 INJUNCTION AND ATTORNEYS FEES

FILED CLERK OF COURT
 GREENVILLE CO. S.C.
 JAN 15 2001
 JAN -3 A 4 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-

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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." Notios Corp. v. Harvey, 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. 4972 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.B.2d 95 (1948), quoting *For v. Luntrip*, 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, \$687.75 for Jennifer Miller, and costs of \$93.39 for a total of \$6,907.14.

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 mislaid by the court and not signed until today - 2/1

[Signature]
LARRY R. PATTERSON,
Circuit Judge Presiding

E

THE CARPENTER LAW FIRM, P.C.
ATTORNEYS AND COUNSELORS AT LAW

August 19, 2004

The Hon. Phyllis Henderson, Chairman
Greenville County Council
301 University Ridge
Greenville, SC 29601

CERTIFIED MAIL

RE: FOIA Request

7192 7565 1290 0000 0042

Dear Ms. Henderson:

Pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-30, *et seq.*, I request copies of all documents dated after January 1, 2002, referring or relating to:

1. Guidelines for the use of County Council Discretionary Funds; or
2. Expenditures of County Council Discretionary Funds.

Please produce responsive documents in their entirety, including all attachments, enclosures, and exhibits. In the event you determine that a requested document contains material or information within the statutory exemptions to mandatory disclosure, I request you review such material for discretionary disclosure. Similarly, in the event you determine a document contains material or information within the statutory exemptions to mandatory disclosure, I request, in accordance with the provisions of S.C. Code Ann. § 30-4-40(b), you produce any and all reasonably segregable portions of such document.

If you determine that all documents responsive to any individual requested item (or portion thereof) have been disclosed or specifically identified and withheld under the claim of authority, I request specific written confirmation of such fact. In the event you determine you have no document responsive to an individual request item (or portion thereof), I request specific written confirmation of that fact.

This request constitutes notice of demand for production of all described documents. If, for any reason, you determine that you will not send us any document (or portion thereof), or that this request will not, in whole or in part, be complied with, I request prompt notice

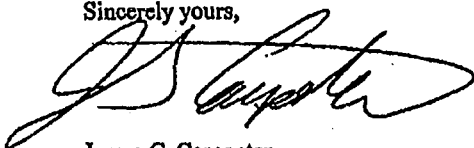
August 19, 2004

of any action taken. In addition, I request such notice include complete identification of the withheld documents (or portions thereof) by title, author, date, nature of such material, and a thorough explanation of all legal and factual bases for your determination to deny disclosure. I request that in responding to this request you adhere to the time limitations set forth in S.C. Code Ann. § 30-4-30(c).

I will pay the reasonable and direct costs of locating and reproducing the requested documents to the extent required by S.C. Code Ann. § 30-4-30(b). However, I request prior notice should you determine that such costs will exceed \$100.

If you have any questions, please telephone me. Thank you.

Sincerely yours,



James G. Carpenter

RECEIPT	
7102 7865 1260 0000 0042	
FROM:	
James G. Carpenter	
RE: FOIA Request	
SEND TO:	
The Hon. Phyllis Henderson, Chair	
Greenville County Council	
301 University Ridge	
Greenville SC 29601	
FEES:	
Postage	0.37
Certified Fee	2.30
Return Receipt	1.76
Restricted	
TOTAL	\$ 4.42
POSTMARK OR DATE	

819 E. NORTH ST., SUITE 230 • GREENVILLE, SC • 29601

PHONE: 864-235-1269 • FAX: 864-331-3058

E-MAIL: James.Carpenter@CarpenterLawFirm.net • URL: lawyers.com/carpenter

F



County of Greenville

"... At Your Service"

Mark W. Tollison
Assistant County Attorney
(864) 467-7110
Email: mtollison@greenvillecounty.org

September 2, 2004

James G. Carpenter, Esquire
The Carpenter Law Firm, PC
819 E. North Street, Ste. 230
Greenville, SC 29601

Re: FOIA Request dated August 19, 2004

Dear Mr. Carpenter:

On behalf of Greenville County Council Chairman Phyllis Henderson, this letter is in response to your S. C. Freedom of Information Act ("FOIA") request dated August 19, 2004. Your letter requests "copies of all documentation dated after January 1, 2002, relating to:

1. Guidelines for the use of County Council Discretionary Funds; or
2. Expenditures of County Council Discretionary Funds."

Please be advised that Greenville County does not have any documentations post January 1, 2002 relating to "County Council Discretionary Funds". It is my belief that you are seeking information concerning what is now known as Council District Expense Funds, which I believe at one time may have been referred to as Council Reserves. If it is the current "Council District Expense Fund" information dating back to January 1, 2002 that is the subject of your Freedom of Information Act Request, please advise and we will proceed to make those public records available pursuant to your request.

If you have any questions, please feel free to call me 467-7110.

Sincerely,



Mark W. Tollison

MWT/gb

G



County of Greenville

"... At Your Service"

Mark W. Tollison
Assistant County Attorney
(864) 467-7110
Email: mtollison@greenvillecounty.org

September 14, 2004

James G. Carpenter, Esquire
The Carpenter Law Firm, PC
819 E. North Street, Ste. 230
Greenville, SC 29601

Re: FOIA Request dated August 19, 2004

Dear Mr. Carpenter: *Jim*

This letter is to follow up and complete your Freedom of Information Act ("FOIA") request dated August 19, 2004. Pursuant to our telephone conversations this past week, please find enclosed a copy of the current County guidelines covering the County Council District Expense Funds. As we discussed, this response and attachment shall serve to close out your FOIA request of August 19, 2004. Should you determine at a later date that you are still interested in obtaining the full Council District Expense Fund Expenditures documentation post January 1, 2002, the County can proceed to make those materials available upon a new written request.

The cost associated with your request is \$0.10 (one page @ 10¢). Please make your check payable to the County of Greenville and mail your payment to County Attorney, 301 University Ridge, Suite 2400, Greenville, SC 29601.

If you have any questions, please feel free to call me at 467-7110.

Sincerely,

Mark W. Tollison
Mark W. Tollison

MWT/gb

Enclosure

County Square 301 University Ridge Suite 2400 Greenville, SC 29601 Fax (864) 467-5964

H

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
- Funds may be encumbered for viable projects only and will lapse at the end of a council member's term

I

THE CARPENTER LAW FIRM, P.C.
ATTORNEYS AND COUNSELORS AT LAW

March 6, 2006

The Hon. Butch Kirven, Chairman
Greenville County Council
301 University Ridge
Greenville, SC 29601

CERTIFIED MAIL

RE: FOIA Request

7192 7965 1290 0000 0646

Dear General Kirven:

Pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-30, *et seq.*, I request a copy of the following public records related to expenditures from Council Reserves from January 1, 2004 to the present:

1. Legislation governing standards or guidelines for such expenditures and any changes to that legislation.
2. All councilors' requests for expenditures.
3. All documents showing expenditures made pursuant to these requests.
4. All documents refusing or rejecting those requests.

Please produce responsive documents in their entirety, including all attachments, enclosures, and exhibits. In the event you determine that a requested document contains material or information within the statutory exemptions to mandatory disclosure, I request you review such material for discretionary disclosure. Similarly, in the event you determine a document contains material or information within the statutory exemptions to mandatory disclosure, I request, in accordance with the provisions of S.C. Code Ann. § 30-4-40(b), you produce any and all reasonably segregable portions of such document.

If you determine that all documents responsive to any individual requested item (or portion thereof) have been disclosed or specifically identified and withheld under the claim of authority, I request specific written confirmation of such fact. In the event you

March 6, 2006

determine you have no document responsive to an individual request item (or portion thereof), I request specific written confirmation of that fact.

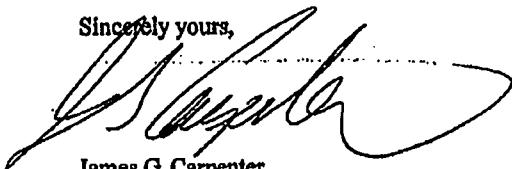
This request constitutes notice of demand for production of all described documents. If, for any reason, you determine that you will not send us any document (or portion thereof), or that this request will not, in whole or in part, be complied with, I request prompt notice of any action taken. In addition, I request such notice include complete identification of the withheld documents (or portions thereof) by title, author, date, nature of such material, and a thorough explanation of all legal and factual bases for your determination to deny disclosure. I request that in responding to this request you adhere to the time limitations set forth in S.C. Code Ann. § 30-4-30(c).

I will pay the reasonable and direct costs of locating and reproducing the requested documents to the extent required by S.C. Code Ann. § 30-4-30(b). However, I request prior notice should you determine that such costs will exceed \$100.

This request for public records is primarily to benefit the general public; therefore I request that you waive the fees pursuant to S.C. Code Ann. § 30-4-30(b).

If you have any questions, please telephone me. Thank you.

Sincerely yours,



James G. Carpenter

RECEIPT

7192 7985 1280 0000 0848

FROM:

The Carpenter Law Firm, PC
RE: FOIA Request

SEND TO:

The Hon. Budh Kiven, Chairman
Greenville County Council
301 University Ridge
Greenville SC 29601

FEES:

Postage	0.39
Certified Fee	2.40
Return Receipt	1.85
Restricted	

TOTAL \$ 4.64

POSTMARK OR DATE

819 E. NORTH ST., SUITE 230 • GREENVILLE, SC • 29601

PHONE: 864-235-1269 • FAX: 864-331-3058

E-MAIL: James.Carpenter@CarpenterLawFirm.net • URL: lawyers.com/carpenter

MEMORY TRANSMISSION REPORT

PAGE : 001
TIME : MAR-06-2006 05:10PM
TEL NUMBER :
E-MAIL :
NAME :

FILE NUMBER : 002
DATE : MAR-06 05:09PM
TO : 292324755
DOCUMENT PAGES : 002
START TIME : MAR-06 05:09PM
END TIME : MAR-06 05:10PM
SENT PAGES : 002
STATUS : OK

FILE NUMBER : 002 *** SUCCESSFUL TX NOTICE ***

THE CARPENTER LAW FIRM, P.C.
ATTORNEYS AND COUNSELLORS AT LAW

March 6, 2006

The Hon. Butch Kirven, Chairman
Greenville County Council
301 University Ridge
Greenville, SC 29601

Dear General Kirven:

Pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-30, et seq., I request a copy of the following public records related to expenditures from Council Reserves from January 1, 2004 to the present:

1. Legislation governing standards or guidelines for such expenditures and any changes to that legislation.
2. All councilors' requests for expenditures.
3. All documents showing expenditures made pursuant to those requests.
4. All documents refusing or rejecting those requests.

Please produce responsive documents in their entirety, including all attachments, enclosures, and exhibits. In the event you determine that a requested document contains material or information within the statutory exemptions to mandatory disclosure, I request you review such material for discretionary disclosure. Similarly, in the event you determine a document contains material or information within the statutory exemptions to mandatory disclosure, I request, in accordance with the provisions of S.C. Code Ann. § 30-4-40(b), you produce any and all reasonably segregable portions of such document.

If you determine that all documents responsive to any individual requested item (or portion thereof) have been disclosed or specifically identified and withheld under the claim of authority, I request specific written confirmation of such fact. In the event you

MEMORY TRANSMISSION REPORT

PAGE : 001
TIME : MAR-06-2006 05:48PM
TEL NUMBER :
E-MAIL :
NAME :

FILE NUMBER : 004
DATE : MAR-06 05:48PM
TO : 82324756
DOCUMENT PAGES : 002
START TIME : MAR-06 05:48PM
END TIME : MAR-06 05:48PM
SENT PAGES : 002
STATUS : OK

FILE NUMBER : 004 *** SUCCESSFUL TX NOTICE ***

THE CARPENTER LAW FIRM, P.C.
ATTORNEYS AND COUNSELLORS AT LAW

March 6, 2006

The Hon. Butch Kirven, Chairman
Greenville County Council
301 University Ridge
Greenville, SC 29601

RE: FOIA Request

YOUR FILE 82324756 0002 0002

Dear General Kirven:

Pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-30, et seq., I request a copy of the following public records related to expenditures from Council Reserves from January 1, 2004 to the present:

1. Legislation governing standards or guidelines for such expenditures and any changes to that legislation.
2. All councilors' requests for expenditures.
3. All documents showing expenditures made pursuant to these requests.
4. All documents refusing or rejecting those requests.

Please produce responsive documents in their entirety, including all attachments, enclosures, and exhibits. In the event you determine that a requested document contains material or information within the statutory exemptions to mandatory disclosure, I request you review such material for discretionary disclosure. Similarly, in the event you determine a document contains material or information within the statutory exemptions to mandatory disclosure, I request, in accordance with the provisions of S.C. Code Ann. § 30-4-40(b), you produce any and all reasonably segregable portions of such document.

If you determine that all documents responsive to any individual requested item (or portion thereof) have been disclosed or specifically identified and withheld under the claim of authority, I request specific written confirmation of such fact. In the event you

THE CARPENTER LAW FIRM, P.C.
ATTORNEYS AND COUNSELORS AT LAW

March 6, 2006

The Hon. Butch Kirven, Chairman
Greenville County Council
301 University Ridge
Greenville, SC 29601

Dear General Kirven:

Pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-30, *et seq.*, I request a copy of the following public records related to expenditures from Council Reserves dated from January 1, 2004 to the present:

1. Guidelines governing expenditures and any changes to Guidelines.
2. All council member requests for expenditures.
3. All documents reflecting expenditures.
4. All documents refusing or rejecting requests for expenditures.

Please produce responsive documents in their entirety, including all attachments, enclosures, and exhibits. In the event you determine that a requested document contains material or information within the statutory exemptions to mandatory disclosure, I request you review such material for discretionary disclosure. Similarly, in the event you determine a document contains material or information within the statutory exemptions to mandatory disclosure, I request, in accordance with the provisions of S.C. Code Ann. § 30-4-40(b), you produce any and all reasonably segregable portions of such document.

If you determine that all documents responsive to any individual requested item (or portion thereof) have been disclosed or specifically identified and withheld under the claim of authority, I request specific written confirmation of such fact. In the event you determine you have no document responsive to an individual request item (or portion thereof), I request specific written confirmation of that fact.

March 6, 2006

This request constitutes notice of demand for production of all described documents. If, for any reason, you determine that you will not send us any document (or portion thereof), or that this request will not, in whole or in part, be complied with, I request prompt notice of any action taken. In addition, I request such notice include complete identification of the withheld documents (or portions thereof) by title, author, date, nature of such material, and a thorough explanation of all legal and factual bases for your determination to deny disclosure. I request that in responding to this request you adhere to the time limitations set forth in S.C. Code Ann. § 30-4-30(c).

I will pay the reasonable and direct costs of locating and reproducing the requested documents to the extent required by S.C. Code Ann. § 30-4-30(b). However, I request prior notice should you determine that such costs will exceed \$100.

If you have any questions, please telephone me. Thank you.

Sincerely yours,

James G. Carpenter

819 E. NORTH ST., SUITE 230 • GREENVILLE, SC • 29601

PHONE: 864-235-1269 • FAX: 864-331-3058

E-MAIL: James.Carpenter@CarpenterLawFirm.net • URL: lawyers.com/carpenter

*Green - when you talk to
them you talk half
with the issue for him.*

Greenville County in minority on discretionary spending

Attorney General's opinion questions practice

BY GARY HYNDMAN
Staff Writer

Greenville County finds itself among few South Carolina counties that allow its elected officials discretionary spending, a practice that has come under public scrutiny in recent years.

An October 2005 survey by the South Carolina Association of Counties reported the county is one of three in the state that gives County Council members money for their districts. Twenty-five of the 49 counties in the state responded to the survey.

And Greenville County's allocation of more than \$20,000 per council member is four times that of the other two that reported permitting the practice.

Alcon County was appropriating \$5,000 to each of its council members at the time. But projects had to be approved by a unanimous vote of council and no more than \$1,000 could be given to an individual agency per year.

Richland County was providing \$4,500 for its individual council members in 2005. There were no restrictions on spending.

A review of the 2004-2005 fiscal year and the first half of the 2005-06 fiscal year provided by Greenville County showed council members had \$200,000 available in their collective district accounts. Nearly \$22,000 was allocated for each of 100 council members, with council chairman receiving \$24,000 and the vice chairman \$23,000.

Individual council members awarded thousands of dollars to constituents for parades, street festivals, road and infrastructure improvements, ball fields, parks, camps, military celebrations and service projects, each without the consent of the full council.

A 2004 Donaldson Center event for the 151st Signal Battalion received more than \$19,000 from all 18 council members. County Council Clerk Theresa Kiser said the funds helped pay for a ceremony and barbecue to recognize troops returning from the Iraq War.

Three former incumbents who lost Republican primary races in 2004 made sizable allocations on their way out the door.

Steve Selby, who lost a bitter race to Tony Trout in District 18, donated \$20,000 to Camp Spearhead two weeks before his term expired, nearly depleting his district's funds in the middle of the fiscal year.

Dorise Brooks, who was defeated by Butch Kirven in District 27, awarded more than \$15,000 to a number of projects in the two months before he left office.

Phyllis Henderson, who lost to Jim Burns in District 21, also gave \$15,000 to a park funding project and a parking lot for the Piedmont Fire Department a month before her term expired.

County Council has adopted guidelines to govern how district funds can be spent. In addition to supporting projects in their respective districts, the funds are used to reimburse council members for their county business expenses and pay for them to attend conferences and the cost of incentive and awards to recognize citizens and county employees for outstanding service.

*Carp
Poss
Parham
is
sympathetic*

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symptoms
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neut
PA-G
L, Sta. O, Easley



County of Greenville

"... At Your Service"

Jeffrey D. Wile
Assistant County Attorney
(864) 467-7110
Email: jwile@greenvillecounty.org

March 23, 2006

James G. Carpenter
The Carpenter Law Firm, P.C.
819 E. North Street
Suite 230
Greenville, SC 29601

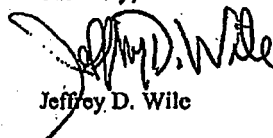
Re: Freedom of Information Request

Dear Mr. Carpenter:

We are in receipt of your March 6, 2006 FOIA request addressed to County Council Chairman Butch Kirven. In your letter you request prior notice in the event we determine that the costs for locating and reproducing the requested documents will exceed \$100.00. Please be advised that we have determined that the costs associated with your request are estimated to be \$237.55. Should you still want to receive the requested information, please mail your check payable to the County of Greenville in the amount of \$237.55 to my office. Upon receipt of the deposit, we will provide the requested information to you. Until we receive the deposit, we will take no further action regarding this matter.

We do not see any reason to find an exception to the County's general policy in this particular instance; and therefore, your request for a waiver pursuant to S.C. Code Ann. §30-4-30(b) is denied.

Sincerely,



Jeffrey D. Wile

JDW/jwg

County Square □ 301 University Ridge □ Suite 2400 □ Greenville, SC 29601 □ Fax (864) 467-5964

03/31/2006

17:41

GREENVILLE COUNTY ATTORNEY → 93313058

NO. 109

001



County of Greenville

"... At Your Service"

Mark W. Tollison
County Attorney
(864) 467-7110

DATE: 3/31/06

TO: Sam Carpenter

FAX NUMBER: 931 - 3058

FROM:

MARK W. TOLLISON ✓
COUNTY ATTORNEYJEFFREY D. WILE
ASSISTANT COUNTY ATTORNEYDEAN CAMPBELL
ASSISTANT COUNTY ATTORNEYBARONDA S. GADSON
LEGAL COORDINATOR

SENDER'S FAX NUMBER: (864) 467-5964

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 2

MESSAGE: Per your 3/6/06 FOIA request —

Current policy comes from the account definition
as adopted and modified by County Council.

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the address above via the U.S. Postal Service. Thank you.

CONFIRMATION COPY W/ENCLOSURES
SENT BY U.S. MAIL

NO CONFIRMATION COPY SENT

County Square 301 University Ridge Suite 2400 Greenville, SC 28601 Fax (864) 467-1884

J

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

The South Carolina Public Interest Foundation
and Edward D. Sloan, Jr., individually and as a
taxpayer of the City of Greenville on behalf of
all others similarly situated,

CIVIL ACTION COVERSHEET

Plaintiff(s)

vs.

Greenville County, et al.

Defendant(s)

(Please Print)

Submitted By: James G. Carpenter
Address: 819 E. North St., Suite 230
Greenville, SC 29601

SC Bar #: 1136
Telephone #: 864-235-1269
Fax #: 864-331-3058
Other:
E-mail: james.carpenter@carpenterlawfirm.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

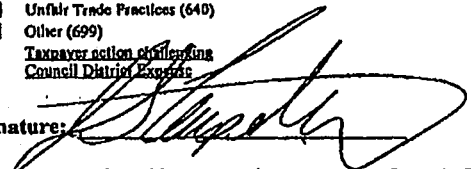
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

☐ Contracts	☐ Torts - Professional Malpractice	☐ Torts - Personal Injury	☐ Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	☐ Other (299)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)		☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
		☐ Other (399)	☐ Building Code Violation (460)
			☐ Other (499)
☐ Inmate Petitions	☐ Judgments/Settlements	☐ Administrative Law/Relief	☐ Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Sexual Predator (510)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Mandamus (520)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Habeas Corpus (530)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
☐ Other (599)	☐ Transcript Judgment (740)	☐ Forfeiture (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Other (899)	☐ SCDOT (950)
	☐ Other (799)		☐ Worker's Comp (960)
			☐ Zoning Board (970)
			☐ Administrative Law Judge (980)
			☐ Public Service Commission (990)
			☐ Employment Security Comm (991)
			☐ Other (999)
☐ Special/Complex/Other	☐ Pharmaceuticals (630)		
☐ Environmental (600)	☐ Unfair Trade Practices (640)		
☐ Automobile Arb. (610)	☒ Other (699)		
☐ Medical (620)			
	Taxpayer action challenging Council District Expansion		

Submitting Party Signature: 

Date: July 20, 2006

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (5/04)

Page 1 of 2

FOR MANDATED ADR COUNTIES ONLY

Florence, Hor) Lexington, Richland, Greenville**, as) Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

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- 41637

2006 JUL 20 P 12:56

SUMMONS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL R. WICKSTROM

(Constitutional Challenge to
Council District Expense)

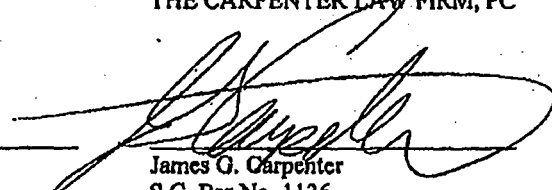
TO THE DEFENDANTS:

You are hereby summoned and required to serve upon the attorney at the address below
an Answer to the attached complaint within 30 days of the date of service hereof. If you fail to
do so, judgment by default will be entered against you for the relief demanded in the Complaint.

I accept service for all defendants this _____
day of July, 2006

Respectfully submitted,
THE CARPENTER LAW FIRM, PC

Clerk to County Council


James G. Carpenter
S.C. Bar No. 1136
819 East North Street, Suite 230
Greenville, SC 29601
(864) 235-1269
Attorney for the Plaintiff

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 ⁷⁰⁰ JUL. 20 P 12: 56
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
(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:

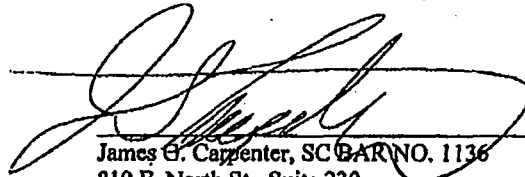
- Flooding
- Roads
- Lights
- Sewer and drainage
- Public buildings and grounds
- Infrastructure related studies.

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



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Telephone: (864) 235-1269
Facsimile: (864) 331-3058

Attorneys for Plaintiffs

**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			4,076,444
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

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	

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	<u>2.3</u>
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

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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Exhibit C

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

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

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:

[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).

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

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

**CERTIFICATE OF
EXEMPTION/WITHDRAWAL FROM
MEDIATION AND ARBITRATION**

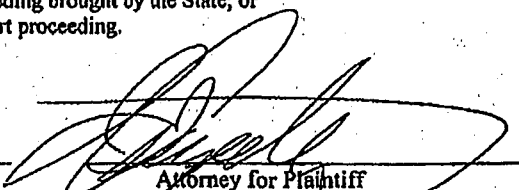
(Constitutional Challenge to
Council District Expense)

1000 JUL 20 P 12:57
CLERK OF COURT
GREENVILLE CO. S.C.

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION OR
MEDIATION BECAUSE:

- ☐ monetary relief requested in this action exceeds \$25,000;
- ☐ this is a class action;
- ☒ there is a substantial claim for injunction or declaratory relief requested in this case;
- ☐ this case involves (check one or more of the following),
 - ☐ Title to real estate;
 - ☐ Wills, trusts and decedents' estates;
 - ☐ Mortgage foreclosure;
 - ☐ Partition
- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;
- ☐ monetary relief requested in this case is unspecified but exceeds \$25,000;
- ☐ this case is a companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue;
- ☐ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a forfeiture proceeding brought by the State; or
- ☐ this is a contempt of court proceeding.

Date: July 20, 2006


Attorney for Plaintiff

NOTE: Motion must be presented to the court, a hearing held, and a finding made, for exemption or withdrawal from arbitration for "strong and compelling reason" sought pursuant to Rule 1(d), Rules of Circuit Court Arbitration.

K

**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
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
Victim's Rights		4,612,548
Home Incarceration Program		1,127,415
Emergency 911		51,446
Contribution to Fund Balance		
		1,512,941
		107,059
TOTAL SPECIAL REVENUE FUND		1,620,000
	\$	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

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
911 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	

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

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

L

Account Name

Description

Council District Expense

- 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

M

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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Exhibit C

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

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 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 [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

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:

[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).

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

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."

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

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

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

Page 10

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.

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

END OF DOCUMENT

N

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,

2007 FEB 21 A 9:52

FILED - CLERK OF COURT
GREENVILLE COUNTY
PAUL B. GIBSON
EDWARD D. SLOAN JR'S
AFFIDAVIT IN SUPPORT
OF MEMORANDUM IN RESPONSE
TO MOTION TO DISMISS

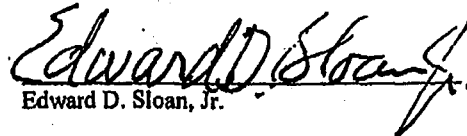
v.

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.

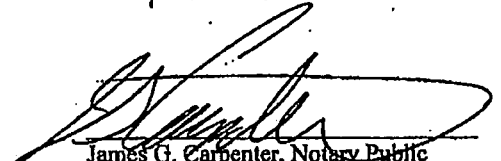
Plaintiff Edward D. Sloan, Jr., being first duly sworn on oath, deposes and states
as follows:

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.



James G. Carpenter, Notary Public
State of South Carolina
My commission expires October 16, 2016

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

The South Carolina Public Interest
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individually, and on behalf of all others
similarly situated,
Plaintiffs,

v.

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Joseph Dill, Cort Flint, Lottie Gibson,
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Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 06-CP-23-4637

Certificate of Service

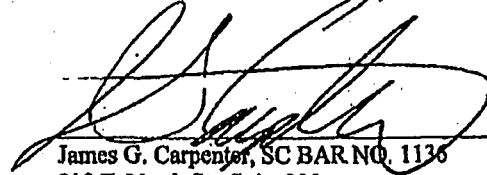
(Council District Expense)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER
2007 FEB 21 A 9 52

The undersigned attorney hereby certifies that he served a copy of the foregoing
Affidavit of Edward D. Sloan in Support of Plaintiffs' Memorandum in Response to
Motion to Dismiss upon the attorney for the defendants, Nick Nicholson, by first-class
mail, postage prepaid, this Wednesday, February 21, 2007, addressed as follows:

Boyd B. "Nick" Nicholson
Haynsworth Sinkler Boyd, PA
P.O. Box 2048
Greenville, SC 29602

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) 331-3083

Attorneys for Plaintiffs

O

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

RESOLUTION #14-2003/04

**A RESOLUTION AUTHORIZING THE AMENDMENT OF THE
FLORENCE COUNTY COUNCIL GUIDELINES FOR THE
EXPENDITURES OF INFRASTRUCTURE IMPROVEMENT FUNDS.**

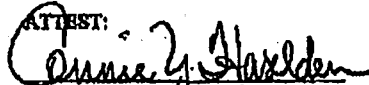
WHEREAS, the Florence County Council has established a uniform and organized procedure for the expenditure of infrastructure funds, and currently utilizes the Florence County Council Guidelines for the Expenditures of Infrastructure Improvement Funds; and

WHEREAS, it is the desire of the Florence County Council to amend said Guidelines for the Expenditures of Infrastructure Improvement Funds to state that any and all expenditures from the infrastructure and paving funds shall be voted upon by Council and subject to approval by the majority of Council at a duly called meeting.

NOW, THEREFORE, BE IT RESOLVED by the members of the Florence County Council that the Florence County Council Guidelines for the Expenditures of Infrastructure Improvement Funds be amended to state that any and all expenditures from the infrastructure and paving funds shall be voted on by Council at a duly called meeting and subject to approval by the majority of Florence County Council.

DONE IN MEETING DULY ASSEMBLED THIS 4th DAY OF MARCH, 2004.


Rev. Terry Alexander, Chairman
Florence County Council

ATTEST:

Connie Y. Haselden, Clerk
Florence County Council

FLORENCE COUNTY COUNCIL**GUIDELINES FOR THE EXPENDITURES OF
INFRASTRUCTURE IMPROVEMENT FUNDS**

1. The infrastructure funds shall be used only for valid public purposes, germane to the functions of county government, and specifically, the business of Florence County.
2. The infrastructure funds shall be used only for capital purchases. Examples of such use include the following:
 - A. Resurfacing roads;
 - B. Paving Roads;
 - C. Purchasing pipe and related materials for drainage improvements;
 - D. Purchasing recreation equipment including, but not limited to, bleachers, fencing, lighting fixtures, concrete for play areas, or related items such as sand, top soil, or gravel;
 - E. Purchasing items for beautification projects such as landscaping, lighting fixtures, or signage;
 - F. Purchasing other capital equipment to be located on public property or property in which Florence County has a legal interest to benefit the general public;
 - G. Any other capital purchase that serves a valid public purpose as determined by the Council applying the following test to the proposed project:
 - (1) What is the ultimate goal or benefit to the public?
 - (2) Will public or private parties be the primary beneficiaries?
 - (3) Is the project and its benefit to the general public speculative?
 - (4) What is the probability that the public interest will be served and to what degree?
3. Funds shall not be used to defray recurring operation expenditures. The only services for which it is permissible to utilize infrastructure funds are those services coincident to the installation of the items identified in Section 2, above.
4. The capital purchases made utilizing infrastructure funds shall be purchased in accordance with the Florence County Procurement Code, and any such purchases shall be coordinated through the Florence County Purchasing Department.
5. Any and all capital purchases made utilizing infrastructure funds for projects that would normally be conducted by the Florence County Public Works Department shall be made only after consultation with the Florence County Public Works Director.
6. Any and all capital purchases made utilizing infrastructure funds for projects that would normally be conducted by the Florence County Department of Parks and Recreation shall be made only after consultation with the Florence County Recreation Director. Additionally, any and all such expenditures shall conform to and/or be consistent with the Florence County Recreation Master Plan.
7. Any and all expenditures from the infrastructure funds and paving funds shall be voted on by Council at a duly called meeting and subject to approval by the majority of Florence County Council.

Revised: February 2004

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

7009 SEP -8 A 11: 50

**MOTION FOR LEAVE TO FILE
SUPPLEMENTAL COMPLAINT**

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

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

Now come the Plaintiffs, by their undersigned attorney, and move the Court, pursuant to SCRCP 15(d) for leave to file a Supplemental Complaint "setting forth transactions or occurrences or events which have happened since the date of the [Complaint]." *Id.* In support of this Motion, Plaintiffs would show the Court the following:

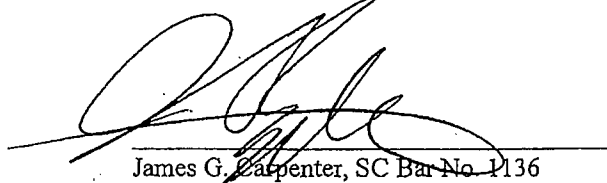
1. For several years, Defendants have authorized and operated a fund variously known as the Council District Expense Fund, Council Reserves, Discretionary Funds, or the Slush Fund.
2. The specific subject of this action is Ordinance No. 3940 (Exhibit A), enacted August 2, 2005, appropriating funds for the fiscal year ending June 30, 2007.
3. With the Complaint, Plaintiffs provided a South Carolina Attorney General opinion dated November 13, 2003 (Exhibit C) stating that a county council's delegation of legislative power to an individual member, as described therein, was unlawful.
4. Nevertheless, upon information and belief, since the filing of this civil action,

Greenville County Council has made similar appropriations for fiscal years ending June 30, 2008, June 30, 2009, June 30, 2010, and June 30, 2011.

5. Upon information and belief, Greenville County Council made the two most recent appropriations after this Court announced its intention to rule that the "Council District Expense" is unlawful.

WHEREFORE, Plaintiff prays the Court for leave to file a Supplemental Complaint, and for an order declaring that the delegation of the discretionary spending authority is illegal; for injunctive relief forbidding the expenditure of funds in this manner, without the approval of the County Council as a whole; for costs and attorneys fees; and for 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) 331-3083

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-23-4637

**SUPPLMENTAL COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

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

Now come the plaintiffs, by their undersigned attorney, and as a Supplemental
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.

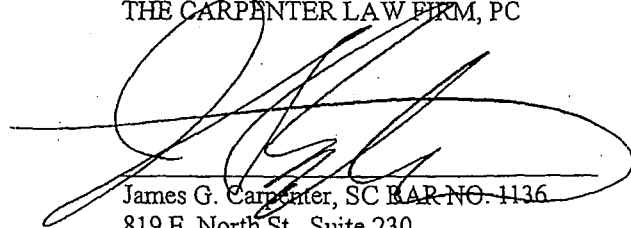
11. Upon information and belief, Greenville County Council has made similar appropriations for fiscal years ending June 30, 2008, June 30, 2009, June 30, 2010, and June 30, 2011.

12. 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
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		14,002,358
Public Safety		29,278,075
Elected or Appointed Offices/Judicial		13,233,501
Elected or Appointed Offices/Fiscal		2,201,549
Elected or 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			\$ 27,556,265

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

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
Accommodations Tax		15,318,125
Charity Hospitalization		750,107
Property Tax (including delinquent taxes)	\$	3,617,568
State Shared Taxes (Merchants Inventory)		230,520
Fund Balance Contribution		228,356
Infrastructure Bank		4,076,644
Victim's Right		4,612,548
Home Incarceration Program		1,127,415
EP11 User Fees		51,446
		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
Stormwater Utility Fee		9,625,003
		5,975,000
TOTAL ENTERPRISE FUND		\$ 15,600,003

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 "worst 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

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

Westlaw

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

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

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), *aff'd.*, 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:

[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 withhold 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:

[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, *Carl v. South Carolina Jobs-Economic Development Authority (JEDA)*, 284 S.C. 438, 327 S.E.2d 331 (1985) is instructive. In *Carl*, 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).

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

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."

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

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

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

Page 10

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.

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

END OF DOCUMENT

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

**MOTION FOR
ATTORNEYS FEES**

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

The Court entered an order on February 10, 2010, granting judgment to the Plaintiffs. The undersigned attorney received a copy of the Order from the clerk's office February 12, 2010. Plaintiffs now move the Court, pursuant to SCRCP 54 and S.C. Code Ann. § 15-77-300 for costs and attorneys fees. Plaintiffs incorporate a memorandum of law, and attach an affidavit of counsel in support of the Motion.

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. Thus, the citizen must prove three elements to claim attorney's fees: (1) the citizen must be the prevailing party; (2) the government entity must have acted without substantial justification; and (3) no special circumstances would have made 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. Kaiser, 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 elements for an award of attorney's fees under this statute.

1. 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. This Court's order entered February 10, 2010 ruled, "The 'Council District Expense Fund' portion of the 2006-2007 budget for Greenville County is declared to be illegal." Thus, Plaintiffs are prevailing parties.

2. Defendants Acted Without Substantial Justification.

In analyzing this element, courts look to whether the governmental defendant had a reasonable basis in law and fact. *Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue*, 358 S.C. 647, 595 S.E.2d 890 (Ct. App. 2004). Defendants did not have a reasonable basis in law and fact.

With the Complaint, Plaintiffs provided a South Carolina Attorney General opinion dated November 13, 2003 stating that a county council's delegation of legislative power to an individual member, as described therein, was unlawful. The facts and circumstances were similar to those of Greenville County. Nevertheless, after the Attorney General issued his opinion, Greenville County Council made similar appropriations each year. Even after the filing of this civil action, Greenville County Council has made similar appropriations for fiscal years ending June 30, 2008, June 30, 2009, June 30, 2010, and June 30, 2011.

Finally, on November 8, 2008, this Court announced its intention to rule that the "Council District Expense" was an unlawful delegation of legislative power, and asked

Plaintiffs' counsel to draft an order. Transcript of Record, Case No. 03-CP-23-3785 (November 7, 2008), p. 27. Six months later, on May, 14, 2009, Greenville County Council made two more similar appropriations for the Council District Expense for fiscal years 2010 and 2011 using the same guidelines and procedures that this Court had found unlawful. Responses to Plaintiffs' Second Set of Interrogatories, served November 16, 2009, Answer to Interrogatory 1. Thus, ignoring the Attorney General opinion and the oral ruling of this court, Defendants were not "substantially justified" in pressing their claims in this lawsuit.

3. 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 resources. 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. The Court continued, "Citizens should be encouraged to bring suits like these." *Id.*

The Court ruled that Defendants actions were illegal. With the Attorney General opinion on point, Defendants were already on notice of the illegality of their actions. Under these circumstances, the Defendants' conduct was not substantially justified. Accordingly, Plaintiffs meet the qualifications for an award of attorneys' fees under S.C. Code Ann. § 15-77-300.

4. 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.

5. Plaintiffs' Actual Attorneys Fees and Costs are Reasonable.

As to the amount, this case presented a financial risk for Plaintiffs. The County and the public benefited from this litigation. Plaintiffs' counsel attaches an affidavit and statements documenting attorneys' fees and costs (Affidavit and Exhibits to Affidavit). In pursuing this matter to date, Plaintiffs have incurred \$59,612.50 in attorneys' fees and \$471.65 in costs. Plaintiffs' actual attorneys' fees and costs were 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 case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *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, 486 S.E.2d 750 (1997). "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." *Id. citing Jackson*, 326 S.C. at 308, 486 S.E.2d at 760 and *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427.

First, as to the nature, extent and difficulty of the case, Defendants continued their illegal conduct, even after Plaintiffs brought this action, and after the Court announced its intended ruling. Plaintiffs spent time, effort and money to litigate this matter with the Defendants.

Second, as to the time necessarily devoted to the case, Plaintiffs spent time in gathering evidence and researched the facts and the law to prove the violation.

Third, Plaintiffs' counsel are experienced attorneys of good professional standing and well known to the courts of this State. *See, inter alia, 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); *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).

Fourth, counsel did not work on a contingency fee, but rather Plaintiffs paid these fees as they accrued. Plaintiffs should be reimbursed for their fees and expenses.

Fifth, Plaintiffs obtained beneficial results. Defendants refused to correct the violation even after knowledge of the Attorney General opinion and after the Court had announced its intended ruling. Furthermore, Plaintiffs' litigation benefits every citizen of the County by requiring that County comply with the law of this State.

Sixth, as to the customary legal fees for similar services, Plaintiffs have presented Counsel's affidavit supported by detailed time records showing that Plaintiffs incurred attorneys' fees and costs. Plaintiffs respectfully suggest that based upon Counsel's affidavit and the court's familiarity with attorney fees customarily charged in this legal community, the time spent and the hourly rates requested by Counsel are reasonable and modest. In fact, Counsel have discounted their normal rates due to the public interest nature of this litigation. The Court should

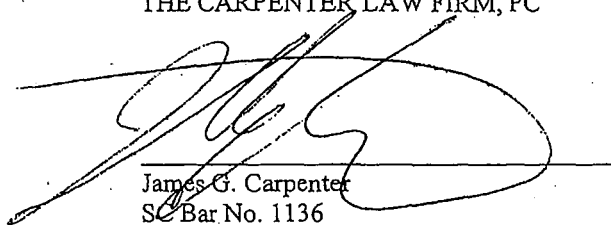
find that Plaintiffs' actual attorneys' fees and costs were reasonable, and that Plaintiffs are entitled to a full award of attorney's fees and costs, with interest.

CONCLUSION

In the case at bar, Plaintiffs have prevailed. The Defendants were not substantially justified. No other factors make an award of attorneys' fees unjust. Wherefore, Plaintiffs pray the Court for an award of actual attorneys' fees and costs from the Defendants.

WHEREFORE, Plaintiff prays the Court for costs and attorneys fees and for 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) 331-3083

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

**AFFIDAVIT IN SUPPORT OF
MOTION FOR
ATTORNEYS FEES**

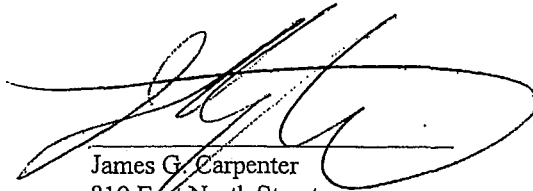
**(Constitutional Challenge to
Council District Expense)**

James G. Carpenter, being first duly sworn, states as follows:

1. I am lead counsel for the Plaintiffs. I graduated from the University of South Carolina School of Law in 1984. I was admitted to the Bar in South Carolina in 1985 and in North Carolina in 1986. I am also admitted to practice before the United States District Court for the District of South Carolina and the United States Court of Appeals for the Fourth Circuit.
2. Since 1994, I have been practicing civil litigation in my own firm. My normal billing rate is \$275 per hour, but because of the public interest nature of this litigation, I agreed with Plaintiffs for rates of \$200 per hour.
3. As far as I know, our firm is the only one in this state specifically focusing on this kind of public interest litigation. We have been working on such cases for more than twelve years, primarily with Mr. Sloan and the South Carolina Public Interest Foundation.
4. My associate Jennifer Miller worked on this case. She graduated from the University of South Carolina School of Law and was admitted to the bar in 1997. She has been with my firm for more than twelve years. Her billing rate is \$150 per hour.
5. We maintain daily detailed time records of our professional services. I attach to this Affidavit monthly invoices with daily work records detailing the hours our firm expended litigating this case. Our attached monthly invoices show attorneys fees totaled \$59,612.50, and our costs totaled \$471.65 through January 31, 2010.
6. The Court ruled for Plaintiffs after several years of Defendants' illegal activity and several years of litigation.

