

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM JASPER COUNTY
Court of Common Pleas**

The Honorable Carmen T. Mullen, Circuit Court Judge

C.A. No.: 2013-002266

JASPER COUNTY BOARD OF EDUCATION, ...Appellant.

v.

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

RECORD ON APPEAL

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Attorney for Respondents

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM JASPER COUNTY
Court of Common Pleas**

Hon. Carmen T. Mullen, Circuit Court Judge

C.A. No.: 2013-CP-27-00362

JASPER COUNTY BOARD OF EDUCATION..... Appellant

v.

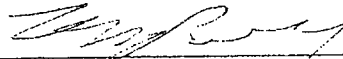
JASPER COUNTY COUNCIL AND JASPER COUNTY AUDITOR..... Respondents.

Notice of Appeal

Jasper County Board of Education appeals the judgment of the Honorable Carmen T. Mullen dated September 26, 2103, and the order of the Honorable Carmen T. Mullen dated October 2, 2013, denying Jasper County Board of Education's Motion to Alter or Amend Judgment Pursuant to S.C. R. Civ. P. 52(b) and 59(e). Appellant received written notice of entry of the order denying Jasper County Board of Education's Motion to Alter or Amend Judgment Pursuant to S.C. R. Civ. P. 52(b) and 59(e) on October 8, 2013.

October 21, 2013

CHILDS & HALLIGAN, P.A.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge

C.A. No.: 2013-CP-27-00362

Jasper County Board of Education Appellant

v.

Jasper County Council and Jasper County Auditor Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on counsel for Respondents, by depositing a copy of it in the U.S. Mail, postage prepaid, on October 21, 2013, addressed to Marvin C. Jones, Esq., Jasper County Attorney, P.O. Box 420, Ridgeland, SC, 29936.

CHILDS & HALLIGAN, P.A.



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Attorneys for Appellant

October 21, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2013-CP-27-00362

JASPER COUNTY BOARD
OF EDUCATION,)

Plaintiff,)

vs.)

JASPER COUNTY COUNCIL)
and)
JASPER COUNTY AUDITOR)

Defendants.)

ORDER

In this action, the Jasper County Board of Education seeks a declaratory judgment that the Jasper County Council does not have the authority to determine the school tax millage of the Jasper County School District, or, in the alternative, that the County Council must accept the millage determination of the School Board for the school operating budget and incorporate it into the County's annual appropriation ordinance. The Defendant Counterclaimants seek a declaratory judgment that no power to levy an ad valorem tax to fund revenue for the School District operating budget in Jasper County has ever been delegated by the General Assembly to the Jasper County Board of Education. The matter is before the Court on the Plaintiff's motion for judgment on the pleadings and the Defendants' cross motion for judgment on the pleadings or in the alternative for summary judgment. The Plaintiff's complaint alleged that certain delegation of powers to Jasper County Council respecting the determination of the School District operating revenue and tax millage was unconstitutional. However, at the hearing the plaintiff stated that the matter could be resolved as a matter of statutory interpretation and the issue of constitutionality was not argued and is abandoned.

After the pleadings are closed, but within such time as not to delay the trial, any party may move for judgment on the pleadings. South Carolina Rules of Civil Procedure Rule 12 states that "a motion for judgment on the pleadings is proper where pleadings

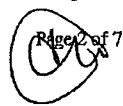
entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue.” Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 297 S.E.2d 638, 640 (1982). If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. SCRCP 12. The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. Cunningham v. Anderson Cnty., 402 S.C. 434, 442, 741 S.E.2d 545, 549 (Ct. App. 2013). A motion for summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is not a genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Health Promotion Specialists, LLC v. S. Carolina Bd. Of Dentistry, 2011-200626, 2013 WL 2631075 (S.C. June 12, 2013).

FINDINGS OF FACT

Because both the complaint and the counter-claim raise issues of statutory interpretation, there are very few facts which require recitation and they may be briefly stated. Jasper County Council was created by the General Assembly in its 1968 Acts and Joint Resolutions No. 982, p. 2370, which in relevant part, gave County Council the authority “[t]o make appropriations and to levy taxes therefore . . . for educational purposes” This Statute also required every “county official, department, commission, institution or board receiving grants or appropriations from county, state and federal funds . . . [to] make a full and detailed report of its financial status . . . together with its budget and recommendations for the coming year, to the county council.” Since 1968, the Jasper County Council has been considering and approving the revenue side of the Jasper County School District operating budget and setting the corresponding millage.

In 1971, the General Assembly created the Jasper County Board of Education. 1971 Acts and Joint Resolutions No. 601, p. 1114 (S.C.).¹ Section two of that Act gave

¹ The Plaintiff also invited the attention of the Court to 1989 Acts and Joint Resolutions No. 288, p. 1685 (S.C.). The provisions of Section Two of Act No. 601 of 1971 were re-adopted in their entirety by Act No. 288 and, therefore, Act No. 288 changed none of the powers of the School Board.

Page 2 of 7


to the School Board a number of powers. The pleadings, memorandum and argument for the School Board make reference to a number of these powers, and the Court has reviewed Section Two in its entirety. In argument, the Plaintiff invited the Court's attention to three of those delegated powers: (1) the power to determine and evaluate educational programs to provide maximum educational opportunity for children of the county, (2) the power to adopt a system of budgetary controls and annually adopt a budget sufficient to meet the educational needs of the county, and (3) the power to perform other duties and responsibilities not inconsistent with the local and state laws which might be necessary to meet the educational needs of the county. The Plaintiff also referred the Court to various provisions of the South Carolina Code of Laws and of the South Carolina Constitution. None of the statutes nor constitutional provisions referred to by the Plaintiff specifically give to the School Board the power to set a millage or to impose a tax.

Following the adoption of the Home Rule Act in 1975, Jasper County did not call for a referendum on the form of government, but instead accepted the legislatively assigned Council – Administrator form of government provided for in Code of Laws of South Carolina § 4-9-10(b). Of particular significance, at the time of adoption of the Council – Administrator form of government, Jasper County Council was appropriating funds for the school operating budget in the County's budget ordinance and setting the millage. There is no evidence in this record that at the time of adoption of the Council – Administrator form of government that the School Board was establishing such millage.

CONCLUSIONS OF LAW

It has long been held in South Carolina that as a general proposition, the determination of powers and duties of local county governments and school districts resides in the General Assembly. Gaud v. Walker, 214 S.C. 451, 53 S.E.2d 316 (S.C. 1949). School districts have no inherent right of local self-government – all powers are derived from the General Assembly. Moseley v. Welch, 2009 S.C.19, 39 S.E.2d 133 (S.C. 1946). In South Carolina, counties and school districts, even though frequently co-existent in area, are separate and distinct governmental entities. Cf. Grey v. Vaigneur,

243 S.C. 604, 135 S.E.2d 227 (S.C. 1962). However, the fact that counties and school districts are separate and distinct governmental entities does not mean that they are separated in every respect. For example, Code of Laws of South Carolina § 4-1-80 requires the governing board of each county to furnish the superintendent of education with office space and furniture.

Because this is a case of statutory interpretation, we now turn to a review of relevant decisions on that subject. The cardinal rule of statutory construction for a Court is to ascertain the intent of the legislature and to give it effect. Knotts v. S.C. Dept. of Natural Resources, 48 S.C. 1, 558 S.E.2d 511 (S.Ct. 2002). In ascertaining the intention of the legislature, the Court need not look beyond words of the statute to ascertain the intent of the legislature when it appears on the face of the statute. Wright v. Colleton County School Dist., 301 S.C. 282, 391 S.E.2d 564 (S.Ct. 1990).

Tax statutes like other laws should be construed with the view towards ascertaining and giving effect to the intention of the legislature. Meredith v. Elliott, 247 S.C. 335, 147 S.E.2d 244 (S.C. 1966). No tax can be imposed without express statutory authority and that authority is construed against the taxing entity. Wingfield v. S.C. Tax Comm'n., 147 SC 116, 144 SE 846 (SC 1928). Statutes imposing taxes cannot be extended by implication beyond the clear import of the language used. Adams v. Burts, 245 S.C. 339, 140 S.E.2d 586 (S.Ct. 1965). Local governmental entities only have the power to tax where the General Assembly specifically delegates that authority and therefore the authority is not extended by implication. Hospitality Association of SC, Inc. v. Charleston, 320 SC 219, 464 S.E.2d 113 (SC 1995).

Where the power over a particular subject matter has been delegated to local government by the General Assembly without any express limitations, the extent to which that power shall be exercised rests in the discretion of the local authorities and, as long as it is exercised in good faith and for an appropriate purpose, the Courts have no grounds upon which to interfere. Lomax v. City of Greenville, 225 S.C. 289, 82 S.E.2d 191 (S.C. 1954).

The Court's review of the statute creating Jasper County Council, 1968 Acts and Joint Resolutions No. 988, p. 2370, in conjunction with the rules of statutory construction set forth herein, leads to the conclusion that the Jasper County Council was given the

power to approve the operating budget revenue of the school district and to levy the taxes therefore. This conclusion is consistent with other provisions of the statute including Section Eight, which appears to require the School District to forward its budget and recommendations for the next ensuing year to the County Council. As previously noted, in Wright v. Colleton County School District, supra., the Court need not go beyond the words of the statute to ascertain the intent of the legislature when it appears on the face of the statute. The power to set the school operating budget millage was clearly given to County Council in 1968.

On the other hand, 1971 Acts and Resolutions No. 601, p. 1114 (S.C.) does not delegate any taxing power to the Jasper County School Board for operating revenue. A tax statute may not be extended beyond its clear import, and any substantial doubt as to its meaning must be resolved against the School Board and in favor of taxpayers. Beard v. South Carolina Tax Commission, 230 S.C. 357, 95 S.E.2d 628 (S.C. 1950); Alltell Communications, Inc. v. South Carolina Tax Commission, 399, S.C. 313, 731 S.E.2d. 869 (S.C. 2012); Clark v. South Carolina Tax Commission, 259 S.C. 161, 191 S.E.2d. 23 (S.C. 1972). Nowhere in Act No. 601 of 1971 or Act No. 288 of 1989 is there any mention of the power to "tax" or to "set millage". That power cannot be inferred or implied, but must be clearly delegated. Adams v. Burts, supra. A fair reading of the cited statutes leads to the conclusion that there has been no delegation of taxing authority for operating revenue to the Board.

In 1975, the General Assembly adopted Code of Laws of South Carolina § 4-9-70. This statute clarified that county councils would not be charged with responsibility for public school education. However, that Section contained a number of provisos, the first of which states, "that except as otherwise provided for in this section the county council shall determine by ordinance the method of establishing the school tax millage except in those cases where boards of trustees of the districts or county board of education establish such millage at the time one of the alternate forms of government provided for in this chapter becomes effective." The Court has found that the Jasper County Board of Education was not setting its own millage at the time that Jasper County adopted the Council – Administrator form of government. In addition, no evidence has been put before the Court that any of the other exceptions contained in other provisos of

Code of Laws of South Carolina § 4-9-70, are applicable to the Jasper County School District.

The Supreme Court has recognized the wide discretion of the Legislature in determining how to go about accomplishing its constitutional duty of providing for the maintenance and support of a system of free public schools. Burris v. Anderson County Board of Education, 369 S.C. 443, 633 S.E.2d 482, (S.C. 2006). In Stone v. Traynham, 278 S.C. 407, 297 S.E.2d 420 (S.C. 1982), the Supreme Court had before it a case which called for an interpretation of the several provisos included in Code of Laws of South Carolina § 4-9-70, but, most particularly, the first proviso which the one in issue here. The Supreme Court stated as follows:

By enacting § 4-9-70, the General Assembly attempted to ensure that the taxing power for all school districts would be properly vested in some authority. *The clear intent is to vest the power to determine the school tax levy in county council in all cases where it is not vested elsewhere.*

278 S.C. at 410, 297 S.E.2d at 422 (*emphasis added*).

The Court finds and concludes that Code of Laws of South Carolina § 4-9-70 vests in the Jasper County Council the power to determine the school tax levy, and to determine by ordinance the method of establishing the school tax millage.

As an alternative theory of relief, the Plaintiff asserts in it's Complaint that "[t]o the extent that the Council has any power concerning the *ad valorem* property tax levy for the budget adopted by the Board, the power is limited to appropriating the property tax revenue and establishing the *ad valorem* property tax millage rate previously adopted by the Board. . . ." Of necessity, the Plaintiffs' claim is directed at the authority extended to the County Council in Act No. 982 of 1968 "to make appropriations and to levy taxes . . . for educational purposes . . .", or to language of the first proviso of Code of Laws of South Carolina § 4-9-70 which states, "the county council shall determine by ordinance the method of establishing school tax millage . . ." or both. In neither case does the delegation require Jasper County Council to adopt an appropriation or set millage previously adopted in a resolution of the Jasper County School Board. A review of Act No. 982 of 1968, Act No. 601 of 1971, and of the Code of Laws of South Carolina § 4-9-70, reveals no express limitations on the discretion of the Jasper County

Council's authority to make appropriations and to levy taxes or to establish a method of school tax millage. Additionally, nowhere among the constitutional provisions or other statutes cited by the Plaintiff does the Court find any such express limitation. In this case the Complaint does not allege that the Jasper County Council acted in bad faith or for an inappropriate purpose and there has not been offered any evidence on this issue. The Court finds that determination of the amount of the appropriation to the School District operating budget and determination of the millage to fund the school district's operating budget is within the discretion of Jasper County Council subject to the exercise of good faith and for an appropriate purpose.

Based upon the Findings of Fact and Conclusions of Law, the motion of the Plaintiff for judgment on the pleadings is DENIED.

Further, based upon the Findings of Fact and Conclusions of Law, the Defendant – Counterclaimant's motion for summary judgment is GRANTED and it is the judgment of the Court that Jasper County Council has been delegated the power to make appropriations and to levy taxes for the Jasper County School District annual operating budget and to determine by ordinance the method of establishing school tax millage. This delegation of power includes the right of Jasper County Council to exercise their discretion subject to the limitations of good faith and acting for an appropriate purpose.

AND IT IS SO ORDERED.



Carmen T. Mullen
Judge, Fourteenth Judicial Circuit

25 September, 2013

Beaufort, South Carolina



FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-27-00362

JASPER COUNTY BOARD OF EDUCATION

JASPER COUNTY COUNCIL AND

PLAINTIFF(S)

JASPER COUNTY AUDITOR

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ 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 (formal order to follow) ☒ Statement of Judgment by the Court; The Court hereby respectfully denies Plaintiff's Motion to Alter or Amend Judgment Pursuant to SCRPC 52(b) and 59(e) without a hearing.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2142
Judge Code9-27-13
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Mark Bosher
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Jasper County Board of Education

Plaintiff(s)

vs.

Jasper County Council and Jasper County Auditor

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013 CP 27-362

(Please Print)

Submitted By: William F. Halligan
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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 Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (399) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcripts of Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex /Other | | | |
| ☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☒ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

William F. Halligan

Date: July 15, 2013

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

STATE OF SOUTH CAROLINA,

COUNTY OF JASPER

Jasper County Board of Education

Plaintiff,

vs.

Jasper County Council and Jasper County
Auditor

Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Columbia, South Carolina

Dated: July 15, 2013

William F. Halligan

Plaintiff/Attorney for Plaintiff

Address: Childs & Halligan, P.A.
P.O. Box 11367
Columbia, SC 29211-1367
(803) 254-4035

SCCA 401 (5/02)

000013

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS

Jasper County Board of Education,)

Plaintiff,)

vs.)

Jasper County Council and Jasper County Auditor,)

Defendants.)

C.A. No. _____

**COMPLAINT
for Declaratory Judgment, Permanent
Injunction, and Writ of Mandamus**

The Jasper County Board of Education, by and through its undersigned attorneys, files this civil action complaint for relief against Defendants Jasper County Council and the Jasper County Auditor, and would respectfully show unto the Court as follows:

PARTIES

1. Plaintiff Jasper County Board of Education ("Board") manages and controls the Jasper County School District ("School District"), with all powers and functions vested in school trustees by general or special enactment, and exists pursuant to Article XI of the State Constitution.

2. Defendant Jasper County Council ("Council") is the governing body of the County of Jasper, which exists pursuant to Article VIII of the State Constitution.

3. Defendant Jasper County Auditor ("Auditor") is the county auditor of the County of Jasper, with the powers and duties provided by S.C. Code Ann. §12-39-10, *et seq.*

JURISDICTION AND VENUE

4. The jurisdiction of this Court is founded on Article V, § 11 of the Constitution of the State of South Carolina, which grants the Circuit Courts general jurisdiction over civil

actions. Venue is proper pursuant to the South Carolina Code of Laws and the South Carolina Rules of Civil Procedure.

5. The Declaratory Judgment Act provides, in part, as follows:
 - a. "Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. §15-53-20.
 - b. An interested party whose, "... rights, status or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute, ... and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. §15-53-30.
 - c. "Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper." S.C. Code Ann. § 15-53-120.
 - d. "When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration" S.C. Code Ann. § 15-53-80.

6. A genuine, justiciable controversy exists between the Board and the Council regarding their "rights, status and other legal relations" with regard to the authority to determine annual local revenue budget and *ad valorem* tax rate of the School District.

7. The "rights, status and other legal relations" of the Board and the Council with regard to the School District's annual local revenue budget and *ad valorem* tax rate directly affect the responsibilities and official activities of the Auditor, who is therefore a proper party pursuant to S.C. Code Ann. § 15-53-80.

8. A prompt judicial resolution of the controversy is necessary and proper because the Board must now operate under a fiscal year 2013-2014 budget that is infused with uncertainty on account of this controversy.

FOR A FIRST CAUSE OF ACTION

9. The Board realleges the foregoing allegations.
10. Public education is a function and responsibility of the State of South Carolina.
11. Consistently with the South Carolina School Code, Title 59 of the Code of Laws of South Carolina, Act No. 288 of 1989 establishes the Board's powers and duties relative to the public schools of the School District, which include the following:
 - a. The Board is empowered and required to "determine and evaluate the educational program in the schools and provide a systematic program of curriculum development and revision designed to provide maximum educational opportunities for each child in the county."
 - b. The Board is empowered and required to "adopt a system of budgetary controls and annually adopt a budget, with power to revise when necessary, sufficient to meet the educational needs of the county."
 - c. The Board is empowered and required to "provide for the disbursement of all county, state, and federal educational funds received by the school district."
 - d. The Board is empowered and required to "perform any other duties and responsibilities not inconsistent with local and state laws which may be necessary to meet the educational needs of the county."
12. The Council's powers and duties are both established and limited as follows:
 - a. A local law, Act No. 982 of 1968, provided for a County Council form of government in Jasper County and established the "powers and the duties" of the Council, including in Section 6, subparagraph 5, "to make appropriations and to levy taxes therefor for corporate purposes and for educational purposes...."

- b. Article VIII, § 7 of the Constitution of the State of South Carolina, as amended in 1975, establishes that the powers, duties, functions and responsibilities of counties are established by general law and not by local laws.
- c. A general law, adopted in 1975, S.C. Code Ann. § 4-9-30, provides as follows:

"each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof: ... (5) to assess property and levy *ad valorem* property taxes ... and make appropriations for functions and operations of the county...."
- d. Public education is not listed as a "function and operation" of a county in S.C. Code Ann. § 4-9-30(5), and is excluded as a function of a county because it is a function of the state government pursuant to Article XI of the State Constitution.
- e. Pursuant to S.C. Code Ann. § 4-9-70, Chapter 9 of Title 4, including S.C. Code Ann. § 4-9-30(5), "shall not be construed to devolve any additional powers upon county councils with regard to public school education," so that the Council has no power to determine the budget "sufficient to meet the educational needs of the County," which is solely within the power and duty of the Board under Act No. 288 of 1989.
- f. Act No. 982 of 1968 is unconstitutional special legislation, pursuant to Article VIII, § 7 and Article III, § 34 of the State Constitution.
- g. Council's purported power and duty under Act No. 982 of 1968 as to the Board and School District is not valid, and Council has no legal authority to either make appropriations or levy taxes for educational purposes.

- h. To the extent that the Council has any power concerning the *ad valorem* property tax levy for the budget adopted by the Board, the power is limited to appropriating the property tax revenue and establishing the *ad valorem* property tax millage rate previously adopted by the Board, within the limits on tax rates provided in the general law of S.C. Code Ann. § 6-1-320.
- 13. The Auditor has the following relevant power and duties:
 - a. The Auditor, "after receiving statements of the rates and sums to be levied for the current year from the department and from other officers and authorities legally empowered to determine the rate or amount of taxes to be levied for the various purposes authorized by law, shall immediately proceed to determine the sums to be levied upon each tract and lot of real property and upon the amount of personal property, monies, and credits listed in his county in the name of each person." S.C. Code Ann. §12-39-180.
 - b. The Auditor has the power and duty before each September 30 to "make up and complete the tax books of the county" (§12-39-140) and to prepare and deliver to the County Treasurer the county tax duplicate imposing *ad valorem* taxes (S.C. Code Ann. §§ 12-39-150, -180, -190).
- 14. For fiscal year 2013-2014 (tax year 2013) the Board adopted a budget and millage rate of 172 mills for school operating purposes for the School District, which is the same millage rate as levied in tax year 2012.
- 15. Subsequent to the Board's adoption of the budget and rate for school operations, the Council adopted an ordinance which purports to include the School District's school operating millage rate for fiscal year 2013-2014 (tax year 2013).
- 16. The school operating millage rate purportedly adopted by the Council of 166 mills is lower than the school operating millage rate adopted by the Board.

17. Consequently, the school operating *ad valorem* revenue to the School District of Jasper County for fiscal year 2014 (tax year 2013) is estimated to be \$444,000 less under the Council's ordinance than under the budget and rate adopted by the Board.

18. If the Auditor applies the Council's adopted school operating rate instead of the Board's adopted school operating property for property tax rate, the reduction in *ad valorem* revenue will impede the Board in the performance of its statutory duties and "not meet the educational needs of the county."

19. The Board contends that, under the governing law, the Board, and not the Council, has the authority to determine the budget and *ad valorem* millage rate for school operations for the School District.

20. The Board contends that only the Board's adopted budget and rate for *ad valorem* school operating taxes constitute the "statements of the rates and sums to be levied for" school operating purposes of the School District for tax year 2013 (fiscal year 2013-2014) pursuant to S.C. Code Ann. § 12-39-180.

21. The Board is entitled to a permanent injunction prohibiting the Auditor and the Council from imposing and levying the property tax millage rate for the School District on the basis of an ordinance of the Council.

22. The Board is entitled to a writ of mandamus to the Auditor, because the Auditor has a duty to impose and levy the *ad valorem* property tax millage rate adopted by the Board, which is a ministerial act by the Auditor, the Board has the specific legal right for which discharge of the Auditor's duty is necessary, and the Board has no other legal remedy.

PRAYER FOR RELIEF

Wherefore the Jasper County Board of Education demands that:

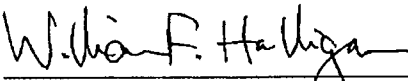
- a. The Court declare that only the Jasper County Board of Education's adopted budget and rate for *ad valorem* school operating taxes constitute the

"statements of the rates and sums to be levied for" school operating purposes of the Jasper County School District for tax year 2013 (fiscal year 2013-2014) pursuant to S.C. Code Ann. §12-39-180; and

- b. The Court enjoin the Jasper County Auditor and Council from entering taxes for the school operating purposes of the Jasper County School District on the basis of the ordinance of the Jasper County Council;
- c. The Court issue a mandatory injunction and/or a writ of mandamus to the Jasper County Auditor to impose and levy the ad valorem property tax millage rate determined by the Jasper County Board of Education; and
- d. The Court grant such other and further relief, including preliminary relief, as the Court deems necessary and proper, awarded in a prompt manner consistent with the declarations and the time constraints of this matter.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 
Kenneth L. Childs, S.C. Bar No. 1217
kchilds@childs-halligan.net

William F. Halligan, S.C. Bar No. 2607
bhalligan@childs-halligan.net

Keith R. Powell, S.C. Bar No. 69292
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P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Plaintiff

July 15, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

JASPER COUNTY BOARD
OF EDUCATION,)

Plaintiff,)

vs.)

JASPER COUNTY COUNCIL)
and)
JASPER COUNTY AUDITOR)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE No.: 2013-CP-27-362

ANSWER AND COUNTERCLAIM

2013 AUG 30 AM 9:42
JASPER COUNTY
CLERK OF COURT
JASPER COUNTY, SC

1.  NOW COMES Jasper County Council and the Jasper County Auditor, Defendants and Counterclaimants, by and through their undersigned Attorney answering the Complaint of the Plaintiff, Jasper County Board of Education and setting forth their Counterclaim against the Jasper County Board of Education, as follows:

1. The Defendants deny each and every allegation of the Complaint not specifically admitted or qualified.
2. As to the allegations of Paragraph one of the Complaint, the Defendants would admit that the Jasper County Board of Education is an organization created by the General Assembly of South Carolina with such powers and functions as may be delegated by law; the Defendants deny each and every allegation contained in Paragraph one.