7. Plaintiff should be awarded attorneys fees under S.C. Code Ann. § 15-77-300. Plaintiffs funded this case with private resources, and this case presented a financial risk for them, but the County and its citizens and taxpayers benefited as a result of this litigation.
8. I believe that our actual attorneys' fees and costs were reasonable and that Plaintiff is entitled to an award of these attorney's fees and costs.

Further the affiant saith naught.



James G. Carpenter
819 East North Street
Greenville, SC 29601
(864) 235-1269
SC Bar No. 1136

Subscribed and sworn to before me
this 22nd day of February, 2010

Notary Public, State of South Carolina
My commission expires: _____

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
3/31/2006	2590

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

				TERMS	PROJECT
				Upon Receipt	Slush Fund III
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Conf. with Mr. Sloan; drafting and revising complaint re: slush fund; Review of AG Opinion, faxes to Mr. Sloan; Tel. confs. with Mr. Sloan, Mark Tollison;	3/31/2006	2.75	200.00	550.00
Thank You for using The Carpenter Law Firm			Total \$550.00		

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
6/30/2006	2695

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Fax from Mr. Sloan;	6/21/2006	0.25	200.00	50.00
J.C. Carpenter	Revisions to Complaint, Summons and Exemption form; tel. conf. with and fax from Mr. Sloan;	6/22/2006	0.25	200.00	50.00
Thank You for using The Carpenter Law Firm			Total		\$100.00

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
7/31/2006	2721

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Faxes from Mr. Sloan; tel. conf. with Mr. Sloan; Organizing file; revising complaint; call to Mark Tollison;	7/17/2006	1	200.00	200.00
J.C. Carpenter	Tel. confs. with Mr. Sloan; review of file; call to Mark Tollison, county attorney's office; fax to Mr. Sloan;	7/18/2006	2.25	200.00	450.00
J.C. Carpenter	fax from Mr. Sloan; Conf. with Mr. Sloan;E-mail from Mark Tollison; fax to Mr. Sloan;	7/19/2006	0.75	200.00	150.00
J.C. Carpenter	Revision of Summons; preparation of complaint and exhibits; filing and service of summons & Complaint; Delivery to Mr. Sloan; E-mail from Tollison; fax to Mr. Sloan;	7/20/2006	1.5	200.00	300.00
J.C. Carpenter	Receipt & review of faxes from Mr. Sloan; preparation and revision of interrogatories and requests for production to County; Faxes to Mr. Sloan; conf. and tel. conf. with Mr. Sloan;	7/26/2006	2.25	200.00	450.00
J.C. Carpenter	Tel. conf. with Ben Szobody;	7/27/2006	0.25	200.00	50.00
J.C. Carpenter	Call and fax from Mr. Sloan;	7/28/2006	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with and fax from Mr. Sloan;	7/29/2006	0.25	200.00	50.00
		7/17/2006		150.00	150.00
Thank You for using The Carpenter Law Firm			Total		\$1,850.00

THE CARPENTER LAW FIRM, P.C.

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(864) 235-1269

Invoice

DATE	INVOICE #
8/31/2006	2745

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	Research; conf. w/JGC	8/21/2006	2	150.00	300.00
J.C. Carpenter	Receipt & Review of Motion to Dismiss from Defendants; Tel.conf. with Mr. Sloan; fax to Mr. Sloan; Research on WESTLAW cases;	8/22/2006	2.75	200.00	550.00
Jennifer Miller	Research; conf. w/JGC	8/22/2006	1.75	150.00	262.50
J.C. Carpenter	Tel. conf. with and e-mail to Nick Nicholson;	8/23/2006	0.25	200.00	50.00
Jennifer Miller	Research; conf. w/JGC	8/23/2006	1.5	150.00	225.00
Jennifer Miller	Research; conf. w/JGC	8/24/2006	2	150.00	300.00
Jennifer Miller	Research; conf. w/JGC	8/25/2006	2.25	150.00	337.50
Jennifer Miller	research; return	8/28/2006	1.75	150.00	262.50
Jennifer Miller	research; return	8/30/2006	1	150.00	150.00
Thank You for using The Carpenter Law Firm			Total		\$2,437.50

THE CARPENTER LAW FIRM, P.C.

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Invoice

DATE	INVOICE #
10/31/2006	2790

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Receipt & Review of cases on res judicata and collateral estoppel;	10/10/2006	0.25	200.00	50.00
Jennifer Miller	research; response to motion	10/9/2006	2	150.00	300.00
Jennifer Miller	research; response to motion	10/10/2006	1.5	150.00	225.00
Jennifer Miller	research; response to motion	10/11/2006	0.5	150.00	75.00
Jennifer Miller	research; response to motion	10/12/2006	2.5	150.00	375.00
Jennifer Miller	research; response to motion	10/13/2006	2	150.00	300.00

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
11/30/2006	2820

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Faxes from and to Mr. Sloan;	11/3/2006	0.25	200.00	50.00
Jennifer Miller	Return to Motion	11/21/2006	4	150.00	600.00
Jennifer Miller	Return to Motion	11/22/2006	5.25	150.00	787.50
Jennifer Miller	Return to Motion	11/25/2006	2.25	150.00	337.50
Jennifer Miller	return to motion	11/27/2006	4.25	150.00	637.50
Jennifer Miller	return to motion	11/28/2006	3.75	150.00	562.50
Jennifer Miller	return to motion	11/29/2006	2.5	150.00	375.00
Jennifer Miller	return to motion	11/30/2006	4.5	150.00	675.00
</					

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law

819 E. North Street, Suite 230

Greenville, SC 29601

(864) 235-1269

Invoice

DATE	INVOICE #
12/31/2006	2846

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	return to motion	12/1/2006	3.75	150.00	562.50
Jennifer Miller	Memorandum of Law	12/11/2006	0.5	150.00	75.00
Jennifer Miller	Memorandum of Law	12/12/2006	0.5	150.00	75.00
Jennifer Miller	Memorandum of Law	12/13/2006	0.25	150.00	37.50
Jennifer Miller	Memorandum of Law	12/14/2006	2.5	150.00	375.00
Jennifer Miller	Memorandum of Law	12/15/2006	2	150.00	300.00
Jennifer Miller	Memorandum of Law	12/22/2006	1.5	150.00	225.00
Jennifer Miller	Memorandum of Law	12/26/2006	1	150.00	150.00
Jennifer Miller	Memorandum of Law	12/27/2006	0.75	150.00	112.50
Jennifer Miller	Memorandum of Law	12/28/2006	0.5	150.00	75.00
Jennifer Miller	Memorandum of Law	12/29/2006	1.25	150.00	187.50
Jennifer Miller	Memorandum of Law	12/30/2006	0.25	150.00	37.50
Thank You for using The Carpenter Law Firm			Total		\$2,212.50

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
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Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
1/31/2007	2886

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Conf. with JJM; tel. confs. with Mr. Sloan; review of fax from Mr. Sloan;	1/10/2007	0.25	200.00	50.00
Jennifer Miller	Memorandum revision; faxes to Mr. Sloan; confs. w/JGC	1/10/2007	2.5	150.00	375.00
J.C. Carpenter	Review and revision of Memo of Law in opposition to Motion for Summary Judgment;	1/11/2007	1.5	200.00	300.00
Jennifer Miller	Memorandum revision; faxes to Mr. Sloan; confs. w/JGC	1/11/2007	0.75	150.00	112.50
Jennifer Miller	Memorandum revision; faxes to Mr. Sloan; confs. w/JGC	1/12/2007	1	150.00	150.00
Jennifer Miller	confs. w/JGC; editing memorandum; faxing to Mr. Sloan; research; revising memorandum	1/15/2007	4.5	150.00	675.00
Jennifer Miller	confs. w/JGC; editing memorandum; faxing to Mr. Sloan; research; revising memorandum	1/16/2007	1	150.00	150.00
Jennifer Miller	confs. w/JGC; editing memorandum; faxing to Mr. Sloan; research; revising memorandum	1/17/2007	1.75	150.00	262.50
Jennifer Miller	confs. w/JGC; editing memorandum; faxing to Mr. Sloan; research; revising memorandum	1/18/2007	1.25	150.00	187.50
Thank You for using The Carpenter Law Firm			Total		

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
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(864) 235-1269

Invoice

DATE	INVOICE #
1/31/2007	2886

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS		PROJECT	
			Upon Receipt		Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT	
Jennifer Miller	Revising and proofreading Memorandum; faxing to Mr. Sloan; confs. w/JGC; incorporating Mr. Sloan's comments	1/22/2007	1.75	150.00	262.50	
Jennifer Miller	Revising and proofreading Memorandum; faxing to Mr. Sloan; confs. w/JGC; incorporating Mr. Sloan's comments	1/23/2007	1	150.00	150.00	
Jennifer Miller	Revising and proofreading Memorandum; faxing to Mr. Sloan; confs. w/JGC; incorporating Mr. Sloan's comments	1/24/2007	1.75	150.00	262.50	
J.C. Carpenter	Receipt & review of fax from Mr. Sloan; review and revisions to Memo of law;	1/25/2007	1.75	200.00	350.00	
Jennifer Miller	Revising and proofreading Memorandum; faxing to Mr. Sloan; confs. w/JGC; incorporating Mr. Sloan's comments	1/25/2007	0.5	150.00	75.00	
Jennifer Miller	Revising and proofreading Memorandum; faxing to Mr. Sloan; confs. w/JGC; incorporating Mr. Sloan's comments	1/26/2007	0.75	150.00	112.50	
J.C. Carpenter	Fax from Mr. Sloan; revisions to Memorandum of Law; Conf. with and e-mail to JJ Miller;	1/29/2007	0.5	200.00	100.00	
Jennifer Miller	revising Memo in response to summary judgment	1/29/2007	1.25	150.00	187.50	
Jennifer Miller	revising Memo in response to summary judgment	1/31/2007	1.75	150.00	262.50	
Thank You for using The Carpenter Law Firm			Total		\$4,025.00	

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DATE	INVOICE #
2/28/2007	2921

BILL TO
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				TERMS	PROJECT
				Upon Receipt	Slush Fund III
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	revising Memo in response to summary judgment	2/1/2007	1	150.00	150.00
Jennifer Miller	Revising and proofing memorandum in response to motion to dismiss; conf. w/JGC; faxing to Mr. Sloan	2/2/2007	2.5	150.00	375.00
Jennifer Miller	Revising and proofreading, serving and filing memorandum of law; affidavit in support; calls and faxes to Mr. Sloan; confs. w/JGC	2/5/2007	1.25	150.00	187.50
J.C. Carpenter	Review of case file; Report to Judge Few; Review of memorandum in opposition to Motion to Dismiss;	2/6/2007	0.5	200.00	100.00
Jennifer Miller	Revising and proofreading, serving and filing memorandum of law; affidavit in support; calls and faxes to Mr. Sloan; confs. w/JGC	2/6/2007	1	150.00	150.00
Jennifer Miller	Revising and proofreading, serving and filing memorandum of law; affidavit in support; calls and faxes to Mr. Sloan; confs. w/JGC	2/7/2007	2.25	150.00	337.50
Jennifer Miller	Revising and proofreading, serving and filing memorandum of law; affidavit in support; calls and faxes to Mr. Sloan; confs. w/JGC	2/8/2007	0.75	150.00	112.50
Thank You for using The Carpenter Law Firm				Total	

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DATE	INVOICE #
2/28/2007	2921

BILL TO
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			TERMS		PROJECT
			Upon Receipt		Slush Fund III
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	Revising and proofreading, serving and filing memorandum of law; affidavit in support; calls and faxes to Mr. Sloan; confs. w/JGC	2/9/2007	1.75	150.00	262.50
Jennifer Miller	Affidavit revision; signing; calls and faxes to Mr. Sloan; ; confs. w/JGC; filing and serving;	2/12/2007	0.75	150.00	112.50
Jennifer Miller	Affidavit revision; signing; calls and faxes to Mr. Sloan; ; confs. w/JGC; filing and serving;	2/14/2007	0.75	150.00	112.50
Jennifer Miller	Affidavit revision; signing; calls and faxes to Mr. Sloan; ; confs. w/JGC; filing and serving;	2/15/2007	1.25	150.00	187.50
Jennifer Miller	Affidavit revision; signing; calls and faxes to Mr. Sloan; ; confs. w/JGC; filing and serving;	2/16/2007	1.25	150.00	187.50
Jennifer Miller	signing, filing and serving affidavit; conf. w/JGC and Mr. Sloan	2/19/2007	1.5	150.00	225.00
Thank You for using The Carpenter Law Firm			Total		\$2,500.00

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DATE	INVOICE #
3/31/2007	2957

BILL TO
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TERMS	PROJECT
Upon Receipt	Slush Fund III

NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Tel. confs. with Nick Nicholson, Mr. Sloan; Judge Few, re: status of case, scheduling of hearing;	3/7/2007	0.25	200.00	50.00
Jennifer Miller	confs. w/JGC re. trial scheduling; conf. w/JGC re. summary judgment motion and memorandum; research and drafting	3/7/2007	0.5	150.00	75.00
Jennifer Miller	confs. w/JGC re. trial scheduling; conf. w/JGC re. summary judgment motion and memorandum; research and drafting	3/9/2007	1.5	150.00	225.00
Jennifer Miller	research for sj motion and memo; conf. w/JGC	3/12/2007	4.25	150.00	637.50
Jennifer Miller	research for sj motion and memo; conf. w/JGC	3/13/2007	0.75	150.00	112.50
Jennifer Miller	research for sj motion and memo; conf. w/JGC	3/14/2007	3.75	150.00	562.50
Jennifer Miller	research for sj motion and memo; conf. w/JGC	3/15/2007	1.75	150.00	262.50
Jennifer Miller	research for sj motion and memo; conf. w/JGC	3/16/2007	2.75	150.00	412.50
J.C. Carpenter	Tel. conf. with reporter, re: Slush Fund case; review of AG Opinion on the subject;	3/20/2007	0.5	200.00	100.00
Jennifer Miller	revising memorandum of law	3/26/2007	1.25	150.00	187.50
Jennifer Miller	revising memorandum of law	3/27/2007	0.5	150.00	75.00
Jennifer Miller	revising memorandum of law	3/28/2007	1.75	150.00	262.50

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DATE	INVOICE #
3/31/2007	2957

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			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	revising memorandum of law	3/29/2007	0.75	150.00	112.50

Thank You for using The Carpenter Law Firm	Total	\$3,075.00

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4/30/2007	2987

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			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	revising memo of law	4/2/2007	2.5	150.00	375.00
Jennifer Miller	revising memo of law	4/3/2007	4	150.00	600.00
Jennifer Miller	revising memo of law	4/4/2007	3.75	150.00	562.50
Jennifer Miller	revising memo of law	4/5/2007	1.75	150.00	262.50
Jennifer Miller	revising memo of law	4/6/2007	2.25	150.00	337.50
Jennifer Miller	revising memo of law	4/7/2007	2.5	150.00	375.00

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DATE	INVOICE #
5/31/2007	3017

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			TERMS	PROJECT		
			Upon Receipt	Slush Fund III		
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT	
Jennifer Miller	organizing file	5/7/2007	0.5	150.00	75.00	
Thank You for using The Carpenter Law Firm			Total		\$75.00	

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DATE	INVOICE #
6/30/2007	3044

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			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Fax from Mr. Sloan;	6/6/2007	0.25	200.00	50.00
J.C. Carpenter	Receipt & review of fax from Mr. Sloan;	6/11/2007	0.25	200.00	50.00
J.C. Carpenter	Receipt & review of materials on elimination of Slush Fund;	6/18/2007	0.25	200.00	50.00
J.C. Carpenter	E-mail from Nick Nicholson; call to Nick Nicholson, re: deposition subpoena; Tel. conf. with Mr. Sloan;	6/25/2007	0.75	200.00	150.00
Thank You for using The Carpenter Law Firm			Total \$300.00		

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DATE	INVOICE #
7/31/2007	3070

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			TERMS		PROJECT	
			Upon Receipt		Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT	
J.C. Carpenter	E-mail from Nick Nicholson; calls from Mr. Sloan; review of file; call to Nick Nicholson; fax to Mr. Sloan; E-mail to Nicholson, re: discovery responses, Memorandum of Law;	7/11/2007	1.5	200.00	300.00	
J.C. Carpenter	E-mail from Nick Nicholson; fax to Mr. Sloan;	7/13/2007	0.25	200.00	50.00	
J.C. Carpenter	Review of file in preparation for argument;	7/16/2007	1	200.00	200.00	
J.C. Carpenter	E-mail to Nick Nicholson, re: memorandum of law in support of motion to dismiss;	7/18/2007	0.25	200.00	50.00	
J.C. Carpenter	Call and e-mails from Nick Nicholson; call to Nicholson; Receipt & Review of Defense memo;	7/19/2007	1	200.00	200.00	
J.C. Carpenter	Research on exceptions to collateral estoppel; faxing Defendants' memo to Mr. Sloan; receipt & review of defendants' discovery responses;	7/20/2007	4.75	200.00	950.00	
J.C. Carpenter	Fax from and Tel. conf. with Mr. Sloan; review of research materials; faxes to Mr. Sloan;	7/21/2007	2.5	200.00	500.00	
J.C. Carpenter	Tel. confs. with Mr. Sloan, re: issues of collateral estoppel; drafting reply memorandum on issue of collateral estoppel; Receipt & Review of discovery from Nick Nicholson; Fax to Mr. Sloan;	7/23/2007	6.75	200.00	1,350.00	
Thank You for using The Carpenter Law Firm			Total			

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DATE	INVOICE #
7/31/2007	3070

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			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Receipt & review of fax from Florence County Attorney; fax to Mr. Sloan; revisions to Reply Memo; Tel. conf. with Mr. Sloan;	7/24/2007	0.75	200.00	150.00
J.C. Carpenter	Call from Richland County Attorney's office; conf. with Mr. Sloan; e-mail to Richland County Attorney's office; Revisions to Reply Memorandum;	7/25/2007	0.5	200.00	100.00
J.C. Carpenter	Call to Richland County, re: slush funds; e-mailing reply memo to Nick Nicholson; Judge Few; Fax to Mr. Sloan; Tel. conf. with Mr. Sloan;	7/26/2007	0.5	200.00	100.00
J.C. Carpenter	Tel.conf. with and fax to Mr. Sloan;	7/29/2007	0.25	200.00	50.00
J.C. Carpenter	Preparation for hearing; Tel. conf. with Mr. Sloan; Representation at hearing; conf. with Nick Nicholson;	7/30/2007	2.5	200.00	500.00
Thank You for using The Carpenter Law Firm			Total \$4,500.00		

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DATE	INVOICE #
8/31/2007	3102

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			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Receipt & review of motion for summary judgment; tel. conf. with Mr. Sloan; fax to Mr. Sloan; receipt & review of Answer;	8/14/2007	0.5	200.00	100.00
J.C. Carpenter	Call from Mr. Sloan; preparation for hearing on Motion for Summary Judgment;	8/15/2007	0.75	200.00	150.00
J.C. Carpenter	Tel.conf. with Mr. Sloan;	8/16/2007	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. Judge Few's law clerk; e-mail to Nick Nicholson; Preparation for hearing tomorrow; Tel. conf. with Mr. Sloan; Memo from opposing counsel on claim preclusion; faxes to Mr. Sloan; 6:27	8/20/2007	5.5	200.00	1,100.00
J.C. Carpenter	Tel. confs. with Judge Few, Nick Nicholson, Mr. Sloan;	8/21/2007	0.5	200.00	100.00
Thank You for using The Carpenter Law Firm			Total		\$1,500.00

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DATE	INVOICE #
9/30/2007	3129

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

				TERMS	PROJECT
				Upon Receipt	Slush Fund III
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Faxes to Mr. Sloan, re: Charleston County ending the practice of individual grants;	9/20/2007	0.5	200.00	100.00
Thank You for using The Carpenter Law Firm			Total \$100.00		

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DATE	INVOICE #
10/31/2007	3159

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Fax to Mr. Sloan;	10/17/2007	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; review of filed memos and authorities; preparation for hearing on Motions;	10/18/2007	2	200.00	400.00
J.C. Carpenter	Review of arguments by opposing counsel; preparation for hearing on motions for summary judgment;	10/19/2007	2	200.00	400.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; preparation for hearing on Motion for Summary Judgment; e-mail from Judge's office; fax to Mr. Sloan;	10/22/2007	3.25	200.00	650.00
J.C. Carpenter	Calls to and from Law clerk; e-mail to Judge; Preparation for and attendance at hearing; Tel. conf. with Mr. Sloan; Drafting proposed order;	10/23/2007	4.75	200.00	950.00
J.C. Carpenter	Faxes from and tel. conf. with Mr. Sloan; call to Nick Nicholson; Revisions to proposed order; fax to Mr. Sloan;	10/24/2007	0.75	200.00	150.00
J.C. Carpenter	E-mail to Judge Few;	10/26/2007	0.25	200.00	50.00
J.C. Carpenter	Review of transcript of hearing;	10/30/2007	0.25	200.00	50.00
Thank You for using The Carpenter Law Firm			Total \$2,700.00		

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DATE	INVOICE #
11/30/2007	3195

BILL TO
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			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Review of case; revisions to report to Judge Few; Receipt & review of Nick's Comments on my proposed order; fax to Mr. Sloan;	11/2/2007	0.5	200.00	100.00
J.C. Carpenter	Revision of report to Court;	11/6/2007	0.25	200.00	50.00
Thank You for using The Carpenter Law Firm			Total \$150.00		

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DATE	INVOICE #
12/31/2007	3225

BILL TO
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			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Revisions of report to Court;	12/31/2007	0.25	200.00	50.00
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DATE	INVOICE #
6/30/2008	3407

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	conf. w/JGC re. order and motion for summary judgment; gathering research	6/19/2008	0.5	150.00	75.00
J.C. Carpenter	Conf. with JJ Miller, re: motions pending; review of materials on Slush Funds; discussion of motion strategy;	6/19/2008	0.5	200.00	100.00
Jennifer Miller	conf. w/JGC re. order and motion for summary judgment; gathering research	6/20/2008	0.25	150.00	37.50
Jennifer Miller	confs. w/JGC re. drafting summary judgment memo	6/25/2008	0.25	150.00	37.50
Jennifer Miller	confs. w/JGC re. drafting summary judgment memo	6/27/2008	0.25	150.00	37.50
Thank You for using The Carpenter Law Firm			Total \$287.50		

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DATE	INVOICE #
7/31/2008	3445

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	s.j. motion; conf. w/JGC	7/7/2008	0.5	150.00	75.00
Jennifer Miller	s.j. motion; conf. w/JGC	7/8/2008	0.5	150.00	75.00
Jennifer Miller	s.j. motion; conf. w/JGC	7/9/2008	0.5	150.00	75.00
Jennifer Miller	s.j. motion; conf. w/JGC	7/10/2008	0.5	150.00	75.00
Jennifer Miller	s.j. motion; conf. w/JGC	7/11/2008	0.5	150.00	75.00
Jennifer Miller	confs. w/JGC; research	7/14/2008	0.5	150.00	75.00
Jennifer Miller	confs. w/JGC; research	7/15/2008	0.5	150.00	75.00
Jennifer Miller	confs. w/JGC; research	7/16/2008	0.5	150.00	75.00
Jennifer Miller	confs. w/JGC; research	7/17/2008	0.5	150.00	75.00
Jennifer Miller	confs. w/JGC; research	7/18/2008	0.75	150.00	112.50
Jennifer Miller	summary judgment memo research and first draft	7/21/2008	0.5	150.00	75.00
Jennifer Miller	summary judgment memo research and first draft	7/22/2008	0.5	150.00	75.00
Jennifer Miller	summary judgment memo research and first draft	7/23/2008	0.5	150.00	75.00
Jennifer Miller	summary judgment memo research and first draft	7/24/2008	2.5	150.00	375.00
Jennifer Miller	summary judgment memo research and first draft	7/25/2008	2.25	150.00	337.50
Jennifer Miller	summary judgment memo research and first draft	7/26/2008	0.75	150.00	112.50
Jennifer Miller	drafting and revising summary judgment memo	7/28/2008	1.5	150.00	225.00
Thank You for using The Carpenter Law Firm			Total		

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			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	drafting and revising summary judgment memo	7/29/2008	1.5	150.00	225.00
Jennifer Miller	drafting and revising summary judgment memo	7/30/2008	1.5	150.00	225.00
Jennifer Miller	drafting and revising summary judgment memo	7/31/2008	3.25	150.00	487.50
			</		

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			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	revising memorandum	8/1/2008	1.25	150.00	187.50
Jennifer Miller	revising memo	8/4/2008	0.75	150.00	112.50
Jennifer Miller	revising memo	8/5/2008	1.75	150.00	262.50
Jennifer Miller	revising memo	8/6/2008	1.5	150.00	225.00
Jennifer Miller	revising memo	8/7/2008	1.5	150.00	225.00
Jennifer Miller	revising memo	8/8/2008	1.25	150.00	187.50
Jennifer Miller	key citing authorities in attorney general's opinion and revising memorandum; reviewing prior orders and foia requests and adding to memo	8/11/2008	1.75	150.00	262.50
Jennifer Miller	key citing authorities in attorney general's opinion and revising memorandum; reviewing prior orders and foia requests and adding to memo	8/12/2008	2.25	150.00	337.50
J.C. Carpenter	Receipt & review of fax from Mr. Sloan;	8/13/2008	0.25	200.00	50.00
Jennifer Miller	key citing authorities in attorney general's opinion and revising memorandum; reviewing prior orders and foia requests and adding to memo	8/13/2008	2	150.00	300.00
Jennifer Miller	key citing authorities in attorney general's opinion and revising memorandum; reviewing prior orders and foia requests and adding to memo	8/14/2008	2.25	150.00	337.50

Thank You for using The Carpenter Law Firm	Total

THE CARPENTER LAW FIRM, P.C.

Attorneys and Counselors at Law
819 E. North Street, Suite 230
Greenville, SC 29601
(864) 235-1269

Invoice

DATE	INVOICE #
8/31/2008	3480

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

				TERMS	PROJECT
				Upon Receipt	Slush Fund III
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	key citing authorities in attorney general's opinion and revising memorandum; reviewing prior orders and foia requests and adding to memo	8/15/2008	2.5	150.00	375.00
Jennifer Miller	adding to memo	8/18/2008	2	150.00	300.00
Jennifer Miller	adding to memo	8/19/2008	2.25	150.00	337.50
Jennifer Miller	adding to memo	8/20/2008	2	150.00	300.00
Jennifer Miller	adding to memo	8/21/2008	2.5	150.00	375.00
Jennifer Miller	adding to memo	8/22/2008	2.25	150.00	337.50
Jennifer Miller	reviewing documents produced by County and adding to Memorandum; reviewing Memorandum of opposing counsel and revising argument; reviewing file for Florence's unconstitutional guidelines; call to attorney in Florence for copy of unconstitutional guidelines; reviewing atty. gen. opinion; revising memo; calls to and correspondence from counsel in Florence County re. their guidelines	8/25/2008	1.75	150.00	262.50
Thank You for using The Carpenter Law Firm				Total	

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8/31/2008	3480

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South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	reviewing documents produced by County and adding to Memorandum; reviewing Memorandum of opposing counsel and revising argument; reviewing file for Florence's unconstitutional guidelines; call to attorney in Florence for copy of unconstitutional guidelines; reviewing atty. gen. opinion; revising memo; calls to and correspondence from counsel in Florence County re. their guidelines	8/26/2008	2	150.00	300.00
J.C. Carpenter	Tel. conf. with Nick Nicholson; note to JJ Miller;	8/27/2008	0.25	200.00	50.00
Jennifer Miller	reviewing documents produced by County and adding to Memorandum; reviewing Memorandum of opposing counsel and revising argument; reviewing file for Florence's unconstitutional guidelines; call to attorney in Florence for copy of unconstitutional guidelines; reviewing atty. gen. opinion; revising memo; calls to and correspondence from counsel in Florence County re. their guidelines	8/27/2008	2	150.00	300.00
Thank You for using The Carpenter Law Firm			Total		

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DATE	INVOICE #
8/31/2008	3480

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

		TERMS		PROJECT	
		Upon Receipt		Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	reviewing documents produced by County and adding to Memorandum; reviewing Memorandum of opposing counsel and revising argument; reviewing file for Florence's unconstitutional guidelines; call to attorney in Florence for copy of unconstitutional guidelines; reviewing atty. gen. opinion; revising memo; calls to and correspondence from counsel in Florence County re. their guidelines.	8/28/2008	2.25	150.00	337.50
Jennifer Miller	reviewing documents produced by County and adding to Memorandum; reviewing Memorandum of opposing counsel and revising argument; reviewing file for Florence's unconstitutional guidelines; call to attorney in Florence for copy of unconstitutional guidelines; reviewing atty. gen. opinion; revising memo; calls to and correspondence from counsel in Florence County re. their guidelines	8/29/2008	1.75	150.00	262.50
Thank You for using The Carpenter Law Firm			Total		\$6,025.00

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DATE	INVOICE #
9/30/2008	3522

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	adding to memorandum from authorities in AG opinion	9/2/2008	2	150.00	300.00
Jennifer Miller	adding to memorandum from authorities in AG opinion	9/3/2008	2.25	150.00	337.50
Jennifer Miller	adding to memorandum from authorities in AG opinion	9/4/2008	2	150.00	300.00
Jennifer Miller	adding to memorandum from authorities in AG opinion	9/5/2008	2.5	150.00	375.00
Jennifer Miller	adding to memorandum from additional authorities; revising memorandum; proofreading memorandum	9/8/2008	1.75	150.00	262.50
Jennifer Miller	adding to memorandum from additional authorities; revising memorandum; proofreading memorandum	9/9/2008	1.25	150.00	187.50
Jennifer Miller	adding to memorandum from additional authorities; revising memorandum; proofreading memorandum	9/10/2008	0.75	150.00	112.50
Jennifer Miller	adding to memorandum from additional authorities; revising memorandum; proofreading memorandum	9/11/2008	2	150.00	300.00
J.C. Carpenter	Review of proposed order; preparation for meeting and meeting with Nick Nicholson;	9/12/2008	0.75	200.00	150.00
Thank You for using The Carpenter Law Firm.			Total		

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DATE	INVOICE #
9/30/2008	3522

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	adding to memorandum from additional authorities; revising memorandum; proofreading memorandum	9/12/2008	1.75	150.00	262.50
Jennifer Miller	final proofreading; forwarding to JGC and faxing to Mr. Sloan for response	9/15/2008	1.25	150.00	187.50
Jennifer Miller	final proofreading; forwarding to JGC and faxing to Mr. Sloan for response	9/16/2008	1.75	150.00	262.50
J.C. Carpenter	Review of Memo in Support of Motion for Summary Judgment;	9/17/2008	0.5	200.00	100.00
Jennifer Miller	final proofreading; forwarding to JGC and faxing to Mr. Sloan for response	9/17/2008	2	150.00	300.00
Jennifer Miller	final proofreading; forwarding to JGC and faxing to Mr. Sloan for response	9/18/2008	2.25	150.00	337.50
Jennifer Miller	final proofreading; forwarding to JGC and faxing to Mr. Sloan for response	9/19/2008	1.75	150.00	262.50
Jennifer Miller	researching on Westlaw (allstates, treatises); revising memo; confs. w/JGC; revising memo; gathering exhibits; faxing to Mr. Sloan	9/22/2008	1	150.00	150.00
Jennifer Miller	researching on Westlaw (allstates, treatises); revising memo; confs. w/JGC; revising memo; gathering exhibits; faxing to Mr. Sloan	9/23/2008	1.5	150.00	225.00
J.C. Carpenter	E-mails from and to Nick Nicholson;	9/24/2008	0.25	200.00	50.00
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DATE	INVOICE #
9/30/2008	3522

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

				TERMS	PROJECT
				Upon Receipt	Slush Fund III
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	researching on Westlaw (allstates, treatises); revising memo; confs. w/JGC; revising memo; gathering exhibits; faxing to Mr. Sloan	9/24/2008	1.75	150.00	262.50
Jennifer Miller	researching on Westlaw (allstates, treatises); revising memo; confs. w/JGC; revising memo; gathering exhibits; faxing to Mr. Sloan	9/25/2008	1	150.00	150.00
Jennifer Miller	researching on Westlaw (allstates, treatises); revising memo; confs. w/JGC; revising memo; gathering exhibits; faxing to Mr. Sloan	9/26/2008	1.75	150.00	262.50
J.C. Carpenter	Receipt & review of Defendant's Memo in Support of Motion for Summary Judgment; fax to Mr. Sloan; Tel. conf. with Mr. Sloan; call to AG's office; drafting civil action cover sheet; Conf. with JJ Miller; E-mail to Judge Few and Nick Nicholson;	9/29/2008	1.5	200.00	300.00
Jennifer Miller	Filing and serving Memorandum; faxing to Mr. Sloan; drafting Reply Memorandum; research	9/29/2008	3	150.00	450.00
J.C. Carpenter	E-mails from and to Emery Smith; fax to Mr. Sloan;	9/30/2008	0.25	200.00	50.00
Thank You for using The Carpenter Law Firm				Total	

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DATE	INVOICE #
9/30/2008	3522

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	Filing and serving Memorandum; faxing to Mr. Sloan; drafting Reply Memorandum; research	9/30/2008	2.75	150.00	412.50
		9/23/2008		25.00	25.00
Thank You for using The Carpenter Law Firm			Total \$6,375.00		

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Invoice

DATE	INVOICE #
10/31/2008	3555

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
Jennifer Miller	research for Reply Memorandum; drafting Memo; confs. w/JGC; serving Reply	10/1/2008	3	150.00	450.00
J.C. Carpenter	Review of research, preparation of Reply Memo; conf. with and e-mail from JJ Miller;	10/2/2008	2	200.00	400.00
Jennifer Miller	research for Reply Memorandum; drafting Memo; confs. w/JGC; serving Reply	10/2/2008	3.25	150.00	487.50
J.C. Carpenter	Conf. with JJ Miller; review of research; tel. conf. with Mr. Sloan; Preparation of Reply Brief;	10/3/2008	2	200.00	400.00
Jennifer Miller	research for Reply Memorandum; drafting Memo; confs. w/JGC; serving Reply	10/3/2008	3.5	150.00	525.00
J.C. Carpenter	Tel. conf. with and fax to Mr. Sloan; review of recent case on discretionary acts and ministerial acts; e-mail to court and counsel; preparation for hearing;	10/6/2008	2.75	200.00	550.00
Jennifer Miller	copying and filing memo; certificate of service; reviewing Wilson case; conf. w/JGC;	10/6/2008	2.75	150.00	412.50
J.C. Carpenter	Preparation for and representation in hearing on cross motions for summary judgment;	10/7/2008	3.5	200.00	700.00
Thank You for using The Carpenter Law Firm			Total		\$3,925.00

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DATE	INVOICE #
11/30/2008	3587

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS		PROJECT
			Upon Receipt		Slush Fund III
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Review of Transcript; Preparation for Hearing;	11/5/2008	1.25	200.00	250.00
J.C. Carpenter	Calls from and to Nick Nicholson; calls to Judge Few's office, Mr. Sloan;	11/6/2008	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; preparation for and representation in hearing on Motion for Summary Judgment;	11/7/2008	2.75	200.00	550.00
J.C. Carpenter	Faxes from Mr. Sloan; Drafting Order;	11/10/2008	3.75	200.00	750.00
J.C. Carpenter	Faxes to and from Mr. Sloan; revisions to proposed order; tel. confs. with Mr. Sloan;	11/11/2008	6.25	200.00	1,250.00
Jennifer Miller	reviewing and editing proposed order; confs. w/JGC	11/11/2008	2	150.00	300.00
J.C. Carpenter	Fax from Mr. Sloan; revisions to proposed order; fax to Mr. Sloan; E-mail to Nick Nicholson; Tel. confs. with Mr. Sloan, Nick Nicholson;	11/12/2008	0.75	200.00	150.00
J.C. Carpenter	Tel. conf. with Nick Nicholson, re: proposed order;	11/13/2008	0.25	200.00	50.00
J.C. Carpenter	E-mails from and to Judge Few, opposing counsel; fax to Mr. Sloan;	11/22/2008	0.25	200.00	50.00
J.C. Carpenter	Tel. confs. with Nick Nicholson; review of transcript of hearing;	11/24/2008	0.75	200.00	150.00
Jennifer Miller	conf. w/JGC re. receipt of transcript	11/24/2008	0.25	150.00	37.50
	Transcript of hearing 10/07/2008	11/7/2008		164.45	164.45
Thank You for using The Carpenter Law Firm			Total		\$3,751.95

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Invoice

DATE	INVOICE #
12/31/2008	3624

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

				TERMS	PROJECT
				Upon Receipt	Slush Fund III
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
	Court Reporter	12/10/2008		107.25	107.25
Thank You for using The Carpenter Law Firm				Total	\$107.25

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Invoice

DATE	INVOICE #
5/31/2009	3751

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Review of draft order; review of file; E-mail to Nick Nicholson;	5/20/2009	0.75	200.00	150.00
Thank You for using The Carpenter Law Firm			Total		\$150.00

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Invoice

DATE	INVOICE #
6/30/2009	3778

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Tel. conf. with Ben Szbody, Mr. Sloan, Nick Nicholson;	6/3/2009	0.5	200.00	100.00
J.C. Carpenter	Tel. conf. with Nick Nicholson;	6/10/2009	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with Nick Nicholson, re: drafting section of order;	6/30/2009	0.25	200.00	50.00
Thank You for using The Carpenter Law Firm			Total		\$200.00

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Attorneys and Counselors at Law

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Greenville, SC 29601

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Invoice

DATE	INVOICE #
7/31/2009	3803

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Call from Nick Nicholson, re: Slush Fund order; Receipt & Review of Slush Fund Order; fax to Mr. Sloan; Tel. confs. with Mr. Sloan; e-mail to Judge Few;	7/3/2009	0.75	200.00	150.00
J.C. Carpenter	tel.conf. with and fax to Mr. Sloan;	7/20/2009	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with Judge Few, Nick Nicholson; tel. conf. with Mr. Sloan; E-mail from Nick Nicholson;	7/28/2009	0.75	200.00	150.00
J.C. Carpenter	E-mails from Judge Few, Nick Nicholson; faxes to and from Mr. Sloan; Review of transcript of hearing; Tel. confs. and conf. with Mr. Sloan;	7/29/2009	2.5	200.00	500.00
J.C. Carpenter	Calls from Mr. Sloan, Bob Lloyd; call to Mr. Sloan;	7/30/2009	0.25	200.00	50.00
Thank You for using The Carpenter Law Firm			Total \$900.00		

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Invoice

DATE	INVOICE #
8/31/2009	3836

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Court hearing on proposed order ;	8/3/2009	0.25	200.00	50.00
J.C. Carpenter	Calls to and from and faxes from Mr. Sloan;	8/7/2009	0.5	200.00	100.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; review of transcript of hearing fax to Mr. Sloan;	8/10/2009	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with Mr. Sloan;	8/11/2009	0.25	200.00	50.00
J.C. Carpenter	Receipt & review of fax from Mr. Sloan;	8/12/2009	0.25	200.00	50.00
J.C. Carpenter	Tel. confs. with Mr. Sloan; e-mail to Judge Few, Nick Nicholson; fax to Mr. Sloan;	8/14/2009	0.5	200.00	100.00
J.C. Carpenter	Fax from and Tel. conf. with Mr. Sloan;	8/15/2009	0.25	200.00	50.00
Thank You for using The Carpenter Law Firm			Total		\$450.00

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DATE	INVOICE #
9/30/2009	3867

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS		PROJECT	
			Upon Receipt		Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT	
J.C. Carpenter	Court hearing on proposed order ;	8/3/2009	0.25	200.00	50.00	
JG Carpenter-...	Receipt & review of fax from Mr. Sloan;	8/12/2009	0.25	200.00	50.00	
J.C. Carpenter	Tel. confs. with Mr. Sloan; drafting and revising Supplemental Complaint and Motion to file Supplemental Complaint; faxes to and from Mr. Sloan;	9/3/2009	1	200.00	200.00	
J.C. Carpenter	Faxes from Mr. Sloan; Tel. conf. with Mr. Sloan;	9/4/2009	0.25	200.00	50.00	
J.C. Carpenter	Tel.conf. with Mr. Sloan; filing and service of Motion for Leave to File Supplemental Complaint;	9/8/2009	0.5	200.00	100.00	
J.C. Carpenter	Tel.conf. with Mr. Sloan; drafting, revising discovery requests to County; faxes to and from Mr. Sloan; Serving Discovery;	9/10/2009	1.25	200.00	250.00	
		9/3/2009		25.00	25.00	
Thank You for using The Carpenter Law Firm			Total		\$725.00	

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Invoice

DATE	INVOICE #
10/31/2009	3901

BILL TO
South Carolina Public Interest Foundation P.O. Box 25999 Greenville, SC 29616-0999

			TERMS	PROJECT	
			Upon Receipt	Slush Fund III	
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT
J.C. Carpenter	Letter and call from Nick Nicholson; fax to Mr. Sloan;	10/15/2009	0.25	200.00	50.00
J.C. Carpenter	Tel. conf. with Mr. Sloan; E-mail to Nick Nicholson; fax to Mr. Sloan;	10/17/2009	0.25	200.00	50.00
	Lis Pendens filing fee	10/6/2009		10.00	10.00
Thank You for using The Carpenter Law Firm			Total \$110.00		

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Greenville, SC 29601
(864) 235-1269

DATE	INVOICE #
11/30/2009	3939

						TERMS	PROJECT
						Upon Receipt	Slush Fund III
NAME	DESCRIPTION	SERVICE DATE	QTY	RATE	AMOUNT		
J.C. Carpenter	Receipt & review of discovery responses from Nick Nicholson; fax to Mr. Sloan;	11/16/2009	0.25	200.00	50.00		
J.C. Carpenter	Fax from Mr. Sloan; call to Mr. Sloan;	11/17/2009	0.25	200.00	50.00		
Misc. Expenses	Credit for Filing Fee charged in error.	10/6/2009		-10.00	-10.00		
Total \$90.00							

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 03-CP-23-3785
	)	
Edward D. Sloan, Jr.	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	(Slush Fund)
Greenville Hospital System	)	
	)	
Defendant.	)	
	)	

November 7, 2008
Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

A P P E A R A N C E S:

JAMES CARPENTER, Esquire
Attorney for the Plaintiff

BOYD B. NICHOLSON, Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



1 that I have been posing over the last ten or
2 fifteen minutes is really not something we need
3 to focus on. Everybody agrees that the council
4 can't delegate a legislative power to an
5 individual council member. And the question that
6 we're actually going to turn this case on is
7 whether or not what was delegated was in fact
8 legislative, right?

9 MR. NICHOLSON: That's the issue,
10 Judge.

11 THE COURT: Well, then I've spoken to that
12 issue and I think we're done unless there's any
13 further arguments. I would like for Mr.
14 Carpenter to begin preparation of an order. If I
15 were you, I would get this transcript too. Y'all
16 consult with each other and then get the order to
17 me. We may even come back again to discuss it.
18 This is, to me, this is -- well, I don't know.
19 This order needs to be attended to carefully.

20 MR. NICHOLSON: Yes, sir.

21 THE COURT: All right. (Pause.)

22 I set a file out here that I wanted to ask
23 you all about and some do-gooder came and moved
24 it. Do you know who that was?

25 SPEAKER: Well, it was a combination of

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.

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.

**RESPONSES TO PLAINTIFFS'
SECOND SET OF INTERROGATORIES,
REQUEST FOR PRODUCTION OF
DOCUMENTS, AND REQUESTS
FOR ADMISSION**

(Council District Expense)

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendants answer
Plaintiffs' Second Set of Interrogatories as follows:

INTERROGATORY NO. 1: In what amounts are the Council District Expense funds
allocated to each Councilor for fiscal years ending June 30, 2009, 2010, and 2011?

ANSWER: Within the documents attached hereto see "Operating Exp" line items in the
following documents:

Budget File, 05/14/2009 (Fiscal Year 2011)
Budget File, 05/14/2009 (Fiscal Year 2010)
Budget File, 09/25/2008 (Fiscal Year 2009)

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Defendants answer
Plaintiffs' Second Set of Request for Production of Documents as follows:

REQUEST NO. 2: The Ordinances appropriating Council District Expense funds for fiscal years ending June 30, 2009, 2010, and 2011.

ANSWER: See documents attached hereto.

REQUEST NO. 3: For each Ordinance in the previous request, the background public record that creates and allocates appropriated funds to Council District Expense.

ANSWER: See documents attached hereto.

REQUEST NO. 4: Any statement of "Guidelines" or the equivalent thereof governing the use of Council District Expense for any fiscal year ending June 30, 2009, 2010, and 2011.

ANSWER: See documents attached hereto.

REQUEST NO. 5: Any ordinance, resolution, or other authority creating or adopting "Guidelines" governing the use of Council District Expense for fiscal years ending June 30, 2009, 2010, and 2011.

ANSWER: See documents attached hereto.

Pursuant to Rule 35 of the South Carolina Rules of Civil Procedure, Defendants answer Plaintiffs' Second Set of Requests for Admission as follows:

REQUEST NO. 6: Admit that Ordinances appropriating funds for fiscal years ending June 30, 2009, 2010, and 2011 appropriated Council District Expense funds in amounts exceeding \$20,000 per Councilor.

ANSWER: Admit.

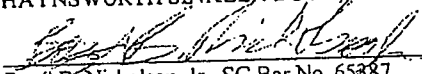
REQUEST NO. 7: Admit that the individual accounts of the Council District Expense for fiscal years ending June 30, 2009, 2010, and 2011 are substantively the same as the individual accounts for Council District Expense in Ordinance 3940.

ANSWER: Admit.

REQUEST NO. 8: Admit that the individual accounts of the Council District Expense for fiscal years ending June 30, 2009, 2010, and 2011 allow each Councilor to expend money as he sees fit, subject only to compliance with the "Guidelines" applicable to that fiscal year.

ANSWER: Admit.

HAYNSWORTH SINKLER BOYD, P.A.



Boyd B. Nicholson, Jr., SC Bar No. 65387

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Greenville, SC 29602-2048

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E-Mail: nnicholson@hsblawfirm.com

Attorneys for Defendants

Greenville, South Carolina
November 16, 2009

COUNTY OF GREENVILLE
FISCAL YEAR 2007-2008 BUDGET ORDINANCE

SECTION 1: The following funds are hereby appropriated for the operations of county government for the fiscal year beginning July 1, 2007 and ending June 30, 2008.

SCHEDULE A: GENERAL FUND

Administrative Services	\$	2,288,311	
General Services		10,601,762	
Human Resources		1,814,634	
Public Works		16,408,275	
Public Safety		32,972,487	
Elected & Appointed Offices/Judicial		14,145,627	
Elected & Appointed Offices/Fiscal		2,327,187	
Elected & Appointed Offices/Law Enforcement		31,022,602	
Other Services		6,226,510	
Subtotal	\$	118,607,395	
Other Financing Uses		1,625,342	
TOTAL GENERAL FUND	\$	120,232,737	

SCHEDULE B: SPECIAL REVENUE FUND

Road Program			
Road Projects	\$	11,600,000	
Other Financing Uses		2,000,000	\$ 13,600,000
Accommodations Tax			772,610
Medical Charities			4,894,384
Infrastructure Bank			
Other Financing Uses	\$	4,575,039	
Economic Development		722,356	5,297,395
Victim's Rights			1,114,138
Home Incarceration Program			57,416
Hospitality Tax			
Projects	\$	5,500,000	
Other Financing Uses		1,200,000	6,700,000
Emergency 911			
Expenditures		1,643,263	
Fund Balance Contribution		76,737	1,720,000
TOTAL SPECIAL REVENUE FUND			\$ 34,155,943

SCHEDULE C: DEBT SERVICE FUND

	G.O. BONDS	COPs, SSRBs, CAPITAL LEASES	
Principal	\$ 3,465,000	\$ 9,436,272	\$ 12,901,272
Interest	2,729,236	3,503,502	6,232,738
Service Charge	7,000	7,000	14,000
Fund Balance Contribution	165,962		165,962
TOTAL DEBT SERVICE FUND	\$ 6,367,198	\$ 12,946,774	\$ 19,313,972

SCHEDULE D: CAPITAL PROJECTS FUND

Information Technology	\$	1,633,361	
Facility Projects		250,000	
Automobile Replacement Program		1,500,000	
TOTAL CAPITAL PROJECTS FUND	\$	3,383,361	

SCHEDULE E: INTERNAL SERVICE FUND

Fleet Management			
Expenditures	\$	5,313,996	
Fund Balance Contribution		45,955	\$ 5,359,951
Health and Dental Insurance			
Expenditures		17,736,655	
Fund Balance Contribution		3,336,193	21,072,848
Workers Compensation Insurance			
Expenditures		2,340,359	
Fund Balance Contribution		231,708	2,572,067
TOTAL INTERNAL SERVICE FUND			\$ 29,004,866

SCHEDULE F: ENTERPRISE FUND

Solid Waste	\$	9,933,611	
Stormwater Management		10,165,355	
TOTAL ENTERPRISE FUND	\$	20,098,966	

SECTION 2: Revenues available in FY2008 are estimated according to the following schedules.

SCHEDULE A: GENERAL FUND

Property Tax (including delinquent taxes)	\$	61,601,401
County Office Revenue		25,964,340
State Shared Taxes		22,757,708
Other Revenue		5,496,208
Transfers In		3,200,000
Fund Balance Usage		1,213,080
TOTAL GENERAL FUND	\$	120,232,737

SCHEDULE B: SPECIAL REVENUE FUND

Road Paving			
Road Maintenance Fees	\$	6,437,807	
Other Financing Sources		1,500,000	
Other		360,000	
Fund Balance Usage		5,302,193	\$ 13,600,000
Accommodations Tax			772,610
Medical Charities			
Property Tax (including delinquent taxes)	\$	3,949,845	
State Shared Taxes (Merchants Inventory)		179,520	
Other		75,065	
Fund Balance Usage		689,954	4,894,384
Infrastructure Bank			
FILOT Revenues	\$	5,084,543	
Fund Balance Usage		212,852	5,297,395
Victim's Rights			
Intergovernmental Revenue	\$	858,000	
Fund Balance Usage		256,138	1,114,138
Home Incarceration Program			57,416
Hospitality Tax			6,700,000
E911 User Fees			1,720,000
TOTAL SPECIAL REVENUE FUND			\$ 34,155,943

SCHEDULE C: DEBT SERVICE FUND

	G.O. BONDS	COPs, SSRBs, CAPITAL LEASES	
Property Tax (including delinquent taxes)	\$ 1,528,288	\$ 3,306,131	\$ 4,834,419
Intergovernmental	4,738,910	2,534,693	7,273,603
Interest	100,000	150,000	250,000
Interfund Transfers	-	3,505,088	3,505,088
Fund Balance Usage	-	3,450,862	3,450,862
TOTAL DEBT SERVICE FUND	\$ 6,367,198	\$ 12,946,774	\$ 19,313,972

SCHEDULE D: CAPITAL PROJECTS FUND

General Fund Transfer	\$	800,000
Capital Project Reserve	\$	1,083,361
Master Lease Proceeds		1,500,000
TOTAL CAPITAL PROJECTS FUND	\$	3,383,361

SCHEDULE E: INTERNAL SERVICE FUND

Fleet Management Reimbursement	\$	5,359,951
Health and Dental Premiums		21,072,848
Workers Compensation Premiums		2,572,067
TOTAL INTERNAL SERVICE FUND	\$	29,004,866

SCHEDULE F: ENTERPRISE FUND

Solid Waste			
Property Tax	\$	4,260,371	
Solid Waste Tipping Fees		3,200,000	
Other		657,205	
Fund Balance Usage		1,816,035	\$ 9,933,611
Stormwater			
Fees	\$	6,670,000	
Fund Balance Usage		3,495,355	10,165,355
TOTAL ENTERPRISE FUND			\$ 20,098,966

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

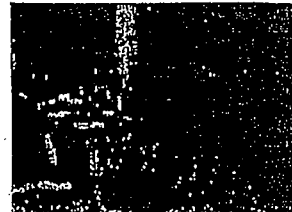
consider ordinances, resolutions, bids, contracts, zoning changes, road maintenance, and to review any and all matters relating to County

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.

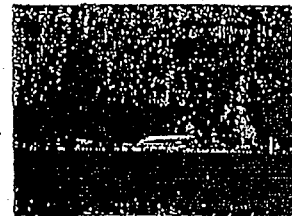
Budget Highlights

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 at Council meeting (above)
and Council staff (below)



COUNTY COUNCIL	FY2006 ACTUAL	FY2007 PROJECTION	FY2008 BUDGET	FY2009 BUDGET	TOTAL BUDGET
PERSONNEL SERVICES	\$ 579,715	\$ 599,319	\$ 649,375	\$ 664,718	\$ 1,314,093
OPERATING EXPENSES	538,575	474,066	443,379	421,379	864,758
CONTRACTUAL CHARGES	3,753	3,501	7,053	7,053	14,106
CAPITAL OUTLAY	-	-	-	-	-
TOTALS	\$ 1,122,043	\$ 1,076,886	\$ 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

COUNTY COUNCIL

Performance Indicators:	Actual 2006	Projected 2007	Target 2008	Target 2009

PRIORITY AREAS

Program Goal 1: To provide prompt and courteous service to Council members, the public and staff by providing accurate information in a usable and understandable format.

Objective 1 (a): To ensure accuracy of the preparation of agenda packets for distribution, agenda items for consideration, resolutions and ordinances for Council action 100% of the time.

# agenda packages prepared for delivery	22	22	22	22
% agenda packages prepared /delivered on time	100%	100%	100%	100%
# agendas posted on webpage & bulletin board	22	22	22	22
% agendas posted on webpage & bulletin board	100%	100%	100%	100%
# agendas on CD mailed to Library	22	22	22	22
% agendas on CD mailed to Library on time	100%	100%	100%	100%

Objective 1 (b): To ensure that all public hearing notices are properly submitted to the designated local newspaper in accordance with the guidelines for public notices 100% of the time.

# public hearing notices submitted to newspaper	55	55	55	55
% notices submitted according to guidelines	100%	100%	100%	100%

Objective 1 (c): To respond to Freedom of Information Requests within 15 business days.

# Freedom of Information Requests received	4	4	4	4
% requests responded to within 15 days	100%	100%	100%	100%

Note: County Council, as a governing body, is responsible for all priority areas of the Council. The goals and objectives listed above reflect those of the Council office staff.

Greenville Fun Facts

Greenville County government began in 1868, when the new South Carolina Constitution created a three member board of commissioners to supervise

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

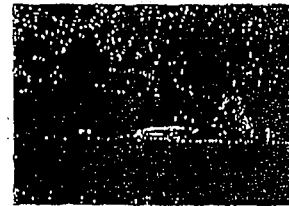
Services include, but are not limited to, holding public meetings to consider ordinances, resolutions, bids, contracts, zoning changes, road maintenance, and to review any and all matters relating to County business; levying taxes and raising/lowering tax millage; adopting an annual County budget; setting 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 FY2010 and FY2011 is \$2,190,584 and is 0.11% less than the previous two-year budget. Decreases in the budget are attributed to the reengineering efforts of departments to streamline costs while providing the same level of service. The FY2010 and FY2011 budgets allow for 15.80 full-time equivalent positions.



County Council at Council meeting (above)
and Council staff (below)



COUNTY COUNCIL	FY2008 ACTUAL	FY2009 PROJECTION	FY2010 BUDGET	FY2011 BUDGET	TOTAL BUDGET
PERSONNEL SERVICES	\$ 595,146	\$ 664,718	\$ 644,434	\$ 659,950	\$ 1,304,384
OPERATING EXPENSES	445,128	421,379	436,000	436,000	872,000
CONTRACTUAL CHARGES	3,161	7,053	7,100	7,100	14,200
CAPITAL OUTLAY					
TOTALS	\$ 1,043,435	\$ 1,093,150	\$ 1,087,534	\$ 1,103,050	\$ 2,190,584
POSITION SUMMARY	16.0	16.0	16.0	16.0	
FTE SUMMARY	15.8	15.8	15.8	15.8	

FY2008/FY2009 Accomplishments

- Implemented a new boards and commissions interactive interview process
- Completed all scanning backlog of Council archive documents

FY2010/FY2011 Key Action Steps

- Image newspaper articles pertaining to Council and County operations for research and reference
- Research technological applications to improve departmental efficiency
- Review department work process procedures to ensure they reflect current work processes
- Develop and present to Council for their consideration and approval, a policy to honor citizens who have served on Boards and Commissions for 10+ years

COUNTY COUNCIL

Performance Indicators:	Actual 2008	Projected 2009	Target 2010	Target 2011

PRIORITY AREAS

Program Goal 1: To provide prompt and courteous service to Council members, the public and staff by providing accurate information in a usable and understandable format.

Objective 1(a): To ensure accuracy of the preparation of agenda packets for distribution, agenda items for consideration, resolutions and ordinances for Council action 100% of the time.

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# agendas on CD mailed to Library	22	22	22	22
% agendas on CD mailed to Library on time	100%	100%	100%	100%

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Note: County Council, as a governing body, is responsible for all priority areas of the Council. The goals and objectives listed above reflect those of the Council office staff.

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GREENVILLE COUNTY
BUDGET FILE
05/14/2009

PAGE 3

FISCAL YEAR: 2011
FUND: 01 GENERAL FUND
DEPARTMENT: 01 LEGISLATIVE & ADMIN. SERVICES
DIVISION: 41500 COUNTY COUNCIL

	PRIOR YEAR	BASE BUDGET	EXPANSION	TOT REQUESTED	ADJUSTMENTS	TOT RECOMMEND
SALARIES						
11101 SALARIES- FULL TIME		454,462		454,462		454,462
11102 SALARIES- PART TIME						
11103 SALARIES- FT OVERTIME						
11104 SALARIES- PT OVERTIME						
11110 FICA		34,766		34,766		34,766
11111 POLICE RETIREMENT				41,992		41,992
11112 SC RETIREMENT		41,992		4,620		4,620
11113 DENTAL INSURANCE		4,620		1,875		1,875
11114 LIFE INSURANCE		1,875		1,545		1,545
11115 WORKERS COMPENSATION		1,545		2,100		2,100
11116 UNEMPLOYMENT INSURANCE		2,100		118,590		118,590
11127 HEALTH INSURANCE		118,590		659,950		659,950
SALARIES		659,950		659,950		659,950
OPERATING EXP						
12001 COPY EXPENSE		1,024		1,024		1,024
12002 POSTAGE		50		50		50
12003 PRINTING & BINDING		5,800		5,800	2,000-	3,800
12004 INCENTIVES & AWARDS		1,500		1,500	1,400-	100
12007 ADVERTISING		3,300		3,300		3,300
12009 MEMBERSHIPS & DUES		60,000		60,000		60,000
12010 PUBLICATIONS		503		503		503
12029 OPERATIONAL SUPPORT		11,067		11,067		11,067
12031 OPERATIONAL ASSETS				1,979		1,979
12201 GENERAL TRANSPORTATIO		1,979		8,200	1,500-	6,700
12202 TRAINING/TRAVEL/CONFE		8,200		2,500		2,500
12221 OFFICE SUPPLIES		2,500		1,500		1,500
12228 PHOTO/MICROFILM SUPPL		1,500		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		24,251		24,251		24,251
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		21,828		21,828		21,828
12269 COUNCIL DIST. EXP.DIS		21,828		21,828		21,828
12271 TECHNICAL/PROFESSIONA		74,000		74,000		74,000
12284 COUNCIL DIST. EXP.DIS		26,946		26,946		26,946
12286 COUNCIL DIST. EXP.DIS		21,828		21,828		21,828
OPERATING EXP		440,900		440,900	4,900-	438,000
CONTRACTUAL						
13370 SERVICE CONTRACTUAL A		7,100		7,100		7,100
13373 OPERATING LEASE AGREE						
CONTRACTUAL		7,100		7,100		7,100
DIVISION TOT		1,107,950		1,107,950	4,900-	1,103,050

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GREENVILLE COUNTY
BUDGET FILE
05/14/2009

PAGE 3

FISCAL YEAR: 2010
FUND: 01 GENERAL FUND
DEPARTMENT: 01 LEGISLATIVE & ADMIN. SERVICES
DIVISION: 41500 COUNTY COUNCIL

	BASE BUDGET	EXPANSION	TOT REQUESTED	ADJUSTMENTS	TOT RECOMMEND
SALARIES			441,228		441,228
11101 SALARIES- FULL TIME	441,226				
11102 SALARIES- PART TIME					
11103 SALARIES- FT OVERTIME					
11104 SALARIES- PT OVERTIME					
11110 FICA	33,754		33,754		33,754
11111 POLICE RETIREMENT					
11112 SC RETIREMENT	40,769		40,769		40,769
11113 DENTAL INSURANCE	4,620		4,620		4,620
11114 LIFE INSURANCE	1,875		1,875		1,875
11115 WORKERS COMPENSATION	1,500		1,500		1,500
11116 UNEMPLOYMENT INSURANC	2,100		2,100		2,100
11127 HEALTH INSURANCE	118,590		118,590		118,590
SALARIES	644,434		644,434		644,434
OPERATING EXP					
12001 COPY EXPENSE	1,024		1,024		1,024
12002 POSTAGE	50		50		50
12003 PRINTING & BINDING	5,800		5,800	2,000-	3,800
12004 INCENTIVES & AWARDS	1,500		1,500	1,400-	100
12007 ADVERTISING	3,300		3,300		3,300
12009 MEMBERSHIPS & DUES	60,000		60,000		60,000
12010 PUBLICATIONS	503		503		503
12029 OPERATIONAL SUPPORT	11,067		11,067		11,067
12031 OPERATIONAL ASSETS					
12201 GENERAL TRANSPORTATIO	1,979		1,979		1,979
12202 TRAINING/TRAVEL/CONF	8,200		8,200	1,500-	6,700
12221 OFFICE SUPPLIES	2,500		2,500		2,500
12228 PHOTO/MICROFILM SUPPL	1,500		1,500		1,500
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	24,251		24,251		24,251
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	21,828		21,828		21,828
12269 COUNCIL DIST. EXP.DIS	21,828		21,828		21,828
12271 TECHNICAL/PROFESSIONA	74,000		74,000		74,000
12284 COUNCIL DIST. EXP.DIS	26,946		26,946		26,946
12286 COUNCIL DIST. EXP.DIS	21,828		21,828		21,828
OPERATING EXP	440,900		440,900	4,900-	436,000
CONTRACTUAL					
13370 SERVICE CONTRACTUAL A	7,100		7,100		7,100
13373 OPERATING LEASE AGREE					
CONTRACTUAL	7,100		7,100		7,100
DIVISION TOT	1,092,434		1,092,434	4,900-	1,087,534

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GREENVILLE COUNTY
BUDGET FILE
09/25/2009

PAGE 1

FISCAL YEAR: 2009
FUND: 01 GENERAL FUND
DEPARTMENT: 01 LEGISLATION & ADMIN. SERVICES
DIVISION: 41000 COUNTY COUNCIL

	2008 YEAR	BAGE BUDGET	EXPANSION	TOT REQUESTED	ADJUSTMENTS	TOT RECOMMEND	APPROVED
SALARIES							
11101 SALARIES- FULL TI		432,226		432,226		432,226	432,226
11102 SALARIES- PART TI		20,526		20,526		20,526	20,526
11103 SALARIES- FT OVER							
11104 SALARIES- FT OVER							
11110 FICA		34,636		34,636		34,636	34,636
11111 POLICE RETIREMENT							
11112 SC RETIREMENT		39,309		39,309		39,309	39,309
11113 DENTAL INSURANCE		4,866		4,866		4,866	4,866
11114 LIFE INSURANCE		1,975		1,975		1,975	1,975
11115 WORKERS COMPENSAT		10,270		10,270		10,270	10,270
11116 UNEMPLOYMENT INSUR		2,240		2,240		2,240	2,240
11117 HEALTH INSURANCE		118,590		118,590		118,590	118,590
SALARIES		664,710		664,710		664,710	664,710
OPERATING S							
12001 COPY EXPENSE		1,024		1,024		1,024	1,024
12002 POSTAGE		49		49		49	49
12003 PRINTING & REPRO		5,325		5,325		5,325	5,325
12004 INCENTIVES & AWAR		1,521		1,521		1,521	1,521
12007 ADVERTISING		3,014		3,014		3,014	3,014
12009 MEMBERSHIPS & DUE		58,444		58,444		58,444	58,444
12010 PUBLICATIONS		503		503		503	503
12029 OPERATIONAL SUPPD		6,065	5,000	11,065	5,000-	6,065	6,065
12201 GENERAL TRANSPORT		1,979		1,979		1,979	1,979
12202 TRAINING/TRAVEL/C		2,987		2,987	5,000	7,987	7,987
12221 OFFICE SUPPLIES		1,507		1,507		1,507	1,507
12228 PHOTO/VIDEO/FLM S		1,205		1,205		1,205	1,205
12260 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12261 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12262 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12263 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12264 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12265 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12266 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12267 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12268 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12269 COUNCIL DIST. EXP		24,251		24,251		24,251	24,251
12271 TECHNICAL/PROPHGS		143,449		143,449	80,250-	63,199	63,199
12284 COUNCIL DIST. EXP		26,946		26,946		26,946	26,946
12286 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
OPERATING S		496,629	5,000	501,629	80,250-	421,379	421,379
CONTRACTUAL							
13370 SERVICE CONTRACTU		7,053		7,053		7,053	7,053
13371 OPERATING HOUSE A		7,053		7,053		7,053	7,053
CONTRACTUAL		7,053		7,053		7,053	7,053
DIVISION TOT		1,168,400	5,000	1,173,400	80,250-	1,093,150	1,093,150

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.

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE CASE NO. 2010-CP-23- 1610

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., Robert Taylor, Joseph
Baldwin, James Burns, Sidney Cates,
Joseph Dill, Lottie Gibson, Judy Gilstrap,
Willis Meadows, Xanthene Norris, Fred
Payne and Liz Seman,
Defendants.

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

(Council District Expense: 2010, 2011)

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 *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *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), *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. On June 16, 2009, Greenville County Council enacted Ordinance 4296 (Exhibit A).
9. Ordinance 4296 Section 1 appropriated funds for the fiscal year ending June 30, 2010, and included an appropriations for the "Council District Expense" (Exhibit A-1) as follows:

12284 Council Dist. Exp. Dis.	26,946
12286 Council Dist. Exp. Dis.	21,828
Operating Exp.	440,900
10. On August 4, 2009, Greenville County Council enacted Ordinance 4301 (Exhibit B).

11. Ordinance 4301 Section 1 appropriated funds for the fiscal year ending June 30, 2011, and included an appropriation for "Council District Expense" (Exhibit B-1) as follows:

12284 Council Dist. Exp. Dis.	26,946
12286 Council Dist. Exp. Dis.	21,828
Operating Exp.	440,900

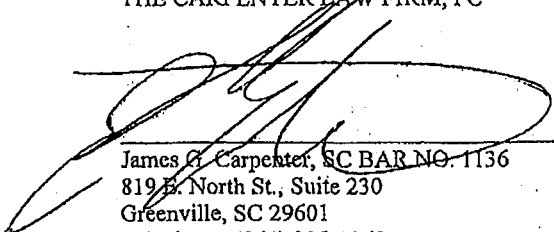
12. "Council District Expense" included an annual appropriation of more than \$20,000 per council member;
13. Ordinances 4296 and 4301, which included appropriations of more than \$20,000 per council member, included a delegation of legislative power.
14. The Ordinances' delegation of legislative authority to an individual member was improper.
15. Upon information and belief, from the dates these Ordinances were enacted to the date of this Complaint, "guidelines" governing the delegated legislative power were unchanged.
16. The Ordinances' delegation of legislative power to an individual member, as described herein, is illegal, as held by Order of this Court, *South Carolina Public Interest Foundation, et al v. Greenville County, et al.*, Civil Action No. 2006-CP-23-4637 (Order entered February 10, 2010).

WHEREFORE, Plaintiffs pray the Court for an order:

1. Declaring that in the Ordinances referenced herein, the appropriations referenced herein, and the delegation of the discretionary spending authority, as referenced herein, are illegal, invalid, and *ultra vires*;

2. Temporary, preliminary, and permanent injunctive relief prohibiting disbursement of funds from the Council District Expense Fund;
3. Granting Plaintiffs costs and attorneys fees; and
4. Granting Plaintiffs 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) 331-3083

Attorneys for Plaintiffs

COUNTY OF GREENVILLE
FISCAL YEAR 2009-2010 BUDGET ORDINANCE

SECTION 1: The following funds are hereby appropriated for the operations of county government for the fiscal year beginning July 1, 2009 and ending June 30, 2010.

SCHEDULE A: GENERAL FUND

Administrative Services		\$ 2,265,364
General Services		10,191,283
Human Resources		2,063,344
Public Works		15,723,933
Public Safety		35,973,852
Elected & Appointed Offices/Judicial		15,035,077
Elected & Appointed Offices/Fiscal		2,402,650
Elected & Appointed Offices/Law Enforcement		34,479,222
Other Services		5,372,672
Subtotal		<u>\$ 123,507,405</u>
Other Financing Uses		7,062,256
TOTAL GENERAL FUND		<u>\$ 130,569,661</u>

SCHEDULE B: SPECIAL REVENUE FUND

Road Program		
Road Projects	\$ 9,400,000	
Other Financing Uses	6,000,000	\$ 15,400,000
Accommodations Tax		772,610
Medical Charities		
Expenditures	5,121,029	
Fund Balance Contribution	114,980	5,236,009
Infrastructure Bank		
Economic Development	\$ 760,970	
Other Financing Uses	6,775,733	7,536,703
Victim's Rights		845,009
Home Incarceration Program		62,256
Hospitality Tax		
Projects	\$ 2,685,031	
Other Financing Uses	4,014,969	6,700,000
Emergency 911		
Expenditures	1,645,316	
Fund Balance Contribution	74,684	1,720,000
TOTAL SPECIAL REVENUE FUND		<u>\$ 38,272,587</u>

SCHEDULE C: DEBT SERVICE FUND

	G.O. BONDS	COPs, SSRBs, CAPITAL LEASES	
Principal	\$ 4,095,000	\$ 8,330,000	\$ 12,425,000
Interest	2,993,364	4,401,251	7,394,615
Service Charge	7,000	13,000	20,000
Other Financing Uses		4,403,748	\$ 4,403,748
Fund Balance Contribution		3,591,677	3,591,677
TOTAL DEBT SERVICE FUND	<u>\$ 7,095,364</u>	<u>\$ 20,739,676</u>	<u>\$ 27,835,040</u>

SCHEDULE D: CAPITAL PROJECTS FUND

Information Technology		\$ 3,093,070
Geographic Information System		100,000
Facility Projects		250,000
TOTAL CAPITAL PROJECTS FUND		<u>\$ 3,443,070</u>

SCHEDULE E: INTERNAL SERVICE FUND

Fleet Management		
Expenditures	\$ 6,200,000	
Fund Balance Contribution	25,000	\$ 6,225,000
Health and Dental Insurance		
Expenditures	20,297,732	
Fund Balance Contribution	1,519,999	21,817,731
Workers Compensation Insurance		
Expenditures	1,800,000	
Fund Balance Contribution	933,420	2,733,420
TOTAL INTERNAL SERVICE FUND		<u>\$ 30,776,151</u>

PLAINTIFF'S
EXHIBIT

County of Greenville
Operating and Capital Budget
Fiscal Years 2010 and 2011

7

SCHEDULE F: ENTERPRISE FUND
Solid Waste
Stormwater Management
TOTAL ENTERPRISE FUND

\$ 11,359,292
10,210,186
\$ 21,569,478

SECTION 2: Revenues available in FY2010 are estimated according to the following schedules.

SCHEDULE A: GENERAL FUND
Property Tax (including delinquent taxes)
County Office Revenue
State Shared Taxes
Other Revenue
Transfers In
Fund Balance Usage
TOTAL GENERAL FUND

\$ 72,561,716
24,220,208
20,429,373
5,925,975
7,224,000
208,389
\$ 130,569,661

SCHEDULE B: SPECIAL REVENUE FUND

Road Paving
Road Maintenance Fees
Other Financing Sources
Other
Fund Balance Usage
Accommodations Tax
Medical Charities
Property Tax (including delinquent taxes)
State Shared Taxes (Merchants Inventory)
Other
Other Financing Sources
Infrastructure Bank
FILOT Revenues
Other
Fund Balance Usage
Victim's Rights
Intergovernmental Revenue
Fund Balance Usage
Home Incarceration Program
Hospitality Tax
EP11 User Fees
TOTAL SPECIAL REVENUE FUND

\$ 6,367,395
4,060,000
4,972,605
\$ 15,400,000
772,610
\$ 4,233,287
179,520
23,202
800,000
5,236,009
\$ 5,475,618
274,733
1,786,352
7,536,703
\$ 833,250
11,759
845,009
62,256
6,700,000
1,720,000
\$ 38,272,587

SCHEDULE C: DEBT SERVICE FUND

Property Tax (including delinquent taxes)
Intergovernmental
Interest
Other Financing Sources
Fund Balance Usage
TOTAL DEBT SERVICE FUND

G.O. BONDS	COPs, SSRBs, CAPITAL LEASES	
\$ 1,763,870	\$ 2,769,507	\$ 4,533,377
3,491,430	2,543,753	6,035,183
300,000	150,000	450,000
	10,270,450	10,270,450
1,540,064	5,005,966	6,546,030
\$ 7,095,364	\$ 20,739,676	\$ 27,835,040

SCHEDULE D: CAPITAL PROJECTS FUND
General Fund Transfer
TOTAL CAPITAL PROJECTS FUND

\$ 3,443,070
\$ 3,443,070

SCHEDULE E: INTERNAL SERVICE FUND
Fleet Management Reimbursement
Health and Dental Premiums
Workers Compensation
TOTAL INTERNAL SERVICE FUND

\$ 6,225,000
21,817,731
2,733,420
\$ 30,776,151

SCHEDULE F: ENTERPRISE FUND

Solid Waste
Property Tax
Solid Waste Tipping Fees
Other
Fund Balance Usage
Stormwater
Fees
Fund Balance Usage
TOTAL ENTERPRISE FUND

\$ 3,880,513
3,412,232
880,000
3,186,547
\$ 11,359,292
\$ 8,247,107
1,963,079
\$ 10,210,186
\$ 21,569,478

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, 2009 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 \$1,682,300,000 and an estimated current collection rate of ninety-five percent (95%).

	TAX RATES FY2010
General Fund	40.5
Special Revenue Fund	
Charity Hospitalization	2.4
Debt Service Funds	
G. O. Bonds	1.0
Certificates of Participation	1.5
Enterprise Fund	
Solid Waste	<u>2.2</u>
TOTAL	47.6

SECTION 4: LINE ITEM ACCOUNTS ESTABLISHED. All line item accounts as set forth in the FY2010 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 FY2009-2010 capital projects, \$700,000 of the FY2010 Prescription for Progress \$9,400,000 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. The road assistance money set aside for municipalities in this section shall not be made available to any municipality that owes an outstanding balance to Greenville County.

SECTION 8: ROAD IMPROVEMENT FUNDING. Road improvement funding distribution 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

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: USER FEES. The County Administrator is hereby given authority to set user fees designed to cover the costs of programs approved for operation in the fiscal year 2010 budget.

SECTION 11: 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 2009 on all taxable property in Greenville County a tax as determined in Section 3.

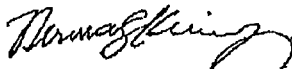
SECTION 12: All ordinances in conflict are hereby repealed.

SECTION 13: This ordinance shall take effect July 1, 2009.

ADOPTED IN REGULAR MEETING THIS 16th Day of June, 2009.

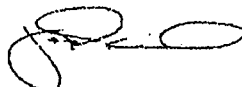
GREENVILLE COUNTY, SOUTH CAROLINA

By:



Herman G. Kirven, Jr., Chairman of County Council
Greenville County, South Carolina

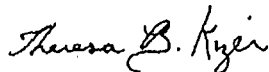
By:



Joseph M. Kernen, County Administrator
Greenville County, South Carolina

ATTEST:

By:



Theresa B. Kizer, Clerk to County Council
Greenville County, South Carolina

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GREENVILLE COUNTY
BUDGET FILE
05/14/2009

PAGE 3



FISCAL YEAR: 2010
FUND: 01 GENERAL FUND
DEPARTMENT: 01 LEGISLATIVE & ADMIN. SERVICES
DIVISION: 41500 COUNTY COUNCIL

	PRIOR YEAR	BASE BUDGET	EXPANSION	TOT REQUESTED	ADJUSTMENTS	TOT RECOMMEND
SALARIES						
11101 SALARIES- FULL TIME		441,228		441,228		441,228
11102 SALARIES- PART TIME						
11103 SALARIES- FT OVERTIME						
11104 SALARIES- PT OVERTIME						
11110 FICA		33,754		33,754		33,754
11111 POLICE RETIREMENT						
11112 SC RETIREMENT		40,769		40,769		40,769
11113 DENTAL INSURANCE		4,820		4,820		4,820
11114 LIFE INSURANCE		1,875		1,875		1,875
11115 WORKERS COMPENSATION		1,500		1,500		1,500
11116 UNEMPLOYMENT INSURANCE		2,100		2,100		2,100
11127 HEALTH INSURANCE		118,590		118,590		118,590
SALARIES		644,434		644,434		644,434
OPERATING EXP						
12001 COPY EXPENSE		1,024		1,024		1,024
12002 POSTAGE		50		50		50
12003 PRINTING & BINDING		5,800		5,800	2,000-	3,800
12004 INCENTIVES & AWARDS		1,500		1,500	1,400-	100
12007 ADVERTISING		3,300		3,300		3,300
12009 MEMBERSHIPS & DUES		60,000		60,000		60,000
12010 PUBLICATIONS		503		503		503
12029 OPERATIONAL SUPPORT		11,067		11,067		11,067
12031 OPERATIONAL ASSETS						
12201 GENERAL TRANSPORTATION		1,979		1,979		1,979
12202 TRAINING/TRAVEL/CONFERENCE		8,200		8,200	1,500-	6,700
12221 OFFICE SUPPLIES		2,500		2,500		2,500
12228 PHOTO/MICROFILM SUPPL		1,500		1,500		1,500
12280 COUNCIL DIST. EXP. DIS		21,828		21,828		21,828
12281 COUNCIL DIST. EXP. DIS		21,828		21,828		21,828
12282 COUNCIL DIST. EXP. DIS		21,828		21,828		21,828
12283 COUNCIL DIST. EXP. DIS		21,828		21,828		21,828
12284 COUNCIL DIST. EXP. DIS		21,828		21,828		21,828
12285 COUNCIL DIST. EXP. DIS		24,251		24,251		24,251
12286 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		21,828		21,828		21,828
12269 COUNCIL DIST. EXP. DIS		21,828		21,828		21,828
12271 TECHNICAL/PROFESSIONAL		74,000		74,000		74,000
12284 COUNCIL DIST. EXP. DIS		26,946		26,946		26,946
12286 COUNCIL DIST. EXP. DIS		21,828		21,828		21,828
OPERATING EXP		440,900		440,900	4,900-	436,000
CONTRACTUAL						
13370 SERVICE CONTRACTUAL A		7,100		7,100		7,100
13373 OPERATING LEASE AGREE						
CONTRACTUAL		7,100		7,100		7,100
DIVISION TOT		1,092,434		1,092,434	4,900-	1,087,534

632

COUNTY OF GREENVILLE
FISCAL YEAR 2010-2011 BUDGET ORDINANCE

SECTION 1: The following funds are hereby appropriated for the operations of county government for the fiscal year beginning July 1, 2010 and ending June 30, 2011.

SCHEDULE A: GENERAL FUND

Administrative Services	\$	2,311,646
General Services		10,365,640
Human Resources		2,109,063
Public Works		15,961,651
Public Safety		37,002,637
Elected & Appointed Offices/Judicial		15,391,058
Elected & Appointed Offices/Fiscal		2,459,124
Elected & Appointed Offices/Law Enforcement		35,665,021
Other Services		5,483,787
Subtotal	\$	126,749,627
Other Financing Uses		5,913,769
Fund Balance Contribution		6,037
TOTAL GENERAL FUND	\$	132,669,433

SCHEDULE B: SPECIAL REVENUE FUND

Road Program		
Road Projects	\$	9,400,000
Other Financing Uses		6,000,000
Accommodations Tax		15,400,000
Medical Charities		772,610
Infrastructure Bank		5,180,876
Economic Development	\$	782,299
Other Financing Uses		6,720,634
Victim's Rights		7,502,933
Home Incarceration Program		866,037
Hospitality Tax		63,769
Projects	\$	2,685,031
Other Financing Uses		4,014,969
Emergency 911		6,700,000
Expenditures	\$	1,466,305
Fund Balance Contribution		253,695
TOTAL SPECIAL REVENUE FUND	\$	38,206,225

SCHEDULE C: DEBT SERVICE FUND

	G.O. BONDS	COPs, SSRBs, CAPITAL LEASES	TOTAL
Principal	\$ 4,230,000	\$ 8,887,415	\$ 13,117,415
Interest	2,814,833	4,087,936	6,902,769
Service Charge	7,000	13,000	20,000
Other Financing Uses	-	1,077,415	1,077,415
Fund Balance Contribution	-	-	-
TOTAL DEBT SERVICE FUND	\$ 7,051,833	\$ 14,065,766	\$ 21,117,599

SCHEDULE D: CAPITAL PROJECTS FUND

Information Technology	\$	2,760,825
Geographic Information Systems		100,000
Facility Projects		250,000
TOTAL CAPITAL PROJECTS FUND	\$	3,110,825



SCHEDULE E: INTERNAL SERVICE FUND

Fleet Management		
Expenditures	\$ 6,200,000	
Fund Balance Contribution	25,000	\$ 6,225,000
Health and Dental		
Expenditures	\$ 21,896,596	
Fund Balance Contribution		21,896,596
Workers Compensation		
Expenditures	\$ 1,700,000	
Fund Balance Contribution	1,119,842	2,819,842
TOTAL INTERNAL SERVICE FUND		\$ 30,941,438

SCHEDULE F: ENTERPRISE FUND

Solid Waste		\$ 10,685,808
Stormwater Management Program		10,233,915
TOTAL ENTERPRISE FUND		\$ 20,919,723

SECTION 2: Revenues available in FY2011 are estimated according to the following schedules.

SCHEDULE A: GENERAL FUND

Property Tax (Including delinquent taxes)	\$ 74,212,818
County Office Revenue	24,817,835
State Shared Taxes	20,437,509
Other Revenue	5,952,791
Transfers In	7,248,480
TOTAL GENERAL FUND	\$ 132,669,433

SCHEDULE B: SPECIAL REVENUE FUND

Road Paving		
Road Maintenance Fees	\$ 6,558,623	
Other	332,962	
Other Financing Sources	7,150,000	
Fund Balance Usage	1,358,415	\$ 15,400,000
Accommodations Tax		772,610
Medical Charities		
Property Tax (Including delinquent taxes)	\$ 4,317,953	
State Shared Taxes (Merchants Inventory)	179,520	
Other	25,453	
Other Financing Sources	650,000	
Fund Balance Usage	7,950	5,180,876
Infrastructure Bank		
FILOT Revenues	\$ 5,530,374	
Other	221,142	
Fund Balance Usage	1,751,417	7,502,933
Victim's Right		
Intergovernmental Revenue	\$ 841,583	
Fund Balance Usage	24,454	866,037
Home Incarceration Program		63,769
Hospitality Tax		6,700,000
E911 User Fees		1,720,000
TOTAL SPECIAL REVENUE FUND		\$ 38,206,225

SCHEDULE C: DEBT SERVICE FUND

	G.O. BONDS	COPs, SSRBs, CAPITAL LEASES	TOTAL
Property Tax (Including delinquent taxes)	\$ 1,799,147	\$ 2,698,721	\$ 4,497,868
Intergovernmental	3,434,767	2,538,688	5,973,455
Interest	300,000	150,000	450,000
Other Financing Sources		6,940,018	6,940,018
Fund Balance Usage	1,517,919	1,738,339	3,256,258
TOTAL DEBT SERVICE FUND	\$ 7,051,833	\$ 14,065,766	\$ 21,117,599

SCHEDULE D: CAPITAL PROJECTS FUND

General Fund Transfer	\$	3,110,825
TOTAL CAPITAL PROJECTS FUND	\$	3,110,825

SCHEDULE E: INTERNAL SERVICE FUND

Fleet Management Reimbursements		\$	6,225,000
Health and Dental Premiums			
Premiums	\$	21,893,080	
Fund Balance Usage		3,516	21,896,596
Workers Compensation Premiums			2,819,842
TOTAL INTERNAL SERVICE FUND			\$ 30,941,438

SCHEDULE F: ENTERPRISE FUND

Solid Waste			
Property Tax	\$	3,958,124	
Solid Waste Tipping Fees		3,772,232	
Other		880,000	
Fund Balance Usage		2,075,452	10,685,808
Stormwater			
Fees	\$	8,361,065	
Fund Balance Usage		1,872,850	10,233,915
TOTAL ENTERPRISE FUND			\$ 20,919,723

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, 2010 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 \$1,699,100,000 and an estimated current collection rate of ninety-five percent (95%).

	TAX RATES
	FY2011
General Fund	40.5
Special Revenue Fund	
Charity Hospitalization	2.4
Debt Service Funds	
G. O. Bonds	1.0
Certificate of Participation	1.5
Enterprise Fund	
Solid Waste	2.2
TOTAL	47.6

SECTION 4: LINE ITEM ACCOUNTS ESTABLISHED. All line item accounts as set forth in the FY2011 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 FY2010-2011 capital projects, \$700,000 of the FY2011 Prescription for Progress \$9,400,000 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 based on "percentage of road miles per district" and "worst 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 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: USER FEES. The County Administrator is hereby given authority to set user fees designed to cover the costs of programs approved for operation in the fiscal year 2011 budget.