3. The Defendants admit the allegations of Paragraphs two and three of the Complaint.
4. As to the allegations of Paragraph four of the Complaint, this is a jurisdictional allegation not requiring a response.
5. As to the allegations of Paragraph five of the Complaint, which quotes from the South Carolina Declaratory Judgment's Act, Code of Laws of South Carolina § 15-53-10, et seq., (1976 as amended), these Defendants admit the accuracy of the quoted excerpts, but would crave the Courts reference to the Statute in it's entirety and it's full context, and in that regard the Defendants do not admit that the Plaintiff is entitled to a declaratory judgment as the pleadings are currently framed.
6. As to the allegations of Paragraphs six and seven of the Complaint, these are jurisdictional allegations not requiring a response.
7. The allegations of Paragraph eight of the Complaint are denied.

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AS TO THE FIRST CAUSE OF ACTION

8. As to the allegations of Paragraph nine of the Complaint, the Defendants reallege their answers to Paragraphs one through eight thereof as fully as if set out herein verbatim.
9. The allegations of Paragraph ten of the Complaint are admitted.
10. As to the allegations of Paragraph eleven, quoting from Act Number 288 of 1989, these Defendants admit the accuracy of the quoted excerpts, but would crave the Courts reference to the Statute in it's entirety and it's full context.

11. As to the allegations of Paragraph twelve:

a. These Defendants admit that sub-paragraphs a, b and c quote and paraphrase from various provisions of the Statutes and Constitution of South Carolina, but would crave the Court's reference to these provisions in their entirety and full context;

b. These Defendants would deny the allegations of sub-paragraph d and would affirmatively allege that the reason public education is not addressed in Code of Laws of South Carolina § 4-9-30 (1976 as amended) is because it is specifically addressed in Code of Laws of South Carolina § 4-9-70 (1976 as amended);

c. As to the allegations of sub-paragraph e, quoting Code of Laws of South Carolina § 4-9-70 "shall not be construed to devolve any additional powers upon county councils with regard to public school education," Defendants admit that this is an accurate excerpt from that Code Section; however, these Defendants pray that this Court review that Section in its entirety and most particularly the provision which states "*provided, however, that except as otherwise provided for in this section the county council shall determine by ordinance the method of establishing the school tax millage except in those cases where boards of trustees of the districts or the county board of education established such millage at the time one of the alternate forms of government provided for in this chapter becomes effective*"; and would further allege that Jasper County chose the Council - Administrator form of government on June 25, 1976, and during that time, County Council determined the school tax millage.

d. These Defendants deny the allegations of sub-paragraphs f, g and h.

12. As to the allegations of Paragraph thirteen of the Complaint, quoting from various South Carolina Code provisions, the Defendants admit the accuracy of the quoted excerpts, but would crave the Court's reference to the Statutes in their entirety and full context.

13. These Defendants have no knowledge of the allegations of Paragraph fourteen of the Complaint and demand strict proof thereof.

14. As to the allegations of Paragraph fifteen of the Complaint, these Defendants admit that Jasper County Council did adopt an Ordinance which included the School District's school operating revenue and millage rate for Fiscal Year 2013 – 2014, as the Council has previously done for many years.

15. As to the allegations of Paragraph sixteen of the Complaint, these Defendants admit that Jasper County Council adopted an operating revenue and millage rate of 166 mills for the Jasper County School District for Fiscal Year 2013 – 2014, but would affirmatively allege that the millage rate would generate increased funds for the School District over their Fiscal Year 2012 – 2013 revenue budget.

16. These Defendants deny the allegations of Paragraphs seventeen, eighteen, nineteen, twenty, twenty-one and twenty-two of the Complaint.

FOR A SECOND DEFENSE

17. The allegations of the Complaint fail to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE

18. On information and belief the Plaintiff has failed to comply with the requirements of Code of Laws of South Carolina § 15-53-80 in that the Attorney General of South Carolina has

not been made a party of this litigation, served with the proceedings or given the opportunity to be heard and therefore the Plaintiff is not entitled to the declaratory relief sought by the Complaint.

FOR A FOURTH DEFENSE

19. The Jasper County School District has failed to exhaust its available statutory remedies in that it has failed to submit to the Jasper County Auditor a statement of the rates and sums to be levied for school purposes for Fiscal Year 2013 – 2014 budget year.

FOR A FIFTH DEFENSE

20. Plaintiffs' claims against Jasper County Council are barred by legislative immunity in that the actions of County Council about which Plaintiff complains are discretionary, legislative acts.

11/10/5

FOR A SIXTH DEFENSE AND BY WAY OF
COUNTERCLAIM AGAINST THE PLAINTIFF

21. For purposes of this Counterclaim, the Defendant – Counterclaimants reallege all of their admissions, qualifications and allegations of fact contained in Paragraphs 1 – 20 of this Answer and Counterclaim as if stated herein verbatim.

22. This Counterclaim is brought pursuant to the South Carolina Declaratory Judgments Act, Code of Laws of South Carolina § 15-53-10, et seq., (1976 as amended) for declaration of the relative rights, status or other legal relations among the parties.

23. Act Number 288 of 1989 establishes the powers and duties of the Jasper County Board of Education. Neither in that statute nor in any other statute has the Jasper County Board of Education been given the power to impose annual tax millage for school purposes.

24. On May 29th, 2012, there was introduced in the South Carolina General Assembly Bill S. 1556, which would have given the Jasper County Board of Education power to impose annual tax millage for school purposes. That Bill did not pass the General Assembly and therefore was not adopted as law.

25. On February 7th, 2013, there was introduced in the South Carolina General Assembly Bill S. 358, which would have given the Jasper County Board of Education power to impose annual tax millage for school purposes. That Bill did not pass the General Assembly and therefore was not adopted as law.

26. The Jasper County Board of Education is not legally empowered to determine the rate or amount of taxes to be levied for school purposes.

27. There is a controversy of justiciable nature among the parties; the Defendant – Counterclaimants are informed and believe that they are entitled to have this Honorable Court inquire into these matters and to issue a declaratory judgment determining the rights of the Plaintiff and ordering that the Plaintiff does not have the power to impose annual tax millage for school purposes for the Jasper County School District.

WHEREFORE, THE DEFENDANTS, JASPER COUNTY COUNCIL AND JASPER COUNTY AUDITOR, having answered the Complaint herein, pray that the Court dismiss the cause of action of the Plaintiff with costs and disbursements of this action.

AND WHEREFORE, having set forth its Counterclaim, Defendant – Counterclaimants pray that this Court issue its Declaratory Judgment declaring that the Jasper County Board of

Education does not have the power to impose annual tax millage for the Jasper County School District and for such other and further relief as this Court may deem just and proper.



MARVIN C. JONES
Jasper County Attorney

South Carolina Bar No.3201
Post Office Box 420
262 Third Avenue
Ridgeland, SC 29936
Telephone No. 843-726-5403
Facsimile No. 843-726-3240

Attorney for the Defendants
Jasper County Council and
Jasper County Auditor

30 August, 2013

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS

Jasper County Board of Education,
Plaintiff,

C.A. No. 2013-CP-27-00362

vs.

REPLY TO COUNTERCLAIM

Jasper County Council and Jasper County
Auditor,
Defendants.

Plaintiff, Jasper County Board of Education, replying to the Counterclaim asserted in Defendants' Counterclaim (*see* Answer Paragraph 21, *et seq.*) filed August 30, 2013, states as follows:

1. As to Answer Paragraph 21, Plaintiff reasserts the allegations of its Complaint by way of response to Defendants' incorporation of Answer ¶¶ 1-16.

2. As to Answer ¶ 21, incorporated Answer ¶¶ 17-20 are denied.

3. Answer ¶ 22 is a legal and jurisdictional statement to which no reply is required.

4. The first sentence of Answer ¶ 23 is admitted to the extent Act No. 288 of 1989 does state some powers and duties of the Plaintiff; it is denied that Act No. 288 of 1989 is the sole or an exhaustive source of Plaintiff's legal status and relations as to the Defendants.

5. The second sentence of Answer ¶ 23, consisting solely of Defendants' legal interpretations of Act 288 of 1989 and "any other statute," is denied.

6. Any legal conclusion in Answer ¶ 24 is denied. Plaintiff admits that a bill entitled H.1156 and referencing the Jasper County School District passed the Senate and received one reading in the House prior to the expiration of the 119th General Assembly.

7. Any legal conclusion in Answer ¶ 25 is denied. Plaintiff admits that a bill entitled S.358 and referencing the Jasper County School District received two readings by, and presently resides in, the Senate during the current session of the South Carolina General Assembly.

8. Answer ¶ 26 is denied.

9. Plaintiffs concur that a justiciable controversy exists concerning the parties and the common subject matter referenced in both the Complaint and the Counterclaim, and that the Court may resolve the controversy pursuant to the Declaratory Judgments Act; all other legal conclusions of Answer ¶ 27 are denied.

10. Any allegation of the Counterclaim requiring a specific reply and not specifically admitted in the foregoing responses is denied.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 

Kenneth L. Childs, S.C. Bar No. 1217
kchilds@childs-halligan.net

William F. Halligan, S.C. Bar No. 2607
bhalligan@childs-halligan.net

Keith R. Powell, S.C. Bar No. 69292
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P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Plaintiff

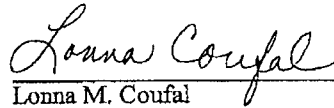
September 4, 2013

Columbia, South Carolina

CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing **REPLY TO COUNTERCLAIM** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 4th day of September, 2013:

Marvin C. Jones, Esq.
Jasper County Attorney
P.O. Box 420
Ridgeland, SC 29936



Lonna M. Coufal

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Jasper County Board of Education

☐ Plaintiff

v.

Jasper County Council And Jasper County Auditor

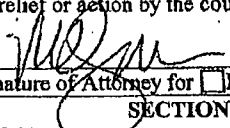
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2013-CP-27-362

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: William F. Halligan, Bar No. Address: PO Box 11367, Columbia, SC 29211 phone: 803-254-4035 fax: e-mail: kchilds@childs-halligan.net other:		Defendant's Attorney: Marvin C. Jones, Bar No. 3201 Address: PO Box 420, Ridgeland, SC 29936 phone: 843-726-5403 fax: 843-726-3240 e-mail: mjones@jaspercountysc.gov other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Defendant's Motion for Judgment on the Pleadings or in the Alternative for Summary Judgment Estimated Time Needed: 30 Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant August 30, 2013 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

000031

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

Jasper County Board of Education)

Plaintiff,)

vs.)

Jasper County Council and
Jasper County Auditor)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE No.: 2013-CP-27-362

MOTION FOR
JUDGMENT ON THE
PLEADINGS OR IN THE
ALTERNATIVE FOR
SUMMARY JUDGMENT

2013 AUG 30 9
CLERK OF COURT
JASPER COUNTY

TO: William F. Halligan, of Childs & Halligan, P.A., Attorneys for the above named Plaintiff.

PLEASE TAKE NOTICE that ten (10) days hence or as soon thereafter as counsel can be heard, but in no event later than immediately before the call of this case for trial, the undersigned counsel for the Defendants herein will move and does move before the presiding Judge of the Court of Common Pleas for the Fourteenth Judicial Circuit for judgment on the pleadings in this action pursuant to South Carolina Rules of Civil Procedure Rule 12(c) and for Summary Judgment pursuant to South Carolina Rules of Civil Procedure Rule 56 on the grounds that the Complaint fails to state facts sufficient to constitute a cause of action against these Defendants and, in the alternative that when the facts of the case are viewed in the light most favorable to the Plaintiffs, the Defendants are still entitled to judgment on the Complaint and the Counterclaim as a matter of law.

This motion is made and based upon the pleadings in this action, the discovery responses of the Plaintiff, to be filed, and the affidavits filed herewith and to be filed.

Respectfully submitted,


MARVIN C. JONES
Jasper County Attorney

South Carolina Bar No.3201
Post Office Box 420
262 Third Avenue
Ridgeland, SC 29936
Telephone No. 843-726-5403
Facsimile No. 843-726-3240
Attorney for the Defendants
Jasper County Council and
Jasper County Auditor

30 August, 2013

000032

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS

Jasper County Board of Education,)

☒ Plaintiff)

C.A. No. 2013-CP-27-00362

v.)

**MOTION INFORMATION FORM
AND COVER SHEET**

Jasper County Council and Jasper County)

Auditor,)

☐ Defendant)

check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney

Keith R. Powell

S.C. Bar No. 69292

Childs & Halligan, P.A.

PO Box 11367, Columbia, SC 29211

telephone: (803) 254-4035 fax: (803) 771-4422

e-mail: kpowell@childs-halligan.net

name, S.C. Bar no. and address of defendant's attorney

Marvin C. Jones

S.C. Bar No. 3201

Jasper County Attorney

PO Box 420, Ridgeland, SC 29936

telephone: (843) 726-5403 fax: (843) 726-3240

e-mail: mjones@jaspercountysc.gov

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: **MOTION FOR JUDGMENT ON THE PLEADINGS**

Estimated Time Needed: **60 MINUTES**

Court Reporter Needed: **YES**

SECTION II: Motion Type

☒ Written motion attached

☐ Form Motion --

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff

9/4/13
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☒ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____

(print name)

☐ MOTION FEE COLLECTED:

☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (1/2003) (c&h)

000033

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

)
)
) IN THE COURT OF COMMON PLEAS

Jasper County Board of Education,

Plaintiff,

vs.

Jasper County Council and Jasper County
Auditor,

Defendants.

)
)
) C.A. No. 2013-CP-27-00362

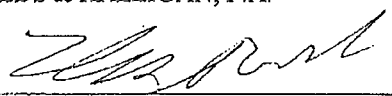
)
) **PLAINTIFF'S MOTION FOR JUDGMENT**
) **ON THE PLEADINGS**
)

TO: MARVIN C. JONES, ESQ., ATTORNEY FOR THE DEFENDANTS

PLEASE TAKE NOTICE that the above-named Plaintiff will move, and does hereby move, ten (10) days after service hereof, or at such other time as the Court may direct, pursuant to S.C. R. Civ. P. 12(c) for judgment on the pleadings in its favor on all issues before the Court under the pleadings. Plaintiff will rely on the pleadings and a memorandum of law to be filed herewith, as well as any other evidence as may properly come before the Court upon the hearing of the motion.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 

Kenneth L. Childs, S.C. Bar No. 1217
William F. Halligan, S.C. Bar No. 2607
Keith R. Powell, S.C. Bar No. 69292

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

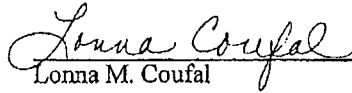
Attorneys for Plaintiff

September 4, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing **PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 14th day of September, 2013:

Marvin C. Jones, Esq.
Jasper County Attorney
P.O. Box 420
Ridgeland, SC 29936



Lonna M. Coufal

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

Jasper County Board of Education,
☒ Plaintiff)

v.)

Jasper County Council and Jasper County
Auditor,)

☐ Defendant)

check box above indicating submitting party)

IN THE COURT OF COMMON PLEAS

C.A. No. 2013-CP-27-00362

**MOTION INFORMATION FORM
AND COVER SHEET**

name, S.C. Bar no. and address of plaintiff's attorney William F. Halligan, Esq. S.C. Bar No. 2607		name, S.C. Bar no. and address of defendant's attorney Marvin C. Jones, Esq. S.C. Bar No. 3201	
Childs & Halligan, P.A. PO Box 11367, Columbia, SC 29211 telephone: (803) 254-4035 fax: (803) 771-4422 e-mail: bhalligan@childs-halligan.net		Jasper County Attorney PO Box 420, Ridgeland, SC 29936 telephone: (843) 726-5403 fax: (843) 726-3240 e-mail: mjones@jaspercountysc.gov	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: "Click_Nature"		Court Reporter Needed: YES / NO	
Estimated Time Needed: "Click_Time"			
SECTION II: Motion Type			
☒ Written motion attached: Plaintiff's Notice of Motion and Motion to Alter or Amend Judgment Pursuant to S.C. R. Civ. P. 52(b) and 59(c)			
☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for Plaintiff / Defendant <i>William F. Halligan</i>		Date submitted <i>Sept 26, 2013</i>	
SECTION III: Motion Fee			
☒ PAID -- AMOUNT: \$25.00			
☐ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support			
☐ Domestic Abuse or Abuse and Neglect			
☐ Indigent Status ☐ State Agency v. Indigent Party			
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief			
☐ Motion for Stay in Bankruptcy			
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)			
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions			
Name of Court Reporter: _____			
☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order.		JUDGE	
☐ Other:		CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ (print name)		DATE FILED	
☐ MOTION FEE COLLECTED:			
☐ CONTESTED -- AMOUNT DUE: _____			

SCCA/233 (1/2003) (c&h)

000036

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS

Jasper County Board of Education,
Plaintiff,

C.A. No. 2013-CP-27-00362

vs.

**Plaintiff's Notice of Motion and Motion to
Alter or Amend Judgment Pursuant to S.C.
R. Civ. P. 52(b) and 59(e)**

Jasper County Council and Jasper County
Auditor,
Defendants.

TO: MARVIN C. JONES, ESQ., ATTORNEY FOR THE DEFENDANTS

PLEASE TAKE NOTICE that Plaintiff Jasper County Board of Education, by and through its undersigned attorneys, hereby moves, pursuant to S.C. R. Civ. P. 52(b) and 59(e), to alter or amend the judgment entered pursuant to the Order filed September 26, 2013, of which Plaintiff received written notice on September 26, 2013, as follows:

1. The "Proposed Order" previously supplied to the court by the Plaintiff is incorporated herein by reference and attached to this motion, as the proper legal disposition and declaratory judgment of the issues before the Court in this action and accordingly the Plaintiff moves, pursuant to S.C. R. Civ. P. 52(b) and 59(e), to amend the Court's Order of September 26, 2013, by replacing the entirety of the Order with the language of the attached "Proposed Order" so as to rule in Plaintiff's favor on all issues raised therein and incorporated into this motion by reference.

2. Plaintiff further moves pursuant to S.C. R. Civ. P. 52(b) and 59(e) for a ruling by the Court in Plaintiff's favor on the issue raised in Plaintiff's Memorandum of Law in Support of Judgment on the Pleadings at pages 5-6, and 12-13:

"After the choice of the council-administrator form of county

government, 'the structure, powers, duties, functions and responsibilities of county government under the council-administrator form shall be as prescribed in Article 1 of this chapter.' S.C. Code Ann. § 6-9-670. (Emphasis added.) Thus, after July 1, 1976, the 'powers, duties, functions and responsibilities' of the Jasper County Council were 'prescribed' by the general, statewide law of §§ 4-9-10 through 190, and not special Act 982 of 1968. ... As a county government under the Home Rule, Council may "levy ad valorem property taxes ... and make appropriations for functions and operations of the county" S.C. Code § 4-9-30(5) (emphasis added). Education is not included in the § 4-9-30(5) list of county functions and operations, nor could it be. ... No Council power to levy school taxes survived the Home Rule Act, which was subsequent to the adoption of Section 1 of Article VIII of the South Carolina Constitution providing that: 'powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue *until changed* in a manner provided by law.' (Emphasis added.) This change to delimit County tax power to the realm of 'functions and operations of the county' wrought by the Home Rule Act in implementing the transition required by new Article VIII erased any preexisting County power to tax for school operations."

3. Plaintiff further moves pursuant to S.C. R. Civ. P. 52(b) and 59(e) for a ruling by the Court in Plaintiff's favor on the issue raised in Plaintiff's Memorandum of Law in Support of Judgment on the Pleadings at page 9:

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

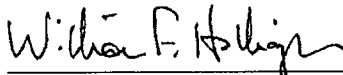
4. Plaintiff further moves pursuant to S.C. R. Civ. P. 52(b) and 59(e) for a ruling by the Court in Plaintiff's favor on the issue raised by Plaintiff's Memorandum of Law in Support of Judgment on the Pleadings at page 11:

"Section 4-9-30(5) and the constitutional separation of counties and school districts eliminates the authority of Council to establish 'the method' [under § 4-9-70] by arrogating to itself the authority to establish the school millage."

This motion is based on the pleadings, memoranda, and arguments previously submitted to the Court.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: 
Kenneth L. Childs, S.C. Bar No. 1217
William F. Halligan, S.C. Bar No. 2607
Keith R. Powell, S.C. Bar No. 69292

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Attorneys for Plaintiff Jasper County Board of Education

September 26, 2013

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Jasper County Board of Education,
Plaintiff,

vs.

Jasper County Council and Jasper County
Auditor,
Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2013-CP-27-00362

**ORDER GRANTING PLAINTIFF'S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

This declaratory judgment action was filed July 15, 2013, by the Jasper County Board of Education ("Board"). Defendants filed an Answer and Counterclaim on August 30, 2013. The Board contends that it has the legal authority to determine the *ad valorem* millage rate for school operations for the Jasper County School District, not the Jasper County Council ("Council"). Defendant Council contends the opposite—that Council has the substantive authority to determine the school operating millage, not the Board. The parties filed offsetting claims in the Complaint and a Counterclaim on the fundamental issue of the locus of this substantive authority under the relevant statutes, and also filed cross-motions for judgment on the pleadings.

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. S.C. R. Civ. P. 12. "A motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue." *Rosenthal v. Unarco Indus., Inc.*, 278 S.C. 420, 297 S.E.2d 638, 640 (1982).

A justiciable controversy exists between the Board and the Council regarding their "rights, status and other legal relations" with regard to the authority to determine the annual local revenue budget and *ad valorem* tax rate of the School District. S.C. Code Ann. § 15-53-20. The

Auditor was joined as a necessary party. S.C. Code Ann. § 5-53-80.¹ A hearing on the cross-motions for judgment on the pleadings was held before the undersigned on September 19, 2013.²

General Rules of Construction

The issue of interpretation of a statute is a question of law for the court. *Catawba Indian Tribe of S. Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). The key to statutory interpretation is to "ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The cardinal rule of statutory construction is that words used therein must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation. *Wright v. Colleton County*, 301 S.C. 282, 391 S.E.2d 564 (1990); *Burns v. State Farm Mut. Auto Ins. Co.*, 297 S.C. 520, 377 S.E.2d 569 (1989); *Bryant v. City of Charleston*, 295 S.C. 408, 368 S.E.2d 899 (1988). The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Multi-Cinema, Ltd. v. S.C. Tax Comm'n*, 292 S.C. 411, 357 S.E.2d 6 (1987); *Hitachi Data Sys. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

The primary concern in interpreting a statute is to ascertain and effectuate legislative intent. All rules of statutory construction are subservient to the rule that legislative intent must prevail if it can reasonably be discovered in the language used, and that language must be construed in light of the intended purpose of the statute. As in this case, where a statute is complete, plain, and unambiguous, legislative intent must be determined from the language of the statute itself.

Charleston Cnty. Parents for Pub. Sch., Inc. v. Moseley, 343 S.C. 509, 541 S.E.2d 533, 536 (2001). The Court should also seek to harmonize the constitutional provisions and general and

¹ Defendant's affirmative defense that there is no justiciable case with regard to the Auditor is therefore denied, as the Auditor is a statutory participant in *ad valorem* school operations taxation within S.C. Code Ann. §§ 15-53-20, -80. Moreover, the Auditor is a party asserting the Counterclaim.

² "The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar." S.C. R. Civ. P. 57. Time is of the essence because taxes for Tax Year 2013 need to be finalized promptly. See S.C. Code Ann. § 12-39-140, *et seq.*

special laws at issue. "Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and given effect, if it can be done by any reasonable construction." *Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken*, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003). "It is the duty of the court to harmonize statutory conflicts." *Neel v. Shealy*, 261 S.C. 266, 276, 199 S.E.2d 542, 547 (1973). "Moreover, if possible, we must construe a statute so that it is valid." *Bodman v. State*, 403 S.C. 60, 66, 742 S.E.2d 363, 365-66 (2013).

"It is presumed that the Legislature [is] familiar with prior legislation, and that if it intend[s] to repeal existing laws it would ... expressly [do] so; hence, if by any fair or liberal construction two acts may be made to harmonize, no [c]ourt is justified in deciding that the last repealed the first." *Justice v. Pantry*, 330 S.C. 37, 43-44, 496 S.E.2d 871, 874 (Ct. App. 1998) *aff'd as modified sub nom. Justice v. The Pantry*, 335 S.C. 572, 518 S.E.2d 40 (1999) (quoting *State v. Hood, et al.*, 181 S.C. 488, 491, 188 S.E. 134, 136 (1936)).

There is a presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects. *State v. McKnight*, 352 S.C. 635, 648, 576 S.E.2d 168, 175 (2003).

Conclusions of Law

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

On March 7, 1973, the "Home Rule Amendment" to the South Carolina Constitution was ratified. S.C. Act No. 63 of 1973 (Article VIII). Section 1 of Article VIII provides: "The powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law." The General

Assembly thereafter enacted the "Home Rule Act," Act No. 283 of 1975. In *Duncan v. York County*, 267 S.C. 327, 228, S.E.2d 92 (1976), the Court held that section 1 of Article VIII allowed the General Assembly to legislate to bring about an orderly transition to local home rule government, but that such authority was temporary and extended only so far as necessary to place Article VIII fully into operation. As of July 1, 1976, all county governments were transitioned to the new uniform "home rule" system. S.C. Code Ann. § 4-9-10. Jasper County elected and continues to use the council-administrator form as provided in S.C. Code Ann. § 4-9-610, *et seq.*³

After the choice of the Council-Administrator form of county government, "the structure, powers, duties, functions and responsibilities of county government under the Council-Administrator form shall be as *prescribed* in Article 1 of this chapter." S.C. Code Ann. 6-9-670 (*emphasis added*). Thus, after July 1, 1976, the "powers, duties, functions and responsibilities" of the Council were "prescribed" by the general, statewide law of S.C. Code Ann. §§ 4-9-10 through 190.