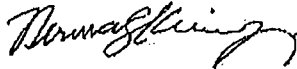
SECTION 11 LEVY AUTHORIZED. A copy of this ordinance shall be furnished to the County Auditor and the Auditor is hereby authorized and directed to levy in the year 2010 on all taxable property in Greenville County a tax as determined in Section 3.

SECTION 12 All ordinances in conflict are hereby repealed.

SECTION 13 This ordinance shall take effect July 1, 2010.

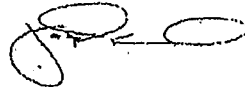
ADOPTED IN REGULAR MEETING THIS 4th Day of August, 2009.

GREENVILLE COUNTY, SOUTH CAROLINA

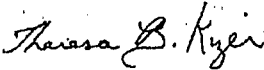
By: 

Herman G. Kirven, Jr. Chairman of County Council
Greenville County, South Carolina

ATTEST:

By: 

Joseph M. Bennett, County Administrator
Greenville County, South Carolina

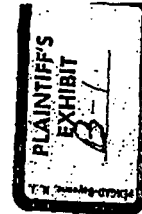
By: 

Theresa B. Kizer, Clerk to County Council
Greenville County, South Carolina

PR3G:FIBRO01C

GREENVILLE COUNTY
BUDGET FILE
05/14/2008

PAGE 3



FISCAL YEAR: 2011
FUND: 01 GENERAL FUND
DEPARTMENT: 01 LEGISLATIVE & ADMIN. SERVICES
DIVISION: 41500 COUNTY COUNCIL

	PRIOR YEAR	BASE BUDGET	EXPANSION	TOT REQUESTED	ADJUSTMENTS	TOT RECOMMEND
SALARIES						
11101 SALARIES- FULL TIME		454,462		454,462		454,462
11102 SALARIES- PART TIME						
11103 SALARIES- FT OVERTIME						
11104 SALARIES- PT OVERTIME						
11110 FICA		34,766		34,766		34,766
11111 POLICE RETIREMENT						
11112 SC RETIREMENT		41,992		41,992		41,992
11113 DENTAL INSURANCE		4,620		4,620		4,620
11114 LIFE INSURANCE		1,875		1,875		1,875
11115 WORKERS COMPENSATION		1,545		1,545		1,545
11116 UNEMPLOYMENT INSURANCE		2,100		2,100		2,100
11127 HEALTH INSURANCE		118,590		118,590		118,590
SALARIES		659,950		659,950		659,950
OPERATING EXP						
12001 COPY EXPENSE		1,024		1,024		1,024
12002 POSTAGE		50		50		50
12003 PRINTING & BINDING		5,800		5,800	2,000-	3,800
12004 INCENTIVES & AWARDS		1,500		1,500	1,400-	100
12007 ADVERTISING		3,300		3,300		3,300
12009 MEMBERSHIPS & DUES		60,000		60,000		60,000
12010 PUBLICATIONS		503		503		503
12029 OPERATIONAL SUPPORT		11,067		11,067		11,067
12031 OPERATIONAL ASSETS						
12201 GENERAL TRANSPORTATION		1,979		1,979		1,979
12202 TRAINING/TRAVEL/CONF		8,200		8,200	1,500-	6,700
12221 OFFICE SUPPLIES		2,500		2,500		2,500
12228 PHOTO/MICROFILM SUPPL		1,500		1,500		1,500
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		24,251		24,251		24,251
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		21,828		21,828		21,828
12269 COUNCIL DIST. EXP.DIS		21,828		21,828		21,828
12271 TECHNICAL/PROFESSIONAL		74,000		74,000		74,000
12284 COUNCIL DIST. EXP.DIS		26,946		26,946		26,946
12286 COUNCIL DIST. EXP.DIS		21,828		21,828		21,828
OPERATING EXP		440,900		440,900	4,900-	436,000
CONTRACTUAL						
13370 SERVICE CONTRACTUAL A		7,100		7,100		7,100
13373 OPERATING LEASE AGREE						
CONTRACTUAL		7,100		7,100		7,100
DIVISION TOT		1,107,950		1,107,950	4,900-	1,103,050

638

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FILED: CLERK OF COURT
GREENVILLE CO. SC
PAUL B. WICKENS
CASE NO. 2010-CP-23-1610

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

v.

Greenville County, a Political Subdivision
of the State of South Carolina, Herman G.
Kirven, Jr., Robert Taylor, Joseph
Baldwin, James Burns, Sidney Cates,
Joseph Dill, Lottie Gibson, Judy Gilstrap,
Willis Meadows, Xanthe Norris, Fred
Payne and Liz Seman,
Defendants.

CERTIFICATE OF
EXEMPTION/WITHDRAWAL FROM
MEDIATION AND ARBITRATION.

(Council District Expense)

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION OR
MEDIATION BECAUSE:

- ☐ monetary relief requested in this action exceeds \$25,000;
☐ this is a class action;
☒ there is a substantial claim for injunction or declaratory relief requested in this case;
☐ this case involves (check one or more of the following),
☐ Title to real estate;
☐ Wills, trusts and decedents' estates;
☐ Mortgage foreclosure;
☐ Partition
☐ this is a special proceeding or action seeking extraordinary relief such as mandamus,
habeas corpus or prohibition;
☐ monetary relief requested in this case is unspecified but exceeds \$25,000;
☐ this case is a companion or related to similar actions pending in other courts with which
the action might be consolidated but for lack of jurisdiction or venue;
☐ this action is appellate in nature;
☐ this is a post-conviction relief matter;
☐ this is a forfeiture proceeding brought by the State; or
☐ this is a contempt of court proceeding.

Date: February 26, 2010

Attorney for Plaintiff

NOTE: Motion must be presented to the court, a hearing held, and a finding made, for
exemption or withdrawal from arbitration for "strong and compelling reason" sought
pursuant to Rule 1(d), Rules of Circuit Court Arbitration.

RECEIVED

MAR 15 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC 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.

NOTICE OF APPEAL

Appellants 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 (collectively, the "County") appeal the
Order of the Honorable John C. Few dated February 8, 2010, and entered February 10, 2010
(a copy of which is attached). The County received written notice of the entry of this Order
on February 12, 2010.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



Boyd B. Nicholson, Jr., SC Bar No. 65387

Post Office Box 2048

Greenville, South Carolina 29601

(864) 240-3200

Attorneys for Appellants

March 12, 2010
Greenville, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2006CP23046370 P 2:45

Edward D Sloan Jr vs. Greenville County

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
FEB 10 2010

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: _____

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 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 P.O. Box 2048 Greenville, SC 296022048

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CP APP-24/FORM 4

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

CPFORM4M

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

2006-CP-23-4637

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.

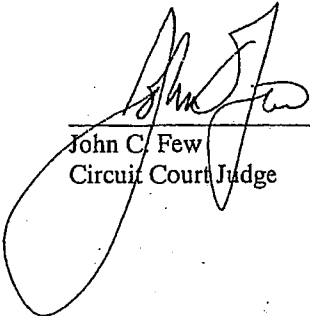
The Slush Fund allows Council members to implement public policy that may have been rejected by the Council as a whole. For example, Council may consider passing a proposed ordinance to improve sewer service throughout the County. After weighing the benefits of improved sewer service, the Council may 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

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

20 SEP -2 CASE NO. 06-CP-23-4637

FILED-CLERK OF COURT
GREENVILLE CO S.C.
CARL E. WICKENSTEIN

SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF MOTION FOR
COSTS AND ATTORNEYS' FEES

(Challenge to Council District Expense)

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." Plaintiffs brought this civil action alleging in part: "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." Complaint, par. 11. Plaintiffs attached a copy of the Attorney General Opinion to the Complaint.

The facts and circumstances that the Attorney General opinion addressed, arising in Florence County, were similar to those of Greenville County. Nevertheless, Greenville County Council continued to make similar appropriations each year, even after the Attorney General issued his opinion. Furthermore, after Plaintiffs filed this civil action, Greenville County Council has continued to make similar annual appropriations.

On October 7, 2008, this Court held a hearing on cross motions for summary judgment, and after extensive discussion, the Court stated the following:

I think the relative importance to the people of Greenville County of spending money on sewer and drainage as opposed to spending money on roads should be made by the council itself and not by the council member. This thing allows individual council members to decide for their own districts which is more important. That, to me, using your authority is this absolute, unregulated, undefined discretion.

There's nothing in here that restricts that. It says funds may be encumbered for viable projects only. Clearly, spending money on sewer and drainage is a viable project. I mean, that's good for the county. Nobody's going to dispute that. It doesn't seem to me that if one council member is all fired up about sewer and drainage and another council member is all fired up about roads that there's any way for the council to say no, y'all need to spread it out a little bit more.

So it does seem to me like this is the . . . equivalent of giving [an] individual council member a legislative responsibility. But I want to go back and do some more reading.

Transcript of Record, Case No. 03-CP-23-3785 (October 7, 2008), pp. 47-48.

On November 7, 2008, at another hearing, the attorney for the County conceded that legislative power of the county must be exercised by the County Council. Transcript of Record, Case No. 03-CP-23-3785 (November 7, 2008), p. 26. This Court announced its intention to rule that the "Council District Expense" was an unlawful delegation of legislative power, and asked Plaintiffs' counsel to draft an order. Transcript of Record, Case No. 03-CP-23-3785 (November 7, 2008), p. 27.

The parties could not agree on the wording of a proposed order.

On August 3, 2009, the Court held another hearing to discuss the order for this case. The Court reiterated the concession from the attorney for the defendants that "the council cannot delegate legislative authority to an individual council member." Transcript of Record, Case No. 03-CP-23-3785 (August 9, 2009), p. 4. The Court stated, "With that concession, I am going to rule in favor of Mr. Sloan. I am going to rule that the discretionary fund is illegal, not unconstitutional but illegal. I'll get the order out as quickly as I can. But will probably not be in the next day or so. But there will be an order coming out." *Id.*

In the meantime, on May 14, 2009, Greenville County Council made two more similar appropriations for the Council District Expense for fiscal years 2010 and 2011 using the same guidelines and procedures that this Court found unlawful. Responses to Plaintiffs' Second Set of Interrogatories, served November 16, 2009, Answer to Interrogatory 1. Thus, Defendants ignored both the Attorney General Opinion and the oral ruling of this Court.

This Court entered its order February 10, 2010 and ruled, "The 'Council District Expense Fund' portion of the 2006-2007 budget for Greenville County is declared to be illegal."

On February 22, 2010, Plaintiffs moved the Court, pursuant to SCRPC 54 and S.C. Code Ann § 15-77-300 for costs and attorneys' fees with a memorandum of law, and an affidavit of counsel. Plaintiffs argued that they satisfied the criteria for attorneys' fees under S.C. Code Ann. § 15-77-300 because (1) plaintiff was the prevailing party; (2) the attorneys' fees requested were reasonable; (3) defendant Greenville County acted without substantial justification in pressing it's claim; and (4) no special circumstances make the award unjust. *Heath v. County of Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990); *Richland County v. Kaiser*, 351 S.C. 89, 567 S.E.2d 260 (Ct. App. 2002).

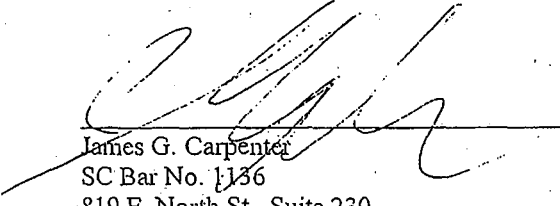
Plaintiff intends this memorandum to supplement the one filed February 22, 2010. The most recent analogous ruling on attorneys' fees under § 15-77-300 is *Cornelius v. Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006). *Cornelius* affirmed the award of attorneys' fees to the plaintiff in a declaratory judgment action against Oconee County. Oconee County argued that § 15-77-300 does not provide for an award of attorneys' fees in a declaratory judgment action. The Supreme Court ruled, "A party whose position prevails in a declaratory judgment dispute with a state agency may be awarded fees under § 15-77-300." *Id.* at 497. In the present

case, Mr. Sloan has prevailed in an action for declaratory judgment. Accordingly, *Cornelius* supports Mr. Sloan's motion for attorneys' fees.

In *Cornelius*, Oconee County argued that it had acted "with 'substantial justification' within the meaning of the statute" because novel issues were raised. *Id.* at 497. The Court disagreed and recognized that "declaratory judgment actions by their very nature often present novel questions." *Id.*

In conclusion, Plaintiffs submit that they have met the criteria for an award of attorneys' fees. As demonstrated by their motion and memo filed February 22, 2010, the fee request is reasonable, and there is no good reason not to award attorneys' fees.

Respectfully submitted
THE CARPENTER LAW FIRM, PC



James G. Carpenter
SC Bar No. 1136
819 E. North St., Suite 230
Greenville, SC 29601
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Attorneys for Plaintiffs

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 OPPOSITION
TO PLAINTIFFS' MOTION FOR
ATTORNEY'S FEES**

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INTRODUCTION

Pursuant to S.C. Code Ann. § 15-77-300, Plaintiffs South Carolina Public Interest Foundation and Edward D. Sloan, Jr. have petitioned for an award of attorney's fees from the Defendants Greenville County and Greenville County Council (collectively the "County"). Plaintiffs' Motion should be denied. First, Plaintiffs cannot demonstrate that Defendants acted without substantial justification in pressing its claims. Second, the award of attorney's fees in the present action would be unjust. For these reasons, to be discussed more fully below, the County respectfully requests that this Court deny Plaintiffs' Motion for Attorney's Fees.

PROCEDURAL HISTORY

In this action the Plaintiffs challenged the establishment and use of the "Council District Expense Fund" (hereinafter referred to as "Council Reserves") as a violation of the non-delegation principle. See Complaint, ¶¶ 8, 11. 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 studies." Complaint, ¶ 10; see also Complaint at Exhibit B. Plaintiffs based their challenge entirely on an opinion issued by the South Carolina Attorney General's office on November 13, 2003. See Complaint, ¶¶ 11.

In 1996 Plaintiff Edward Sloan sued the County in a case styled Sloan v. Greenville County, C.A. No. 96-CP-23-2918 (the "Prior Action"). In the Prior Action Mr. Sloan argued, among numerous legal challenges, that the Council Reserves violated the non-delegation principle. See Third Amended Complaint from Prior Action (attached hereto as Exhibit 1) at ¶¶ 73-103. Mr. 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. Mr. 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 Court found in favor of the County in the Prior Action. See Order from Prior Action (attached hereto as Exhibit 2) The Court noted how Mr. Sloan had 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 (Exhibit 2) at p. 2. In ruling for the County, the Court held, in part, as follows:

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.

Exhibit 2 at p. 10.

ARGUMENT

“The prevailing party to a civil action may recover attorney’s fees against a state agency only if ‘the agency acted without substantial justification in pressing its claim against the party’ and there are no ‘special circumstances that would make the award of attorney’s fees unjust.’” Video Gaming Consultants, Inc. v. S.C. Dep’t of Revenue, 358 S.C. 647, 650, 595 S.E.2d 890, 891 (Ct. App. 2004) (citing S.C. Code Ann. § 15-77-300 (2010)). Consequently, to recover attorney’s fees from a governmental entity a plaintiff must (1) be the prevailing party in the action; (2) demonstrate that the governmental entity acted “without substantial justification” in

pressing its claim; and (3) demonstrate that there are no special circumstances rendering an award of attorney's fees unjust. Jasper County Bd. of Educ. V. Jasper County. Grand Jury, 303 S.C. 49, 398 S.E.2d 498, 499 (1990); Heath v. County. Of Aiken, 295 S.C. 416, 368 S.E.2d 904 (1988). Plaintiffs cannot prove the second and third elements.

I. The County Was Substantially Justified in Relying on the Precedent of the Prior Action.

In the context of § 15-77-300, the term "substantial justification" "does not mean 'justified to a high degree,' but rather 'justified in substance or in the main' – that is, justified to a degree that could satisfy a reasonable person." Heath, 302 S.C. at 183 (quoting Pierce v. Underwood, 108 S. Ct. 2541, 2250 (1988)). "In deciding whether a state agency acted with substantial justification, the courts look to the agency's position in litigating the case to determine 'whether it is one which has a reasonable basis in law and fact.'" Video Gaming Consultants, Inc., 358 S.C. at 650. Importantly, "[a]n agency's loss on the merits does not create a presumption that its position was not substantially justified." Id. Rather, it is the governmental entity's litigation position which must satisfy the substantial justification standard, as opposed to the underlying action challenged in the litigation. McDowell, 304 S.C. at 539. The record shows that the County's position in 'pressing its claim' was substantially justified.

A. By relying upon precedent directly on point and from this jurisdiction, Defendants were substantially justified in pressing their claims.

When Plaintiffs filed the current action the County relied upon existing precedent dealing with the same issue presented in this case, within this same jurisdiction, and between essentially these same parties. In its Order in the Prior Action, the Court determined "that Council's appropriation of funds to the Council Reserves budget item as an item in County's annual budget" was in compliance with the County's Code and State Law. Exhibit 2 at p. 8. By relying

upon a holding issued in this same jurisdiction, dealing with precisely the same issue, and between essentially these same parties, the County was substantially justified in pressing its claim.

A review of the cases in which South Carolina courts have determined the governmental agency acted without substantial justification likewise reflects favorably upon the County's position in pressing its claim in the present action. In Heath, for example, the South Carolina Supreme Court determined that Aiken County acted without substantial justification where the statute and "relevant precedent clearly established that the [defendant's] claims were without merit." 302 S.C. at 184. Likewise, in Brown v. City of N. Charleston, the Court of appeals issued an opinion similar to that in Heath, explaining that North Charleston had acted without substantial justification where the language of the relevant statute "plainly foreclose[d] the legal position taken by the city." 314 S.C. 298, 301, 442 S.E.2d 633, 635 (Ct. App. 1994). Lastly, in Cornelius v. Oconee County, the South Carolina Supreme Court determined that the governmental entity acted without substantial justification where the county could cite "no viable authority supporting its [legal] position." 369 S.C. 531, 540, 633 S.E.2d 492, 497 (S.C. 2006).

Because Defendants in the present case relied heavily on the Order in the Prior Action, a case directly on point, from this Circuit and between the same parties, the present case simply does not compare to those in Heath, Brown, or Cornelius. In the present case, there are no statutes or precedents "clearly establish[ing]" that Defendants took an erroneous position in this litigation, nor are there statutes or other authority "plainly foreclose[ing]" Defendants position. Rather, the case law most precisely on point stands directly in Defendants favor, specifically upholding the very Council Reserves that are the subject of this present litigation.

In an effort to demonstrate that Defendants were not substantially justified in their position, Plaintiffs rely almost entirely on the fact that the Attorney General of South Carolina rendered an opinion in 2003 at odds with the County's position. "While an attorney general opinion may be persuasive, [however,] it is not binding precedent." Branch v. City of Myrtle Beach, 332 S.C. 575, 580, 505 S.E.2d 925, 927 (Ct. App. 1998); see also Anders v. S.C. Parole and Cmty. Corr. Bd., 279 S.C. 206, 209-210, 305 S.E. 229, 231 (S.C. 1983) ("The cited opinion of the Attorney General is not binding on this Court."); Kalber v. Redfearn, 215 S.C. 224, 54 S.E.2d 791 (S.C. 1949) ("While the opinions of the Attorney General are not binding upon the Court, they are persuasive..."). Consequently, the mere fact that the State's Attorney General rendered an Opinion at odds with Defendants' position in pressing their claim neither "clearly establishes" that Defendants took an erroneous position in this litigation, nor "plainly forecloses" its position. A court may accept the Attorney General's Opinion or reject it outright – the authority is simply not binding upon any court. Consequently, Defendants were substantially justified in relying upon the previous Order from the Prior Action and in disputing the Opinion of the Attorney General.

B. Plaintiffs misinterpret the focus of the 'substantial justification' prong by emphasizing the County's governmental actions as opposed to its position in 'pressing the claim.'

Plaintiffs argue that by continuing to make the appropriations in controversy after receiving the Attorney General's Opinion and this Court's announcement of its intention to rule in favor of Plaintiffs, Defendants "were not 'substantially justified' in pressing their claims in this lawsuit." (Pl. Mot. at 3.) By focusing on the activity underlying the present litigation rather than the County's position in litigating the case, Plaintiffs misinterpret the statutory language of

§15-77-300, and thereby fail to satisfy their burden of demonstrating that Defendants acted without 'substantial justification.'

As the Supreme Court in McDowell makes clear, the focus of the 'substantial justification' standard is on the governmental entity's position in litigating its case. In McDowell, the South Carolina Department of Social Services (DSS) denied appellant food stamp benefits after determining that a car registered in her name was an asset that precluded her from eligibility to receive the aid. McDowell, 304 S.C. at 540. The Court of Appeals reversed the agency's determination, finding in favor of the appellant. Id. In light of the favorable holding, appellant filed for attorney's fees pursuant to S.C. Code Ann. § 15-77-300, arguing that DSS acted without substantial justification in pressing its claims. Id. at 541. The Supreme Court determined that DSS acted without substantial justification by "rel[ying] on an erroneous legal conclusion in defending its decision in proceedings before the circuit court and Court of Appeals." Id. at 542-543. In so holding, the Court concluded that "DSS's *litigation position* was not substantially justified because it had no reasonable basis in law and fact." Id. at 543 (emphasis added). By contrast, the Supreme Court determined that appellant was **not** entitled to attorney's fees for the initial hearing before DSS, reasoning that "at this point [DSS] was not 'pressing its claim' in litigation against appellant but was merely functioning as an administrative decision-maker." Id. McDowell makes clear that the governmental entity's position in litigating the matter is the focus of the inquiry; governmental actions underlying the litigation do not factor into the analysis under § 15-77-300.

Plaintiffs' argument focuses entirely, and erroneously, on Defendants' actions extraneous to the actual litigation. Not one of Plaintiffs' assertions relates to the validity or substance of Defendants' position in the present litigation (i.e. in pressing its claim). Rather, Plaintiffs assert

that “after the Attorney General issued his opinion, Greenville County Council made similar appropriations each year,” and further that “after the filing of this civil action, Greenville County Council has made similar appropriations...” (Pl. Mot. at 2.) Plaintiffs likewise note appropriations were made after “this Court announced its intention to rule that the ‘Council District Expense’ was an unlawful delegation of legislative power....” Id. Plaintiffs conclude by asserting that by “ignoring the Attorney General opinion and the oral ruling of this Court, Defendants were not ‘substantially justified’ in pressing their claims in this lawsuit.” (Pl. Mot. at 3.)

Whether Defendants’ continued to make appropriations during the pendency of this present litigation -- pursuant to a policy that a Court in this Circuit had upheld in a previous challenge by Mr. Sloan -- is irrelevant to a determination of whether Defendants were substantially justified in pressing their claim. As made clear in McDowell, it is the validity and substance of Defendants’ position in the litigation that must meet the requisite threshold – not the actions underlying the litigation. Consequently, Plaintiffs’ reliance on the actual appropriations and the timing thereof to prove Defendants’ lack of ‘substantial justification’ is entirely misplaced and irrelevant, and Plaintiffs therefore fail to satisfy their burden of demonstrating Defendants acted without ‘substantial justification.’

II. The Award of Attorneys Fees in the Present Case Would Be Unjust.

For the same reasons that the County’s position in this litigation was substantially justified, an award of attorney’s fees against the County would likewise be unjust. The precise issue presented in the present claim – the validity of the Council Reserves – was previously litigated from 1996 through 1998, and ultimately resulted in a disposition favorable to Defendants. In pressing its claim, Defendants in the present case relied heavily upon the Order

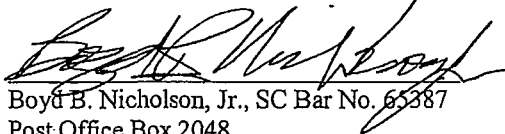
of this Court in the Prior Action. Since the issuance of the 1998 Order, there has been no change in binding authority, and Defendants have continued to operate in consonance with the Order. The only contrary authority established between the issuance of the 1998 Order and this Court's Order filed February 8 of this year was the Attorney General's Opinion referenced above. While the Attorney General's Opinion certainly favored Plaintiffs' position, the Opinion itself did not constitute binding authority upon this Court. Furthermore, the Attorney General's Opinion did not interpret any relevant case law filed subsequent to the issuance of the Order in the Prior Action. In pressing its claim in the present action, Defendants were faced with a fundamental choice: accede to the Attorney General's Opinion and its limited precedential value, or defend its long-practiced and voted on policies in light of the Court's 1998 Order which upheld the validity of the very practice in question. The County respectfully requests that to require the County to pay for attorneys' fees of the Plaintiffs for adhering to precedent set forth in this jurisdiction, concerning this precise issue, and adjudicated between these same parties, would be unjust.

CONCLUSION

For the foregoing reasons the Court should deny the Plaintiffs' Motion for Attorney's Fees.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



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Attorneys for Defendants Greenville County
and Greenville County Council

October 4, 2010
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 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.

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.

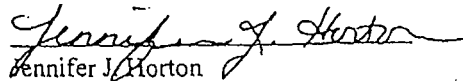
ELEVENTH CAUSE OF ACTION

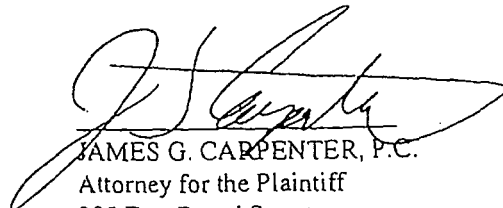
100. Plaintiff incorporates all preceding paragraphs by reference.
101. Defendant has violated Articles I, §§ 1, 2, 3, and 23; X §§ 7, 8, and 11; and XII, § 1 of the South Carolina Constitution and § 11-1-40 of the South Carolina Code Annotated.
102. Defendant has acted *ultra vires* and in excess of 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


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

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, 1998, and a copy mailed first class this _____ day of March, 1998 to attorneys of record or to parties (when appearing pro se) as follows:

James E. Carpenter 205 E. Broad St.
Greenville SC 29601
Jennifer Horton 401 Liberty Ln.
Greenville SC 29609

Ronald K. Wray, II P.O. Box 13589 F
Greenville SC 29603
W. Howard Boyd, Jr. P.O. Box 13531 F
Greenville SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP FORM 4
(Rev. 2/96)



CLERK OF COURT

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

**REPLY MEMORANDUM IN
SUPPORT OF MOTION FOR COSTS
AND ATTORNEYS' FEES**

(Challenge to Council District Expense)

Defendants argue that Plaintiffs relied solely on a South Carolina Attorney General Opinion dated November 13, 2003, 2003 WL 22862787 (S.C.A.G.), whereas Defendants relied upon a Circuit Court opinion. Actually, the Circuit Court opinion did not address the issue of whether legislative authority may be delegated. The Attorney General opinion analyzed many South Carolina cases and concluded that a virtually identical operation in another county was unlawful.

I. Defendants did not have an *objective* good faith belief in the legal soundness of their position.

When Plaintiffs filed suit on July 20, 2006, they attached a copy of the Attorney General Opinion finding it unlawful to delegate legislative authority to individual Council members to spend public funds. The opinion addressed facts and circumstances nearly identical to those of Greenville County and relied on a substantial body of South Carolina case law. The following are the case citations and the summaries by the Attorney General:

1. *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.”)

2. *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 [to make decisions] is necessary applies”).
3. *Pettiford v. S.C. State Bd. of Ed.*, 218 S.C. 322, 62 S.E.2d 780 (1950) (“an administrative board or body, when acting in a quasi-judicial capacity, must itself consider all the evidence before rendering a decision.”)
4. *South Carolina State Highway Dept. v. Harbin*, 226 S.C. 585, 86 S.E.2d 466 (1955) (“the attempted delegation of authority to the Highway Department to suspend or revoke a driver’s license for cause satisfactory to it was invalid . . . [because] there is no standard except the personal judgment of the administrative officers of the Department.’ 226 S.C. at 596.”)
5. *Richards v. City of Columbia*, 227 S.C. 538, 88 S.E.2d 683 (1955) (“the Supreme Court declar[ed] that [an] ordinance unlawfully delegated legislative power . . . [because] it did not contain a sufficiently definite standard or yardstick.”)
6. *Gunter v. Blanton*, 259 S.C. 436, 192 S.E.2d 473 (1972), (“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. . . . [T]he General Assembly possessed no

constitutional authority to delegate the approval or disapproval of tax increases to the delegation.”)

7. *G. Curtis Martin Investment Trust v. Clay*, 274 S.C. 608, 266 S.E.2d 82, 85 (1980) (“[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.”)
8. *State ex rel. McLeod v. McInnis*, 278 S.C. 307, 295 S.E.2d 633 (1982) (“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.”)
9. *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”).
10. *Bradley v. State Human Affairs Comm’n.*, 293 S.C. 376, 360 S.E.2d 537 (Ct. App. 1987) (“State Employee Grievance Committee chairperson could not delegate quasi-judicial powers of the Committee to the Committee’s attorney:
 . . . [a] reading of the statute makes it clear that the job of a committee attorney is only advisory to the committee However, the role of decision maker cannot be delegated.”)
11. *Dawson v. State Law Enforcement Division*, 304 S.C. 59, 403 S.E.2d 124 (1991)
 (“ [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”).
12. *Tucker v. South Carolina Dept. of Highways and Public Transportation*, 309 S.C.

395, 424 S.E.2d 468 (1992) ("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.")

The Attorney General Opinion cited and relied upon each of the foregoing cases, in reasoning that this type of discretionary fund is an illegal delegation of legislative authority. The County's contention that Plaintiffs relied *only* upon an Attorney General opinion is unfounded. Plaintiffs *also relied* upon each of the twelve cases cited above, which undergirded the analysis of the Attorney General Opinion. By attaching a copy of the Attorney General Opinion to the Complaint, Plaintiffs put the County of notice of these authorities from the outset. Nevertheless, the County vigorously opposed the claim that the County illegally delegated legislative authority, and continued to make Slush Fund appropriations year after year.

Defendants rely upon Judge Ervin's Order in the 1996 Slush Fund case, 96 CP-23-2918, to demonstrate their good faith belief in their legal position, but the Order did not specifically address the delegation of legislative authority to an individual council member. Instead, the Court reasoned that the Council as a whole had adopted the budget ordinance, including the line item for the Slush Fund. The Court rather addressed (1) the procedural regularity of Defendants' adoption of the Budget Ordinance, (2) the issue of mootness, and (3) whether the Slush Fund disbursements violated the First Amendment. Judge Ervin's order did not endorse Defendants' delegation of legislative authority to individual Council members.

II. An award of attorneys' fees to Plaintiffs would be just.

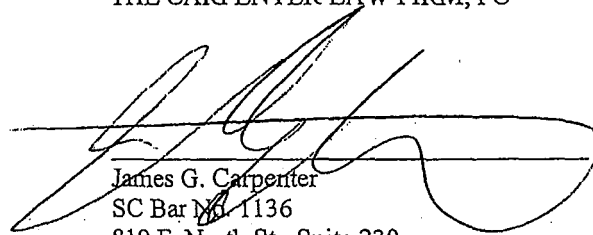
Defendants also argue that an award of attorneys' fees would be unjust, and they rely upon "the same reasons" as in their previous argument. They do not assert any additional reasons to support their claim that an award of attorney's fees would be unjust. Plaintiffs

respectfully suggest that the line of twelve cases stretching back more than one hundred years, all cited in the Attorney General opinion that the Plaintiffs provided to the Defendants with the Complaint, supports the Plaintiffs' position that Defendants may not lawfully delegate legislative authority, and therefore an award of attorneys' fees in this case is just.

Defendants argue that they had the difficult choice of following Judge Ervin's order from the first Slush Fund case, or an Attorney General's Opinion. Defendants' choice was not that stark or that difficult. Defendants' choice was to rely upon an order that did not specifically address the issue, or to follow a line of cases from the appellate courts of this state dating back more than one hundred years, reflecting fundamental common law principles going back to time immemorial, that legislative authority may not be delegated.

Defendants made their choice; now it is time for them to live with the consequences.

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) 331-3083
Attorneys for Plaintiffs

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

RECEIVED

NOV 22 2010

SC Court of Appeals

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

v.

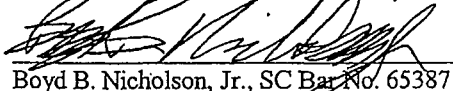
Greenville County, Herman G. Kirven, Jr., Judy Gilstrap, Eric
Bedingfield, Jim Burns, Scott Case, Joseph Dill, Cort Flint, Lottie
Gibson, Mark Kingsbury, Xanthene Norris, Robert Taylor, and
Tony Trout, ... Appellants.

NOTICE OF APPEAL

Appellants 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 (collectively, the "County") appeal the
Order of the Honorable D. Garrison Hill dated November 10, 2010, and entered November
11, 2010 (a copy of which is attached). The County received written notice of the entry of
this Order on November 15, 2010.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.


Boyd B. Nicholson, Jr., SC Bar No. 65387

Post Office Box 2048
Greenville, South Carolina 29601
(864) 240-3200
Attorneys for Appellants

November 19, 2010
Greenville, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2006CP2304637
2010 NOV 11 A 9:30

Edward D Sloan Jr vs. Greenville County
FILED 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
COUNTY OF GREENVILLE

2010 NOV 11 A 9:30
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.

ORDER GRANTING PLAINTIFFS
ATTORNEYS' FEES AND COSTS

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.

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,

128
HIT

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.

1. 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. Kaiser*, 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 (Ct. App. 2003). *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. 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

* REHIEP *
Paul B. Wilkerson
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 11/11/10

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No(s) : 03-CP-23-3785;
Edward D. Sloan, Jr., et al	)	04-CP-23-8179;
Plaintiff,	)	05-CP-23-7906;
	)	06-CP-23-4637
-VS-	)	
Greenville Hospital System,	)	TRANSCRIPT OF RECORD
et al	)	
Defendants.	)	COPY

July 30, 2007
Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

A P P E A R A N C E S:

JAMES CARPENTER, Esquire
Attorney for the Plaintiff

BOYD NICHOLSON, Esquire
Attorney for Defendant

TERESA B. JOHNSON
OFFICIAL REPORTER

1 THE COURT: All right. Does that suit you?

2 MR. NICHOLSON: Yes, sir. I think that is
3 proper.

4 THE COURT: All right. How much time do you
5 think you need? Why don't I just say you can
6 amend your Complaint --

7 MR. CARPENTER: Yes, sir.

8 THE COURT: And you obviously be able to file
9 a new answer. All right?

10 MR. CARPENTER: Yes, sir.

11 THE COURT: You want to do a short order on
12 that as will?

13 MR. CARPENTER: Yes, sir.

14 THE COURT: I don't see any need to put any
15 time frame but don't say that you shall amend it
16 in 30 days.

17 MR. CARPENTER: All right.

18 MR. NICHOLSON: Judge, that brings us down to
19 our last motion. That is a motion that the County
20 bought in the case, uh, it's a '06 case. The
21 case number is 4637. It is a case that Mr.
22 Carpenter has captioned Constitutional Challenge.
23 Our motion is a motion to dismiss. We didn't
24 file an answer. We filed a motion to dismiss in
25 lieu of an answer. We did it based on res

1 judicata.

2 It is our contention, Your Honor, that this
3 is a case that has been tried before. The same
4 issue. Mr. Sloan filed a Complaint back in 1986.
5 There was an Order back in 1998, I believe. The
6 same issues were presented in that case. At the
7 very least, the same issues could have been
8 presented in that case. As a result, the case
9 should be dismissed on res judicata.

10 The Complaint, Your Honor, involves Mr.
11 Sloan's challenge to a policy called Council
12 District Expense Funds which we also referred to
13 in the briefs as Counsel Reserves. Mr. Sloan
14 likes to refer to it as the Slush Fund which even
15 quite frankly was coined by Greenville County
16 Council during some heated debates about this
17 policy several years ago.

18 What this policy basically does is sets aside
19 a certain amount of money. In this case, it is
20 \$22-23,000 per person, per Council member. The
21 policy said that \$43,000 for each county member
22 may be spent upon request for projects related to
23 infrastructure.

24 Back in 1996, Mr. Sloan challenged this
25 policy under a variety of theories. One of which

1 was it was an improper delegation of authority to
2 individual council members. He argued that
3 instead of individual council members out paying
4 money for particular infrastructure projects that
5 the entire council should vote on. There are
6 several other theories in there as well including
7 establishing clause -- I think he had over the 11
8 causes of action in that claim.

9 One of them was clearly a non-delegation
10 argument. He did not appeal that Order, the 1990
11 Order. In 2003, the Attorney General was asked
12 by Florence County -- they had a policy -- quite
13 frankly, I don't know how similar it was. But
14 they had a policy that individual council members
15 could allocate certain monies to a particular
16 project. Someone asked the Attorney General's
17 office do you think this is legal. The Attorney
18 General's office opined that they thought that
19 that did not -- in their opinion, that did not
20 would not be upheld.

21 Based upon that 2003 Attorney General's
22 opinion, Mr. Sloan filed a Complaint in 2006 in
23 which he said County Council has this policy and
24 -- I'm sorry about that, Your Honor. It says
25 that, alleged the fact that they had a county

1 expense account. The last paragraph of the
2 Complaint is the important one in this case. It
3 states county council delegation of legislative
4 power for individual members as described here in
5 is unconstitutional and illegal as explained in
6 the South Carolina Attorney General opinion dated
7 November 13, 2003. He attaches it. That's the
8 Attorney General's opinion I discussed.

9 He basically had an action in 1998 in which
10 he challenge this discretionary fund for several
11 reasons including one of which for improper
12 delegation of authority. In 2000, he loss. He
13 didn't appeal. 2003, the A.G. came up with an
14 opinion that dealt with this issue. In 2006, he
15 filed an Complaint saying it is unconstitutional
16 based upon A.G.'s opinion. That has been
17 litigated, Your Honor. For that reason, we would
18 argue it is res judicata.

19 THE COURT: Is the fund -- is there any
20 factual difference or any difference in the
21 factual basis of your claim now as opposed to
22 then? Does the fund, does it still arise from
23 the same ordinance? Is it still being applied in
24 the same way? Anything new about this case?

25 MR. CARPENTER: In answer to that limited

1 question, no. But it is not barred by res
2 judicata in our view because, for two reasons.
3 One, we are talking about different expenditures.
4 What was at issue in the other case was
5 expenditures in the mid-nineties. What is in the
6 issue in this case is expenditures from 2005,
7 2006.

8 THE COURT: That is what you allege is a
9 factual difference?

10 MR. CARPENTER: Yes. I think under the cases
11 that I am right on that. We have submitted
12 extensive briefs on this case, Your Honor. There
13 are a couple of Supreme Court cases that dealt
14 with the tax issues. The Court ruled that in a
15 tax case, taxes approved year-by-year. Just
16 because you have a tax liability assessed against
17 you under certain facts in one year doesn't mean
18 it is res judicata for tax liability in the
19 subsequent year. I think we are dealing not with
20 res judicata but if we are dealing with anything,
21 we are dealing with collateral estoppel.

22 The distinction is important because res
23 judicata is construed pretty strictly. It is
24 applied pretty strictly against the Plaintiff who
25 wants to bring the same case over again.

1 Collateral estoppel is susceptible to being
2 overruled by other interest. That is set out in
3 the South Carolina Court of Appeals opinion in
4 which they adopted Section 28, Restatement of
5 Judgment.

6 In Section 28, Restatement of Judgment, they
7 stated five or six different reasons for which
8 collateral estoppel can be not followed in
9 deference to other things. The two that are most
10 important are when the legal climate has changed
11 in the interim. That is one of them. It didn't
12 say specifically when a case has being overruled.
13 The Supreme Court cases that deal with collateral
14 estoppel and we have cited in our reply brief
15 mainly, they say that a different interpretation
16 on a regulation that an agency interpreting a
17 regulation in a different way is sufficient
18 reason for not ruling that the second case is
19 decided by principles of collateral estoppel.

20 The collateral estoppel cases that the Court
21 has come down hard on relate to cases that are
22 almost contemporaneous. There are a couple.
23 Montana cases, they were fighting over a
24 taxability issue. The State of Montana wanted to
25 tax the proceeds of public contracts. If it was

1 a state contract, they also issued a
2 corresponding tax deduction. When it is a
3 federal contract, there was no deduction. The
4 United States argued it was a violation of
5 supremacy clause to treat federal contracts
6 different from State contracts.

7 They filed suit in the State court, they
8 filed suit in federal courts basically
9 contemporaneously. In one of them, they got an
10 adverse ruling and didn't appeal it. In the
11 other one, they got an adverse ruling and
12 appealed it. The Supreme Court ruled under those
13 circumstances collateral estoppel would bar the
14 United States from arguing that they should not
15 be, that collateral estoppel will bar the first
16 second case because they didn't appeal the first
17 case.

18 In a similar case, there was a case about
19 federal inspectors going on the company's
20 properties to do inspections. It was either EPA
21 or DHEC. They had some contract employees that
22 were going to go with them because they did not
23 have enough federal employees. There were two
24 cases. One in the sixth circuit and one in
25 another circuit, maybe the ninth.

1 In any event, they got an adverse ruling in
2 one of the circuits. The Assistant General did
3 not elect to appeal it, petition for cert in US
4 Supreme Court. In the other one came down a few
5 months later, he petitioned for cert in the US
6 Supreme Court. The company, which is the same
7 company in both circuits, same circumstances
8 argued collateral estoppel and the Supreme Court
9 agreed. Those are the two exceptions that, in
10 which the Court has said that you get different
11 circumstances then it is not barred by collateral
12 estoppel. Those are contemporaneous cases.

13 In other cases where you have got a separate
14 tax year, the Court has ruled that a separate tax
15 year creates new liability all by itself and
16 therefore collateral estoppel should not apply to
17 bar rearguing the issues. The cases have also
18 held that just because a legal ruling was made in
19 a case between two parties does not mean that the
20 party is never free to say that ruling was wrong.
21 When it is strictly a question of interpretation
22 of the law and the Court makes an improper
23 ruling, that does not bar the losing side from
24 ever arguing that issue again. These are some of
25 the public policy issues that the Court have

1 found overcome a strict allegation of collateral
2 estoppel.

3 As I said, we filed, well, Nick has filed
4 one, I filed two fairly long briefs with
5 extensive citation to authority. Both US Supreme
6 Court cases, South Carolina Court of Appeals
7 cases, the Restatement of Judgments. I may have
8 thrown in an Am. Jur. or C.J.S. citation as well.

9 In summary, there are two reasons why
10 collateral estoppel does not bar this suit.
11 First of all, it is not res judicata. We are
12 talking about different years. But, collateral
13 estoppel, there is a public policy exception for
14 collateral estoppel. In cases of tax collection,
15 the authorities analyze it like this, you are
16 going to have one equality or another.