As a county government under Home Rule, Council may "levy ad valorem property taxes ... and make appropriations for functions and operations of the *county*" S.C. Code § 4-9-30(5) (*emphasis added*). Education is not included in the list of county functions and operations of S.C. Code Ann. § 4-9-30(5). School districts exist under Article X, § 3 of the South Carolina Constitution, not Article VIII. Article XI, § 3 provides that, "[t]he General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public institutions

³ This fact is taken from the concurrence of the Affidavit of Judith M. Frank ¶ 4, cited in support of Defendants' motion, with the Plaintiffs' citation to the same ordinance (Jasper County Code of Ordinances § 2-1) in its memorandum in support of its own motion. This is, at most, an "immaterial issue" of fact as it affects judgment on the pleadings in this case, *Rosenthal*, 297 S.E.2d 638, 640 (1982), and in light of the relevant local government provisions given the invalidation of Form 5 county government by the Supreme Court in *Duncan*, *supra*.

of learning as may be desirable." The separate nature of school districts and county governments was confirmed in clear language by the Supreme Court:

Creation of different provisions for school districts does not impinge upon the 'home rule' amendment because public education is not the duty of the counties, but of the General Assembly. The General Assembly has not been mandated by any constitutional amendment to enact legislation to confer upon the counties the power to control the public school system. To the contrary, the command of new Article XI, Section 3, is "The General Assembly shall provide for the maintenance and support of a system of free public schools."

The contrast between Article XI and Article VIII should be obvious. In Article XI the General Assembly is charged with the duty to provide for a system of public education, whereas, in Article VIII the General Assembly is required to confer powers upon the counties so that they may carry out local functions.

Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975).⁴

A school district is a body politic. S.C. Code Ann. § 59-17-10. A school district is an area encompassing a legal entity whose sole purpose is that of providing free school education and the area of which constitutes a complete tax unit. S.C. Code § 59-1-160. "School districts and their governing boards are generally considered political subdivisions of the State and hence may properly be vested with the State's taxing power." *Crow v. McAlpine*, 277 S.C. 240, 285 S.E.2d 355 (1981). The State Constitution requires that, "each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year." S.C. Const. art. X, § 7.

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

"Section 2. In addition to those powers and duties of the county board of trustees now devolved on the board and those already provided for by general and special legislation, *the board has the*

⁴ See also *Horry Cnty. Sch. Dist. v. Horry Cnty.*, 346 S.C. 621, 552 S.E.2d 737, 742 (2001) (public education is not the duty of the counties, but of the General Assembly) and *Charleston Cnty. Sch. Dist. v. Charleston Cnty.*, 297 S.C. 300, 376 S.E.2d 778, 780 (1989).

following powers and duties relative to the public schools of the district: ...

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

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

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

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

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

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

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

The provisions pertaining to the Board's budgetary powers remained the same in Act 288 of 1989 as they had been in Act 601 of 1971, and both are subsequent to Act 982 of 1968. The 1989 iteration of the Board's powers is, of course, *post* Home Rule.

Thus, the General Assembly has granted to the Board the explicit, statutory power to "determine and evaluate the educational program in the schools and provide a systematic program of curriculum development and revision designed to provide maximum educational opportunities for each child in the county; [to] adopt a system of budgetary controls and annually adopt a budget, with power to revise when necessary, sufficient to meet the educational needs of the county; [and to] perform any other duties and responsibilities not inconsistent with local and state laws which may be necessary to meet the educational needs of the county." The General

Assembly granted to the pre-Home Rule council the express power to "make appropriations and to levy taxes . . . for educational purposes" without any explicit authority to revise the Board's educational program or budget.

Local revenue budget and *ad valorem* tax are two sides of the same coin. *Lee Cnty. v. Stevens*, 277 S.C. 421, 289 S.E.2d 155 (1982)⁵ and the "power to approve the budget . . . carries with it the power to disapprove until the budget conforms to the legislative wish . . ." *Gould v. Barton*, 256 S.C. 175, 181 S.E.2d 662, 674 (1971). General law, independent of the Defendants,

limits increases in *ad valorem* tax rates for operations and, *ipso facto*, local revenue in the budget. S.C. Code Ann. §§ 6-1-300, -320.

The Court does not conclude that the grant of power to "make appropriations and . . . levy taxes . . . for educational purposes" in Act 982 of 1968 implies the authority to exercise discretion in determining the amount of the appropriation and the property tax millage rate, a position asserted by the Council citing *Richland Co. Sch. District 1 v. Richland Co. Council*, 310 S.C. 106, 425 S.E.2d 747 (1992) and *Lomax v. City of Greenville*, 225 S.C. 289, 82 S.E.2d 191 (1954).

In *Richland I*, the Supreme Court construed the special legislation applicable to the three school districts of Richland County, which provided as follows:

"[T]he school tax levy for Richland-Lexington School District 5 shall be determined by the board of trustees thereof, and the school tax levy for Richland County School Districts 1 and 2 shall be determined by the Richland County Council based on the requirements of the South Carolina Education Finance Act of 1977 and based on any other additional funding deemed necessary by the board or county council."

⁵ While tax policy is a legislative prerogative within constitutional bounds, the Court said in *Lee Cnty.* that, "[i]t is conducive to good government that the same legislative authority which spends money levy the tax to raise the money needed to carry out its own budget." 289 S.E.2d at 158.

425 S.E.2d at 748. The Court construed the term "board" to be the school board of Richland-Lexington School District 5 and the county council for Richland County School Districts 1 and 2 to be the authorities to determine the tax levy and "additional funding deemed necessary." Thus, the Court gave effect to the express language of the local legislation to determine the one entity for each district which had the explicit discretionary power to determine the tax levy and the "additional funding deemed necessary": the school board for one district and the county council for two districts. The Jasper County local legislation, on the other hand, divides the responsibility and powers: it expressly allocates to the Board, not the Council, the authority to determine the educational program "... to provide maximum educational opportunities," adopt and revise the budget "sufficient to meet the educational needs of the county," and perform other duties "necessary to meet the educational needs of the county"; it expressly allocates to the Council the power to levy property taxes for education without any reference to discretion or other authority.

The Council cites *Lomax* for general statements of law, as follows:

"It is well settled that municipal corporations have and can exercise only their inherent powers and such as have been conferred upon them by the legislature in express terms or by reasonable implication; and that, as a general rule, the grant of power will be strictly construed against the municipality. (citations omitted) Where power over a particular subject matter has been delegated to the municipal corporation by the legislature, without any express limitations, the extent to which that power shall be exercised rests in the discretion of municipal authorities, and as long as it is exercised in good faith and for a municipal purpose, the courts have no ground upon which to interfere." (citations omitted) 82 S.E.2d at 194.

Under the principles cited in *Lomax*, the power conferred in express terms to determine the educational program and sufficient budget is to the Board and not the Council. Furthermore, there is discretion when a power is delegated "without any express limitations." In the case at bar, express limitations of Council authority are contained in the Board's power under Act 288 of

1989, the limited grant of authority to make appropriations and levy taxes without any further power in Act 982 of 1968, and the limitations of the Home Rule Act.

In addition to the exclusion of education from the County's authority to make appropriations and levy property taxes in S.C. Code Ann. § 4-9-30(5), the Court must also consider the role of S.C. Code Ann. § 4-9-70. S.C. Code Ann. §§ 4-9-70 and 80 seem to be parallel provisions addressing the relationship of the country governments under Home Rule with school boards and special purpose districts, respectively. S.C. Code Ann. § 4-9-70 provides

in part as follows:

The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public school education, and all school districts, boards of trustees and county boards of education shall continue to perform their statutory functions in matters related thereto as prescribed in the general law of the State; provided, however, that except as otherwise provided for in this section *the county council shall determine by ordinance the method of establishing the school tax millage* except in those cases where boards of trustees of the districts or the county board of education established such millage at the time one of the alternate forms of government provided for in this chapter becomes effective. In counties containing more than one school district, where all such districts are located wholly within the boundaries of the county, council may by ordinance establish county-wide school tax millage....

The first phrase states that Chapter 9 of Title 4 does not create any additional authority of councils over school districts or boards, and reaffirms their functions "as prescribed in the general law of the State." This is followed by three qualifying "provided" clauses with sequential exceptions addressing the five methods of establishing school district millage rates: school district boards, county boards of education, county councils, legislative delegations, and electors directly by meeting or referendum. The first "provided" clause begins with "except as otherwise provided in this section (*i.e.*, § 4-9-70)," council "shall determine by ordinance the method of establishing school tax millage" followed by the "otherwise" exceptions within § 4-9-70 where the council's duty to establish a method does not seem to apply:

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

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

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

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

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

Stone v. Traynham, 278 S.C. 407, 297 S.E.2d 420 (1982) is the only Supreme Court case to have construed S.C. Code Ann. § 4-9-70. In Orangeburg County, the county board established millage rates for the several school districts in the county, but the county school board was appointed, and the district school boards were elected. The Supreme Court had previously ruled that an appointed school board could not be vested with any taxing power. *Crowe v. McAlpine*, 277 S.C. 240, 285 S.E.2d 355 (1981). In *Stone*, the Supreme Court upheld the county council ordinance under S.C. Code Ann. § 4-9-70 "to determine the method" by transferring the millage authority from the appointed county board to the elected school district boards. The Court said in *Stone* that:

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

Stone, 278 S.E.2d at 422. The language in *Stone* that the intent was to "vest the power to determine the school tax levy in county council in all cases where it is not vested elsewhere," is dicta because *Stone* construed S.C. Code Ann. § 4-9-70 and upheld the council's determination of "method" by transferring millage authority from an appointed to an elected school board. Thus, *Stone* conforms to the restriction of county authority under S.C. Code Ann. § 4-9-30(5) and the constitutional separation of the functions of counties and school districts.

Conclusion

Section 4-9-30(5) and the constitutional separation of counties and school districts eliminate the authority of Council to establish a "method" that merely arrogates unto itself the authority to establish the school millage. Thus, under S.C. Code § 4-9-70 and Act No. 288 of 1989 the Court concludes that the statutory construction that harmonizes all of these provisions is that the Council has a ministerial duty to provide the method for the budget, but the Board's budgeted *ad valorem* revenue and school operating rate must be included within the Council's own "statement of the rates and sums to be levied for the current year" each fiscal year when the Council transmits them to the County Auditor.

This construction harmonizes the Jasper County special legislation for the Board (Act 288 of 1989) and the pre-Home Rule county council (Act 982 of 1968) with the educational constitutional amendment (Article XI), the 1973 Home Rule constitutional amendment (Article VIII), and the 1975 implementing general law, especially S.C. Code §§ 4-9-30(5), 70, and 670, concerning the post-Home Rule Council. Under the Jasper County special legislation, the Board has clear, broad, and exclusive budgetary and fiscal powers, as well as educational responsibility, while the Council had the narrow, non-discretionary role of making appropriations and levying a property tax for educational purposes. Constitution Articles VIII and XI separate the functions and operation of counties from the state responsibility for education. Sections 4-9-670 and 4-9-30(5) restrict the Council's authority to make appropriations and levy property taxes to "functions

and operations of the county," not education because it is not a function of the county. S.C. Code Ann. § 4-9-70 preserves a role for Council in educational matters, but only to the extent of determining "the method of establishing school tax millage." The constitutional separation of counties and school districts, the limitation of S.C. Code Ann. § 4-9-30(5), and the explicit terms of Acts 601 of 1971 and 982 of 1989 exclusively empowering the Board, prevent the Council from using its power to "determine the method" to claim for itself the discretion to reduce the revenue or tax rate determined by the Board to be necessary to fulfill its responsibilities to the students of Jasper County. This construction:

- (1) gives effect to the Board's exclusive powers and duties under Act 288 of 1989, subject to the general laws limiting tax rate increases, §§ 6-1-300, 320;
- (2) recognizes the Council's authority to make appropriations and levy taxes for education under Act 982 of 1968, without giving Council by implication discretionary authority it does not have by express language;
- (3) respects the constitutional division of governmental functions in Articles XI and VIII;
- (4) respects the exclusion of county authority over education under Section 4-9-30(5); and
- (5) gives effect to the Council's authority under Section 4-9-70 to establish a method of establishing school tax millage, consistent with all of the foregoing laws.

No law is repealed, suspended, or given a strained interpretation, and neither the Board nor the Council is given powers by implication that are not stated by express language. This construction of all the statutes does not find a statute, ordinance or franchise to be unconstitutional, and such issues are not decided by courts unless required to dispose of the case. *Riverwoods, LLC v. Cnty. of Charleston*, 349 S.C. 378, 387, 563 S.E.2d 651, 656 (2002). Defendants' defense based on non-service of the Attorney General under S.C. Code Ann. § 15-53-80 is denied.

All parties have stressed that accomplishing the entry and billing of Jasper County property taxes needs to be accomplished quickly. "Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper." S.C. Code Ann. § 15-53-120. "County ... officers ... may be enjoined from acting without authority or illegally An injunction will lie where the conduct of county ... officers results in irreparable injury and the complainant does not have another adequate remedy. It may also lie where injunctive relief is ~~the most direct, prompt, and complete remedy.~~" 43A C.J.S. Injunctions § 207; 43A C.J.S. Injunctions § 231; *Sanford v. S. Carolina State Ethics Comm'n*, 385 S.C. 483, 496, 685 S.E.2d 600, 607 *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009).

Accordingly, the Board is entitled to a permanent prohibitory injunction to restrain the Council from adopting a "method" of establishing the school operating millage that invades the province of the Board to establish its local revenue budget and have the mathematically corresponding *ad valorem* school operations rate levied under S.C. Code Ann. §§ 12-39-140 *et seq.* within the rate limits of S.C. Code Ann. §§ 6-1-300, -320 .

AND IT IS SO DECLARED AND ORDERED.

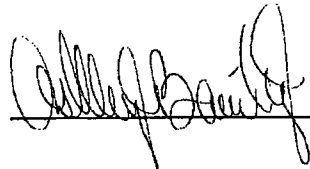
The Honorable Carmen T. Mullen
Chief Administrative Judge, Fourteenth Judicial Circuit

September __, 2013
Beaufort, South Carolina

CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing *Plaintiff's Notice of Motions and Motions to Amend Judgment Pursuant to S.C. R. Civ. P. 52(b) and 59(e)* by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 26th day of September, 2013:

Marvin C. Jones, Esq.
Jasper County Attorney
P.O. Box 420
Ridgeland, SC 29936



STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF JASPER
COURT OF COMMON PLEAS
CASE NO. 2013-CP-27-00362

JASPER COUNTY BOARD OF EDUCATION

PLAINTIFF

VERSUS

SEPTEMBER 19, 2013

TRANSCRIPT OF HEARING

BEAUFORT, SOUTH CAROLINA

JASPER COUNTY COUNCIL AND
JASPER COUNTY AUDITOR

DEFENDANTS

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

ORIGINAL

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

1 Have you all had an opportunity and you're ready to
2 go forward as far as to exchange some discovery? Correct
3 me if I'm wrong, I think Mr. Jones, you're the one that
4 needed or wanted some discovery. Are you satisfied to
5 the extent that you can be?

6 MR. JONES: To the extent that I can be, your Honor.

7 THE COURT: Okay. Is there anything further that
8 you think that is absolutely critical that you need to do
9 before we go forward today?

10 MR. JONES: No, ma'am.

11 THE COURT: Thank you. All right. I appreciate it.
12 Do you want to go first?

13 MR. HALLIGAN: Yes, ma'am.

14 THE COURT: Very good.

15 MR. HALLIGAN: I'm Bick Halligan, with the law firm
16 of Childs and Halligan in Columbia. And I'm here with my
17 partners, Ken Childs and Keith Powell. We have also with
18 us Ms. Bertie Riley, who is the chair of the school board;
19 and Dr. Vashti Washington, who is the superintendent; and
20 Mr. Gary West, who is the chief financial officer.

21 First of all, I want to thank you on behalf of all
22 of us for this very quick hearing. We appreciate it very
23 much. It's a matter of great importance, and you have
24 certainly done all that anyone could ask for, for a quick
25 action.

1 We think that this is a case of statutory
2 construction. It's narrow. It's not broad. It's based
3 on pleadings. And there is a real controversy that is
4 ripe for declaratory judgment on who has authority to
5 decide what the amount and the tax rate for the school
6 district's operational budget.

7 There's some facts. The allegation in the
8 complaint, some of them have been denied. We don't think
9 there's anything, really, in the record, as far as
10 affidavits that address those things. But they show a
11 very real controversy about the authority to set the tax
12 rate, and to determine what the appropriation would be
13 for the portion of the school district's budget that is
14 funded from ad valorem property taxes.

15 In our brief, in our first memorandum in early
16 September, we went through the statutes and the *Home Rule*
17 constitutional amendments and so on. And we thought that
18 it resulted in, really, four alternatives for the Court,
19 any one of which would have entitled the school board to
20 judgment.

21 The other day -- a couple days ago, we filed a
22 supplemental memorandum that really zeroed in on what we
23 thought was the most narrow statutory construction that
24 was the best result in this case. We thought that it
25 gave effect to all of the statutes, the both special laws

1 that are just for Jasper County. It recognized the
2 importance of the constitutional division between schools
3 under Article 11, counties under Article 8, the Home Rule
4 statutes, and how they would apply, so that nothing was
5 really necessary for you to apply. You could apply the
6 express language of each bill, give them all effect.
7 They're all constitutional, and it's a narrow decision
8 only affecting Jasper County.

9 So, I would like to just go through very briefly
10 those statutes and how they fit together.

11 THE COURT: Yes, sir.

12 MR. HALLIGAN: The first bill was in 1968. It's the
13 county -- pre-Home Rule county bill that established the
14 county council, gave it its powers. And it says in one
15 section:

16 *The county council has authority to*
17 *make appropriations and levy taxes*
18 *therefore for corporate purposes and*
19 *educational purposes.*

20 And then, it goes on and lists a lot of things that
21 are the county's responsibility.

22 There's no -- nothing explicit in there about the
23 county reviewing, having discretion, and so on. It's
24 just saying you can make an appropriation, and you levy a
25 tax.

1 The school board is -- and all school districts in
2 South Carolina are this way. They are all established.
3 Their financial authority, their structure is established
4 by local legislation applicable to this one school
5 district at a time. Sometimes you have different local
6 laws for different districts in the same county, so it's
7 very particular.

8 Well, in 1971, the school board was created, and it
9 was given authority. And it's very detailed. And there
10 are five -- or three particular paragraphs that I'd like
11 to emphasize. All of them are important in some way.
12 But one paragraph says that the board has the authority
13 to determine the educational program of the district to
14 achieve the maximum educational opportunities for each
15 child in the county.

16 Paragraph 7 said that the board has the authority to
17 do the budget, to revise the budget as necessary,
18 sufficient to meet the needs of the children of the
19 county.

20 The 18th paragraph says that the school board has
21 the necessary powers, not inconsistent with local and
22 state laws, to meet the educational needs.

23 So, there are very great powers here about
24 determining the educational program, about employing the
25 right number of people. They receive all of the money,

1 they spend all of the money, and they're responsible for
2 the results, to meet high standards which include the
3 maximum opportunities.

4 That law did not change when it was -- that part of
5 it is identical to what was re-enacted in 1989.

6 Well, you go along, and then, in March, 1973, we
7 change our constitution to grant home rule to cities and
8 counties. Article 8 was ratified in March of 1973, and
9 there are two specific constitutional sections that are
10 important. Section 1 said that the powers of counties as
11 they pre-existed would continue until changed by general
12 law. So, in other words, the county's powers under the
13 1968 law continued.

14 The second one, Section 7 says, is that the
15 organization powers and duties of the counties will be
16 specified in general law adopted by the General Assembly.
17 This is now existing at the same time as Article 11,
18 Section 3, which deals with education. And it pre --
19 serves very much as a state function, school districts,
20 and they're setup under the General Assembly to fulfill
21 that state function.

22 Well, then the Home Rule Act was passed in 1975.
23 And Chapter 9 has several -- at least four sections that
24 we've talked about in the brief that are very important.
25 The first says that the counties will decide on their

1 form of government by July 1, 1976. Jasper County did
2 that, and just before that deadline, specified the
3 council administrator for it.

4 The Section 34-9-30, Subparagraph 5, is the section
5 that says that the county councils have the authority to
6 make appropriations and levy property taxes for the
7 purposes of the county. And it lists a long list, and
8 education is very specifically omitted.

9 In our view, this is the law that then changes, and
10 it certainly affects the 1968 county law, because now we
11 have a general law adopted, dealing with the same
12 subjects.

13 Section 49-6-70 says that the powers and duties are
14 as prescribed in Article 1. In other words, once you
15 adopt that form of government, and now here comes the
16 powers and duties set forth in their general law.

17 Now, we also have Section 4-9-70, and this is --
18 I'll just say it's as cryptic and difficult provision of
19 law as any you can read. It parallels the provision in
20 Section 80 that deals with special purpose districts.
21 Starts off that same way. And so, what you have is a
22 statute that sets up the powers of counties, and that
23 does not mention education. And now they have a Section
24 70 that says, okay, what will be the relationship of
25 counties now to school districts.

1 The first phrase says, well, this *Home Rule* does not
2 give any additional authority to the county. We would
3 say that what that means is you don't get any discretion.
4 You don't have it now, by the terms of that special law,
5 and you're not getting it as a result of *Home Rule*.

6 Then, it sets up and it has to address, and you have
7 to step back from the law a minute and say, okay, what
8 are they talking about. Because now you have, except as
9 provided here in this section, and then it goes through,
10 then, a bunch of exceptions and provisos. But what it's
11 really doing is addressing all of the ways that school
12 boards and school districts had financial authority at
13 the time. And it's -- basically, it's six different
14 ways. We had county boards that had full financial
15 authority to pass a tax rate. We had school districts,
16 different from county boards, that had authority. We had
17 legislative delegations that would do authority. We have
18 the electors directly, through either by town meeting or
19 by referendum. And then, you also have county councils.

20 Now, the first phrase says is that the council will
21 determine the method of establishing school millage,
22 except -- and then it listed out all those other ways.

23 Now, we argued in the first memorandum that the
24 bills for the school board of Jasper invoke that power to
25 determine the educational program, the power to budget

1 and revise budgets, and then the residual power to do
2 everything necessary to implement it, gave the school
3 district and gives the school district the power to
4 actually levy taxes, especially when you take away the
5 county's authority to do that.

6 So, our resolution, I mean, we think it's sound
7 either way, but the way to give effect to both Article
8 70, to Section 70, as well as the old pre-Home Rule
9 section is to say that the method, the county can
10 determine the method, but it cannot take to itself and
11 write, either to levy whatever it wanted to at its
12 discretion, or it could not take on its authority to do
13 it absolutely under the old law. It could determine the
14 method.

15 Now, there's one case in the state's history that
16 deals exactly with this section, and that's the case of
17 *Stone v Traynor* out of Orangeburg.

18 Now, I know it's a little complicated, but in
19 Orangeburg, immediately before that case out of
20 Marlboro, the Supreme Court had said that an appointed
21 board could not levy property taxes. So, if the
22 legislative delegation of some other body appointed
23 members of the school board, they could not levy taxes.

24 Well, in Orangeburg County, the county board was
25 both appointed, or at least had appointed members, and

1 levied the property tax. So, *Crow versus McAlpine*
2 knocked that out. But it also, in Orangeburg, you had
3 elected school boards. So, you had an appointed board
4 with the power to tax, and you had elected -- at that
5 point, there were eight school districts in Orangeburg
6 County. So, each of the school districts had elected
7 boards, but the county board covering all of them only
8 had an appointed board.

9 So, the Court said -- the county council passed an
10 ordinance that said that the elected school boards would
11 determine the tax rate in those districts. So, that was
12 determining a method. It did not take onto itself the
13 right to establish the millage records for the different
14 districts.

15 Now, the -- I think what this means is, in summary,
16 and the way we would interpret all of these things -- and
17 this is really the fourth option -- is to say that the
18 county must adopt an ordinance determining the method.
19 And the way to give effect to both of the two local laws
20 is to say that, basically, the county has to pass through
21 the school revenue budget and tax rate. It does not have
22 discretion to vary it, based upon their judgment of what
23 is best for the school district. It is the school
24 district's explicit authority under the local law to
25 decide the educational program; to hire the people; pay

1 them; collect, receive money from state, federal, and
2 local sources, and so on; pass a budget; revise the
3 budget to meet those educational needs that are defined
4 by the school board, directly in relationship with the
5 state legislature, because it is the school board and the
6 state legislature, through general law, that establishes
7 our school policies and defines outcomes that the school
8 district needs to achieve.