17 Either you're going to have two taxpayers in
18 the same year treated differently because one of
19 them has a previous decision or you are going to
20 have one taxpayer treated one way in one year and
21 another way in another year because of
22 intervening legal change or change in legal
23 climate. When you have got that, the judgment is
24 we have got to treat the two taxpayers the same
25 in the same year even though the taxpayer who got

1 the decision earlier was treated differently in a
2 subsequent year.

3 That applies to this case in this way, it
4 seems to me, Richland, uh, Florence County
5 requesting an Attorney General opinion in 2003
6 and was told this violates the Constitution
7 because it delegates a legislative function of a
8 group of people, of a body to an individual
9 member. There are a lot of cases in South
10 Carolina, not specifically on these facts but on
11 similar facts, similar circumstances in which the
12 courts have said a body can act only as a body
13 and not as an individual. The body can't
14 delegate discretionary functions to an individual
15 except like if you wanted to have a --

16 THE COURT: I can tell you that my gut
17 feeling is that we are probably going to have to
18 litigate this again. But I need to read these
19 briefs. I can't follow --

20 MR. CARPENTER: It's a difficult issue.

21 THE COURT: I am having difficulty following.
22 I really need to read the briefs before I can
23 participate in this discussion. I am sorry I
24 didn't do that.

25 MR. NICHOLSON: Jim and I were just talking.

1 We scheduled some time with you on August the
2 21st. I think that will be a perfect time to
3 come back and talk to you about that if that's
4 okay with you, Your Honor.

5 MR. CARPENTER: There is one other reason
6 that is more fundamental to me. He brings this
7 on a 12(b)(6) motion. You can't look at the four
8 corners of the Complaint and come up with res
9 judicata defense. There is no answer filed in
10 this case. It is a motion under 12(b)(1) an
11 12(b)(6). You can't look at the other case from
12 10 years ago on a 12(b)(6) motion.

13 I agree with Nick that this issue is going to
14 have to be dealt with. All he need to do is file
15 an answer. I am not telling him anything he
16 doesn't know. He can get to the place where he
17 brings this up and argue it. We are going to
18 have to do that. But the 12(b)(6) motion, I
19 think, should be denied and he should file an
20 answer because you can't get all of this in the
21 four corners of the Complaint.

22 MR. NICHOLSON: Judge, based on what you
23 said, I will just hold my argument unless you
24 want to hear a brief response.

25 THE COURT: I think I'm going to have to go

1 back and --

2 MR. NICHOLSON: That's fine.

3 THE COURT: -- look at some of the, look at
4 the briefs and look at the cases that you all
5 have cited before I will be ready to rule anyway.

6 MR. NICHOLSON: Okay.

7 THE COURT: How does the fact that Mr. Sloan
8 files a case of purporting to represent the
9 entire class of taxpayers that come under the
10 jurisdiction of Greenville County, within the
11 jurisdiction of Greenville County affect the res
12 judicata or collateral issue?

13 MR. NICHOLSON: He has bought the case.

14 THE COURT: Yeah, but he brings it not in
15 his own capacity as an individual but in his
16 capacity as representing the citizens. There
17 certainly will be some citizens whom he
18 represented both now and before, there will be
19 some who he has not represented before. I don't
20 know how it comes out. That seems like something
21 to think about.

22 MR. NICHOLSON: It seems to me there are, we
23 could find at least one taxpayer out there, I
24 think, who probably doesn't like the position
25 that he has taken. There are some who like the

1 fact that they have --

2 THE COURT: That they have the Slush Fund?

3 MR. NICHOLSON: That they have the Slush
4 Fund, right.

5 THE COURT: That would be probably beside the
6 point though.

7 MR. NICHOLSON: I would say on the taxpayer
8 argument, those cases he's talking about are
9 individual taxpayers, one of whom has had a tax
10 liability and the IRS changes their stance or
11 their interpretation that the ruling, that the
12 logic was not fair for this taxpayer who lost,
13 you know, back three years ago. It is not fair
14 for him to be able to come up and do another
15 challenge if the law has been changed and this
16 taxpayer right here pays something different.
17 That is totally different when we've got the same
18 policy and we are just making the same argument
19 here.

20 THE COURT: It may be. I also don't think
21 the Attorney General issuing an advisory opinion
22 is really all that significant of a change from a
23 legal landscape.

24 MR. NICHOLSON: I would also point out that
25 the cases they site in the opinion, they site one

1 case that came after our ruling in a prior
2 action. One case. It was the Hodges case. In
3 that case really dealt with more of a separation
4 of powers than a non-delegation argument. So all
5 of the law that the 2003 A.G. opinion deals with
6 predates the case Mr. Sloan bought in 1996. We
7 are not talking about any new law.

8 THE COURT: Okay. Why don't we plan on
9 putting this on the agenda? Y'all wrote me about
10 the 20th and the 21st.

11 MR. CARPENTER: We agreed to do it on the
12 Tuesday which is the 21st. We have asked the
13 Court to preserve for us Tuesday and a couple,
14 three other weeks that you gave us. We did all
15 of this on e-mail while you were gone. We had
16 requested specific dates over the next few
17 months. We have not assigned cases to those days
18 because they seem to be a little fluid.

19 THE COURT: How much time do you all want on
20 the 21st?

21 MR. CARPENTER: I think we requested the
22 morning.

23 MR. NICHOLSON: I thought you said you just
24 had the morning.

25 THE COURT: Yeah, I think that's right. Uh-

STATE OF SOUTH CAROLINA

) COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

) Case No(s) : 06-CP-23-4637

The South Carolina Public
Interest Foundation, et al

ORIGINAL

Plaintiff,

-VS-

) TRANSCRIPT OF RECORD

Greenville County, et al

Defendant.

October 27, 2007

Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

A P P E A R A N C E S:

JAMES G. CARPENTER, Esquire
Attorney for the Plaintiff

BOYD B. NICHOLSON JR, Esquire
Attorney for the Defendant

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Motions	4
Certificate of Reporter	49

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>

PLAINTIFF'S EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT'S EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

THE COURT: Okay.

MR. NICHOLSON: Good morning, Your Honor.

May it please the Court. We are here today on a case that Mr. Carpenter likes to call the Slush Fund III case. Honestly, I don't think I can run from that term because a county councilman gave it that term back in the mid-90s, I believe.

THE COURT: Okay. Go ahead.

MR. NICHOLSON: What we are talking about is a fund, uh, a policy that Greenville County has had since the mid-90s. It started around 1994 pursuant to which in the county budgeting process, each council member will have up to a specific amount of money that he can designate for a specific type of project, particularly, infrastructure.

Mr. Sloan is bringing this case. Another challenge was made to this very policy in 1996. Judge Irvin in 1998 entered a decision. The policy was out. Our motion hearing today, Your Honor, is that this present action before the Court should be dismissed because of res judicata, claim proclusion.

Mr. Carpenter has argued that this case

1 should not be dismissed because of several
2 exceptions. The exceptions that he uses are
3 those with respect to issue proclulsion. We are
4 talking about claim proclulsion here, res
5 judicata, not collateral estoppel.

6 The elements of claim proclulsion for res
7 judicata are identify of parties. We have that.
8 Uh, subject matter is the same as the prior
9 litigation. We have that. And three, there was
10 an adjudication of the issue in the former
11 proceeding. We have that. Res judicata says any
12 claim that was brought or could have been brought
13 in the prior action.

14 Now, admittedly looking at the order where
15 Judge Irvin -- I don't see that the order
16 expressly deals with the issue that Mr. Sloan has
17 raised in this case. However, that issue was
18 raised in their pleadings. In his brief, Mr.
19 Carpenter says, well, the prior action was very
20 limited. It was limited solely to an allegation
21 that the county was not following their own
22 guidelines. Your Honor, I respectfully disagree.

23 I been jealous of Mr. Carpenter the last few
24 years with his fancy Powerpoint presentation, so
25 I prepared a slide. But I only have three of

1 them. I didn't think it was worthwhile to bring a
2 bunch of equipment. If I could approach, Your
3 Honor, I have prepared a few old fashion slides
4 that I think illustrates how the claims that are
5 being brought today were also brought back in
6 1996. Now, the key point -- the key point in his
7 complaint, current complaint is -- his sole
8 allegation of illegality is county council's
9 delegation of legislative power from individual
10 members is unconstitutional and illegal ethics
11 claim and a South Carolina Attorney General
12 opinion is attached to the complaint. It's a
13 2003 complaint.

14 Basically, all of his allegations, his
15 substantive allegations are "See the AG's
16 opinion". So he incorporates that by reference
17 into his complaint. Over to the right, he made
18 those same type of arguments, those same type of
19 delegation arguments in his prior complaint which
20 we have attached as Exhibit 1.

21 Now, going to the next slide or the second
22 page that I gave you. The 2003 AG's opinion
23 cites and relies upon Article 10, Section 7 of
24 the South Carolina Constitution in rendering its
25 opinion, the AG's opinion. In his prior action,

1 paragraph 1 of 1 in the prior action, again,
2 we've attached Exhibit 1 to our motion. Mr.
3 Sloan alleges that he has violated articles,
4 among other things Article 10, Section 7. He
5 pled it in his prior case.

6 **THE COURT:** Well, let's -- I don't think
7 there's any dispute that Mr. Sloan, taking it
8 step by step, could have made the constitutional
9 argument against the delegation of spending
10 authority in the '96 case that he now makes in
11 this case. No dispute about that, right, Mr.
12 Carpenter?

13 **MR. CARPENTER:** If I had been smarter, I
14 could have done it, Judge.

15 **THE COURT:** But you could have done it. All
16 right. Probably no dispute -- I mean, maybe I'm
17 wrong about this. Probably no dispute that
18 without thinking about exceptions, uh, it is a
19 claim that is procluded in subsequent litigation
20 if it's not included in the first case if this
21 were a normal lawsuit between two individuals.
22 You agree with that, Mr. Carpenter?

23 **MR. CARPENTER:** As carefully stated as you
24 did ---

25 **THE COURT:** Yes, I'm taking it step by step.

1 **MR. CARPENTER:** Yes, sir.

2 **THE COURT:** All right. Now, the dispute
3 then is whether the -- maybe their -- the dispute
4 then is whether -- the fact that Mr. Sloan brings
5 these -- this case in a representative capacity,
6 uh, as a taxpayer, uh, does that make it
7 different? Does the fact that this is a
8 subsequent factual scenario in which the same
9 legal issue could be presented, does that make a
10 difference? And is there some exception that
11 applies? Those are the three issues. Is that
12 correct?

13 **MR. NICHOLSON:** I think those are the
14 issues.

15 **THE COURT:** Is that correct, Mr. Carpenter?

16 **MR. CARPENTER:** I think that's a good
17 summary of it, yeah.

18 **THE COURT:** Okay. Well, why don't we let,
19 since Mr. Carpenter is essentially the proponent
20 of the right to go forward here, we will let him
21 argue as to what his basis is for one or more of
22 those three possibilities. Then we will hear you
23 in response.

24 **MR. NICHOLSON:** Yes, sir.

25 **MR. CARPENTER:** Judge, I think there is a

1 more fundamental disagreement that I think may
2 have a significant impact on this case. When the
3 Defendants filed their motion to dismiss, they
4 raise both collateral estoppel and res judicata.
5 When they filed their answer a year later, they
6 raised both collateral estoppel and res judicata.
7 When they filed their motion for summary
8 judgement, they cited the basis in the motion to
9 dismiss which would include both res judicata and
10 collateral estoppel. Their memorandum of law in
11 support of the motion to dismiss addresses on res
12 judicata.

13 **THE COURT:** In this case?

14 **MR. CARPENTER:** In this case. Their
15 memorandum addresses only res judicata. I
16 thought that might be an oversight. But when you
17 look at their supplemental memorandum, they
18 practically pounded on the table and say, "This
19 is not collateral estoppel. This is res
20 judicata. All those exceptions that Carpenter is
21 talking about for collateral estoppel, they don't
22 apply to this. This is res judicata." We are
23 contending it's not res judicata at all, it's
24 collateral estoppel. There is the fundamental
25 disagreement, I think, between the parties.

1 **MR. NICHOLSON:** I agree with that. That is
2 a huge disagreement.

3 **MR. CARPENTER:** To me, that's fundamental.
4 I'm thoroughly convinced that Mr. Nicholson is
5 wrong and I'm right on that point. The big thing
6 is that res judicata prohibits Mr. Sloan from
7 going back to 1995 or 1996 and filing a second
8 action about those expenditures back then.

9 **THE COURT:** Wait. Say that again please.

10 **MR. CARPENTER:** Res judicata is a concept
11 for claim proclusion. Once the claim is decided,
12 I can't go back and argue the same claim. I
13 can't go back and argue again that those
14 expenditures that I contested in 1995 and 1996
15 are illegal. That case is over with. Res
16 judicata is a thing adjudicated. Those
17 expenditures were adjudicated. I can't go back
18 and deal with those under res judicata.

19 That doesn't prohibit me from coming in and
20 saying that these expenditures in 2006 and 2007
21 are illegal. That was not -- no court has
22 decided that, that that's not a thing
23 adjudicated. The only theory that would do Mr.
24 Nicholson any good is collateral estoppel which
25 is issue proclusion. And as he notes in his ---

1 **THE COURT:** Well, he -- he will say that
2 that wouldn't help him. The question of whether
3 or not this delegation of spending authority that
4 is characterized either as the discretionary fund
5 or the Slush fund, the question of whether or not
6 that violates the non-delegation clause of the
7 South Carolina Constitution was not actually
8 litigated. It could have been but it was not
9 actually litigated. Right?

10 **MR. NICHOLSON:** That's right.

11 **THE COURT:** Issue proclusion does not apply
12 unless it was actually litigated. I'm just
13 telling -- now, you, uh, ---

14 **MR. CARPENTER:** So I think he loses.

15 **THE COURT:** He just admitted it too. Well,
16 he, uh, whether it is collateral estoppel or not
17 is not an issue. Mr., uh, Nicholson is not
18 claiming that you are barred by collateral
19 estoppel.

20 **MR. CARPENTER:** He has waived that. He
21 raised it twice ---

22 **THE COURT:** It is either res judicata or we
23 are ready to go forward.

24 **MR. CARPENTER:** That's right.

25 **THE COURT:** Right?

1 **MR. CARPENTER:** I believe so.

2 **MR. NICHOLSON:** I've made that statement. I
3 don't plan to go back on it.

4 **MR. CARPENTER:** That's fine then. I was all
5 set to argue the exceptions to the ---

6 **THE COURT:** The thing though. Where you
7 disagree is what's the thing.

8 **MR. CARPENTER:** Right.

9 **THE COURT:** You say it is the legality of
10 the expenditures from the mid-90s.

11 **MR. CARPENTER:** Right.

12 **THE COURT:** He says it is the legal question
13 of whether or not county council has the power
14 under State Constitution to delegate the spending
15 authority into this fund and not as it applies to
16 a specific factual scenario.

17 **MR. CARPENTER:** And I sent your law clerk a
18 series of Supreme Court cases this morning.
19 Those are the same cases I referred to I think in
20 my memorandum. Those cases set out the
21 differences between collateral estoppel and res
22 judicata. As I read it, they very clearly come
23 down on my side of the question. I'll be happy
24 to go through them if that's what would please
25 the Court.

1 **THE COURT:** Well, let's go through them.
2 You emailed them to me this morning.

3 **MR. CARPENTER:** Yes, sir.

4 **THE COURT:** I will have them on my screen
5 momentarily. All right. Which one you want to
6 talk about first?

7 **MR. CARPENTER:** My intention is to go
8 through them chronologically. I think the law
9 was developed and clarified as the Supreme Court
10 went along. The first case is the United States
11 versus Moser. This is from 1924. It reaches
12 clear back to the Civil War. The question was
13 when this man who was a naval cadet in the Civil
14 War and subsequently served in the Navy and then
15 retired, there was a law that said that was his
16 service as a naval cadet in a naval academy
17 during the ongoing Civil War attributable to his
18 years of service in the Navy for retirement
19 purposes. The difference was, the difference
20 between the retirement of a captain and a rear
21 admiral. So it made a difference to this guy.

22 Three times the issue of whether his service
23 counted was decided. The first time, it was a
24 decision on the merits. The next two times, the
25 Court of Claims ruled that the issue was res

1 judicata, a thing decided. Some time after this
2 or during this time, somebody else brought a very
3 similar claim. The Court of Claims said that
4 they rethought the issue and came down on the
5 other side of the question that service in the
6 naval academy was not attributable, didn't count
7 toward retirement. You had to have 40 years and
8 reach a certain rank and that sort of thing.

9 After they decided those other cases called
10 the Jasper cases, they came back to the Moser
11 case. At the bottom of page 1, it says in the
12 second and third Moser cases, however, the Court
13 of Claims declined to follow the Jasper case
14 holding that by reason of its decision in the
15 first Moser case, the question was res judicata.
16 The present suit was decided in Moser's favor,
17 Moser's favor upon the same ground. And in
18 addition, the Court reverted to the position
19 taken in the first Moser cases. So they changed
20 their mind subsequently again in the Court of
21 Claims.

22 This case went to the Supreme Court. The
23 Supreme Court said we're not going to jump into
24 the issue of which way of deciding cases were
25 more correct in 1924 or something that arose in

1 the Civil War. They made the decision on the
2 doctrine of res judicata. Uh, on page 2, the
3 lefthand column, the general principles are well
4 settled and need not be discussed. The scope of
5 their application depends on whether the question
6 arises in a subsequent action on the same parties
7 on the same claim or demand or upon a different
8 claim or demand. In the former cases, judgement
9 on the merits constitutes an absolute bar to the
10 subsequent action. In the later case, the
11 inquiry is whether a point or question presented
12 for determination of the subsequent action is the
13 same as that litigated in determining the
14 original action.

15 What they limited it to in the next paragraph
16 is a right, question or fact distinctly put at
17 issue and directly determined by the court can
18 not be disputed in subsequent suit. The right
19 issue or fact in this case is the series of
20 expenditures in 2006/2007. The issue, fact or
21 right decided in the previous case was the
22 legality of those issues, of those expenditures
23 in 1995 and '96.

24 Now, they go on and give some other
25 discussion limiting the effect of res judicata.

1 Uh, second column, page 2. Uh, third sentence.
2 Where, for example, a court, in deciding a case,
3 has enunciated a rule of law, the parties in a
4 subsequent action upon a different demand are not
5 estopped from insisting that the law is otherwise
6 merely because the parties are the same in both
7 cases. That's the distinguished in the next
8 sentence from the other.

9 But the fact, question or right distinctly
10 adjudged in the original action can not be
11 disputed. It is the fact of his, of the
12 eligibility to include his naval academy service
13 as part of his naval service retirement, that
14 fact was adjudicated in the first case. That's
15 what couldn't be readjudicated in the subsequent
16 cases.

17 Twenty-four years later, we had another case
18 called Commissioner of Internal Revenue versus
19 Sunnen. In that case, the Supreme Court also
20 addressed what is res judicata and how does it
21 apply. In that case, there was a man who was an
22 inventor.

23 THE COURT: Hold on just minute.

24 MR. CARPENTER: Okay.

25 THE COURT: Let's go back to this Moser

1 case.

2 MR. CARPENTER: All right.

3 THE COURT: Uh, and let's get the facts
4 right again.

5 MR. CARPENTER: All right.

6 (WHEREUPON, there is a pause.)

7 THE COURT: Okay. I got you.

8 MR. CARPENTER: All right. Uh, the next
9 case is called Commissioner of Internal Revenue
10 versus Sunnen. That was a 1948 US Supreme Court
11 case. The taxpayer was an inventor. He would
12 invent and make these machines. Then he would,
13 uh, he had a company that he was by far the
14 majority owner of. The company had a contractual
15 right to manufacture his inventions and sell
16 them. The company would pay him a fee as a
17 license to use his invention.

18 Apparently, back then -- well, the tax system
19 might have been set up differently or something.
20 But anyway, he, at some point during his life, he
21 decided to assign the right to receive those
22 royalties to his wife for tax purposes. The
23 issue in this case was was he still the person
24 who owned that money and is he taxable for that
25 money or is that money taxable to his wife.

1 There were agreements starting in 1928 that
2 covered his agreement with the company about
3 paying royalties to him. He was found to be the
4 taxpayer. There was an issue there and disputed.
5 The court found that he was the taxpayer.

6 Things rocked along for ten years. There
7 were some intervening changes in how the IRS
8 interpreted the tax law. In the late 30s and
9 early 40s, he had assigned that same, the
10 royalties to that same invention to his wife,
11 operating under the same contract, but there were
12 several others that were similar. The question
13 was, uh, are these later assignments governed by
14 the earlier ruling from the tax court. And it
15 went to the Eighth Circuit and went to the
16 Supreme Court. The Court has a discussion about
17 res judicata. That's on page 6, uh, of the
18 decision.

19 The Court said if the doctrine of res
20 judicata is properly applicable so that all the
21 royalty payments made during 1937 and 1941 are
22 governed by the prior decision of the board of
23 tax appeals, the case may be disposed of without
24 breaching the merits of the controversy.
25 Accordingly, we cast our attention initially on

1 that possibility.

2 So then they go into this long discussion
3 about res judicata. This is on page 6 of the
4 printed opinion, halfway down the left column.
5 Uh, it is first necessary to understand something
6 of the recognized meaning and scope of res
7 judicata, a doctrine of judicial origin. The
8 general rule of res judicata applies to
9 repetitious suits involving the same cause of
10 action. It rests upon considerations of judicial
11 -- of economy of judicial time. Your Honor, you
12 want me to read to this to you or you want to
13 read it yourself?

14 **THE COURT:** Nah, I'm following you. Keep
15 going.

16 **MR. CARPENTER:** Okay. Rests upon
17 considerations of judicial -- economy of judicial
18 time and public policy favoring the establishment
19 of certainty in legal relations. The rule
20 provides that when a court of competent
21 jurisdiction has entered a final judgement on the
22 merits of a cause of action, the parties to the
23 suit and their privies are thereafter bound, not
24 only as to every matter which was offered and
25 received to sustain or defeat the claim or

1 demand, but as to any other admissible matter
2 which might have been offered for that purpose.
3 The judgement puts an end to the cause of action,
4 which cannot be brought -- again be brought into
5 litigation between the parties upon any ground
6 whatever, absent fraud or some other factor
7 invalidating the judgement.

8 But where the second action between the same
9 parties is upon a different cause or demand, the
10 principle of res judicata is applied much more
11 narrowly. And this was a development of the
12 language. This is from '48. It has developed
13 some since then. In this situation, the
14 judgement in the proper -- in the prior action
15 operates as an estoppel, not as to matters which
16 might have been litigated and determined, but
17 only as to those matters in issue or points
18 controverted, upon the determination of which the
19 finding or verdict was rendered.

20 Uh, go on about, uh, the judgement doesn't
21 swallow the cause of action or the claim. Uh,
22 toward the bottom of that paragraph, once a party
23 has fought out a matter in litigation with the
24 other party, he cannot later renew that duel. In
25 this sense, res judicata is usually and more

1 accurately referred to as estoppel by judgement,
2 or collateral estoppel.

3 Headnote 6, these same concepts are
4 applicable in the federal income tax field.
5 Income taxes are levied on an annual basis. Each
6 year is the origin of a new liability and of a
7 separate cause of action. Thus if a claim of
8 liability or non-liability related to a
9 particular tax year is litigated, a judgement on
10 the merits is res judicata as to any subsequent
11 proceeding involving that same claim, that same
12 tax year. But if the later proceeding is
13 concerned with a similar or unlike claim relating
14 to a different tax year, the prior judgement acts
15 as a collateral estoppel only as to those matters
16 in the second proceeding which were actually
17 presented and determined in the first suit.
18 Collateral estoppel operates, in other words, to
19 relieve the government and the taxpayer of
20 redundant litigation of the identical question of
21 a statute's application to a taxpayer's status.

22 Uh, then they go into the exceptions for
23 collateral estoppel. Headnote 7, collateral
24 estoppel is a doctrine capable of being applied
25 so as to avoid undue disparity in the impact of

1 income tax liability. Taxpayer may secure a
2 judicial determination of a particular tax
3 matter, a matter which may recur without
4 substantial variation for some years thereafter.
5 But -- this is an important point, a subsequent
6 modification of the significant facts or a change
7 or development in the controlling legal
8 principles may make that determination obsolete
9 or erroneous, at least for future purposes.

10 Uh, then they go into the consequences of a
11 strict following of res judicata under those
12 circumstances. If such a determination is then
13 perpetuated each succeeding year as taxpayer
14 involved in the -- as to the taxpayer involved in
15 the original litigation, he is accorded a tax
16 treatment different from that given to other
17 taxpayers of the same class. As a result, there
18 are inequalities in the administration of the
19 revenue laws, discriminatory distinctions in tax
20 liability, and a fertile basis for litigious
21 confusion.

22 This is the point that seems to me to be the
23 most salient. We've got two kinds of inequality.
24 One would be the inequality between the IRS and
25 the taxpayer from year to year. One year is

1 includable in his taxable income. Another year
2 is not. It's the same contract, the same
3 relationship between him and the company. A
4 strict application of res judicata would say,
5 well, if it was includable then, it's includable
6 now. But Supreme Court says res judicata only
7 applies to that former tax year. When there is a
8 new tax year, there's a new liability. It's a
9 different claim so res judicata is not
10 applicable. Rather, you follow the change in law
11 if it was changed later so that the first
12 taxpayer is not treated differently from similar
13 taxpayers in that similar circumstance that same
14 tax year. To me, that's analogous to our
15 circumstances here.

16 THE COURT: All right. Hold on just a
17 minute.

18 MR. CARPENTER: All right.

19 (WHEREUPON, there is a pause.)

20 THE COURT: Uh-huh. Okay. Go ahead.

21 MR. CARPENTER: Then the case goes in and
22 talks about exceptions to collateral estoppel,
23 which in my mind are very applicable, but the
24 county is not arguing that. The county is not
25 arguing collateral estoppel. It seems to me

1 that's the only doctrine that gives them a
2 fighting chance of anything. But the exceptions
3 here, I think, apply and would indicate that the
4 exceptions -- the exceptions here should apply to
5 the case that we're arguing here. This
6 discussion we just read, I think, indicates
7 pretty clearly that it's not res judicata except
8 when you are talking about that same tax year.
9 In this case, we're talking about 1996 versus
10 2006.

11 THE COURT: Okay.

12 MR. CARPENTER: There is a lot of discussion
13 about collateral estoppel but I -- in that case,
14 but I will pass over it since it doesn't seem to
15 be an issue.

16 The next case is called Montana versus the
17 United States, 1979 case. In this case, there
18 were three civil actions. We have a government
19 contractor who was contracted with the state of
20 Montana. Montana had an unusual law that said
21 that for every tax, for every construction
22 contract in the state of Montana -- I'm sorry.
23 Yeah, in the State of Montana, there had to be a
24 one percent tax on the gross value of the
25 construction contract. Now, for state

1 construction contracts, the contractor could get
2 a corresponding offset to different kinds of tax.
3 So he pay the tax here to the state of Montana
4 and he got a deduction for those same dollars on
5 his income tax or his employee holding taxes. So
6 it was shifting dollars. When it was a federal
7 construction project, there was no corresponding
8 offset to the contractors. The contractors to a
9 federal construction project had to pay the one
10 percent tax and didn't have any chance of
11 recouping it the way the law was written.

12 Well, the United States didn't like that.
13 The federal contractors didn't like that. The
14 contractor filed suit in Montana state courts
15 attacking the constitutionality of this law. The
16 United States filed a similar lawsuit in United
17 States District Court but then agreed to suspend
18 that action while the other decision was working
19 its way through the Montana courts.

20 Once, uh, -- I think once it worked its way
21 through the Montana courts, the Montana court,
22 Supreme Court ruled that the law was not
23 unconstitutional. At the Solicitor General's
24 urging, the contractor declined to petition the
25 United States Supreme Court for cert.

1 Then there was a -- the contractor then filed
2 a second suit in Montana state court saying, oh,
3 I had to pay this other tax too. I don't like
4 this anymore than I like the first one. That
5 court ruled, well, no, your tax issue is
6 procluded by the decisions from the Montana
7 Supreme Court. The United States then took up
8 its claim. It was a three judge -- I think it
9 was a three judge panel in the US District Court
10 attacking constitutionality of the tax. The
11 district court ruled, I think it was two to one,
12 that it was unconstitutional. Violation of
13 supremacy clause and something else.

14 Uh, so then Montana appealed to US Supreme
15 Court. The Supreme Court ruled that when the
16 Solicitor General told the contractor not to
17 petition for cert from the Montana Supreme Court
18 to the US Supreme Court, then that final decision
19 from Montana Supreme Court was binding on the
20 United States. They all filed within just weeks
21 of each other.

22 The United States was controlling the
23 litigation filed by the contractor. When they
24 let the Montana state Supreme Court decision
25 stand, then that was res judicata to, uh, the

1 United States claim in the US District Court and
2 they could not pursue an independent claim in
3 that court. The Supreme Court, uh, -- that was
4 collateral estoppel. That was not res judicata.
5 But they were all right there close in time. The
6 court said that because you abandoned that
7 litigation, that issue has been determined
8 against you and you can't bring up that same
9 issue here in federal court. That, again, deals
10 with more the exceptions of collateral estoppel
11 than res judicata.

12 Stauffer Chemical again dealt with exceptions
13 of res judicata, I'm sorry, collateral estoppel
14 in that case. The chemical company was having
15 inspectors come in ---

16 **THE COURT:** Well, let's don't talk about
17 exceptions to collateral estoppel.

18 **MR. CARPENTER:** All right. All right. Let
19 me see if I -- I'm thinking that one of these
20 cases might deal with res judicata. Give me a
21 second here. (Pause.)

22 They do go back and cite Moser for the
23 parties in the subsequent action on a different
24 demand are not estopped. Uh, Montana for issues
25 in law which arise in successive action involving

1 unrelated subject matter, uh, is an exception.

2 Now, the uh, the last case, Limbach versus
3 Hooven and Allison Company, uh, I think is quite
4 similar to our set of facts. But I think that
5 dealt with collateral estoppel as well. If -- I
6 would like to address the facts of this too so
7 that in this very similar circumstance, the
8 analytical framework used by the Supreme Court
9 was collateral estoppel instead of res judicata.
10 Can I address that in this Hooven and Allison
11 case?

12 THE COURT: Uh-huh.

13 MR. CARPENTER: All right. That case dealt
14 with a tax on imports. This company was some
15 sort of maker. They would import these big
16 container of fiber or whatever else they made it
17 with. And the rules of Ohio back in the 1930s, I
18 think, was that as long as the contain -- well,
19 there is a US constitutional provision that says
20 that states can't make taxes on imports, duties
21 and excise tax. And the rule from the Supreme
22 Court back in the 30s or so was that as long as
23 that -- if it was an import, as long as that
24 material remained in its original packaging, then
25 it couldn't be taxed as a piece of inventory and

1 subjected to value added tax. That, in effect,
2 would be a tax on an import. That was the ruling
3 from the 1930s.

4 This company benefitted from that. They kept
5 this stuff in its original packaging. They
6 didn't have to pay the local value added tax or
7 property tax on these import supplies from which
8 they were going to make their product.

9 Many years go by and a Supreme Court decision
10 goes down the other way and says that analytical
11 framework is no longer valid. If it's sitting in
12 your lot, whether it's in the original packaging
13 or not, the value added tax, not an excise or an
14 import duty. Whether it's in its original
15 packaging or not, it is subject to the property
16 tax.

17 Well, uh, the company continued to claim --
18 based on their own Supreme Court decision, they
19 continued to claim that it's exempt from the
20 property tax. They went to the tax court of
21 Ohio. They went to the Ohio Supreme Court.
22 Exception to the collateral estoppel applied.
23 When the intervening legal context has changed,
24 then it's time for a new look at this same issue
25 even though you have the same issue, the same

1 tax, same pieces of supply and the same issue.
2 It was a collateral estoppel analysis in which
3 with the intervening change of the law, we can't
4 continue to let this one company have these
5 benefits that's not available to all the other
6 companies. The tax law has to be applied even
7 handedly across the board.

8 **THE COURT:** With all due respect to the
9 Attorney General of South Carolina, there is no
10 intervening change in the legal context that is
11 applicable here. But that only makes a
12 difference if you are trying to assert an
13 exception to the doctrine of collateral estoppel
14 anyway, which we are not, right?

15 **MR. CARPENTER:** Apparently not if he's not
16 arguing collateral estoppel.

17 **THE COURT:** You might talk him into it. But
18 he's not moving.

19 **MR. CARPENTER:** That's fine.

20 **THE COURT:** He's not going to argue
21 collateral estoppel.

22 **MR. CARPENTER:** That's fine. That's why I
23 think this is a lot simpler than I thought it was
24 going to be. I think we could have had a ruling
25 after about five minutes. We're in a different

1 tax year. We are not attacking the same thing we
2 did in 1995. It's not the same adjudicated. If
3 anything is collateral estoppel, which doesn't
4 apply, they are not asserting it. They've waived
5 it. It's not res judicata.

6 THE COURT: All right. Thank you.

7 MR. NICHOLSON: Mr. Sloan asked for
8 declaratory judgement, that it violates the
9 applicable statutes of the policy as a whole.
10 That's the '96 complaint. Now, he did challenge
11 individual -- he had basically a two-prong attack
12 in his first count. Number one, that the fund
13 itself is illegal. Then he says, by the way,
14 some of the funds that you've spent violate your
15 own policy. It's a two-prong attack there.

16 THE COURT: I think that's not a matter in
17 dispute. His point is that, uh, is that when you
18 are talking about a different year and different
19 fund that has been delegated to this
20 discretionary fund, there can be no res judicata.
21 It's a different thing.

22 MR. NICHOLSON: He made a ---

23 THE COURT: How do you distinguish those?

24 MR. NICHOLSON: When he was reading the --
25 he was reading out of the Sunnen case. He quoted

1 something from the Supreme Court which says when
2 you have a successive tax year, you talk about
3 the application of that tax. In none of those
4 cases are they attacking or saying that the law
5 itself is unconstitutional. You do have
6 exceptions here. Again, he hasn't challenged one
7 expenditure in this lawsuit here today. He says
8 the reserve fund itself is unconstitutional. It
9 is illegal. That is the same thing we litigated
10 back in 1996.

11 It would be no different, Your Honor, if,
12 let's say in the -- let's say in the case we just
13 litigated, the hospital case. If that were the
14 case, I know we don't have a written order, but
15 it's assumed that some of those rulings are. He
16 comes back the next year and says, oh, well, the
17 policy is wrong. I'm going to sue them again on
18 this because it's a new expenditure. He is
19 challenging the policy itself. He is not
20 challenging the application. He's challenging
21 the policy itself.

22 Res judicata is designed to stop that so we
23 don't have to sue every year. Maybe it's not
24 you. Maybe it's Judge Hill next year or maybe
25 it's somebody else.

1 **THE COURT:** What do you mean by that?

2 **MR. CARPENTER:** About having Judge Hill?

3 **THE COURT:** Yeah. I'm just kidding.

4 **MR. NICHOLSON:** Let's say -- Your Honor,

5 let's say you decide and you rule, you find, you

6 know, I think it meets the constitution and I

7 find the policy is valid and he doesn't appeal

8 it. Three years later, he comes back and says

9 I'm going to take my chance with Judge Hill.

10 **THE COURT:** No.

11 **MR. NICHOLSON:** And he just ---

12 **THE COURT:** No, he would not do that.

13 Collateral estoppel would prevent him from doing

14 that.

15 **MR. NICHOLSON:** Well, that's true. That's

16 true there. What if he comes up with another?

17 **THE COURT:** Under his theory he could pursue

18 it.

19 **MR. CARPENTER:** Res judicata says we're not

20 going to do that. Let it be done one time.

21 Let's shoot it.

22 **THE COURT:** Since you brought in the hunting

23 analogy, Mr. Sloan says that you get to start

24 your limit over each year. You go back to zero.

25 **MR. NICHOLSON:** Here, he doesn't have that

1 big bear.

2 THE COURT: He just says he doesn't get to
3 kill just one bear in his lifetime. He gets to
4 kill one every year.

5 MR. NICHOLSON: Well, that's where I
6 strongly disagree. That's what res judicata
7 says. We only get that bear one time.

8 THE COURT: Well, I'm not sure about, uh, --
9 All right. Let me ask you about these cases.
10 Here, in this particular case, we have a disputed
11 issue of law applied to admitted facts. No
12 dispute about what the facts are, right?

13 MR. NICHOLSON: We've got a policy. That's
14 right.

15 MR. CARPENTER: They made expenditures. The
16 only expenditures we are challenging in this
17 lawsuit ---

18 THE COURT: I know that. I know. Why is
19 that any different from the discussions that we
20 saw in the tax case, the two tax cases that he
21 cited earlier? Admitted facts, same facts from
22 year to year. Different argument as to how the
23 law should be applied to the facts.

24 MR. NICHOLSON: None of those cases are they
25 attacking the law of -- they are attacking the

1 application.

2 **THE COURT:** Why is that -- why is that --
3 why is that -- all right. Uh, you are putting it
4 -- you may be right, but you are putting
5 significance on the fact that in this case, he is
6 challenging the law as unconstitutional.
7 Whereas, in the retirement case and the tax case,
8 the Plaintiff was challenging the law as wrongly
9 applied.

10 **MR. NICHOLSON:** That's right. You have a
11 different set of facts every year, like with a
12 different tax. Arguably, you at least have some
13 differing facts.

14 **THE COURT:** That's not -- that was not the
15 basis on which those cases were decided. Those
16 cases contemplated that the facts were the same
17 from year to year. They were just in a different
18 year.

19 **MR. NICHOLSON:** Well, right. That's right.

20 **THE COURT:** Well, I'm not, uh, ---

21 **MR. NICHOLSON:** There was no challenge to
22 the law itself in either of those cases. It was
23 always the application. That's what they are
24 concerned about.

25 **THE COURT:** I -- I -- I hear that. But the

1 question, the question of whether or not the law
2 as it was held to apply to the facts in previous
3 years govern the question about how the law would
4 be applied to the facts in the current year is
5 the same. In this case, there's a challenge to
6 the constitutionality of the law. I'm wrestling
7 with why that is a significant difference to just
8 applying the -- to just talking about the
9 application of the law. Why is that difference
10 significant?

11 **MR. NICHOLSON:** Why is the application
12 different from the law itself?

13 **THE COURT:** No. Your point is that when you
14 look at that retirement case or that tax case,
15 uh, you might have another Plaintiff, another tax
16 payer or another potential retiree come along
17 with a different factual situation and the law
18 that was, uh, being discussed there could be
19 applied to that other factual situation and still
20 be a valid law. So therefore, the focus in your
21 mind is on the application of the law to changing
22 facts between fact patterns. You are saying that
23 here, under the challenge that Mr. Sloan makes in
24 '96 and also to the challenge that he makes now
25 in '06 that there is no set of facts to which

1 this law could be legally applied. The law
2 itself is unconstitutional.

3 MR. NICHOLSON: It's the same, it's the
4 exact same claim.

5 THE COURT: Well, ---

6 MR. NICHOLSON: I think that that's what res
7 judicata is meant -- if that's the case, he could
8 bring a suit every year, he could bring a suit
9 every month.

10 THE COURT: I'm not worried about that.

11 MR. NICHOLSON: That's what ---

12 THE COURT: I don't even want to talk about
13 that anymore. That's a non-issue.

14 MR. NICHOLSON: Okay.

15 THE COURT: The question is not what he
16 could do. The question is what he is doing. I
17 just don't know, I don't know that the law is,
18 uh, -- let me ask this. What if the county were
19 to say, it's 2008, times have changed. I don't
20 think we're going to put any money in the Slush
21 fund this year. If you -- if John Smith were to
22 come out -- you concede that if John Smith were
23 the plaintiff this year, right now in this case,
24 there would be no, there would be no proclusion
25 and we could litigate this.

1 MR. NICHOLSON: I agree.

2 THE COURT: It would not be mute.

3 MR. NICHOLSON: That's right.

4 THE COURT: It would be an active -- it

5 would be a case in controversy under the -- under

6 Article 3.

7 MR. NICHOLSON: Yes, sir.

8 THE COURT: Uh, now, what if in 2008, the

9 county says we're not going to put any money in

10 the Slush fund this year, but nevertheless John

11 Smith comes along and says, well, I been thinking

12 about it and I think this ordinance is

13 unconstitutional under state law. You would

14 claim it was not a case for controversy because

15 there is no money that's being spent under that,

16 uh, ordinance in the current year.

17 MR. NICHOLSON: I claim a lot of things,

18 Your Honor.

19 THE COURT: You would be right if you

20 claimed that. If the county were not employing

21 -- if the county were not utilizing an

22 unconstitutional ordinance, the simple fact that

23 the ordinance was on the books would not, uh,

24 make it subject to litigation.

25 MR. NICHOLSON: Right. In that

1 hypothetical, the ordinance would almost be
2 enough.

3 **THE COURT:** Well, so in that context, what
4 is important is not that the law exists but that
5 the law is being applied and used. That's Mr.
6 Sloan's point here is that to say that your
7 distinction is not -- and I don't know. I'm just
8 thinking it through. But to say that your
9 distinction is not a valid one is because you
10 can't take a law in the abstract that's not being
11 applied and litigate its constitutionality. You
12 can only litigate its constitutionality if there
13 is actually some relief that could come from it.
14 I know that changes the subject a little bit but
15 it highlights the question. Are we talking just
16 about the law itself or are we talking about the
17 application of the law to the facts that are
18 present in 2006 and 2007?

19 **MR. NICHOLSON:** Right. I think what we are
20 talking about is we are talking about a facial
21 challenge. He is making a facial challenge just
22 like we made a facial challenge before. Before,
23 he made a facial challenge and an as-applied
24 challenge because he said what you are doing
25 under the ordinance is wrong too.

1 **THE COURT:** Interesting question.

2 **MR. CARPENTER:** Your Honor, if I could
3 explain. We talked about specific appropriations
4 to that discretionary fund. It's not a challenge
5 in the abstract. We attached to the complaint a
6 series of pages from the budget talking about
7 specific appropriations. We talked about the
8 provisions that govern those appropriations, the
9 expenditures. What we ask for is temporary,
10 preliminary and permanent injunctive relief
11 forbidding the expenditure of funds in this
12 manner. We are talking about specific
13 expenditures here. We didn't set out a laundry
14 list of the funds.

15 We have since obtained, I think, from the
16 internet a series of spreadsheets that show
17 particular expenditures. What we ask for in the
18 prayer for relief is forbidding the expenditure
19 of these funds as well as several other things.
20 We're talking about actual dollars here. We are
21 not bringing this lawsuit in the abstract.