9 As I said, in our view, this gives effect to every
10 one of the laws I've mentioned. It gives effect to the
11 constitutional separation of powers. And it would result
12 in a judgment on the pleadings for the school board,
13 because this is what is directly at issue -- who has that
14 authority.

15 I want to close with a brief quote from the Lee
16 County case that we cited in the brief. I didn't cite
17 this quote. I should have. It says:

18 *It is conducive to good government*
19 *that the same legislative authority which*
20 *spends money levy the tax to raise the*
21 *money needed to carry out its own budget.*

22 So, we think that, in that case, that it is good
23 government, and it completely complies with the language
24 of each of the laws that applies. Thank you.

25 THE COURT: Yes, sir. Mr. Halligan, before Mr.

1 Jones responds, why now? Why are you all raising this
2 now?

3 MR. HALLIGAN: Oh, well, we were cut, so.

4 THE COURT: Well, I understand that. My
5 understanding, just from what I saw in the briefs, was
6 there is a \$440,000.00, roughly, shortfall is what your
7 anticipation is. Is that correct?

8 MR. HALLIGAN: Yes, ma'am. Yes, ma'am.

9 THE COURT: Does that have anything to do with the
10 failing grades Jasper County has received for the last
11 two years?

12 MR. HALLIGAN: Well, the budget -- now, this is
13 completely outside the record, and I know it.

14 THE COURT: I understand that. And that's not
15 really what matters as far as my interpretation of this,
16 but go ahead. Okay?

17 MR. HALLIGAN: There are several things.

18 THE COURT: Yes.

19 MR. HALLIGAN: One is that the board with the
20 administrative staff really did a top-notch review this
21 year of its budget. The budget overall is a half a
22 million dollars less than last year. It is several
23 million dollars less than it was several years ago. The
24 district has lost a number of students to a charter
25 school that is a state charter. That will result in a

1 significant reduction in state revenue. It is already
2 reflected in this budget.

3 Because of the way that happened last year, the
4 district was staffed for many more children than it
5 received state money for. Its fund balance is too low,
6 the district has debts, and it is worried about its
7 credit rating. Its fund balance is too low, and it
8 needed to add security staff; it needed to meet Common
9 Core standards. And you can name a bunch of other
10 things, and I'm arguing completely off the record that we
11 have a reasonable budget, which is not your issue, but
12 that's the reason we're here. We're here for reasons
13 that really don't have anything to do with the merits of
14 who has authority.

15 THE COURT: Okay. I appreciate that. Thank you.

16 MR. HALLIGAN: Thank you.

17 THE COURT: Mr. Jones.

18 MR. JONES: May it please the Court?

19 THE COURT: Yes, sir.

20 MR. JONES: Your Honor, as a preliminary matter, I
21 would like to introduce Mr. Henry Ethridge, who's the
22 chairman of Jasper County Council; Ms. Barbara Park, who
23 is vice-chair; and of course, you know Tom Johnson, who
24 is a member of that council. And we also have a number
25 of other folks from Jasper County who are here, as well,

1 including Ms. Hazel Humes, who is the auditor and a party
2 to this suit.

3 Your Honor, I want to try to -- I guess, first,
4 since the question was asked, and since none of this is
5 on the record, I would like to clarify that while it is
6 true that the approved millage from County Council is
7 less than the request, it will, in fact, generate more
8 money than they received last year, because of the
9 increase in the value of a single mill.

10 So, there are nuances to this which are outside of
11 the record that if, you know, if we're going to go there,
12 we need to sort of balance out half the playing field.

13 I want to start out by putting this case into its --
14 into a broader context. There are, in South Carolina,
15 about 84 school districts. As you know, many counties
16 have multiple districts. With 46 counties, that's
17 roughly two apiece. But Jasper County has a single
18 district.

19 Now, of those 84 districts, 25 of them possess no
20 fiscal autonomy. They are exactly like Jasper County.
21 Twenty-six of them have complete fiscal autonomy. I say
22 complete. Complete within the limits of state law. And
23 that's what this school district asked the Court to give
24 to them.

25 There is, in addition, 30 districts that are

1 bifurcated in some fashion. Typically, the school
2 district has the authority of their budget up to certain
3 limits, but if they increase it greater than that, they
4 have to do any of a variety of things. It might be to go
5 to county council. Might be go to referendum. Might be
6 go to the legislative delegation. But the point is that
7 this case is potentially impacting about 70 percent of
8 the districts in the state, because about 70 percent
9 either do not have fiscal autonomy, or have limits on
10 their fiscal autonomy, which is not what this district is
11 requesting the Court to give it.

12 So, with that background, I want to talk just a
13 little bit about what I think is the appropriate law in
14 this case.

15 My colleague, Mr. Halligan, has told the Court that
16 he views this now as a case of statutory interpretation.
17 And as such, I read that to mean that the constitutional
18 issues are off the table. And for that reason, I'm not
19 raising the issue with regard to the Attorney General and
20 his notice.

21 And so, as a matter of statutory interpretation, I
22 guess the most basic rule that you hear at almost every
23 case in which an issue of statutory interpretation is
24 involved is the one that says it's the obligation of the
25 Court to find the intention of the General Assembly; to

1 find the intention of the legislature. And both of us
2 cite to the case of *Wright versus Colleton County School*
3 *District* for the almost universal proposition that if the
4 intention of the legislature can be found within the
5 confines of the language of the statute, you need go no
6 further.

7 Finally, I would say to you that we're really
8 talking here about a taxing statute, and there are some
9 particular rules that relate to taxing statutes. First,
10 no tax can be imposed without express statutory
11 authority. And that authority is always construed
12 against the taxing authority, and in favor of the
13 taxpayer. So, as you look at the authority of -- what
14 they're saying here is, what is the authority of the
15 school board to determine what the tax is going to be.
16 Whether that mechanism is through county council or
17 otherwise, that's what they're talking about.

18 Second thing, local governmental entities only have
19 the power to attach where the General Assembly
20 specifically delegates that authority, and it is not
21 extended by implication. And I think if you -- that the
22 arguments of my colleagues are all about implication, and
23 not about specific authority.

24 So, with that background, I want to look at
25 basically the same statutes that Mr. Halligan briefed for

1 you. The first of those is Act 982 of 1968. That's the
2 act that established the Jasper County Council and gave
3 it certain powers. And among those was the power to make
4 appropriations and to levy taxes for educational
5 purposes. And in addition, and later in that act in
6 Section 8, it requires the board to report its financial
7 status annually, and to provide council with its budget
8 and recommendations.

9 Now, I said require the board. It requires all
10 boards and agencies of the county to do that, not
11 specifically the school board. And there's a good reason
12 for that. The school board didn't exist at the time this
13 statute was adopted. And therefore, you could not imply
14 that any authority was given to this school board,
15 because it just wasn't there until 1971.

16 Now, in 1975, the General Assembly -- excuse me,
17 your Honor, I'm a little dry -- the General Assembly
18 adopted Section 4-9-70 as a part of its Home Rule
19 legislation. And that section starts out by essentially
20 saying county councils are not entitled to meddle in the
21 business of school boards. And we accept that. We don't
22 run the school board. But then, there was a series of
23 provisos.

24 And the first of those provisos said -- and I think
25 it's important to quote this, because the language is

1 particular:

2 *Except as otherwise provided for*
3 *in this section, the county council shall*
4 *determine by ordinance the method of*
5 *establishing the school tax millage,*
6 *except in those cases where boards of*
7 *trustees of the districts or the county*
8 *board of education establishes such*
9 *millage at the time one of the alternate*
10 *forms of government provided for in this*
11 *chapter becomes effective.*

12 Now, you have before you the affidavit of Ms. Judy
13 Frank, who is the clerk of council for Jasper County
14 Council. And you will see there that in 1976, I believe
15 it was June, the county adopted the council
16 administrative form of government, authorized the
17 employment of an administrator.

18 You also see that there are three appropriations
19 bills, or ordinances, attached to it for '75, '76, '77 to
20 bracket that time. And in every case, in *Section 6* and
21 in *Section 16*, the county council makes appropriations
22 for the school board or for the schools.

23 So, that means that when you look back at 4-9-70,
24 the final portion of that, except in those cases where
25 board of trustees of the districts of the county board of

1 the education established, such millage doesn't apply.

2 And when you read on through the other exceptions,
3 none of them apply. As far as I know, counsel doesn't
4 claim that any of them do.

5 And so, the question before the Court is, the
6 legislation that you're being asked to interpret, says,
7 when you separate out everything that is surplussage, the
8 county council shall determine by ordinance the method of
9 establishing the school tax millage, and that's it,
10 because none of the rest of it really applies in this
11 case applies in Jasper County.

12 So, while Mr. Halligan says that he finds this
13 statute to be difficult -- and I admit that it is a bit
14 obtuse -- we're lucky to have *Stone versus Traynor*,
15 because there, the Court is very clear. It said, and I'm
16 quoting:

17 *The clear intent is to vest the*
18 *power to determine the school tax levy*
19 *in county council in all cases where it*
20 *is not vested elsewhere.*

21 So, the question you have before you is, as of June
22 of 1976, was it vested elsewhere? Answer: no.
23 Therefore, it is with the county council.

24 Now, a number of references have been made to the
25 statutes, the local statutes, that establish the --

1 establish the school boards, particularly Act 601 of
2 1971. It was later amended in 1989, but the amendment
3 doesn't change any of the powers. So, that part of it is
4 of no consequence. And none of those provisions, none of
5 those powers, include anything that is remotely like set
6 the millage, establish the appropriations, appropriate
7 the funds, impose a tax. There is nothing like any of
8 that in that statute.

9 Now, it's also been suggested that perhaps county
10 council should be a rubber stamp body for the school
11 board. County council should accept the budget that is
12 proposed by the school board, and that its only authority
13 is to adopt that which is handed to it, to the school
14 board. But there's nothing that says that. And the
15 statute that gives the county the authority, Section 4-9-
16 70, says -- I want to say this exactly right:

17 *The county council shall determine by*
18 *ordinance --*

19 Determine. The word *determine* implies discretion.
20 The county council isn't being asked to adopt something
21 that is sent to it. It's being asked to determine what
22 it should be.

23 And there is a case in South Carolina, *Lomax versus*
24 *Greenville* -- it's in my brief -- that says when the
25 General Assembly grants power to a subordinate entity

1 without express limitation, that power is exercised in
2 the discretion of the entity, subject to actions being
3 taken in good faith.

4 And there's no charge here of an absence of good
5 faith. They don't like it, but there's no allegation of
6 an absence of good faith.

7 In conclusion, all of the statutes that we are
8 dealing here with are at least 38 years old, because
9 that's when the *Home Rule* statute, *Section 4-9-70* was
10 adopted. By that time, the powers of the school board
11 were set. The powers of county council were set. And in
12 that time, in all 38 years, the school board has accepted
13 the authority of Jasper County Council to establish their
14 millage.

15 The General Assembly has twice refused to extend the
16 power to the school board. And in fact, if you look at
17 the -- I don't think that those bills say anything about
18 what their power is or isn't. But it is important in the
19 sense that it shows what an ordinance -- or I'm sorry --
20 what a statute might look like that extends that power to
21 a school board.

22 In that particular statute -- not statute -- that
23 particular bill, they don't give the school, this school
24 board, the unfettered authority. There are limitations.
25 They wouldn't be added to the 29 that have full

1 authority. They would be among those for which there is
2 a cap. So, in effect, this school board is asking more
3 of the Court than that which the General Assembly has
4 already refused twice.

5 I think that there is a good public policy here that
6 the General Assembly is still certainly entitled to
7 exercise. And that is that it may not be right for every
8 entity, but it is important to have a single body that
9 can look over the needs of a county and establish the
10 overall tax burden that the people of Jasper County are
11 going to -- that's going to be imposed on the people of
12 Jasper County.

13 It could be split up. In some places, it is split
14 up, but there's a good policy justification for it. It
15 is within the power of the General Assembly. All of the
16 arguments that have been made thus far about powers of
17 counties, powers of schools, Article 11 versus Article 8,
18 those kinds of arguments, are resolved by asking yourself
19 this question: does the General Assembly have the power
20 to give to county councils the power to impose school
21 millage. The answer to that is clearly yes, because the
22 General Assembly has the power to delegate under Article
23 11. The case are myriad that say this is the
24 responsibility not of counties; this is the
25 responsibility of the General Assembly. And this Court's

1 give wide authority to the General Assembly to resolve
2 those issues, if they choose to.

3 It is clearly within the power of the General
4 Assembly to do what they have done. And in this case, I
5 would submit to your Honor, Jasper County Council is well
6 within its authority, within the directives of the
7 General Assembly, to pass upon and make decisions about
8 the revenue side of the Jasper County School Board
9 budget. Thank you, ma'am.