22 **THE COURT:** You are talking about actual
23 dollars but it doesn't make any difference
24 whatsoever to the character of your case, how
25 much money is put in there and what the

1 individual council members decide to spend it on,
2 whether it is 1996 or 2006. Your entire claim is
3 based, not on the -- is not based on, uh, how
4 this ordinance is employed, but the general
5 concept of giving money to individual council
6 members to spend without the decision being made
7 by the council itself.

8 MR. CARPENTER: It is a broad challenge but
9 it does challenge specific expenditures in the
10 year ---

11 THE COURT: I understand that. We are
12 spending a lot of time dancing around the issue
13 here. Really, it all boils down... I mean, the
14 only distinction that you have drawn between
15 these cases that Mr. Carpenter was discussing and
16 this case is that in this case, there is an
17 attack on the constitutionality, or really the
18 validity of the ordinance ---

19 MR. NICHOLSON: Right.

20 THE COURT: --- as opposed to an argument
21 that the ordinance should not be applied in this
22 particular way.

23 MR. NICHOLSON: That's right.

24 THE COURT: The only real issue is whether
25 or not res. judicata claimed proclusion in this

1 context applies differently when the attack is
2 made to the validity of an ordinance as opposed
3 to the application of the ordinance. And, uh,
4 you contend that if the challenge made by the
5 retiree to his being denied retirement were a
6 constitutional challenge or any other type of
7 challenge to the validity of the law, he would
8 have been procluded, and that the challenge to
9 the tax -- that the taxpayer had made was a
10 challenge to the constitutionality of the, uh,
11 taxing rule, the rule of taxation, then he would
12 have been procluded, except I know one of those
13 cases was flipped around. It was the government
14 who was opposing the later application.

15 MR. NICHOLSON: I will point out too that
16 first case you mentioned, the Moser case, the
17 1924 case, the Supreme Court said in two
18 different opinions that Mr. Carpenter read over,
19 one was a Montana case and one was the, uh,
20 Stauffer case. They both pretty much said -- I
21 don't understand what our court was talking about
22 when it created an exception to the Moser case.
23 So I think they limited Moser to the facts of the
24 case. Moser really doesn't have any broader
25 application other than the facts of that

1 particular case.

2 MR. CARPENTER: They keep quoting the rule
3 of law over and over again. The rule of law is
4 when a court deciding a case has enunciated a
5 rule of law, parties in the subsequent action on
6 a different demand are not estopped from the laws
7 otherwise merely because the parties were the
8 same in both cases. That's repeated through
9 several of these cases. That concept was
10 repeated.

11 THE COURT: All right.

12 MR. NICHOLSON: That's our point.

13 THE COURT: Okay. Now, obviously if I grant
14 the motion, uh, to dismiss, then the case is
15 over. If I deny the motion to dismiss, are we --
16 are you ready to proceed on the legal arguments
17 today?

18 MR. NICHOLSON: I'm not.

19 MR. CARPENTER: I am, but Nick asked that we
20 not pursue that today because he wanted to focus
21 the Court simply on the res judicata. I'm happy
22 to accommodate him on that. I just don't want
23 him to come back and once we've argued res
24 judicata and he's refused to argue collateral
25 estoppel, I don't want him to come back next time

1 and argue I was wrong on collateral estoppel.

2 THE COURT: That would be res judicata.

3 MR. CARPENTER: I think so.

4 THE COURT: All right.

5 MR. CARPENTER: As far as the merits of it,
6 I think the Attorney General did a very good job.

7 THE COURT: That may be true, but the
8 Attorney General's opinion has no influential,
9 uh, weight in -- little influential weight in
10 this court. Not just with me, but I mean, it's
11 not, it's not binding and it's not -- I've still
12 got to make the decision. He's just one smart
13 guy who thinks one way. I'm not procluded by it.
14 Some people don't think it's all that smart. I
15 will go on the record by saying he's plenty
16 smart.

17 Well, I'm having, I'm having -- it's an
18 interesting question. I'm having difficulty
19 seeing that there is a, uh, that there is
20 significance in the fact that the challenge is to
21 the validity of the, uh, ordinance as opposed to
22 the applicability of the ordinance. I see the
23 argument. I don't see any legal support for it.
24 There are no cases that draw that distinction
25 that you have cited. Are they?

1 **MR. NICHOLSON:** The cases I cited go to the
2 general proposition of what res judicata is and
3 that there really are no exceptions to res
4 judicata other than ---

5 **THE COURT:** Yes. The question is what's the
6 thing. Of course, "res" means thing.

7 **MR. NICHOLSON:** Yeah.

8 **THE COURT:** The question is what's the
9 thing. Is it the legality of the money being
10 spent in 2000, I mean, in 1996 or I guess you
11 were litigating 1995 expenditures. Let's say
12 mid-90s expenditures. Or is it the
13 constitutionality of the statute? Or let's say
14 the validity, I should say the validity of the
15 ordinance. You are saying -- your claim is that
16 Mr. Sloan attacked the validity of the ordinance
17 by claiming generally that there were
18 constitutional problems and specifically that the
19 ordinance was a violation of county law.

20 All right. Well, I'm going to tell you that
21 I'm inclined to rule that the thing is 1995 or
22 1996 and not the validity of the ordinance and
23 therefore res judicata would not preclude the
24 litigation of this challenge. I'm inclined to
25 rule that way. (Pause.)

1 And, uh, all right. Do we have anything else
2 -- other than to decide this question of -- that
3 relates to this motion to dismiss, is there
4 anything else that's selected for today?

5 **MR. NICHOLSON:** No, sir.

6 **MR. CARPENTER:** We've got Ambulances II but
7 we stipulate to the dismissal of that.

8 **THE COURT:** Okay. We narrowed the issue
9 pretty much. We've got the issue narrowed by
10 agreement down to a pretty specific point. That
11 is, essentially what is the thing. What is the
12 res that was adjudicated back in 1996 or '97?
13 Stated differently, it would be is there a
14 significance in the fact that the validity of the
15 ordinance was challenged as opposed to the
16 applicability of the ordinance. If we are
17 talking about the applicability, things would be,
18 folks would be restricted to 1995 and 1996. If
19 we are talking about the validity, then the thing
20 transcends the timeframe in which it was
21 initially litigated to today. It's an
22 interesting question.

23 I'm going to ask -- I think this should be
24 done in a short order, an order of maybe even two
25 or three pages because of the way we narrowed the

1 issue. And so I would like -- I'm going to go
2 ahead and ask Mr. Carpenter to draw a short order
3 that addresses this and denies the motion to
4 dismiss.

5 MR. CARPENTER: Yes, sir.

6 THE COURT: If you are aware of any -- I
7 suppose this is not -- I mean, you cited a bunch
8 of cases in there. If you go back through those
9 cases and you figure out that there is a
10 distinction drawn ---

11 MR. NICHOLSON: Yes, sir.

12 THE COURT: --- that is something I would
13 like to have my attention focused back in on.
14 Otherwise -- well, you know, submit the order and
15 then if you have anything else to file, let me
16 know.

17 MR. NICHOLSON: Thank you.

18 THE COURT: All right. And we are scheduled
19 to get back together when?

20 MR. NICHOLSON: December 11th.

21 MR. CARPENTER: I've got the 12th for some
22 reason.

23 MR. NICHOLSON: That date's fine with me.

24 THE COURT: All right. Let me see what I
25 have. (Pause.)

1 I'm pretty sure that -- I think we had it on
2 the 11th and we moved it to the 12th. I'm
3 supposed to be in Pickens on that Thursday and
4 Friday. Somebody came to us after we set it for
5 that Tuesday and said they have a two-day trial
6 we really need to try. I wrote y'all and I said
7 can we move it from Tuesday to either Monday or
8 Wednesday.

9 MR. NICHOLSON: That's right.

10 THE COURT: I think we moved it to
11 Wednesday. Does that sound right? Does it suit
12 everybody then? We're going to do it on the
13 12th.

14 MR. CARPENTER: Suits me.

15 THE COURT: Okay. And y'all will let me
16 know -- do we know already what's going to be
17 litigated?

18 MR. CARPENTER: No, I certainly request this
19 one, the merits of this case. We'll get
20 something -- suggest something well in advance of
21 the hearing.

22 THE COURT: All right. See y'all.

23 MR. CARPENTER: Thank you.

24 (END OF PROCEEDING)

25

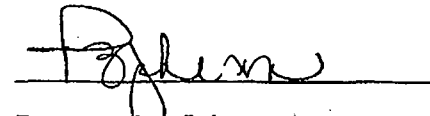
CERTIFICATE

49

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of Common Pleas
8 for Greenville, South Carolina, on this 4th day of
9 August, 2010.

10 I do further certify that I am neither of kin,
11 counsel nor interest to any party hereto.

12
13 August 5, 2010

14
15 
16
17 Teresa B. Johnson
18 Official Court Reporter
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21
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25

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 06-CP-23-4637
	)	
S.C. Public Interest	)	
Foundation and Edward D.	)	
Sloan, Jr., Individually, and	)	
on Behalf of All Others	)	
Similarly Situated	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	(Slush Fund)
Greenville County, Herman G.	)	
Kirven, Jr., Judy Gilstrap,	)	
Eric Beddingfield, Jim Burns,	)	
Scott Case, Joseph Dill, Cort	)	
Flint, Lottie Gibson, Mark	)	
Kingsbury, Xanthene Norris,	)	
Robert Taylor, Tony Trout	)	
	)	
Defendant.	)	

October 7, 2008
Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

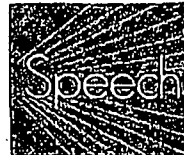
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I N D E X

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Motions	4
Certificate of Reporter	50

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u> <u>EV</u>

PLAINTIFF'S EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT'S EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

THE COURT: All right. Who wants to go first?

MR. CARPENTER: I'll take first crack at it, Your Honor. This case is a challenge to the Greenville County Council Reserves or Discretionary Fund. Mr. Sloan filed this lawsuit after doing a FOIA request asking for information about the expenditures. We also learned that in 2003, the South Carolina Attorney General issued an opinion. It related to a set up in Florence County very similar to this.

The Attorney General's opinion establishes that in Florence County individual council members were given a certain amount of money to spend on roads or other infrastructure projects. They could spend that on their own without getting the approval of County Council. Officials with the county raised the question about the appropriateness of this and the Attorney General in a long and well researched opinion stated that because these were discretionary acts and the responsibility for spending money belongs to the County Council as a whole. This was an invalid, unwarranted

1 delegation of legislative authority.

2 That seems to be in line with the other
3 authorities we've cited and we found. A couple
4 of days ago, we sent to the Court and opposing
5 counsel the reply memo in which we attached
6 several sections of McQuillen on municipal
7 corporations and a couple of sections of, I
8 believe it was Am. Jur. 2d. All of which seem to
9 draw the line for what can be delegated and what
10 can't between discretionary activities and
11 ministerial activities.

12 Opposing counsel has also seemed to recognize
13 at least in some measure that that is the
14 dividing line. So it seems that the crucial
15 issue for this Court is a decision on whether
16 these kind of expenditures are discretionary or
17 ministerial. We sent to the Court with the reply
18 memo a case from North Carolina. Then, just in
19 the last day or so, we also submitted to the
20 Court the case called Wilson versus Preston who
21 is the Anderson County Administrator. It was
22 South Carolina Supreme Court decision from June
23 of this year. In that, uh, --

24 THE COURT: Your position is simple in
25 that if this is a ministerial responsibility, it

1 can be delegated. If it's a discretionary
2 responsibility, it can not.

3 MR. CARPENTER: Yes.

4 THE COURT: You agree with that?

5 MR. NICHOLSON: I don't agree with, I
6 don't agree with his citation of the Wilson v.
7 Preston case. That case dealt with whether or
8 not --

9 THE COURT: I know you don't agree that --
10 I know you don't concede but do you agree that a
11 discretionary responsibility can not be
12 delegated?

13 MR. NICHOLSON: I believe that the way
14 the Supreme Court puts it in the Bower case and,
15 before that, the Harbin case, they talk about
16 unfettered discretion. Even though the Attorney
17 General said look -- and a lot of the Attorney
18 General cases deal with separation of powers at
19 the state level and they talk about the overlap
20 of executive doing legislative work and vice
21 versa. Even the AG's opinion here says we
22 recognize that in county government, County
23 Council performs not only legislative functions,
24 they also perform administrative functions. So
25 the distinction I think here, Judge, is it an

1 administrative function that they are performing
2 or is it a legislative function?

3 THE COURT: Let's spend a few minutes
4 framing the issue. You tell me what you think
5 the issue is that has to be decided as it relates
6 to these facts. Then we will let Mr. Nicholson
7 respond.

8 MR. CARPENTER: All right. The issue
9 is I think as I stated. Is it ministerial or is
10 it discretionary? We do acknowledge that open
11 governments, as Mr. Nicholson said, are not
12 strictly bound by the separation of powers like
13 the state government is. But the critical issue
14 seems to me is can that discretionary function be
15 delegated to one member of the body, reasoning
16 from the greater to the lesser.

17 The General Assembly has then told in more
18 than one case that it can not delegate to a
19 county delegation or to a committee the authority
20 to spend money. And if the General Assembly
21 whose powers are very broad based and fundamental
22 and limited only by the Constitution
23 specifically, the presumption is they can do
24 anything they want to, if they can't delegate the
25 kind of discretionary legislative authority to a

1 subgroup of the General Assembly, then certainly,
2 the lesser, the County Council can't delegate to
3 an individual member the discretion to spend
4 money.

5 So I'm not arguing separation of powers. I
6 think that would not be an appropriate argument.
7 I'm arguing that there improper delegation of
8 discretionary authority to an individual member.

9 THE COURT: All right.

10 MR. NICHOLSON: I agree that's the
11 bottom line issue that they improperly delegate
12 their ultimate legislative making power. The
13 ultimate discretionary power which is their
14 legislative authority to make the rules. The
15 issue, I think, is whether or not these line
16 items, this council budget, whether it falls in
17 that legislative action or whether or not, the
18 spending, the spending by individual council
19 members, whether that ability to do that is
20 unfair discretion which I agree the Supreme Court
21 has said does violate the delegation principle or
22 is it merely a filling in the details of carrying
23 out legislative intent.

24 THE COURT: You are saying we have to deal
25 with the difference between legislative and the

1 executive power? It seems to me the first
2 question is what was delegated.

3 MR. NICHOLSON: Right.

4 THE COURT: Something was delegated from
5 the council to an individual council person. I
6 think what Mr. Nicholson is saying is that what
7 was delegated was more of a discretionary
8 function of implementing a decision that was made
9 properly by the body, right?

10 MR. NICHOLSON: That's right.

11 THE COURT: And you are saying no, what
12 was delegated was the authority that the counsel
13 must retain for itself, whatever that is, which
14 is more of the legislative part of it.

15 MR. CARPENTER: Uh, I would use the
16 term discretionary.

17 THE COURT: I think that -- it seems to me
18 like it's more complicated than just the
19 difference between discretionary and ministerial.
20 An executive is given discretion or can be given
21 discretion as to how to carry out legislative
22 action. And counsel is different than -- County
23 Council is a different entity than the state
24 because we don't have a tripartite county
25 government.

1 MR. CARPENTER: Right.

2 THE COURT: We have a county government
3 whose ultimate, uh, authority is in the council.
4 But that authority is legislative and executive.
5 It's not really judicial but it's legislative and
6 executive together.

7 MR. CARPENTER: To some degree.

8 THE COURT: It overlaps.

9 MR. CARPENTER: But they've got a
10 County Administrator who works for the council.

11 THE COURT: He does.

12 MR. CARPENTER: He doesn't work for
13 individual members.

14 THE COURT: We are learning that, aren't
15 we?

16 MR. CARPENTER: That's where he's
17 aligning himself in this argument. That
18 horrifies him. But that's where he's aligning
19 himself. He's giving to individual members the
20 kind of authority that belong to the group.
21 That's my position. So he would align himself
22 with Mr. Trout who says I can tell individually
23 -- I can tell the Administrator what to do.

24 In the Wilson case, she says I'm entitled to
25 these documents because I'm a County Council

1 member. I can waive the attorney/client
2 privilege because I'm a County Council member.
3 Supreme Court said no, that belongs to the county
4 as a whole. This is a decision that belongs to
5 the County Council as a whole.

6 THE COURT: All right. Let me ask you a
7 question. Under this Slush Fund, as you call it,
8 is it fair to call it that?

9 MR. NICHOLSON: Council members have
10 called it that, Judge. This is a hot political
11 issue. There are members of council who don't
12 like this thing. So, yeah.

13 THE COURT: All right. So under this
14 Slush Fund mechanism, when a council member
15 decides what's going to happen with that
16 particular member's portion of the money, how is
17 that decision implemented?

18 MR. CARPENTER: Well, from previous
19 cases, I can tell you from memory how it works.

20 THE COURT: Well, let me ask first, is it
21 official? I mean, is there a county ordinance
22 that specifies how the council member is to
23 implement the decision of how to spend that
24 money?

25 MR. CARPENTER: The practice -- I don't

1 know the ordinance that governs the procedure.
2 The fund as a whole is a line item in the budget.
3 As I recall, and Nick can correct me if I'm
4 wrong, there is a practice by which individual
5 council members make a written request to the
6 Assistant County Administrator, John Ham --

7 MR. NICHOLSON: Hemsley.

8 MR. CARPENTER: -- Hemsley. And he
9 looks at it to see if he thinks it comes within
10 the guidelines. If he thinks it does, he will
11 issue the check or carry out the request. But to
12 my knowledge, there is no ordinance that
13 establishes a process. There is just a procedure
14 that's developed over time.

15 THE COURT: Well, let's focus on that for
16 a minute because, uh, -- you know, the -- I
17 wonder what is the, uh, what are the -- what's
18 the state law that governs how County Council
19 carries out its decisions. Is there something
20 that mandates the use of a county administrator?

21 MR. NICHOLSON: Well --

22 MR. CARPENTER: There's several
23 different forms of county government that can be
24 established. The council and administrative form
25 is one of the five forms of government that are

1 acceptable here in South Carolina.

2 THE COURT: So there is a statute that
3 lists the five forms of government.

4 MR. CARPENTER: That's right.

5 THE COURT: County -- All right.

6 MR. NICHOLSON: And there's also a
7 statute, Your Honor, that the Attorney General's
8 opinion pointed to. It's 4-9-140, I believe.

9 THE COURT: Let's -- I may be off base but
10 this thing is important to me. If the County --
11 All right. Under state law, County Council can,
12 the County can set itself up as Greenville County
13 has which is to have council and the decisions of
14 council are carried primarily by the County
15 Administrator who works for council, chosen by
16 the council. So council has, it retains its own
17 executive authority.

18 It's not like in the state government where
19 there is legislative action and then the governor
20 has, uh, pretty much, as long as what the
21 government does is not inconsistent with what the
22 legislature does, the government decides how to
23 carry it out. But here, the County can tell the
24 Administrator how to carry it out?

25 MR. CARPENTER: Right.

1 MR. NICHOLSON: That's right.

2 THE COURT: So would it be, is it illegal
3 under state law for the council to pick someone
4 else to carry out their decisions?

5 MR. CARPENTER: The council can -- in
6 certain circumstances, Yes. It depends on what
7 kind of decision is carried out, not whether it
8 is delegated to somebody else. The authorities
9 from McQuillen point out this as a distinction.
10 Ordinarily, the cases turn on the kind of
11 decision that is delegated, not whether it has
12 been or to whom it has been delegated.

13 If we are talking about law enforcement,
14 police officers exercise discretion all the time.
15 And they cases recognize that they have to do
16 that. They have to decide whether to issue a
17 ticket or whether to issue three tickets for the
18 same situation, whether to make an arrest, what
19 kind of charges to make. There's a lot of
20 executive discretion in law enforcement.

21 But when it comes to spending money, the
22 cases upheld that the spending of money is a --
23 if the Court wants to use the term, legislative
24 function or discretionary function that must be
25 exercised by the body as a whole. In these

1 circumstances, individual counsel member decides
2 whether to spend that money at all. He decides
3 when to spend it, whether right before the
4 election or at the 4th of July or whatever. He
5 decides what kind of project to spend it on,
6 whether to do speed bumps or a dugout for the
7 ball field or storm drainage.

8 **THE COURT:** Well, All right. I hear you
9 but let me ask this question. What if the, uh,
10 counsel said, as I'm sure they do, here is
11 \$100,000 to put speed bumps in the neighborhoods
12 around Greenville? It's perfectly fine for the
13 Administrator or somebody not within County
14 Administration, not the council to have delegated
15 to them the authority to decide where the speed
16 bumps get put.

17 **MR. NICHOLSON:** Well, --

18 **THE COURT:** I know that is a different
19 question.

20 **MR. CARPENTER:** I don't entirely agree
21 with you. I don't think they can pay the
22 unfettered discretion to them. They have to tell
23 them how to make that choice, whether it's by
24 traffic studies or whether it's by so much in
25 every district or whether it's by the most needed

1 areas. They can't give them that unfettered
2 discretion because that would be the --
3 **THE COURT:** You agree with that?
4 **MR. CARPENTER:** -- same problem we are
5 dealing with here.
6 **MR. NICHOLSON:** I agree there has to be
7 some guideline.
8 **THE COURT:** All right. What's the --
9 **MR. NICHOLSON:** That's the issue in
10 this case, is there a guideline? Are there
11 enough guidelines?
12 **THE COURT:** Okay. All right. Now, it's
13 helpful to talk about what the issue is.
14 **MR. CARPENTER:** It is.
15 **MR. NICHOLSON:** Judge, I don't think
16 the County Council can go, for instance, and say,
17 go to Hearst and Young and say, you know what,
18 we're tired of budget. You will budget this year
19 and whatever you say goes. We are delegating
20 that authority to Hearst and Young to pay our
21 budget. They can't do that.
22 **THE COURT:** Let's don't talk about Hearst
23 and Young now. Let's talk about County Council
24 members.
25 **MR. NICHOLSON:** All right.

1 **THE COURT:** We agree that at some level
2 of, uh, delegation, there can be too much, if
3 council were to just say, hey, here's \$10
4 million. Each council member gets \$1 million.
5 Y'all have a ball.

6 **MR. NICHOLSON:** I think that's what
7 they did in Florence.

8 **MR. CARPENTER:** No, Florence had
9 limitations on what they could spend it on. They
10 had to spend it on roads or one other thing. I
11 forgot what it was. But it was two categories of
12 expenditures they could make. And that seemed to
13 be more limited than what Greenville County has.

14 **THE COURT:** Well, my point is y'all -- I
15 think what we are hearing is where the
16 disagreement is is over whether or not there are
17 sufficient guidelines and standards and criteria
18 given to each individual council member as to how
19 that money gets spent.

20 **MR. CARPENTER:** That's a generalized
21 way of saying it, Yes.

22 **THE COURT:** Do you agree that if the
23 council were to specifically spell out detailed
24 criteria and guidelines to individual council
25 members as to how this money would be spent that

1 there is some possibility that it would be legal?

2 **MR. CARPENTER:** If it were truly a
3 ministerial act so that there is no discretion
4 involved --

5 **THE COURT:** No discretion?

6 **MR. CARPENTER:** I don't know that it
7 would be illegal. It would not be a delegation
8 of discretionary authority.

9 **THE COURT:** Let's say that --

10 **MR. CARPENTER:** You got 12
11 administrators.

12 **THE COURT:** Let's take the County
13 Administrator. If the County says, we're going
14 to spend, we just happen to have an extra \$10
15 million in our budget this year. We're going to
16 ask the County Administrator to spend it wisely.
17 That's not doable, right?

18 **MR. CARPENTER:** That is an unauthorized
19 delegation of legislative or discretionary
20 authority.

21 **THE COURT:** Okay. But if they were to say
22 we have an extra \$10 million and we're going to
23 decide that we are going to spend it on roads and
24 here is a detailed set of criteria that spells
25 out how the decision is to be made in

1 distinguishing between one road project and
2 another. And, uh, using these criteria, the
3 discretion to decide which particular road
4 project gets done or does not get done is hereby
5 delegated to the County Administrator.

6 MR. CARPENTER: That's pretty close to
7 the way they would do it. The county
8 administrative staff has a list of criteria that
9 they use to fund the --

10 THE COURT: And that would be fine, right?

11 MR. CARPENTER: Yeah. If there's a
12 list of criteria by which the --

13 THE COURT: Okay.

14 MR. CARPENTER: I think County Council
15 votes on that as a whole. They say we like this
16 program and we --

17 THE COURT: Wait a minute now. The answer
18 is yes?

19 MR. CARPENTER: Different hypothetical.

20 THE COURT: I know. We're delegating it
21 to the County Administrator. But my point is,
22 you are trying to draw the line between
23 discretionary and ministerial. And you just
24 conceded that there is some discretion that is
25 properly delegated to an administrative entity in

1 deciding how that money gets spent.

2 MR. CARPENTER: To a -- if it's very
3 limited and there are sufficient criteria that
4 are in place. I think the delegation to an
5 administrative officer who serves at the behest
6 of County Council and under their direction and
7 if they didn't like it, they could yank him in
8 and say we don't like the way you did this, then
9 yeah, I think that would be an appropriate
10 delegation. But that's different from giving it
11 to 12 individual people who have their own
12 kingdoms.

13 THE COURT: Well, you cited this Wilson
14 versus Preston case.

15 MR. CARPENTER: I did, Yes.

16 THE COURT: And in Wilson versus Preston,
17 in drawing the distinction between ministerial
18 duties and discretionary duties, the Court said
19 that a duty is ministerial when it is defined by
20 law with such precision as to leave nothing to
21 the exercise of discretion. When you give to the
22 County Administrator specific criteria on how to
23 decide which road project is the wisest use of
24 county money, you are giving him discretion.

25 MR. CARPENTER: To follow what

1 direction you had given him.

2 THE COURT: Yeah. I know. But that's
3 discretion. And you are the one who brought this
4 Wilson versus Preston case up. You are saying
5 that the only duties that can be delegated --
6 now, you are saying the only duties that could be
7 delegated to a County Administrator are
8 ministerial.

9 And what that's telling me -- maybe I'm
10 misunderstanding. What that's telling me is
11 County Council has got to decide which road
12 projects get picked and then tell the County
13 Administrator go do that road project on Georgia
14 Road down in the southern part of the county. Go
15 do that road project on Highway 11 in the
16 northern part of the county.

17 But really happens is the County says here is
18 some money. These are the things that are
19 important to us. We want to know what the level
20 of traffic is. We want to know how many potholes
21 there are in the road. We want to know other
22 things. What's the road service. We want to
23 know the traffic control devices that need to be
24 ungraded. And taking those criteria, you go
25 decide which project gets the money spent on it.

1 **MR. CARPENTER:** That's not what they do
2 though.

3 **THE COURT:** But that's not my question.
4 My question is my question. Not the question you
5 want to answer, the question I want answered.

6 **MR. CARPENTER:** All right.

7 **THE COURT:** If they say that to County
8 Administrator, it's discretionary, right? It has
9 to be.

10 **MR. CARPENTER:** Right. And they don't
11 vote on it again.

12 **THE COURT:** Right. So they delegate
13 discretionary authority to the County
14 Administrator.

15 **MR. CARPENTER:** If they didn't retain
16 the right to vote on it as a group, I think
17 that --

18 **THE COURT:** Wait a minute. So they vote
19 on it again?

20 **MR. CARPENTER:** I believe so.

21 **THE COURT:** So they --

22 **MR. CARPENTER:** Then they can make
23 changes to -- the way it works is they can make
24 changes to it. If they don't like the plan that
25 comes back from County Administrator, they can

1 make changes to it. And they do.

2 The County Council retains the authority over
3 what roads get paved. There is a recommendation.
4 There is a criteria that the Administration is
5 supposed to apply. They come to them and say
6 based on our criteria, this is what we want paid.
7 As a matter of practice, as I understand it from
8 representations in previous cases, they make
9 changes to that if they want to. Then they vote
10 on it and say yes, we're going to pave these
11 roads.

12 THE COURT: Hold on just a second. Well,
13 I don't think that the issue is as simple as
14 drawing the difference between discretionary and
15 ministerial. You just can't -- there's just no
16 way that --

17 MR. CARPENTER: The Supreme Court in
18 Wilson --

19 THE COURT: Wilson is a completely
20 different case, different facts, different issue.
21 Somebody is trying to force a county official
22 through a writ of mandamus to take some action.
23 The Court is trying to define what acts it will
24 issue a writ of mandamus on and what acts it will
25 not issue a write of mandamus on. Nothing to do

1 with this.

2 MR. CARPENTER: All right.

3 THE COURT: It may be helpful in telling
4 us the difference between discretionary and
5 ministerial. But other than that, it's of no use
6 to us.

7 MR. CARPENTER: All right. There is
8 another case I submitted to the Court. It's from
9 North Carolina. It is from 1925. It sounds
10 remarkably like some of the cases Mr. Sloan has
11 brought.

12 THE COURT: All right. Before we talk
13 about that, let's get back to, uh, let's go back
14 to where we agree, where everybody agree and what
15 the issue is. Everybody agrees that the council
16 can not delegate a certain level of discretion to
17 an individual council member, right?

18 MR. NICHOLSON: Yes.

19 THE COURT: So the question is, the first
20 question really is what was delegated.

21 MR. CARPENTER: Okay.

22 THE COURT: And you are saying what was
23 delegated was legislative authority and what Nick
24 is saying is what was delegated was executive
25 authority, basically. And clearly the council

1 can delegate executive authority. And they can
2 delegate executive discretion.

3 So it seems to me -- that's why I think it's
4 important to understand is it required under this
5 state law that whatever executive authority the
6 council does delegate be delegated to the
7 Administrator. Cause if it is, then that ends
8 the question right there. And if it's not, then
9 we got to keep going.

10 MR. CARPENTER: I think that's a good
11 way to state it because council as a whole
12 employs the administrator. Council as a whole
13 doesn't employ the individual council members.
14 That's a critical difference. The Administrator
15 is answerable to council as a whole. But
16 individual council members are elected
17 individually. They answer only to their
18 constituents.

19 THE COURT: All right. So your -- the
20 point you made a minute ago, the one you just
21 followed up on, answer this.

22 MR. CARPENTER: Okay.

23 THE COURT: Council decides money is to be
24 spent on roads.

25 MR. NICHOLSON: Right.

1 **THE COURT:** Delegate appropriately
2 executive authority to the County Administrator
3 to do what is appropriately to be delegated in
4 spending the money. Administrator starts to do
5 the work and decide how to carry out the
6 responsibility that has been given to him.
7 Council sees it, decides they don't like it.
8 They stop. That can happen.

9 **MR. NICHOLSON:** Absolutely.

10 **THE COURT:** What about in the Slush Fund?
11 Can the council stop an individual council
12 member's decision about how the money is to be
13 spent?

14 **MR. NICHOLSON:** I would think so. They
15 would have to -- if they found out they are going
16 to expend the money -- I don't know if it ever
17 has been done or not. But it seems to me they
18 have the legislative prerogative to say we are
19 stopping the Slush Fund or we are rescinding
20 that --

21 **THE COURT:** Huh-uh. They can clearly stop
22 the Slush Fund.

23 **MR. NICHOLSON:** Right.

24 **THE COURT:** But let's say, just imagine
25 the we-know-impossible-scenario that you would

1 actually have a rogue council member who might
2 decide to do something silly with the money like
3 put 1000 speed bumps in one neighborhood
4 somewhere. Something just -- pick a ridiculous
5 decision. Does council -- can you point to
6 something where council has the authority to say
7 we disapprove of that?"

8 MR. NICHOLSON: In the ordinance, No.
9 But back to their legislative authority flowing
10 down from the state, I think they do have that
11 ability. Just like they have the ability to tell
12 the Administrator, I don't like what you are
13 doing, stop it, they can do the same thing here.

14 THE COURT: But you would agree that the
15 council has to retain that authority?

16 MR. NICHOLSON: I think so.

17 MR. CARPENTER: I think they gave it
18 away when they set this up. I think they would
19 have to change the rules. They could only change
20 the rules going prospectively. If a man put 1000
21 speed bumps in his own neighborhood or in his
22 opponent's neighborhood and they found out about
23 it after the fact, you know, they could change
24 the rules going forward.

25 But if the rules are there, which they are,

1 that say you can do it whether you want to as
2 long as its infrastructure, then I don't think
3 they can say that individual -- there's nothing
4 in there that says individual expenditures -- I
5 think is the Court's question -- can be
6 overridden by County Council. There's nothing
7 like that.

8 **THE COURT:** Well, I need to look at the
9 Slush Fund ordinance.

10 **MR. NICHOLSON:** Let's look at the
11 ordinance.

12 **MR. CARPENTER:** It's attached to it.
13 The description is -- it's attached to Nick's.
14 It's got the description and the limitation. And
15 it doesn't make any provision for County Council
16 overriding an individual expenditure or if he
17 wanted to put five dugouts on the baseball field
18 or, you know, not make any expenditures in his
19 opponent's neighborhood for storm drainage. It's
20 got nothing in there that says County Council can
21 override an individual decision by a council
22 member. That's the problem with it. Or that's
23 one of the problems with it.

24 **THE COURT:** I, uh, -- All right. I've
25 been handed a document that's attached as Exhibit

1 3 to the Defendant's Memorandum in Opposition.

2 MR. NICHOLSON: It's the same thing
3 attached to his complaint.

4 THE COURT: It's a one-page document.
5 What's the -- how does that fit into the, uh, how
6 does that fit into the Slush Fund?

7 MR. NICHOLSON: There is a -- if I
8 could walk through it.

9 THE COURT: Is there a Slush Fund
10 ordinance?

11 MR. NICHOLSON: It's done every year.
12 It's a budget ordinance. That's what it is.

13 THE COURT: It's a line item in the
14 ordinance?

15 MR. NICHOLSON: Right. If you look at
16 the --

17 THE COURT: I want to look at the whole
18 thing.

19 MR. NICHOLSON: If you look at Exhibit
20 1, Your Honor, of that brief, excuse me, Exhibit
21 2, it's called a Budget File right at the top
22 there.

23 THE COURT: All right.

24 MR. NICHOLSON: I have not given you
25 the entire budget. We can certainly do that.

1 But division, excuse me, department one,
2 legislative and administrative services, 4-0-300
3 is the budget line items for the County
4 Administrator. If you go over to the next page,
5 --

6 THE COURT: Wait a minute now. I don't
7 see that. All right. I'm looking for what now?

8 MR. NICHOLSON: This is to kind of
9 orient you. If you look at the top left of that
10 first page, it says --

11 THE COURT: Of Exhibit 2.

12 MR. NICHOLSON: It says Department 01.

13 THE COURT: Oh, yeah.

14 MR. NICHOLSON: Legislative and Admin
15 Services.

16 THE COURT: All right. I see it.

17 MR. NICHOLSON: First division, County
18 Administrator. If you flip over two pages to
19 page 3 --

20 THE COURT: County Council.

21 MR. NICHOLSON: County Council. And
22 then you see it has all of the salaries. This is
23 the staff too, like Clerk of Council. You see
24 Operating Expense. You have General Copy
25 Expense, General Postage, General Printing, et

1 cetera. Then you go down starting at Item 12260.

2 **THE COURT:** That's the Slush Fund.

3 **MR. NICHOLSON:** That's the fund.

4 **THE COURT:** \$21,000 a piece.

5 **MR. NICHOLSON:** A piece. Well, it's

6 more for the Vice Chairman and it's more for the

7 Chairman.

8 **THE COURT:** All right.

9 **MR. NICHOLSON:** And then if you go over

10 to Exhibit 3 that I told you about --

11 **THE COURT:** This is what they can spend it

12 on?

13 **MR. NICHOLSON:** This is what they can

14 spend it on. And it's not just infrastructure.

15 It's their travel expense, if they want to go to

16 a conference. It's whatever postage they have.

17 I'll let you read it.

18 **THE COURT:** So that's basically the only

19 guideline that is given to an individual member?

20 **MR. NICHOLSON:** That's right. That's

21 right. Jim says the -- excuse me, Mr. Carpenter

22 says --

23 **THE COURT:** Well, some of these things are

24 clearly okay, right? I mean, it's fine for

25 council to give some money to a council member to

1 buy pens and pencils.

2 **MR. CARPENTER:** We are not challenging
3 that. Maybe we should have. Maybe County
4 Council should have had some administrative
5 person go out and buy 100 pencils and pass out
6 pens to each council member. But we are not
7 challenging that. We are challenging this --

8 **THE COURT:** I realize what you are
9 challenging. But there you go again. I want my
10 question answered.

11 **MR. CARPENTER:** Maybe we should have
12 challenged it. It's the same principle where
13 you've got maybe one guy likes these \$100 pens.
14 He's going to spend his whole \$20,000 on \$100
15 pens.

16 **THE COURT:** Well, think about to what
17 extreme you must take this point if you pursue
18 what you just said. I mean, are these, do --
19 these men and women giving office space in the
20 council chambers?

21 **MR. NICHOLSON:** Your Honor, I honestly
22 don't know the answer to that question.

23 **THE COURT:** I mean, they have a key to the
24 building, right?

25 **MR. NICHOLSON:** They have a mailbox and

1 they have mail that goes there.

2 **MR. CARPENTER:** I don't think they have
3 a desk and office.

4 **THE COURT:** They have the right to use the
5 building. They can come in there and go to the,
6 uh, --

7 **MR. NICHOLSON:** Council chambers.

8 **THE COURT:** -- wherever it is that the
9 county code is kept and they can study the code
10 and they can use the bathroom and they can --
11 they probably have, if they don't have a
12 refrigerator full of Coca-Colas, they certainly
13 have a water fountain that they can use. Right?
14 And the water costs the county money, right?

15 So if you take that the extreme, then the
16 council would have to say to each individual
17 council member, uh, since water costs us money,
18 we're going to require you that you can only hold
19 the button on the water fountain down for 15
20 seconds per 24-hour period. Anything other than
21 that is allowing too much money to be spent on
22 water for an individual council member. I mean,
23 that's taking it to an extreme.

24 But if you tell the council -- it's got to be
25 okay for there to be something that they allow

1 the council member discretion over such as --
2 maybe they go out to buy pencils. Come on. They
3 got to say go buy whatever kind of pencils you
4 want. We know you use pencils. We want you to
5 use pencils in your work as a County Council
6 member. It's useful to us.

7 One council member might, uh, want to fulfil
8 their responsibility to the county by driving
9 around and looking to see what the issues are in
10 the county whereas another council member might
11 want to use the internet and use the telephone to
12 call constituents to see what their concerns are.
13 So, isn't it okay for the council member to be
14 reimbursed for mileage if the member chooses to
15 go out and see some project in the community, see
16 some area of the community?

17 MR. CARPENTER: Yeah, that --

18 THE COURT: Of course it is. So there's
19 some level of --

20 MR. CARPENTER: There is a de minimis --

21 THE COURT: Okay. May it is de minimis
22 but there is some stuff in here that's okay.
23 Clearly, what you are saying though is, you are
24 saying mixing in this big stuff is improper.
25 It's improper delegation. It's okay to delegate

1 some things. But what they are really doing is
2 they are giving this legislative authority away.

3 MR. CARPENTER: Yes.

4 THE COURT: Uh, All right. Well, -- we
5 just got to figure out where the line is.

6 MR. NICHOLSON: I agree.

7 THE COURT: Mr. Sloan agrees that there
8 is some level of what's in here that's valid.
9 And you agree that there is some level of
10 delegation that could take place that's invalid.
11 The question is where is the line.

12 MR. NICHOLSON: I agree.

13 THE COURT: What's your position on what
14 the line is?

15 MR. NICHOLSON: My position is that the
16 line -- the standard has been set forth by the
17 Supreme Court in Bower versus South Carolina
18 State Housing Authority, 271 S.C. 219. First,
19 they pointed out that where a lawful delegation
20 of power ends and unlawful delegation begins, uh,
21 you know, there's no bright line. That's a
22 tricky thing. But they set -- Bower quoted
23 Harbin and said that -- and the standard they use
24 was statute which propose an absolutely,
25 unregulated, undefined discretion. That's sort

1 of the buzzwords.

2 Again, it's not a bright line test but that's
3 sort of the overall test for using. What's
4 underlying all of that is the principle that all
5 reasonable doubt must be resolved in favor of
6 constitutionality. And if a constitutional
7 construction is possible, it should be followed.

8 THE COURT: Say that again.

9 MR. NICHOLSON: The whole thing or the
10 last part?

11 THE COURT: The, uh, the whole thing.

12 MR. NICHOLSON: Okay.

13 THE COURT: What can be delegated?

14 MR. NICHOLSON: I'm just going to quote
15 you what Bower said. It said although the Harbin
16 court aptly pointed out difficulty in determining
17 where lawful delegation of power ends and
18 unlawful delegation begins, the Court did offer a
19 workable guideline for ascertaining the boundary
20 when it stated that, quote, "a statute which in
21 effect requires an absolute, unregulated and
22 undefined discretion and administrative body
23 bestow arbitrary powers and is an unlawful
24 delegation of legislative powers."

25 It goes on to state in the opinion we must

1 examine the higher act in light of the
2 surroundings and objections and are not
3 restricted to the ascertainment of standards and
4 expressed terms if they may be reasonably applied
5 from the prior act. All reasonable doubt must be
6 resolved in favor of constitutionality. If a
7 constitutional construction is possible, it
8 should be followed. Similar to the home rule
9 construction to, all powers are liberally
10 construed in favor of county government.

11 (WHEREUPON, there is a pause.)

12 THE COURT: All right. What do you say to
13 that?

14 MR. CARPENTER: What's the question you
15 want answered?

16 THE COURT: Well, what Mr. Nicholson is
17 saying is that, is that, uh, is that this case,
18 which is a state law case, uh, defines -- we've
19 agreed that there is some discretion that can be
20 delegated by the county to, certainly to an
21 administrator.

22 MR. CARPENTER: Right.

23 THE COURT: And we've also agreed that
24 there is some discretion that could be delegated
25 to a council member about how to spend council

1 funds. You have drawn the line at de minimis.
2 I'm not trying to draw you away from that line
3 yet or maybe never. But in trying to figure out
4 what is even de minimis or what is not, Mr.
5 Nicholson says this Bower case is helpful because
6 it tells us when legislative authority has been
7 delegated as opposed to executive authority.

8 MR. CARPENTER: There is another case
9 which addresses that which I think is more on
10 point. That is the Tucker case, Tucker versus
11 South Carolina Highway Department 309 S.C. 395,
12 424 S.E. 2d 468. It's cited in our initial memo
13 on page 9.

14 THE COURT: All right.

15 MR. CARPENTER: The holding in that
16 case dealt with legislative delegation of the
17 General Assembly. And the ruling was the General
18 Assembly could not delegate its spending power to
19 a committee which is what's going on here on a
20 small scale. Whereas on a larger scale,
21 legislative power resides in the hands of the
22 General Assembly may not be delegated to a
23 committee of the legislature. There's a holding
24 in that case. Like I said before, the General
25 Assembly has far broader, for more plenary

1 fundamental power than the County Council does.

2 THE COURT: Yeah.

3 MR. CARPENTER: County Council is a
4 creation of the General Assembly --

5 THE COURT: I think what we need to do, I
6 think we need to take a break and everybody needs
7 to focus in on what the issue is and what the
8 rule of law is before we start trying to apply it
9 to the individual cases. If you look at it from
10 a, listen to what Mr. Carpenter is saying. Here
11 is -- what? 20, some amount of money. And that
12 council member can do the things that they need
13 to do in order to do their job.

14 There is a level of spending -- it's pretty
15 low -- that a council member needs to be able to
16 perform in order to do their job effectively.
17 That includes pencils. It includes water from
18 the water fountain. It includes electricity in
19 the bathroom when they go and turn the light on
20 to use the bathroom. It includes perhaps --
21 really, he has to concede, I think -- mileage,
22 maybe to drive out and see a road situation or
23 see a park and see whether or not it needs to be
24 renovated or whatever. So those are expenses
25 that help the council member do their job.

1 But this ability to spend money on flooding,
2 roads, lights, sewer and drainage, that's not
3 something that helps the council member do their
4 job. And those are the things that we are
5 talking about.

6 MR. CARPENTER: That's correct.

7 THE COURT: Right. We're not focused so
8 much on a pencil. We are focused on a sewer
9 project. So if you take -- I'm imagining that
10 these, that this money get spent by and large in
11 the council member's home district.

12 MR. CARPENTER: I think most of the
13 case.

14 THE COURT: I don't want to be cynical but
15 I imagine that it does. So if you have one
16 council member who believes that it is vitally
17 important to our community and to the healthy
18 economy and quality of life in our community that
19 we focus in on sewer and drainage and that
20 council member responsibly spends the money that
21 they have available on sewer and drainage. You
22 have another council member who believes that
23 it's much more important to the vitality of our
24 community and our economy to spend the money on
25 roads.

1 So you've got an emphasis, a policy that's
2 being implemented differently in different
3 districts and different parts of the county not
4 based on action of the council but based on the
5 individual preferences of council members.
6 That's what -- that's perhaps a difficult thing
7 to defend for you is that individual council
8 members are being allowed to set policy for their
9 districts and spend money in furtherance of that
10 policy.

11 MR. NICHOLSON: I would argue what they
12 are doing is County Council has said
13 infrastructure, we like infrastructure. It's an
14 important thing. We like, we like being able to
15 -- again, the guideline says upon what's non-
16 recurring --

17 THE COURT: I realize what you are saying.
18 I don't mean to cut you off. I think you've got
19 to get in there and figure out how you can draw
20 that line. Infrastructure is a very broad topic.
21 And really, if you were looking at this Bower
22 case and if the General Assembly said to the, uh,
23 the Housing Authority, uh, we want you to, uh,
24 make sure that our people are adequately housed.
25 Go forth and do good.

1 I mean, there are so many things that go into
2 housing. There's, uh, there's sewer. There's
3 roads. There are the houses themselves. And
4 some commissioner of the Housing Authority or
5 whoever is in charge might go and say, you know,
6 in order for us to provide housing to our people,
7 we need to make sure that the roads throughout
8 the county are all adequately repaired so that
9 people can get back and forth. That will help
10 housing.

11 Somebody else who comes along might say in my
12 opinion, it's more important to build apartment
13 complexes in urban areas. So, uh, I mean, I'll
14 have to get further into this case. But I'll bet
15 you that if that was the kind of discretion that
16 was delegated to the Housing Authority and that
17 the Bower case was looking at, they would say
18 that is absolute, unregulated and undefined
19 discretion that has been given to an
20 administrative body. That's essentially what's
21 going on here.

22 You've got individual council members who say
23 which important county function is more important
24 than which other. One person might say I want to
25 spend all my money on studying what's important

1 for infrastructure. So I'm going to go with
2 infrastructure related studies. Another person
3 might say to heck with the studies, I know what's
4 important, I'm going to spend it all on roads and
5 sewer. Anyway, I think you need to be able to
6 articulate how that's, how you would defend that.

7 **MR. NICHOLSON:** Is that not the same
8 thing as saying I think I'll spend more money on
9 going to conferences to educate myself on being a
10 better council person. I'm going to spend the
11 majority of my money on conferences and
12 literature and those types of things so I can
13 make myself the best council person that I can.
14 I'm going to educate myself. Whereas, another
15 person says I like infrastructure better. That's
16 where I'm going to put my resources.

17 Again, we're back to being a council person
18 and doing these things. The overall guidelines
19 have been set. The legislative pronouncement has
20 been made by council.

21 **THE COURT:** So your point there is that
22 under this Slush Fund mechanism, an individual
23 council member could spend the entire thing on
24 enabling that council member to do their job more
25 effectively? Going to conferences, buying pens

1 and pencils, buying magazines and professional
2 journals and reference books. I wonder if a
3 council member can pay their attorney fees out of
4 this Slush Fund?

5 MR. NICHOLSON: That's been tried.
6 That's been tried and rejected.

7 THE COURT: Because think about it, a
8 County Council member who is in jail is unable to
9 do their job effectively. If the attorney can
10 help the County Council member stay out of jail,
11 then perhaps that's a useful use of money.

12 MR. NICHOLSON: I don't think it falls
13 within the guidelines.

14 THE COURT: What?

15 MR. NICHOLSON: I don't think it falls
16 in these guidelines here, Your Honor.

17 THE COURT: I'll tell you what, I really
18 need to study this. I want to go back, now that
19 we've had this discussion, I want to go back and
20 read these cases carefully. I want to consider
21 whether or not this Bower is actually applicable.
22 I want to look at the -- I want to look at the
23 state law that sets up, that allows the council
24 to be set up in this council-slash-administrator
25 mechanism.

1 I want to, uh, make sure that I have seen --
2 I guess if Exhibit 3 is all there is, so be it.
3 I want to make sure I've seen everything that
4 governs how a council member might first make the
5 decision to spend this money or secondly how the
6 council itself might decide they don't like it.
7 There is this provision of the bond that his
8 funds may be encumbered for viable projects only.

9 MR. NICHOLSON: There's no carryover.
10 You can't keep carrying over.

11 THE COURT: You probably couldn't go out
12 and build a wind generating plant or a power
13 generating plant or something like that.

14 MR. CARPENTER: You can do it like that
15 guy got his Cadillac. You know, one piece at a
16 time. It didn't cost me a dime. That country
17 song. You just spend your \$20,000 every year on
18 a wind generation project, I suppose.

19 MR. NICHOLSON: Judge, would it be
20 helpful to supplement the record about those
21 items, about the entire scope of --

22 THE COURT: I don't know. What about this
23 idea of -- are you saying that to some extent,
24 what County Council is doing is they are
25 allotting this entire amount of money to the

1 council member to help them do their job but if
2 they decide not to spend any of it on periodicals
3 and going to conferences that they can devote
4 some of it back to projects that are good for the
5 county itself?

6 MR. NICHOLSON: Part of the fund says
7 that. If they get a request from a -- a
8 community request --

9 THE COURT: Let me ask this question.
10 What if this, what if this thing said -- what if
11 it didn't have that item in there that is -- what
12 if it included only things like pencils and
13 periodicals and conferences and things that are
14 truly dedicated to the ability of a council
15 member to do their job effectively. And it said,
16 however, if the council member doesn't spend all
17 this money, then the money gets returned to the
18 general fund?

19 MR. CARPENTER: That would be no
20 problem because the way it works is they go to
21 conference. They put in a voucher for
22 reimbursement. Every government, every employer
23 in the country does this. You go spend money on
24 making yourself a better employee or officer or
25 council member and we're going to cover the cost

1 of your reasonable expenses. And to do that,
2 you've got so many thousand dollars a year to do
3 that. There's no problem with that.

4 It's only when they start taking the money
5 and spending it, choosing what to spend it on,
6 where to spend it, for whose benefit and what
7 kind of expenditures to make, that's when you get
8 into the improper delegation of legislative
9 authority.

10 THE COURT: I got problems with it. I
11 think it's --

12 MR. NICHOLSON: That section?

13 THE COURT: The whole -- like I was saying
14 about -- I think the relative importance to the
15 people of Greenville County of spending money on
16 sewer and drainage as opposed to spending money
17 on roads should be made by the council itself and
18 not by the council member. This thing allows
19 individual council members to decide for their
20 own districts which is more important. That, to
21 me, using your authority is this absolute,
22 unregulated, undefined discretion.

23 There's nothing in here that restricts that.
24 It says funds may be encumbered for viable
25 projects only. Clearly, spending money on sewer

1 and drainage is a viable project. I mean, that's
2 good for the county. Nobody's going to dispute
3 that. It doesn't seem to me that if one council
4 member is all fired up about sewer and drainage
5 and another council member is all fired up about
6 roads that there's any way for the council to say
7 no, y'all need to spread it out a little bit
8 more.

9 So it does seem to me like this is the, uh,
10 equivalent of giving and individual council
11 member a legislative responsibility. But I want
12 to go back and do some more reading. And, uh, I,
13 uh, will be available -- let's see.

14 MR. NICHOLSON: I thought we had
15 reserved some sort of extra days.

16 THE COURT: We did. But the next time we
17 have anything available -- I'll tell you when I
18 can do it is November 7th.

19 MR. NICHOLSON: I don't have my -- I'm
20 sure that's fine.

21 MR. CARPENTER: That's Friday.

22 THE COURT: Friday.

23 MR. NICHOLSON: I'll have to wear a
24 suit. That's okay.

25 MR. CARPENTER: My boss makes me wear a

1 suit everyday, Judge. November 7th is fine with
2 me. Not real late in the day if we --
3 THE COURT: Why don't we just say 11:00.
4 MR. CARPENTER: Okay.
5 MR. NICHOLSON: Okay.
6 MR. CARPENTER: Judge, I don't know if
7 you had a chance to look at all the stuff we sent
8 you. But we sent some very helpful sections on
9 municipal corporations and Am. Jur. 2d with the
10 reply brief we sent like a couple of days ago.
11 THE COURT: I will have all that digested
12 thoroughly by the time November 7th rolls around.
13 Before this morning, I have not studied it.
14 MR. CARPENTER: All right.
15 THE COURT: November 7th. Okay. Anything
16 further?
17 MR. NICHOLSON: No, sir..
18 MR. CARPENTER: No, sir.
19 (WHEREUPON, there is a pause.)
20 MR. CARPENTER: We are free to go, I
21 guess?
22 THE COURT: Yes. I'll see y'all soon.
23 MR. CARPENTER: All right. Thank you.
24 (END OF PROCEEDING)
25

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of Common Pleas
8 for Greenville, South Carolina, on the 7th day of
9 October, 2008.

10 I do further certify that I am neither of kin,
11 counsel nor interest to any party hereto.

12
13 July 28, 2009
14
15
16

17 _____
18 Teresa B. Johnson
19 Official Court Reporter
20
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No(s) : 03-CP-23-3785
Edward D. Sloan, Jr.	)	
Plaintiff,	)	
-VS-	)	TRANSCRIPT OF RECORD
Greenville Hospital System	)	(Slush Fund)
Defendant.	)	

November 7, 2008
Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

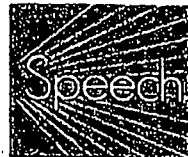
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I N D E X

DIRECT CROSS REDIRECT RECROSS

Motions	4
Certificate of Reporter	33

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u> <u>EV</u>

PLAINTIFF'S EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT'S EXHIBITS

(No exhibits offered.)

PROCEEDINGS

THE COURT: All right. Who wants to go first?

MR. CARPENTER: Judge, when we had the last hearing, the way we ended it, the Court said that, uh, would review the things we had submitted. Last time, we submitted a lot of McQuillan on municipal corporations, a couple of Am. Jur. articles. We had extensive discussion. The Court Reporter provided us a transcript of the discussion. And Your Honor was going to review those things and then come back and --

THE COURT: And rule?

MR. CARPENTER: -- and tell us -- at least move the argument along.

THE COURT: Well, I, uh, I did that and, uh, I was expecting that -- most of what we did last time was to frame the issues. I feel like we made a lot of progress. I was looking for you all to argue as you see fit based on the recent framing of the issue. I have had -- I thought about it. I think I am comfortable with where I am on it. But I want you all to argue. I will tell you what I think right now if you all want me to and then you can go from there.

1 **MR. CARPENTER:** Be very helpful.

2 **THE COURT:** Well, uh, in order to, uh, --
3 we spent a lot of time talking about where the
4 line gets drawn between those delegated
5 expenditures that are appropriate and those that
6 are not. And having thought about it and having
7 read what I read and reflected on the arguments
8 that we had before, I don't know that we need to
9 draw exactly where the line is. We just need to
10 decide, I just need to decide is the line all the
11 way on the end such that all of these
12 expenditures are valid or these delegations are
13 valid or is it not. I don't think it is.

14 I think that to delegate the right to an
15 individual council member to make a decision that
16 distinguishes between something as important as a
17 roads project, something as important as a sewer
18 project, something as important as a county park,
19 then that is to delegate to one council member
20 the legislative function of, uh, of setting
21 county policy. And that's where I am right now.

22 Now, there's a lot of thinking and -- there's
23 a lot of thinking yet to be done as to exactly
24 how that fits into the, uh, legal structure of it
25 all. Because you all took a little bit of a

1 different approach initially. Jim or Mr. Sloan
2 was focused on whether it was a discretionary or
3 ministerial function that was delegated. I think
4 -- I think we got past that. That, to me, is not
5 the issue. It doesn't matter whether it is
6 discretionary or ministerial. All of this stuff
7 is discretionary. That's very clear to me. It's
8 not in a -- it's not necessarily inappropriate to
9 delegate a discretionary act.

10 Where the line gets drawn between the
11 appropriate discretionary act and an
12 inappropriate discretionary act, you asked that
13 it be drawn at the different, I think, between
14 legislative and executive. I think that's
15 probably a pretty good argument. So using it,
16 using your place to draw the line, uh, if it were
17 simply to, uh, just if they were to, just by way
18 of example, say each person gets \$5000 to fix
19 potholes in roads in their community, in their
20 district.

21 You make a pretty good argument that that's
22 an executive, that that's the delegation of an
23 executive decision. The policy has been set.
24 This is going to be used for fixing potholes
25 where they need to be fixed and we're picking

1 somebody to go out and make that decision. Where
2 do they need to be fixed? Put the money there.
3 That's much more of an executive. But when you
4 say, we're going to -- you can use this money
5 either on sewer or on parks or on roads or on
6 going to Los Angeles to a conference on county
7 government, then I don't believe that's
8 executive.

9 **MR. CARPENTER:** A related issue is to
10 whom is this power is going to be delegated. I
11 was looking for it in McQuillan. I saw it this
12 morning. But executive power -- and I agree,
13 there are three types of power. One is
14 legislative, another is executive, another is
15 ministerial. Maybe I didn't appreciate that as
16 well as I should have before I came in last time.
17 And the executive power or administrative power
18 can be delegated to an agent or employee, but it
19 can't be delegated to a member of the legislative
20 body. I think that's an important distinction.

21 **THE COURT:** Well, we spent a lot of time
22 talking about that last time. Why do you say
23 that? What's your authority for saying that?

24 **MR. CARPENTER:** Well, I was looking for
25 it here. The argument I made last time, however,

1 inartfully, was that when you delegate it to an
2 agent or an employee, they are an agent or
3 employee of the body as a whole. It's the
4 council as a whole that has to act on these kinds
5 of decisions. When they delegate with
6 legislative -- when they delegate executive or
7 administrative authority, that person exercising
8 it has to be answerable to the body as a whole.

9 And when -- in these circumstances, when
10 individual council members are making these
11 decisions, they are not -- I think the Court went
12 over this last time. They are not answerable to
13 the body as a whole. There's no mechanism by
14 which the body as a whole can disapprove any
15 expenditure of these discretionary funds.

16 THE COURT: I will tell you that I'm not
17 immediately inclined to agree with that point. I
18 believe that if they -- I've already said. If
19 they were to take something like this fixing
20 potholes thing, just to take it as an example,
21 then they are taking an executive function,
22 delegating it to an individual person who on
23 behalf of the legislative body would execute the
24 legislative body's decision. The fact that this
25 person serves a dual role in legislative and

1 executive junction does not immediately, to me,
2 seem to be inappropriate.

3 That might be different if you were looking
4 at state government -- we talked about this
5 before -- where you have a tripartite division of
6 power. We don't have that in county government.
7 The County Council retains the executive power
8 just as it has the legislative power. It
9 delegates that executive power appropriately
10 without dispute to the County Administrator.
11 Whether or not in delegating that to an
12 individual council member that's appropriate is
13 yet an open question. But it's, uh, I just don't
14 think it's an automatic inappropriate
15 delegation --

16 MR. NICHOLSON: I agree. I think the
17 delegation of a function --

18 THE COURT: That does not need to be part
19 of this decision. Unless I change my mind, given
20 what I said at first, whether or not it is
21 appropriate to delegate it to a council member as
22 opposed to delegating it to a county
23 administrator seems to me to be not a decision
24 that is necessary to make in order to resolve
25 this dispute.

1 MR. NICHOLSON: I agree with that.

2 THE COURT: So having told you what I
3 think I'm going to do, the primary task is left
4 to you to convince me that I'm mistaken.

5 MR. NICHOLSON: I agree. I have the
6 uphill climb based on what you said. Your Honor
7 mentioned the Bower case at the last hearing. I
8 believe Bower is the case that gives us the
9 framework, although Bower itself admits that the
10 framework is rather loose. Again, it comes down
11 to whether or not -- let me use the words that
12 Supreme Court uses -- whether the right reposes
13 an absolute, unregulated and undefined
14 discretion. If that's what happens, then it's
15 unconstitutional. That's what the law says. I
16 can't back away from that.

17 I would argue and submit, Your Honor, that in
18 our case, we don't reach that threshold. These
19 council reserves are not absolute. They are
20 capped at a certain amount. They can not carry
21 over these amounts of money. And there are
22 certain restrictions on the spending of these
23 monies in an election year. I would also submit
24 that its not unregulated. There is a process by
25 which they go through and have these funds

1 reimbursed. They have to go through the finance
2 department.

3 And then finally, I would say that these
4 expenditures are not undefined. Are they broad
5 categories? Yes, they are, but they are at least
6 defined by special -- council defines them as
7 special, non-recurring community requests for
8 infrastructure projects.

9 Now, Your Honor has expressed some concern on
10 the breadth of that statement. But we still have
11 the definition. Again, the overall policy that
12 we are looking at, the Supreme Court said we need
13 to find -- if there is a way, to find
14 constitutionality, we need to. All doubts can be
15 resolved in favor of finding the act to be valid
16 under the precepts of Home Rule.

17 So although there is some broad definitions
18 of infrastructure, it's not an absolute power,
19 it's not unregulated and there is a -- it is
20 defined, it's a defined expenditure. Under the
21 framework of Bower, I would argue that it meets
22 constitutional muster.

23 THE COURT: Okay.

24 (WHEREUPON, there is a pause.)

25 MR. CARPENTER: Is the Court interested

1 in hearing any authorities for the point on which
2 we had the disagreement about the issue of to
3 whom it can be delegated? What I would do is
4 point out paragraphs of what we submitted before.
5 But if you don't want to hear it, I'll not bother
6 the Court.

7 THE COURT: Well, it's not that I don't
8 want to hear it. It's just that I can't see how
9 it makes a difference.

10 MR. CARPENTER: Okay.

11 THE COURT: I mean, --

12 MR. CARPENTER: It's just an additional
13 reason for your decision. It's not critical.

14 THE COURT: Well, uh, perhaps I should.
15 I'm inclined to disagree with you. But if I were
16 to agree with you or if the Appellate Court were
17 to agree with you and disagree with me on the
18 first point, then that would be an additional
19 sustaining ground, I suppose. I will hear from
20 you.

21 MR. CARPENTER: I think I've got three
22 or four citations. One is McQuillan, Section 10-
23 44, the third paragraph. The rule forbidding the
24 delegation of legislative authority does not
25 preclude the appointment of officers, agents or

1 employees but the performance of administrative
2 and executive duties and making effective the
3 legislative will. Uh, it does not deprive the
4 municipality of power to appoint agents to make
5 contracts. Uh, in that circumstance, the, uh,
6 legislative body retains authority to review or
7 correct or govern the actions of the agent or
8 employee by definition of the agent or the
9 agency.

10 McQuillan, Section 10-45, second paragraph
11 toward the bottom. The council may authorize the
12 mayor to make a contract that the council is
13 authorized to make and itself afterwards ratify
14 such contract, take action as an issue, as an
15 issue in bonds and pursuance of it. In such a
16 case, the mayor merely acts as the instrument for
17 amanuenses of the council. The council by
18 ratification finally determines and fills the
19 duty imposed by law.

20 McQuillan, Section 13.07, second paragraph,
21 second sentence. Consequently, no single
22 commissioner or group of commissioners acting as
23 individuals or as a group but not regularly
24 assembled as the Board with the city
25 commissioners has authority or power to bind the

1 municipality by his, her or their actions,
2 representations or declarations unless authority
3 to do so is actually or extensively conferred
4 upon him, her or them by the Board or the city
5 commissioners. Commissioners must act together
6 as a body in order to bind the city. The act of
7 the majority or the board of commissioners as a
8 meeting duly held is the act of the body.

9 These are parts of the overall, uh,
10 scholarship of McQuillan and I respectfully
11 submit, provided a second reason for finding this
12 process and unauthorized delegation of
13 legislative authority.

14 **THE COURT:** Well, I think that the thrust
15 of what you're saying is that the manner of
16 delegation has to be a certain way. What you've
17 just said to me does not restrict to whom the
18 delegation can be made. It can even be made to
19 an outside accountant or something. We talked
20 about Ernst & Young before. I mean that
21 certainly would be possible. I just don't plan
22 to make that the focal point of my decision. I'm
23 going to ask you -- well, I'll hear whatever else
24 y'all want to say. You got anything else you
25 want to say? I want to spend a little time

1 talking about this case before we go.

2 **MR. NICHOLSON:** Well, assuming for the
3 purpose of his argument only that you are going
4 to find that the delegation with respect to
5 infrastructure is unconstitutional, we haven't
6 talked anything about severability. I would
7 argue that -- I would argue that the rest of the
8 scheme or reserve or however you want to call it
9 stands because it is something that can be
10 severed.

11 **THE COURT:** What do you mean? Like the
12 other items that are --

13 **MR. NICHOLSON:** Right. He hasn't
14 challenged the other items. I don't know that
15 he's asked that the entire -- I just can't recall
16 quite frankly from his pleading whether he's
17 asked that the entire council reserves be
18 stricken. But even if he has, I believe that the
19 -- assuming that there's some
20 unconstitutionality, it could be severed out and
21 the remaining policy stand.

22 **THE COURT:** Well, what -- I mean, it's not
23 just -- as I said a minute ago, I think that it's
24 -- if, if the, if, if what is delegated is the
25 authority to decide whether or not to use council

1 funds to send a council member to a conference on
2 county government in Los Angeles or to choose the
3 one in Chicago or to choose the one in Miami or
4 to use it for mileage reimbursement to travel
5 around the county to do things to enable the
6 council member to do their job better or
7 something of that nature, if that's the choice
8 that's being given to the council member, then I
9 don't think I have a problem with it.

10 MR. NICHOLSON: Okay.

11 THE COURT: But if the choice is between
12 something of that category and a roads project,
13 then the fact that the council member might
14 choose to use it for a conference in Los Angeles
15 which would be a legitimate use of the funds does
16 not resuscitate the entire delegation. I mean, I
17 don't know how I can say, I don't know how I can
18 say that they gave this authority to the council
19 member to spend this \$21,000 --

20 MR. NICHOLSON: Uh-huh.

21 THE COURT: -- and the council member gets
22 to decide -- I don't know how I can say --
23 whatever the council member decided to spend it
24 on that was a legitimate purpose is okay. They
25 just can't spend it on any illegitimate purpose.

1 I think I have to say, No, no, no, you just can't
2 do it that way. You've got to go back and
3 redefine the delegation. Therefore, the whole
4 thing is done, is unconstitutional. Because it's
5 not just choosing between roads and bridges and
6 parks and sewers or storm drains. It's choosing
7 between storm drainage and Los Angeles.

8 MR. NICHOLSON: Okay. I understand. I
9 misunderstood what you said earlier.

10 THE COURT: That's what I think. I mean,
11 I think if the definition of what they can do is
12 restricted in a way that they can only use it for
13 these legitimate purposes that I've talked about,
14 then I think there would be no problem with it.
15 But when they get to choose between executive and
16 legislative function, --

17 MR. NICHOLSON: That's the problem.

18 THE COURT: -- then that's the problem.
19 It's not just choosing between one legislative
20 purpose and another. It's choosing between
21 legislative and executive.

22 MR. NICHOLSON: If it's executive, for
23 instance, they pass a budget. I don't want to
24 make you legislate from the bench. But --

25 THE COURT: You will have a hard time

1 getting me to do that.

2 MR. NICHOLSON: Yes, sir. I know that.
3 I know that. But I think what I'm hearing the
4 Court say that if the budget were to, if the line
5 item were to say council has \$20,000 to choose
6 between pencils, going to Los Angeles, mileage
7 reimbursement and the like that those would be
8 certainly executive type functions that would be
9 okay.

10 THE COURT: I think so although that's
11 kind of like the point that Mr. Carpenter was
12 just trying to get me to bite on. I don't think
13 its necessary for me to decide that.

14 MR. NICHOLSON: Okay.

15 THE COURT: All right. Let me take a
16 minute here to focus on this Bower case. Then
17 we'll discuss it some more. (Pause.)

18 What is the, uh, Code Section again that, uh,
19 sets out the council and administrative form of
20 government?

21 MR. NICHOLSON: I've got it right here.
22 It's, uh, -- I've got the book right here, Judge.
23 It's 4-9-610. It goes to 670.

24 (WHEREUPON, there is a pause.)

25 THE COURT: It seems to me like we are

1 skipping a step. Uh, in the Bower case, the
2 Court looked at the constitutional composition of
3 the power of state government. We need to look
4 at the statutory constitution of the power of
5 county government. And the council administrator
6 sections deal with how to implement that power.
7 Where are the sections that create the power that
8 goes to the counties?

9 MR. NICHOLSON: The main one, Your
10 Honor, is Code Section 4-9-25. That's sort of
11 the overarching law that gives the county power
12 coming from Article 8, Section 17 of the
13 Constitution.

14 THE COURT: All right. Hold on.
15 (WHEREUPON, there is a pause.)

16 MR. NICHOLSON: Then, Judge, there's a
17 long designation of power from the next section
18 over, dash 30.

19 (WHEREUPON, there is a pause.)

20 THE COURT: I don't see 30.

21 MR. NICHOLSON: 4-9-30?

22 THE COURT: Oh, okay. I got it. I got
23 it. Wait a minute. I don't see 25. I was
24 looking at 30. Is it in the supplement?

25 MR. NICHOLSON: Either that or I

1 recorded it wrong, Judge. Hold on. Yeah, it's
2 in the supplement. You are right.

3 (WHEREUPON, there is a pause.)

4 THE COURT: All right. Let's see if --
5 let me walk through this. There is a gap
6 somewhere. We got to figure out exactly where it
7 is. But the power of the state exists in the
8 legislature unless the constitution takes, limits
9 the power of the legislature or the legislature
10 does something else with it such as granting it
11 to the counties, certain portion of its power to
12 the county. That's what happened obviously with
13 county powers.

14 So the legislature then creates counties and
15 gives them their power. And in 4-9-30, they set
16 what the powers of the counties are. And if you
17 look at 4-9 -- I mean I'm not sure exactly where,
18 which of these subsections is the power to build
19 a road or to, uh, build a park or to build a
20 sewer system. But I suspect that it is probably
21 from Subsection 14 which says the power which
22 grants the counties shall have the following
23 enumerated powers which shall be exercised by the
24 respective governing bodies thereof.

25 All right. Turn to 14. Enact -- to enact

1 ordinances for the implementation and enforcement
2 of the powers granted in this section. And what
3 the county did was it enacted an ordinance that
4 is the budget ordinance.

5 MR. NICHOLSON: Right.

6 THE COURT: And the ordinance provides
7 that the individual council member gets to, uh,
8 decide how to spend \$21,000. (Pause.)

9 So the county, under Subsection 14 is given
10 the power to enact an ordinance to fulfill its
11 purpose. Somewhere in here, it will say that it
12 will be inferred that building a road is within
13 the county's power.

14 MR. NICHOLSON: 17 is sort of a
15 catchall at the end. To exercise such other
16 powers as may be authorized for the counties.

17 THE COURT: Well, ain't nobody going to
18 dispute that building roads is within the
19 county's power.

20 MR. NICHOLSON: Right.

21 THE COURT: Maybe Subsection 14 is the
22 wrong place to focus. But it enacted an
23 ordinance that provided how it was going to go
24 about doing this work. So Mr. Carpenter, you
25 need to be able to articulate for me what is the

1 limitation on the county's power to enact or the
2 county's manner of enacting that ordinance.

3 In the Bower case, the limitation on the
4 legislature's authority to delegate to the State
5 Housing Authority the legislative function of
6 deciding how to spend all this money is in the
7 constitution of South Carolina, Article 1,
8 Section 8. Where is the limitation in state law
9 or even county law on county action that says it
10 can't delegate this authority to an individual
11 council member?

12 **MR. CARPENTER:** I think it would have
13 to be in the structure adopted by Greenville
14 County which is the council administrator
15 function of government. Council hires an
16 administrator --

17 **THE COURT:** Well, let's look at specific
18 sections. I just read the whole section. I'm
19 starting with Section 610, 4-9-610. It talks
20 about the power of the administrator and what the
21 limits of the administrator's powers are. I
22 don't know that it talks about the power of the
23 county. What I'm saying is Mr. Nicholson is
24 going to come back and say, Judge, in the Bower
25 case, the Court looked at the constitutional

1 limitation on legislative power to delegate
2 legislative function to an executive agency.
3 Here, there is no limitation on county power.
4 Once they gave the county the power to do this,
5 they didn't tell them how they could do it and
6 how they couldn't do it, right?

7 MR. NICHOLSON: Unless -- the 4-9-25
8 says -- the way I read it says unless there's
9 something specific, neither the general law by
10 the General Assembly or the Constitution, then
11 counties are entitled to carry out those laws
12 that it feels are necessary to serve their
13 functions. And I think a particular note in 4-9-
14 25 says, uh, --

15 THE COURT: Let me get my hands on Article
16 1, Section 8. (Pause.)

17 Well, that, to me, is important. If -- it
18 may be that the reasoning of the Bower case does
19 not apply to county government. I think that if
20 it -- I think it does. I think that there's got
21 to be a mechanism for providing that the power
22 that was given to the county has to actually be
23 exercised by the county instead of by -- again,
24 you know how I like taking steps to extremes. If
25 the County Council were to meet on January 1st,

1 every year and say I move that all power of
2 county government be delegated to Tony Trout for
3 the rest of this year. All in favor, say "I".
4 "I". All opposed, "No". That's it. We're gone
5 for the year. County Council is adjourned.
6 We're gone.

7 So we pass an ordinance that says we hereby
8 delegate all the power of this government to Tony
9 Trout, you know, that's an ordinance. It would
10 appear on its face -- they could write it in such
11 a way that it would appear on its face to comply
12 with paragraph -- subparagraph 14 of 4-9-30. But
13 it would obviously be an illegal ordinance. For
14 a variety of reasons, I suppose. One of which
15 would be that -- what we've been talking about,
16 that there's a legislative function of county
17 government that must be exercised.

18 So where does that limitation come from? It
19 might be that it comes from the second clause of
20 4-9-25, a clause I focused on very heavily in the
21 Smoking Ban case although it was in the city
22 ordinance rather than the county ordinance. But
23 not inconsistent with the constitution and
24 general law of the state. Maybe that
25 incorporates the concept of legislative power

1 into what the county must do.

2 We've got to figure that out. If we can't
3 figure it out, then I was wrong. But I'm not
4 wrong. I know there's a way that that limitation
5 exists. I feel like there is. So, uh, any other
6 comments?

7 **MR. CARPENTER:** I was going to invite
8 the Court's attention to the article that talks
9 about the council and administrative form of
10 governments, Article 7, starting at 4-9-610 where
11 it lays out the authority of the administrative.
12 That gives him all executive authority. It
13 doesn't specifically say legislative authority.
14 I think it's got to be inherent in the structure,
15 this legislative authority of the council as
16 whole under common law.

17 As we submitted in McOuillan, legislative
18 authority in the council as a whole and not
19 individual members. So if we're talking about
20 legislative authority, I think we have to go to
21 the common law. If we're talking about --

22 **THE COURT:** There's no doubt that
23 legislative authority is in the council. What if
24 the council was to say -- that's not the problem.
25 The problem is when council takes that

1 legislative authority and in a proper legislative
2 act turns the authority over to something that is
3 not legislative such as an individual council
4 member or an administrator or a private citizen
5 or an accounting firm or something of that
6 nature.

7 Where is the limitation against that? You
8 say that it's inherent. You may be right. I
9 mean, I think that, uh, it's not under the common
10 law because this is a purely statutory entity,
11 this county that we live in. But there are
12 inherent concepts that, uh, come into play.

13 MR. NICHOLSON: I don't think it's that
14 council or administrative form of government he
15 cited.

16 THE COURT: Let me ask you this -- you
17 actually agree, don't you, that there is a
18 requirement that the legislative power of the
19 county be exercised by the county council?

20 MR. NICHOLSON: I do.

21 THE COURT: As opposed to something that
22 is not --

23 MR. NICHOLSON: Your hypothetical would
24 not work, would be unconstitutional.

25 THE COURT: Right. So, so, so the problem

1 that I have been posing over the last ten or
2 fifteen minutes is really not something we need
3 to focus on. Everybody agrees that the council
4 can't delegate a legislative power to an
5 individual council member. And the question that
6 we're actually going to turn this case on is
7 whether or not what was delegated was in fact
8 legislative, right?

9 **MR. NICHOLSON:** That's the issue,
10 Judge.

11 **THE COURT:** Well, then I've spoken to that
12 issue and I think we're done unless there's any
13 further arguments. I would like for Mr.
14 Carpenter to begin preparation of an order. If I
15 were you, I would get this transcript too. Y'all
16 consult with each other and then get the order to
17 me. We may even come back again to discuss it.
18 This is, to me, this is -- well, I don't know.
19 This order needs to be attended to carefully.

20 **MR. NICHOLSON:** Yes, sir.

21 **THE COURT:** All right. (Pause.)

22 I set a file out here that I wanted to ask
23 you all about and some do-gooder came and moved
24 it. Do you know who that was?

25 **SPEAKER:** Well, it was a combination of

1 two do-gooders that work directly for you.

2 THE COURT: My dad used to call them
3 officious intermeddlers. I need to get an update
4 on what else is due to be done in the matters
5 involving Mr. Sloan. Can you give me a -- can
6 you redo your little letter that you been doing?

7 MR. CARPENTER: Yes, sir.

8 THE COURT: And we have some time that was
9 set aside potentially for the 24th and 25th. Are
10 we going to use that time?

11 MR. NICHOLSON: Fine by me.

12 THE COURT: I mean, do y'all have stuff to
13 do? I know what it was. It was a motion to
14 amend the Complaint in the case involving the
15 Cliffs.

16 MR. NICHOLSON: That's not my case.

17 THE COURT: Didn't you just file a motion
18 to --

19 MR. CARPENTER: Oh, yes, Yes. That
20 doesn't involve Mr. Nicholson but Yes. That is
21 an important matter.

22 THE COURT: We dismissed the case, right?

23 MR. CARPENTER: Well, you haven't
24 signed an order to that effect.

25 THE COURT: Okay. I know we contemplated

1 that you might go back and look at it and say we
2 still want to pursue this. So that's what you
3 are saying, right? So we need to set that for a
4 hearing.

5 MR. CARPENTER: Right.

6 THE COURT: We can do that on the 24th.

7 MR. CARPENTER: That sounds good. What
8 time would you like to do it?

9 THE COURT: Let's say tentively ten
10 o'clock. I might have to call you back and move
11 that. I might go over to my son's school that
12 morning in particular for career day. But I
13 haven't heard any details about it. So I'll call
14 over there today and find out. But if we say
15 10:00 to begin with, how is that?

16 MR. CARPENTER: That sounds good.

17 THE COURT: And if I need to change that,
18 I'll let you know. What else would we be doing
19 that day?

20 MR. CARPENTER: I have to go back and
21 look at all the --

22 THE COURT: That's not going to take long,
23 right? Half hour?

24 MR. CARPENTER: Uh, I have not received
25 any -- I've not received any reaction from either

1 the Cliffs or the City. I have not received any
2 reaction from any of the homeowners who may be
3 affected. Because if the line is where we think
4 it is, it cuts across three lots which they've
5 already sold. And it would also impact the
6 nature of conservancy and their easement over
7 this same piece of property.

8 THE COURT: All right. I'm going to say
9 -- I'll set aside for an hour. But it doesn't
10 matter. What other business can we -- you don't
11 have to answer the question now. Let's just
12 figure out what else, if anything, we're going to
13 do that day or the next day. I want to go ahead
14 and clear out my schedule, get my schedule for
15 that week.

16 MR. CARPENTER: We will get that letter
17 revised and updated and send a suggestion for
18 what needs to be heard on that day.

19 MR. NICHOLSON: I'm open so if I need
20 to be here, I'm here.

21 MR. CARPENTER: So if we can get a
22 draft order by then in this case, maybe we can
23 discuss that at this point.

24 THE COURT: Probably not. I'm going to
25 want some time with the order before we're ready.

1 I'm not going to have any time between now and
2 the 24th to work on that order. That's just two
3 weeks from now.

4 MR. CARPENTER: I will try to do an
5 updated letter as quick as possible. I've got a
6 hearing on another case I've got to get ready
7 for.

8 THE COURT: The letter is not as time
9 important to me as just knowing what we're going
10 to do on that Monday or Tuesday if anything. We
11 know one thing.

12 MR. CARPENTER: All right. I will try
13 to, uh, --

14 THE COURT: Who is defending the City?

15 MR. CARPENTER: Kathleen Kempe.

16 THE COURT: When you call her, if she has
17 a conflict, y'all can just move it. Pretty much
18 any time Monday or Tuesday of that week, we can
19 do it.

20 MR. CARPENTER: All right. And Rivers
21 Stilwell is representing the Cliffs.

22 THE COURT: Okay.

23 MR. NICHOLSON: Judge, totally
24 unrelated matter, on the 18th, it's shadow your,
25 Bring Your Child to Work day. Would you mind if

1 I brought my daughter over here to step in and
2 monitor trials and --

3 THE COURT: That will be fine.

4 MR. NICHOLSON: I think you have a jury
5 trial roster that week.

6 THE COURT: Yeah. I'm doing civil. At
7 this point, I don't know what we will be trying.
8 You know how the docket's been going. I know I
9 have a hearing that's currently set for five
10 o'clock that should be an interesting hearing.
11 That's the only specific thing I have on the
12 calendar other than just the regular jury docket.

13 MR. NICHOLSON: We'll just meander over
14 here.

15 THE COURT: Okay. That will be great.
16 All right. I'll see y'all.

17 MR. CARPENTER: Thanks, Judge.

18

19

20 (END OF PROCEEDING)

21

22

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of Common Pleas
8 for Greenville, South Carolina, on the 7th day of
9 November, 2008.

10 I do further certify that I am neither of kin,
11 counsel nor interest to any party hereto.

12
13 July 28, 2009
14
15

16
17 _____
18 Teresa B. Johnson
19 Official Court Reporter
20
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22
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25

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	) Case No(s) : 06-CP-23-4637
The South Carolina Public Interest Foundation, et al	)
Plaintiff,	)
-VS-	)
Greenville County, et al	)
Defendant.	)

ORIGINAL

TRANSCRIPT OF RECORD

October 27, 2007
Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

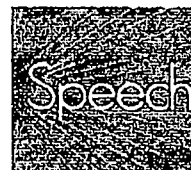
A P P E A R A N C E S:

JAMES G. CARPENTER, Esquire
Attorney for the Plaintiff

BOYD B. NICHOLSON JR, Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
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CAT 7

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2006-CP-23-4637

S.C. PUBLIC INTEREST
FOUNDATION AND EDWARD D.
SLOAN, JR., INDIVIDUALLY, AND
ON BEHALF OF ALL OTHERS
SIMILARLY SITUATION,
PLAINTIFFS,

vs.

TRANSCRIPT OF RECORD

GREENVILLE COUNTY, 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.

ORIGINAL

October 7, 2010
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

JAMES G. CARPENTER, ESQ.
Attorney for the Plaintiff

BOYD B. NICHOLSON, JR., ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: This is case number 2006-CP-23-4637.

I apologize for the delay in starting and, also, bear with us. We're having plea court this week, and it sometimes resembles a carnival atmosphere in here. So you'll have to bear with us. But, hopefully, the bailiffs can keep everybody quiet and everyone will act with appropriate accord.

And it is a motion for attorneys fees.

And I believe it's your motion, Mr. Carpenter.
Whenever you're ready, sir.

MR. CARPENTER: Thank you, Your Honor.

Yesterday afternoon, I filed and sent by e-mail to your law clerk a reply memo.

THE COURT: Yes, sir.

I received that, and I've read it.

MR. CARPENTER: All right. I will not belabor all the points. But, briefly, in 2006, we filed a complaint with the Court contending that the Greenville County slush fund was an illegal delegation of legislative power to individual council members. They were given more than \$20,000 apiece to spend in a fund called slush fund or accounts reserved, and a discretionary fund. And our contention was that this was an unlawful delegation of authority to individual council members.

1 In February of 2010, this Court, Judge Few, agreed
2 and issued an order, first, rejecting the Defendant's
3 argument that this had been decided before in the first
4 slush fund case, rejecting the argument of res judicata
5 and collateral estoppel.

6 The Court relied on a number of authorities, Am.Jur.
7 and McQuillin, on municipalities, and ruled with us that
8 the delegation of legislative authority to spend money to
9 individuals was an unlawful delegation of legislative
10 authority, which must be exercised by the body as a whole.

11 In February, we moved for attorneys fees under
12 15-77-300. And, of course, the Court knows the three
13 criteria. The Plaintiff has to be the prevailing party.
14 The Defendants had to act without substantial
15 justification. And no other circumstances would make an
16 award of attorneys fees unjust. It's plain that the
17 Plaintiff prevailed.

18 The big contention is whether the Defendants acted
19 with substantial justification. The other -- the third
20 criteria, no special circumstances make an award of
21 attorneys fees unjust, the only arguments the Defendants
22 raised in opposition to that were, basically, the same
23 ones they raised in arguing that they've been
24 substantially justified.

25 So I'll focus on the second criteria. When Your

1 Honor was sitting by designation at the Supreme Court, you
2 authored the opinion of Cornelius v. Oconee County, which
3 said that the Defendants have to have a reasonable basis
4 in fact and law. And our contention is they did not in
5 this case.

6 With the complaint that we filed in 2006, we attached
7 an Attorney General's opinion from 2003. That Attorney
8 General's opinion is a formal opinion that goes on for
9 many pages. And, in that opinion, the Attorney General
10 cites and relies on 12 South Carolina cases going back
11 more than 100 years that all support his conclusion that
12 legislative authority cannot be delegated. And, in the
13 hearings, the Defense counsel, ultimately, conceded that
14 legislative authority cannot be delegated. And the issue
15 came down to, is suspending money like this legislative
16 authority?

17 And there's a 1956 case from the South Carolina
18 Supreme Court called Gregory v. Rollins cited in Judge
19 Few's order that it is fundamental that the appropriation
20 of public funds is a legislative function. With the
21 concession of the Defendants and that case, Judge Few
22 ruled that this was the appropriation of public funds, a
23 legislative function that could not be delegated.

24 This is not a new rule. This has been around. The
25 legislative -- the fact that -- the rule that legislative

1 funds cannot be delegated to individual members is as old
2 as the common law, as far as I can tell. At least, it
3 goes back 100 years here in this state, and farther back
4 when you look at the other jurisdictions.

5 In our motion for attorneys fees, we attached an
6 affidavit. Like I said, this case was litigated for
7 nearly four years, over three and a half. We justified
8 the amount of the attorneys fees using the six-factor
9 test. We're asking for just over \$60,000 in fees and
10 costs. The opposing council has not objected, at this
11 point, to any particular entry, nor to the billable rate,
12 nor to the number of hours claimed.

13 I think the Plaintiffs prevailed in the main, which
14 is what the analysis is under 15-77-300. Was the main
15 thrust of our case one that we prevailed on? And I think
16 it's pretty clear that we did. And, therefore, we ask for
17 an award of attorneys fees under 15-77-300 of just over
18 \$60,000, as stated in my affidavit that is attached to the
19 motion.

20 THE COURT: Mr. Carpenter, let me ask you just a
21 couple of questions. I could not find the Attorney
22 General's opinion. And I may just be looking in the wrong
23 place.

24 Do you know where that is?

25 MR. CARPENTER: I can hand you up another copy. It's

1 got some of my underlining and check marks on it, if
2 that's --

3 THE COURT: That's fine.

4 Thank you.

5 MR. CARPENTER: In my reply brief, I listed the cases
6 in chronological order. And they go back over 100 years.
7 I didn't list them in the order they're mentioned in the
8 opinion.

9 THE COURT: Well, the substantial justification,
10 wouldn't that be the Court order that Judge Ervin entered
11 in 1996?

12 MR. CARPENTER: That is the Defendant's argument.

13 And if the Court would like to look at that opinion,
14 that's attached to the Defendants memo filed a couple of
15 weeks ago.

16 And, in that case, we brought a number of causes of
17 action. Most of them related to the validity of
18 individual expenditures. We had -- I think, you know, we
19 might have six or eight causes of action. What the Court
20 focused on was not the delegation of legislative
21 authority. That was in there, but the Court didn't really
22 focus on that.

23 The Court took the analytical view that because the
24 budget itself had been enacted by council as a whole and
25 it was procedurally regular in its enactment, then that

1 was sufficient. The Court didn't really deal with the
2 delegation of legislative authority to an individual
3 council member.

4 But, like I said, the Court focused on procedural
5 regularity. They focused on whether any of the particular
6 donations were in violation of the establishment clause,
7 the First Amendment establishment clause. And one other
8 factor -- I've forgotten what it was -- oh, the mootness.
9 The Court relied on the mootness argument, because the
10 money had already been spent. And the Court didn't want
11 to address issues for money that had already been spent.

12 Now, there was one expenditure that had not been made
13 at that time, but was slated for disbursement. That was
14 related to some computers to be provided for a -- some
15 sort of social agency that was going to train people how
16 to use computers. And the Court, Judge Ervin, ruled that
17 that expenditure did not comply with the guidelines in
18 effect at that time, and disallowed that, and awarded us
19 some measure of attorneys fees.

20 But the Court, in that opinion, did not address with
21 any specificity the delegation of legislative authority to
22 any individual council members, even though we admittedly
23 tried to raise that. But that's not one of those things
24 that caught the Court's attention. And the Court just,
25 you know, kind of passed over it and ruled on these other

1 bases.

2 THE COURT: Okay. Thank you, sir.

3 Mr. Nicholson.

4 MR. NICHOLSON: May it please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 MR. NICHOLSON: Your Honor, we will contend that the
7 order does not use the phrase "improper delegation of
8 legislative authority." But it was, certainly, pled, and
9 it was ruled upon.

10 If I may, Your Honor, I've prepared a very
11 rudimentary -- more for my benefit than anybody, but sort
12 of side by side to compare the pleadings in these two
13 cases. And the main pleading in this case, Your Honor, is
14 paragraph 11 of the complaint. And the Plaintiffs say
15 that the council's delegation of legislative power is
16 illegal, as explained in the AG's opinion. And that's it.

17 If you look on the third amended complaint, which
18 we've attached as Exhibit 1, Your Honor, to our brief.
19 It's on the right-hand side of this first page. I'm
20 reading from Paragraph 74 of the third amended complaint,
21 The Defendant has continued to draw upon council reserve
22 without voting on each expenditure or appropriation. You
23 know, he said we're delegating without voting. That was
24 one of his -- that was the main argument he had, that
25 you're not voting on each expenditure.

1 The next paragraph there, I'm quoting from paragraph
2 81 of the third amended complaint, The county violated the
3 law by dispersing funds at the request of individual
4 members, rather than the council collectively. We will
5 contend he did plead that, Your Honor.

6 And if you look at the second page, the AG's opinion
7 cited Article 7 of the Constitution as authority for their
8 opinion. He pled it in his complaint. On the right-hand
9 side, you'll see, The Defendant has violated Articles 1,
10 2 -- and it mentions Article -- Section 10 and Section 7.

11 The same thing the AG's opinion relied upon or cited,
12 Code Section 4-9-140 on the third page, this was pled in
13 the complaint in the 1996 action that Judge Ervin ruled
14 upon in 1998. Judge Ervin noted in his order at Page 2
15 that, Mr. Sloan had contended that the county's
16 establishment of council reserves as part of its annual
17 operating budget is in violation of various statutory and
18 Constitutional provisions. And Judge Ervin continues in
19 his complaint and cited a number of statutory
20 Constitutional provisions.

21 Judge Ervin goes on at Page 10 of his order to say
22 that, Based upon these statutory Constitutional rules --
23 he uses a broad ruling. He finds that the council
24 reserves are approved during council's annual budget
25 process and council reserves have been [inaudible] in

1 council's annual budget since 1994, '95. Furthermore,
2 since council reserves are part of the county's annual
3 budget, I reject Sloan's argument that each disbursement
4 has a supplemental appropriation as defined in the code.

5 In essence, Your Honor, what -- we never contended
6 that the legislative -- the delegating legislative
7 authority was okay. What we said was they didn't delegate
8 that legislative authority. What we said was they voted
9 on it. And, in voting on it, basically, the council was
10 carrying out executive powers that Judge Few said under
11 the council form of government and the county government
12 under home rule they do. County council exercises both
13 legislative and administrative powers under their form of
14 government, which the Plaintiffs admitted to.

15 Now, we lost. Judge Few, ultimately, said, but when
16 you have to make a decision between whether you're going
17 to give money for a road, on one hand, or sue a project on
18 the other hand, in my mind, that's a legislative decision,
19 and that violates the code. So we lost there.

20 But we had that same policy in 1996. And Judge Ervin
21 ruled upon it and said it was okay. And then we're given
22 an AG's opinion in 2003, which the Plaintiffs say we
23 should just take that and totally disregard an opinion
24 from this circuit and follow the AG's opinion. Judge Few
25 said in the hearing, he said, Look, I know about this AG

1 opinion, but, you know, it is of some weight, but it has
2 no binding influence on me. He looked at the merits.

3 So we would contend that both from a substantial
4 justification point that, number one, we were
5 substantially justified in relying upon this opinion. The
6 cases that he points to in the AG's opinion, Your Honor,
7 most of them deal with state government and whether
8 there's been an improper delegation. And a lot of times
9 those deal with the legislature or the general assembly
10 taking on executive authority where we have some violation
11 of separation of powers doctrines.

12 A lot of the cases, also, that the AG's opinion deal
13 with, what is, actually, a quorum? You know, what is a
14 majority to make a ruling? I have read no case in that
15 AG's opinion that deals with the specific case we have
16 here of how the county was appropriating these dollars
17 after approving it in a budgeting process. The only case
18 we have is Judge Ervin's opinion.

19 And I would, also, say, Your Honor, with respect to
20 the unjust factor, factor number three, it would be unjust
21 for the county to be able to have an order from the
22 circuit and be able to rely upon this and not be able to
23 rely upon an order from the circuit that was ruled upon in
24 which the county was a party, especially when the
25 Plaintiff was, also, a party in that case.

1 THE COURT: Well, I mean, isn't it pretty elementary
2 that a government body or a non-profit board, for that
3 matter, the individual board members don't have any
4 authority on their own? They only have authority through
5 a majority vote of which they're a part of the body --

6 MR. NICHOLSON: That's right.

7 THE COURT: -- and they can't take any action.

8 And this policy delegated payment for an
9 infrastructure in a particular council members district
10 and was, virtually, unfettered on how it could be spent.
11 I mean, I don't understand how anyone conversant with
12 governmental or municipal law could say that that would be
13 a justifiable position to take.

14 I mean, that's been the law since the earth cooled,
15 hasn't it?

16 MR. NICHOLSON: It has.

17 But, again, the distinction is that they voted --
18 what we argued -- again, we lost on the merits. But they
19 voted -- council voted in their annual appropriations that
20 this money will be spent by individual council members
21 just for these specific purposes, not for this
22 infrastructure, but things such as buying paper for their
23 offices, buying pencils, which Judge Few said, I really
24 don't see a problem with that, that they should have a
25 discretion to find out how they're going to run their

1 office.

2 Again, the issue was deciding upon a sewer project
3 versus a road project. That was a legislative decision
4 which he said you can't delegate. That same policy was
5 before Judge Ervin. Now, were those specific arguments
6 made in front of Judge Ervin? No. But the policy was
7 there and the whole idea of a delegation was there in
8 front of Judge Ervin, and he ruled upon it. And I would
9 say that because of that order, the county was
10 substantially justified in relying upon that.

11 THE COURT: So if it was in the complaint, that's
12 enough for it to be the law, as far as the council was
13 concerned?

14 MR. NICHOLSON: As it relates an Attorney General's
15 opinion, I think the county is justified in relying upon
16 an order from this Court, as opposed to an AG's opinion.

17 THE COURT: But wasn't that Attorney General's
18 opinion right on the bulls eye? I mean, it was about a
19 slush fund, too, wasn't it?

20 MR. NICHOLSON: It was a very similar ordinance, yes,
21 sir.

22 THE COURT: And was there any -- I don't know -- of
23 course, I didn't try the case. But was there any evidence
24 in the record about council having knowledge of that
25 Attorney General's opinion, or any change in the policy

1 from -- how long has the policy been around?

2 MR. NICHOLSON: Well, after Judge Few's order, it's
3 been amended.

4 THE COURT: Okay.

5 MR. NICHOLSON: But the policy was in effect from the
6 mid 1990's until 2002.

7 THE COURT: Okay. Was there any evidence about any
8 attempts to change it, or any discussion that was borne
9 out in the record during the discovery of this case?

10 I don't know if there was or not. I'm just asking.

11 MR. NICHOLSON: There was no testimony taken.

12 But, again, I think what the McDowell case that we
13 cite in our brief -- the McDowell case goes to -- you look
14 at the posture taken in the litigation. And, in the
15 McDowell case, they tried to get attorneys fees for DSS
16 having a hearing on some fees that were owed. And there,
17 the Supreme Court says, Well, those fees shouldn't be
18 recoverable because they're DSS. That was not a posture
19 in a case they were taking. They were just carrying out
20 their administrative function.

21 What the Supreme Court looked at was the posture they
22 took and litigated the case and were they substantially
23 justified. And that's what the Supreme Court says should
24 be the focus.

25 THE COURT: All right. Thank you, sir.

1 MR. CARPENTER: May I respond to a couple of
2 questions the Court raised?

3 THE COURT: Yes, sir.

4 MR. CARPENTER: I don't believe there's any evidence
5 that they changed their policy until after the written
6 order came out. But even after Judge Few made his verbal
7 statements from the bench, it took a long time to get the
8 written order out. But after he did that, they enacted
9 two more ordinances, two more annual appropriations. They
10 enacted the slush fund, again, for two more annual budget
11 years, even after he announced his intention, and after
12 they made the concession about not being able to delegate
13 legislative authority.

14 And what I -- Mr. Nicholson may disagree with my
15 characterization. But what I think I heard him say was,
16 Well, they voted. They voted on this. So they voted to
17 do something that was unlawful. And that's their
18 justification for it. They voted to delegate legislative
19 authority and that makes it okay. I can't imagine that
20 that's an appropriate statement of the law.

21 Yes, the slush fund has been around since 1994. But
22 even after we gave them the Attorney General's opinion
23 with the complaint, they made four -- they made enactments
24 for four additional years of slush fund money knowing this
25 opinion with its 12 South Carolina cases cited in it. And

1 I think that's another indication of continuing to proceed
2 on in the face of a clear statement of the law.

3 THE COURT: All right. Well, I appreciate your
4 arguments.

5 I find that based on Section 15-77-300, Mr. Sloan is
6 entitled to the attorneys fees. I find that he did
7 prevail. I find the county's action lacks substantial
8 justification.

9 I don't believe a reasonable person would have
10 believed that an individual council member could exercise
11 the authority that the council granted to such individual
12 council members, and that the decision to do that was
13 either a product of willful ignorance or, certainly, not
14 justifiable reliance on a circuit judge's opinion where
15 the issue, while it may have been in the pleadings, was
16 not ever discussed, specifically, in the order. And the
17 law is uniformly and historically at odds with that
18 position on a very elementary level.

19 And I, also, find that there's no reason why the
20 order would be unjust. I've looked at the amount of
21 attorneys fees and all the factors of Baron Data Systems
22 v. Loter, and I find that the amount is reasonable. And,
23 therefore, I award the fees.

24 I would ask Mr. Carpenter to submit a proposed order.
25 How long do you need, sir?

1 MR. CARPENTER: I can -- what's today? Wednesday?

2 I can submit one to Mr. Nicholson by the end of the
3 week and --

4 THE COURT: That's fine. I would just say by October
5 15th.

6 MR. CARPENTER: Yes, sir.

7 THE COURT: Thank you for your argument.

8 *****END OF TRANSCRIPT OF RECORD*****
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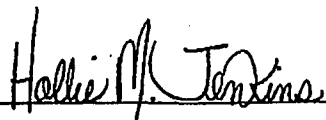
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 7th day of October, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 13, 2011



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

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.)

**DEFENDANTS' INITIAL ANSWERS
TO PLAINTIFFS' INTERROGATORIES**

**TO: THE SOUTH CAROLINA PUBLIC INTEREST FOUNDATION, AND EDWARD
D. SLOAN, JR., INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED, PLAINTIFFS; AND THEIR ATTORNEY, JAMES G.
CARPENTER, ESQUIRE**

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendants 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 (hereinafter referred to as "Defendants") provide the following initial answers to Plaintiffs' Interrogatories as follows:

INTERROGATORY NO. 1: Give the names and addresses of persons known to the Defendants or counsel to have knowledge concerning the facts of the case and indicate whether

or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

1. John Hansley
Deputy County Administrator
301 University Ridge, Suite 2400
Greenville, South Carolina 29601

Theresa B. Kizer
Clerk to Council
301 University Ridge, Suite 2400
Greenville, South Carolina 29601

In their roles with the County Mr. Hansley and Ms. Kizer are familiar with the Council District Expenses. No statements have been taken from Mr. Hansley or Ms. Kizer.

INTERROGATORY NO. 2: Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the Defendant or counsel that relate to any claim, defense, or counterclaim in the case.

ANSWER: None other than those attached to the County's Responses to Plaintiff's Request for Production.

INTERROGATORY NO. 3: List the names and addresses of any expert witnesses whom the Defendants or counsel proposes to use as a witness at the trial of the case.

ANSWER:

The County has not retained an expert witness but reserves the right to do so.

INTERROGATORY NO. 4: For each person known to the Defendants or counsel to have knowledge concerning the facts of the case, set forth either a summary sufficient to inform

the Plaintiffs of the important facts known to or observed by such witnesses, and provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See answer to No. 1 above.

INTERROGATORY NO. 5: For each expert witness whom the Defendants or counsel proposes to use as a witness at the trial of the case, state:

- a. The subject matter on which the expert is expected to testify;
- b. The substance of the facts and opinions to which the expert is expected to testify;
and,
- c. A summary of the ground for each opinion.

ANSWER: See answer to No. 3 above.

INTERROGATORY NO. 6: Describe the procedure by which Greenville County delegates to individual members of Greenville County Council the power to expend public funds.

- a. What is the name or label Greenville County applies to the procedure?
- b. What ordinance or action of County Council established the procedure in effect
July 1, 2006?

ANSWER:

a. The funds are called "Council District Expense." The policy behind these funds, which have had various names, began in 1994.

b. As stated above, the policy behind these funds began in 1994. However, the current budget rules began with the FY 2001 Greenville County Budget and has been carried forward in the subsequent budgets up to and through the current FY 2008 budget year.

INTERROGATORY NO. 7: Has the County imposed a monetary limit on the amount that individual council member is authorized to disburse? If so,

- a. What is the amount of the limit?
- b. What is the source of the limit?

ANSWER:

- a. The amount of the limit is \$26,946 for the Chairman; \$24,251 for the Vice-Chairman; and \$21,828 all other Council members.
- b. The source of the limit is the FY 2008 Greenville County Budget.

INTERROGATORY NO. 8: Has the County imposed a limit on the purposes for which an individual council member may disburse public funds? If so,

- a. What are the limits?
- b. What is the source of the limits?

ANSWER:

- a. A copy of the current Council Policy in effect on July 1, 2006 set forth the uses of the funds and is attached to the County's Responses to Plaintiff's Request for Production.
- b. See response to Item a above.

INTERROGATORY NO. 9: When a council member, pursuant to this procedure, authorizes an expenditure, for a procurement, is the procurement always made by the County?

ANSWER: No.

INTERROGATORY NO. 10: When a council member, pursuant to this procedure, authorizes a grant of funds to a nongovernment organization,

- a. Does the County impose any restriction on the grantee's use of the funds?
- b. Does the grantee receive written notice of the restrictions? How?
- c. Does the County have a procedure to verify that a grantee's use of the funds granted were in compliance with the restrictions?
- d. Does the County always comply with the US law concerning withholdings and reporting the payment to the Internal Revenue Service?

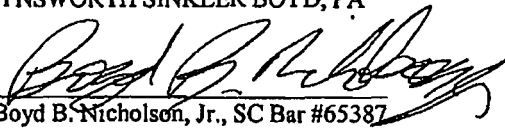
ANSWER:

- a. See response to Interrogatory 8 a above.
- b. Council members have access to the current policy or can request a copy.
- c. County staff reviews all requests for reimbursement in accordance with the policy.
- d. The County is unclear what IRS regulations Plaintiffs are referencing. Please be more specific.

INTERROGATORY NO. 11: Since July 1, 2005, has the County declined to make an expenditure authorized by an individual council member? If so, what and when?

ANSWER: Per letter agreement dated July 19, 2007 between counsel for both parties, responding to this discovery request will take an extensive amount of research, and the parties have agreed that the County will supplement these answers at a later date if necessary.

HAYNSWORTH SINKLER BOYD, PA

By: 

Boyd B. Nicholson, Jr., SC Bar #65387
Two Insignia Financial Plaza
Eleventh Floor
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Greenville, South Carolina 29602

(864) 240-3200
Attorneys for Defendants

Dated: July 20, 2007
Greenville, South Carolina

DOC #551941

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.)

**RESPONSES TO PLAINTIFFS'
SECOND SET OF INTERROGATORIES,
REQUEST FOR PRODUCTION OF
DOCUMENTS, AND REQUESTS
FOR ADMISSION**

(Council District Expense)

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendants answer
Plaintiffs' Second Set of Interrogatories as follows:

INTERROGATORY NO. 1: In what amounts are the Council District Expense funds
allocated to each Councilor for fiscal years ending June 30, 2009, 2010, and 2011?

ANSWER: Within the documents attached hereto see "Operating Exp" line items in the
following documents:

Budget File, 05/14/2009 (Fiscal Year 2011)
Budget File, 05/14/2009 (Fiscal Year 2010)
Budget File, 09/25/2008 (Fiscal Year 2009)

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Defendants answer
Plaintiffs' Second Set of Request for Production of Documents as follows:

REQUEST NO. 2: The Ordinances appropriating Council District Expense funds for fiscal years ending June 30, 2009, 2010, and 2011.

ANSWER: See documents attached hereto.

REQUEST NO. 3: For each Ordinance in the previous request, the background public record that creates and allocates appropriated funds to Council District Expense.

ANSWER: See documents attached hereto.

REQUEST NO. 4: Any statement of "Guidelines" or the equivalent thereof governing the use of Council District Expense for any fiscal year ending June 30, 2009, 2010, and 2011.

ANSWER: See documents attached hereto.

REQUEST NO. 5: Any ordinance, resolution, or other authority creating or adopting "Guidelines" governing the use of Council District Expense for fiscal years ending June 30, 2009, 2010, and 2011.

ANSWER: See documents attached hereto.

Pursuant to Rule 35 of the South Carolina Rules of Civil Procedure, Defendants answer Plaintiffs' Second Set of Requests for Admission as follows:

REQUEST NO. 6: Admit that Ordinances appropriating funds for fiscal years ending June 30, 2009, 2010, and 2011 appropriated Council District Expense funds in amounts exceeding \$20,000 per Councilor.

ANSWER: Admit.

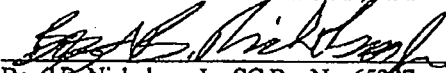
REQUEST NO. 7: Admit that the individual accounts of the Council District Expense for fiscal years ending June 30, 2009, 2010, and 2011 are substantively the same as the individual accounts for Council District Expense in Ordinance 3940.

ANSWER: Admit.

REQUEST NO. 8: Admit that the individual accounts of the Council District Expense for fiscal years ending June 30, 2009, 2010, and 2011 allow each Councilor to expend money as he sees fit, subject only to compliance with the "Guidelines" applicable to that fiscal year.

ANSWER: Admit.

HAYNSWORTH SINKLER BOYD, P.A.



Boyd B. Nicholson, Jr., SC Bar No. 65387

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Greenville, SC 29602-2048

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E-Mail: nnicholson@hsblawfirm.com

Attorneys for Defendants

Greenville, South Carolina
November 16, 2009

**COUNTY OF GREENVILLE
FISCAL YEAR 2007-2008 BUDGET ORDINANCE**

SECTION 1: The following funds are hereby appropriated for the operations of county government for the fiscal year beginning July 1, 2007 and ending June 30, 2008.

SCHEDULE A: GENERAL FUND

Administrative Services		\$ 2,288,311
General Services		10,601,762
Human Resources		1,814,634
Public Works		16,408,275
Public Safety		32,972,487
Elected & Appointed Offices/Judicial		14,145,627
Elected & Appointed Offices/Fiscal		2,327,187
Elected & Appointed Offices/Law Enforcement		31,822,602
Other Services		6,226,510
Subtotal		<u>\$ 118,607,395</u>
Other Financing Uses		1,625,342
TOTAL GENERAL FUND		<u>\$ 120,232,737</u>

SCHEDULE B: SPECIAL REVENUE FUND

Road Program			
Road Projects	\$ 11,600,000		
Other Financing Uses	<u>2,000,000</u>	\$ 13,600,000	
Accommodations Tax		772,610	
Medical Charities		4,894,384	
Infrastructure Bank			
Other Financing Uses	\$ 4,575,039		
Economic Development	<u>722,356</u>	5,297,395	
Victim's Rights		1,114,138	
Home Incarceration Program		57,416	
Hospitality Tax			
Projects	\$ 5,500,000		
Other Financing Uses	<u>1,200,000</u>	6,700,000	
Emergency 911			
Expenditures	1,643,263		
Fund Balance Contribution	<u>76,737</u>	1,720,000	
TOTAL SPECIAL REVENUE FUND		<u>\$ 34,155,943</u>	

SCHEDULE C: DEBT SERVICE FUND

	G.O. BONDS	COPs, SSRs, CAPITAL LEASES	
Principal	\$ 3,465,000	\$ 9,436,272	\$ 12,901,272
Interest	2,729,236	3,503,502	6,232,738
Service Charge	7,000	7,000	14,000
Fund Balance Contribution	165,962		165,962
TOTAL DEBT SERVICE FUND	<u>\$ 6,367,198</u>	<u>\$ 12,946,774</u>	<u>\$ 19,313,972</u>

SCHEDULE D: CAPITAL PROJECTS FUND

Information Technology	\$ 1,633,361
Facility Projects	250,000
Automobile Replacement Program	1,500,000
TOTAL CAPITAL PROJECTS FUND	<u>\$ 3,383,361</u>

SCHEDULE E: INTERNAL SERVICE FUND

Fleet Management		
Expenditures	\$ 5,313,996	
Fund Balance Contribution	<u>45,955</u>	\$ 5,359,951
Health and Dental Insurance		
Expenditures	17,736,655	
Fund Balance Contribution	<u>3,336,193</u>	21,072,848
Workers Compensation Insurance		
Expenditures	2,340,359	
Fund Balance Contribution	<u>231,708</u>	2,572,067
TOTAL INTERNAL SERVICE FUND		<u>\$ 29,004,866</u>

SCHEDULE F: ENTERPRISE FUND

Solid Waste	\$ 9,933,611
Stormwater Management	10,165,355
TOTAL ENTERPRISE FUND	<u>\$ 20,098,966</u>

County of Greenville
Operating and Capital Budget
Fiscal Years 2008 and 2009

8

SECTION 2: Revenues available in FY2008 are estimated according to the following schedules.

SCHEDULE A: GENERAL FUND

Property Tax (Including delinquent taxes)	\$	61,601,401
County Office Revenue		25,964,340
State Shared Taxes		22,757,708
Other Revenue		5,496,208
Transfers In		3,200,000
Fund Balance Usage		1,213,080
TOTAL GENERAL FUND	\$	120,232,737

SCHEDULE B: SPECIAL REVENUE FUND

Road Paving		
Road Maintenance Fees	\$	6,437,807
Other Financing Sources		1,500,000
Other		360,000
Fund Balance Usage		5,302,193
Accommodations Tax	\$	13,600,000
Medical Charities		772,610
Property Tax (Including delinquent taxes)	\$	3,949,845
State Shared Taxes (Merchants Inventory)		179,520
Other		75,065
Fund Balance Usage		689,954
Infrastructure Bank		4,894,384
FILOT Revenues	\$	5,084,543
Fund Balance Usage		212,852
Victim's Rights		5,297,395
Intergovernmental Revenue	\$	858,000
Fund Balance Usage		256,138
Home Incarceration Program		1,114,138
Hospitality Tax		57,416
E911 User Fees		6,700,000
		1,720,000
TOTAL SPECIAL REVENUE FUND	\$	34,155,943

SCHEDULE C: DEBT SERVICE FUND

	G.O. BONDS	COPs, SSRs, CAPITAL LEASES	
Property Tax (Including delinquent taxes)	\$ 1,528,288	\$ 3,306,131	\$ 4,834,419
Intergovernmental	4,738,910	2,934,693	7,273,603
Interest	100,000	150,000	250,000
Interfund Transfers	-	3,505,088	3,505,088
Fund Balance Usage	-	3,450,862	3,450,862
TOTAL DEBT SERVICE FUND	\$ 6,367,198	\$ 12,946,774	\$ 19,313,972

SCHEDULE D: CAPITAL PROJECTS FUND

General Fund Transfer	\$	800,000
Capital Project Reserve	\$	1,083,361
Master Lease Proceeds		1,500,000
TOTAL CAPITAL PROJECTS FUND	\$	3,383,361

SCHEDULE E: INTERNAL SERVICE FUND

Fleet Management Reimbursement	\$	5,359,951
Health and Dental Premiums		21,072,848
Workers Compensation Premiums		2,572,067
TOTAL INTERNAL SERVICE FUND	\$	29,004,866

SCHEDULE F: ENTERPRISE FUND

Solid Waste		
Property Tax	\$	4,260,371
Solid Waste Tipping Fees		3,200,000
Other		657,205
Fund Balance Usage		1,816,035
Stormwater		9,933,611
Fees	\$	6,670,000
Fund Balance Usage		3,495,355
TOTAL ENTERPRISE FUND	\$	20,098,966

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.

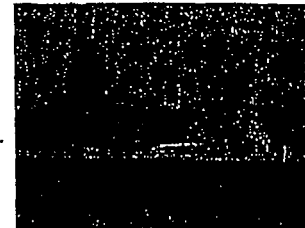
Budget Highlights

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 at Council meeting (above)
and Council staff (below)



COUNTY COUNCIL	FY2006 ACTUAL	FY2007 PROJECTION	FY2008 BUDGET	FY2009 BUDGET	TOTAL BUDGET
PERSONNEL SERVICES	\$ 579,715	\$ 599,319	\$ 649,375	\$ 664,718	\$ 1,314,093
OPERATING EXPENSES	538,575	474,066	443,379	421,379	864,758
CONTRACTUAL CHARGES	3,753	3,501	7,053	7,053	14,106
CAPITAL OUTLAY	-	-	-	-	-
TOTALS	\$ 1,122,043	\$ 1,076,886	\$ 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

COUNTY COUNCIL

Performance Indicators:	Actual 2006	Projected 2007	Target 2008	Target 2009

PROGRAM GOAL 1: To provide prompt and courteous service to Council members, the public and staff by providing accurate information in a usable and understandable format.

Program Goal 1: To provide prompt and courteous service to Council members, the public and staff by providing accurate information in a usable and understandable format.

Objective 1(a): To ensure accuracy of the preparation of agenda packets for distribution, agenda items for consideration, resolutions and ordinances for Council action 100% of the time.

# agenda packages prepared for delivery	22	22	22	22
% agenda packages prepared /delivered on time	100%	100%	100%	100%
# agendas posted on webpage & bulletin board	22	22	22	22
% agendas posted on webpage & bulletin board	100%	100%	100%	100%
# agendas on CD mailed to Library	22	22	22	22
% agendas on CD mailed to Library on time	100%	100%	100%	100%

Objective 1(b): To ensure that all public hearing notices are properly submitted to the designated local newspaper in accordance with the guidelines for public notices 100% of the time.

# public hearing notices submitted to newspaper	55	55	55	55
% notices submitted according to guidelines	100%	100%	100%	100%

Objective 1(c): To respond to Freedom of Information Requests within 15 business days.

# Freedom of Information Requests received	4	4	4	4
% requests responded to within 15 days	100%	100%	100%	100%

Note: County Council, as a governing body, is responsible for all priority areas of the Council. The goals and objectives listed above reflect those of the Council office staff.

Greenville Fun Facts

Greenville County government began in 1868, when the new South Carolina Constitution created a three member board of commissioners to supervise

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 FY2010 and FY2011 is \$2,190,584 and is 0.11% less than the previous two-year budget. Decreases in the budget are attributed to the reengineering efforts of departments to streamline costs while providing the same level of service. The FY2010 and FY2011 budgets allow for 15.80 full-time equivalent positions.



County Council at Council meeting (above)
and Council staff (below)



COUNTY COUNCIL	FY2008 ACTUAL	FY2009 PROJECTION	FY2010 BUDGET	FY2011 BUDGET	TOTAL BUDGET
PERSONNEL SERVICES	\$ 595,146	\$ 664,718	\$ 644,434	\$ 659,950	\$ 1,304,384
OPERATING EXPENSES	445,128	421,379	436,000	436,000	872,000
CONTRACTUAL CHARGES	3,161	7,053	7,100	7,100	14,200
CAPITAL OUTLAY					
TOTALS	\$ 1,043,435	\$ 1,093,150	\$ 1,087,534	\$ 1,103,050	\$ 2,190,584
POSITION SUMMARY	16.0	16.0	16.0	16.0	
FTE SUMMARY	15.8	15.8	15.8	15.8	

FY2008/FY2009 Accomplishments

- ☐ Implemented a new boards and commissions interactive interview process
- ☐ Completed all scanning backlog of Council archive documents

FY2010/FY2011 Key Action Steps

- ☐ Image newspaper articles pertaining to Council and County operations for research and reference
- ☐ Research technological applications to improve departmental efficiency
- ☐ Review department work process procedures to ensure they reflect current work processes
- ☐ Develop and present to Council for their consideration and approval, a policy to honor citizens who have served on Boards and Commissions for 10+ years

COUNTY COUNCIL

Performance Indicators:	Actual 2008	Projected 2009	Target 2010	Target 2011

Program Goal 1: To provide prompt and courteous service to Council members, the public and staff by providing accurate information in a usable and understandable format.

Objective 1(a): To ensure accuracy of the preparation of agenda packets for distribution, agenda items for consideration, resolutions and ordinances for Council action 100% of the time.

# agenda packages prepared for delivery	22	22	22	22
% agenda packages prepared /delivered on time	100%	100%	100%	100%
# agendas posted on webpage & bulletin board	22	22	22	22
% agendas posted on webpage & bulletin board	100%	100%	100%	100%
# agendas on CD mailed to Library	22	22	22	22
% agendas on CD mailed to Library on time	100%	100%	100%	100%

Objective 1(b): To ensure that all public hearing notices are properly submitted to the designated local newspaper in accordance with the guidelines for public notices 100% of the time.

# public hearing notices submitted to newspaper	55	55	55	55
% notices submitted according to guidelines	100%	100%	100%	100%

Objective 1(c): To respond to Freedom of Information Requests within 15 business days.

# Freedom of Information Requests received	4	4	4	4
% requests responded to within 15 days	100%	100%	100%	100%

Note: County Council, as a governing body, is responsible for all priority areas of the Council. The goals and objectives listed above reflect those of the Council office staff.

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GREENVILLE COUNTY
BUDGET FILE
05/14/2009

PAGE 3

FISCAL YEAR: 2011
FUND: 01 GENERAL FUND
DEPARTMENT: 01 LEGISLATIVE & ADMIN. SER .CES
DIVISION: 41500 COUNTY COUNCIL
PRIOR YEAR

	BASE BUDGET	EXPANSION	TOT REQUESTED	ADJUSTMENTS	TOT RECOMMEND
SALARIES			454,462		454,462
11101 SALARIES- FULL TIME	454,462		454,462		454,462
11102 SALARIES- PART TIME					
11103 SALARIES- FT OVERTIME					
11104 SALARIES- PT OVERTIME					
11110 FICA	34,766		34,766		34,766
11111 POLICE RETIREMENT	41,992		41,992		41,992
11112 SC RETIREMENT	4,620		4,620		4,620
11113 DENTAL INSURANCE	1,875		1,875		1,875
11114 LIFE INSURANCE	1,545		1,545		1,545
11115 WORKERS COMPENSATION	2,100		2,100		2,100
11116 UNEMPLOYMENT INSURANCE	118,590		118,590		118,590
11127 HEALTH INSURANCE	659,950		659,950		659,950
SALARIES					
OPERATING EXP			1,024		1,024
12001 COPY EXPENSE	1,024		1,024		1,024
12002 POSTAGE	50		50		50
12003 PRINTING & BINDING	5,800		5,800	2,000-	3,800
12004 INCENTIVES & AWARDS	1,500		1,500	1,400-	100
12007 ADVERTISING	3,300		3,300		3,300
12008 MEMBERSHIPS & DUES	60,000		60,000		60,000
12010 PUBLICATIONS	503		503		503
12029 OPERATIONAL SUPPORT	11,067		11,067		11,067
12031 OPERATIONAL ASSETS					
12201 GENERAL TRANSPORTATIO	1,979		1,979		1,979
12202 TRAINING/TRAVEL/CONF	8,200		8,200	1,500-	6,700
12221 OFFICE SUPPLIES	2,500		2,500		2,500
12228 PHOTO/MICROFILM SUPPL	1,500		1,500		1,500
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	24,251		24,251		24,251
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	21,828		21,828		21,828
12269 COUNCIL DIST. EXP.DIS	21,828		21,828		21,828
12271 TECHNICAL/PROFESSIONA	74,000		74,000		74,000
12284 COUNCIL DIST. EXP.DIS	26,946		26,946		26,946
12286 COUNCIL DIST. EXP.DIS	21,828		21,828	4,800-	21,828
OPERATING EXP	440,900		440,900		438,000
CONTRACTUAL			7,100		7,100
13370 SERVICE CONTRACTUAL A	7,100		7,100		7,100
13373 OPERATING LEASE AGREE					
CONTRACTUAL	7,100		7,100	4,900-	7,100
DIVISION TOT	1,107,950		1,107,950		1,103,050

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GREENVILLE COUNTY
BUDGET FILE
05/14/2009

PAGE 3

FISCAL YEAR: 2010
FUND: 01 GENERAL FUND
DEPARTMENT: 01 LEGISLATIVE & ADMIN. SERVICES
DIVISION: 41500 COUNTY COUNCIL

	PRIOR YEAR	BASE BUDGET	EXPANSION	TOT REQUESTED	ADJUSTMENTS	TOT RECOMMEND
SALARIES						
11101 SALARIES- FULL TIME		441,226		441,226		441,226
11102 SALARIES- PART TIME						
11103 SALARIES- FT OVERTIME						
11104 SALARIES- PT OVERTIME						
11110 FICA		33,754		33,754		33,754
11111 POLICE RETIREMENT						
11112 SC RETIREMENT		40,769		40,769		40,769
11113 DENTAL INSURANCE		4,620		4,620		4,620
11114 LIFE INSURANCE		1,875		1,875		1,875
11115 WORKERS COMPENSATION		1,500		1,500		1,500
11116 UNEMPLOYMENT INSURANCE		2,100		2,100		2,100
11127 HEALTH INSURANCE		118,590		118,590		118,590
SALARIES		644,434		644,434		644,434
OPERATING EXP						
12001 COPY EXPENSE		1,024		1,024		1,024
12002 POSTAGE		50		50		50
12003 PRINTING & BINDING		5,800		5,800	2,000-	3,800
12004 INCENTIVES & AWARDS		1,500		1,500	1,400-	100
12007 ADVERTISING		3,300		3,300		3,300
12009 MEMBERSHIPS & DUES		60,000		60,000		60,000
12010 PUBLICATIONS		503		503		503
12029 OPERATIONAL SUPPORT		11,067		11,067		11,067
12031 OPERATIONAL ASSETS						
12201 GENERAL TRANSPORTATIO		1,979		1,979		1,979
12202 TRAINING/TRAVEL/CONF		8,200		8,200	1,500-	6,700
12221 OFFICE SUPPLIES		2,500		2,500		2,500
12228 PHOTO/MICROFILM SUPPL		1,500		1,500		1,500
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		24,251		24,251		24,251
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		21,828		21,828		21,828
12269 COUNCIL DIST. EXP.DIS		21,828		21,828		21,828
12271 TECHNICAL/PROFESSIONA		74,000		74,000		74,000
12284 COUNCIL DIST. EXP.DIS		26,946		26,946		26,946
12286 COUNCIL DIST. EXP.DIS		21,828		21,828		21,828
OPERATING EXP		440,900		440,900	4,900-	436,000
CONTRACTUAL						
13370 SERVICE CONTRACTUAL A		7,100		7,100		7,100
13373 OPERATING LEASE AGREE						
CONTRACTUAL		7,100		7,100		7,100
DIVISION TOT		1,092,434		1,092,434	4,900-	1,087,534

PROG.FIBER.

GREENVILLE COUNTY
BUDGET FILE
08/25/2008

PAGE 3

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	APPROVED
SALARIES							
11101 SALARIES- FULL TI		432,726		432,226		432,226	432,226
11102 SALARIES- PART TI		20,526		20,526		20,526	20,526
11103 SALARIES- FT OVER							
11104 SALARIES- FT OVER							
11110 FICA		34,636		34,636		34,636	34,636
11111 POLICE RETIREMENT							
11112 SC RETIREMENT		39,389		39,389		39,389	39,389
11113 DENTAL INSURANCE		4,866		4,866		4,866	4,866
11114 LIFE INSURANCE		1,975		1,975		1,975	1,975
11115 WORKERS COMPENSAT		10,270		10,270		10,270	10,270
11116 UNEMPLOYMENT INSU		2,240		2,240		2,240	2,240
11127 HEALTH INSURANCE		118,590		118,590		118,590	118,590
SALARIES		664,718		664,718		664,718	664,718
OPERATING E							
12001 COPY EXPENSE		1,024		1,024		1,024	1,024
12002 POSTAGE		49		49		49	49
12003 PRINTING & BINDIN		5,325		5,325		5,325	5,325
12004 INCENTIVES & AWAR		1,521		1,521		1,521	1,521
12007 ADVERTISING		3,014		3,014		3,014	3,014
12009 MEMBERSHIPS & DUE		58,444		58,444		58,444	58,444
12010 PUBLICATIONS		503		503		503	503
12029 OPERATIONAL SUPPO		6,065	5,000	11,065	5,000-	6,065	6,065
12201 GENERAL TRANSPORT		1,979		1,979		1,979	1,979
12202 TRAINING/TRAVEL/C		2,987		2,987	5,000	7,987	7,987
12221 OFFICE SUPPLIES		1,587		1,587		1,587	1,587
12228 PHOTO/MICROFILM S		1,205		1,205		1,205	1,205
12240 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12261 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12262 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12263 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12264 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12265 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12266 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12267 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12268 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
12269 COUNCIL DIST. EXP		24,251		24,251		24,251	24,251
12271 TECHNICAL/PROGRES		143,449		143,449	80,250-	63,199	63,199
12284 COUNCIL DIST. EXP		26,946		26,946		26,946	26,946
12286 COUNCIL DIST. EXP		21,828		21,828		21,828	21,828
OPERATING E		496,629	5,000	501,629	80,250-	421,379	421,379
CONTRACTUAL							
13370 SERVICE CONTRACTU		7,053		7,053		7,053	7,053
13371 OPERATING LEASE A							
CONTRACTUAL		7,053		7,053		7,053	7,053
DIVISION TOT		1,168,400	5,000	1,173,400	80,250-	1,093,150	1,093,150

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.

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,

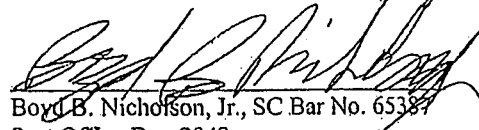
v.

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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

HAYNSWORTH SINKLER BOYD, P.A.


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October 20, 2011
Greenville, South Carolina

ATTORNEYS FOR APPELLANTS