10 THE COURT: Yes, sir.

11 MR. HALLIGAN: Your Honor, I just have several
12 things I'd like to raise on reply. The first is that the
13 chart by the school board association that has been
14 referred to, -- I think it was contained in some papers
15 submitted, maybe attached to this memorandum submitted by
16 Mr. Jones -- it lists all the districts, and then puts
17 them in various categories. And of those districts in
18 the upper left-hand corner that says no limits except the
19 state's limits oppose by 388, you know, certain
20 percentage limits on millage, at least three of those
21 districts are in that category because of lawsuits just
22 like this one.

23 Charleston, and that's in the materials we've
24 submitted in copies, but both Horry and Greenville are
25 there because of lawsuits that were not appealed. And in

1 each case it dealt with limits and the delegations. I
2 mean in Horry, it was the delegation of authority. In
3 Greenville, it dealt with the formula; that it was at
4 variance with the state law.

5 So, cases like this move -- that chart conceals as
6 much complexity -- as complex as it is, every one of
7 those is based upon the specific language in the local
8 law. And we've challenged that before, and moved
9 districts in that box. That's exactly what's going on
10 here.

11 The other thing is, the reason we say this is
12 restricted to Jasper County is because of the clarity of
13 the language. Very few districts have bills as powerful
14 as the county bill of '71 and '89. Now, '89 was adopted,
15 you know, afterward. But very few are that clear and
16 expressive in the school district's statute.

17 Now, in our case in Jasper, what we have is, in the
18 school board's law, you have all this detailed, both
19 responsibility and power. In the county's law, you just
20 have make appropriations and levy. That's all.

21 Now, in other counties, -- and Richland One is cited
22 in their brief. In Richland One, the school board
23 challenged it, and said the county has to do what the
24 school board said. But the bill that's in the school
25 district's local legislation says that the council

1 determines what's necessary. That's exactly what we
2 don't have here. And if the county bill said the school
3 district, I mean, the county has to evaluate, has
4 discretion, and it determines what's necessary for the
5 county, okay, that would be a totally different case.
6 Then, it would be much more on the same grounds as the
7 Richland One case.

8 But here you have to that to determine what is
9 necessary is in the county side, is on the school board
10 side, not on the county side, as it was in Richland One.

11 Now, the statutory interpretation in determining
12 intent, that's what you're always trying to do, but
13 you're also doing it within constitutional lines. In
14 other words, what they say and what's constitutional are
15 sometimes very different. And I'll use an example.

16 In the local bills that are cited as not having been
17 passed, they are, on their face, unconstitutional,
18 because they give the county the legislative delegation
19 power to approve an excessive right. That is completely
20 contrary to oodles of cases over the last 40 or 50 years.
21 So, the bills that are pending are not constitutional.

22 So, I mean, the Court's responsibility in every
23 level is to try to interpret it constitutionally and get
24 through this wicket, these wickets of meaning.

25 The Lomax case and the entire quote out of that

1 case, is that, you know, its Worker's Comp coverage and
2 this sort of thing. But it does say about the delegation
3 of authority, but it includes without any express
4 limitation. In other words, when you have a delegation
5 without any express limitation, then, you, in fact, okay,
6 then, you'd have this discretionary authority.

7 Well, here, you have very definite express
8 limitations. One of them is in the state law, Section 7-
9 9-35, does not mention education. The other is, you have
10 the lines of authority coming through the state as a
11 state function, not a county one. And you have a local
12 bill that says, you know, we determine what's necessary,
13 not the county.

14 Mr. Jones is beating us up over the fact that the
15 power levy has to be explicit and it's in the county
16 bill. In the same way, I'm going to beat him up, because
17 what he's saying is that gives him authority to determine
18 what's necessary. No, that's on our side. That's on the
19 school board's side. And so, that's what opens this
20 possibility up to interpret both of them in ways that
21 respect all of the language, and still requires that the
22 county approve what the school district has determined to
23 be necessary.

24 Now, in the -- some of the quotations from Section
25 70, 4-9-70, this is what I'm talking about. You say, for

1 example, he quotes from -- the quote from -- he correctly
2 quoted the *Stone versus Traynor* case, but that wasn't the
3 issue in the case. It wasn't the issue that the county
4 council was setting the rate. The county council adopted
5 a method of establishing the rate, and that was to say
6 that the elected school board did. And they upheld that
7 ordinance.

8 Now, the method is not -- the county council -- and
9 we've set forth this in the brief. The county council
10 cannot establish the method that it is themselves who do
11 it, because that has already been decided in the local
12 legislation giving what's necessary as to the school
13 board. And Section 35 of the *Home Rule Act* does not make
14 education a function. It recognizes the constitutional
15 division that education is not a function like the
16 county.

17 So, I think the only other subject that I want to
18 mention right now is that every county, city, and school
19 district, no one has unlimited financial authority. They
20 all have the formulas that are set forth in part of Act
21 388 from several years ago saying that an increase in
22 millage is limited by the population and inflation rates.
23 And they vary all over the state.

24 And so, but the district is subject to that limit.
25 It is not -- we're not arguing or believe in any way that

1 this loosens up everything for the school board to do
2 anything it wants. It is not. But it does -- our
3 argument respects all of these laws, and tries to give
4 effect to all of them, without straining any
5 interpretation or having to imply language that doesn't
6 exist.

7 So, we think that this position that we've set
8 forth, especially in our supplemental memorandum, is a
9 sound one. Thank you.

10 THE COURT: Thank you, Mr. Halligan.

11 MR. JONES: Nothing further, your Honor.

12 THE COURT: It is my understanding that the auditor
13 needs to send out the bills, is that correct, on the
14 30th?

15 MR. JONES: It's my understanding that she is ready
16 to send them out now. Whenever -- we wait for the
17 pleasure of the Court, of course, but she is -- she can
18 do that as time is available and when you decide.

19 The 30th is a date that we have requested the Tax
20 Commission give us an extension of, but it's my
21 understanding that we don't have that back yet. You do?

22 UNIDENTIFIED PERSON SPEAKING.

23 MR. JONES: They did accept it. So, there's no
24 longer a magic to the 30th day.

25 THE COURT: Okay. Thank you.

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE No.: 2013-CP-27-362

JASPER COUNTY BOARD)
OF EDUCATION,)
)
Plaintiff,)

vs.)

JASPER COUNTY COUNCIL)
and)
JASPER COUNTY AUDITOR)
)
Defendants.)

DEFENDANTS' SECOND
REQUESTS FOR ADMISSIONS
TO THE PLAINTIFF

TO: William F. Halligan, of Childs & Halligan, P.A., Attorneys for the above named Plaintiff.

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the Defendants, though their undersigned Attorney, submits the following Requests for Admissions. You must file and serve a written response to this request within 30 days following service. Your response to each matter may be in the form of an admission, a specific denial, an objection (with reasons clearly stated), or a statement that the matter cannot be admitted or denied. You may not give lack of information or knowledge as a reason for failure to admit or deny unless you state that you have made reasonable inquiry and the information known or readily available to you was insufficient to enable you to admit or deny.

1. Admit that the Jasper County Board of Education is a member of the South Carolina School Boards Association.
2. Admit that the attached copy of The South Carolina School Boards Association, Fiscal authority dated March 2013 is a true and correct copy of a document of the South Carolina School Boards Association. (Exhibit C).

[Signature of following page]

Respectfully submitted,



MARVIN C. JONES
Jasper County Attorney

South Carolina Bar No.3201
Post Office Box 420
262 Third Avenue
Ridgeland, SC 29936
Telephone No. 843-726-5403
Facsimile No. 843-726-3240
Attorney for the Defendants
Jasper County Council and
Jasper County Auditor

05 September, 2013

EXHIBIT C



Fiscal authority

March 2013

Fiscal Autonomy - 26 districts

(subject to cap under Act 388)

No overseeing body, school board
votes by majority

Aiken
Berkeley
Charleston
Cherokee
Chester
Darlington
Edgefield
Florence 3
Georgetown
Greenville
Horry
Lexington 1, 2, 3, 4, 5
Marlboro
Marion
Spartanburg 1, 2, 3, 4, 5, 6, 7
Union

No Authority - 25 districts

Legislative Delegation approves budget
& sets millage rate (subject to cap under Act 388)

Dillon 3, 4

Town/Citizens meeting to approve budget (subject
to cap under Act 388)

Florence 2, 5

County council approves millage rate (subject to
cap under Act 388)

Beaufort
Calhoun
Clarendon 1, 2, 3
Colleton
Dorchester 2, 4
Greenwood 50, 51, 52
Hampton 1, 2
Jasper
Lee
McCormick
Oconee
Richland 1, 2
Saluda
Sumter

Limited Authority- 30 districts

Referendum to exceed this limit (subject to cap under Act 388)

Allendale	Inflation + 4 mills
Bamberg 1, 2	3 mills
Barnwell 19, 29, 45	10 mills
Florence 4	10 mills
Lancaster	5 mills
Pickens	Formula

County council approval to exceed this limit (subject to cap
under Act 388)

Fairfield	3% above previous year's budget or CPI whichever is lower
Newberry	4 mills

Legislative delegation approval to exceed this limit (subject to
cap under Act 388)

Chesterfield	10% of prior year's tax levy
Laurens 55, 56	7 mills + EFA inflation factor not to exceed 10 mills
York 1	6 mills
Clover 2	6 mills
Rock Hill 3	6 mills
Fort Mill 4	6 mills

County board approves millage rate (subject to cap under Act 388)

Anderson 1, 2, 3, 4, 5	8 mills
Orangeburg 3, 4, 5 (Commission)	3 mills over EFA Inflation factor

Special law to exceed this limit (subject to cap under Act 388)

Williamsburg	3 mills
--------------	---------

Statutory Cap - 3 districts

Requires county council approval to exceed (subject to cap under
Act 388)

Abbeville	Same millage
Kershaw	Limit 74 mills

Requires referendum to exceed (subject to cap under Act 388)

Florence 1	Same millage
------------	--------------

EXHIBIT C



Fiscal authority

March 2013

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Marion
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STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS

Jasper County Board of Education,

Plaintiff,

vs.

Jasper County Council and Jasper County
Auditor,

Defendants.

C.A. No. 2013-CP-27-00362

**PLAINTIFF'S RESPONSES TO
DEFENDANTS' SECOND REQUESTS FOR
ADMISSIONS**

TO: Marvin C. JONES, ESQ., COUNSEL FOR DEFENDANTS

Plaintiff, Jasper County Board of Education, hereby responds to Defendants' Second
Requests for Admissions as follows:

GENERAL OBJECTIONS

- A. Plaintiff Board objects to providing or disclosing any information protected by the attorney-client privilege or attorney work-product doctrine.
- B. Plaintiff Board objects to providing or disclosing any information constituting trial preparation materials or materials otherwise encompassed within the work-product doctrine.
- C. Plaintiff Board objects to each discovery request to the extent that it seeks to require disclosure of any confidential information, subject to the entry of a protective order by the Court.
- D. Plaintiff Board objects to each discovery request that (i) is unreasonably cumulative or duplicative; (ii) seeks material obtainable from some other source that is more convenient, less burdensome, or less expensive; or (iii) otherwise constitutes an abuse of discovery.

E. Plaintiff Board objects to each discovery request because the information sought is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

F. Due to the early stage of the proceedings in this case, Plaintiff Board reserves the right to supplement, amend, or modify each and every response herein as appropriate in light of on-going discovery, as well as continuing case and evidence evaluation and/or analysis.

RESPONSES

1. Admit that the Jasper County Board of Education is a member of the South Carolina School Boards Association.

RESPONSE:

Admitted.

2. Admit that the attached copy of The South Carolina School Boards Association, Fiscal authority dated March 2013 is a true and correct copy of a document of the South Carolina School Boards Association. (Exhibit C.)

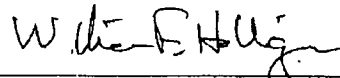
RESPONSE:

Admitted.

Plaintiff reserves the right to supplement the foregoing responses in the future if any additional information is obtained or becomes available throughout discovery.

CHILDS & HALLIGAN, P.A.

By: _____



Kenneth L. Childs, S.C. Bar No. 1217
kchilds@childs-halligan.net

William F. Halligan, S.C. Bar No. 2607
bhalligan@childs-halligan.net

Keith R. Powell, S.C. Bar No. 69292
kpowell@childs-halligan.net

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Plaintiff

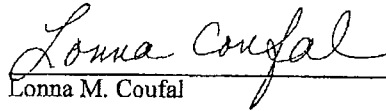
September 16, 2013

Columbia, South Carolina

CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing **PLAINTIFF'S RESPONSES TO DEFENDANTS' SECOND REQUESTS FOR ADMISSIONS** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 16th day of September, 2013:

Marvin C. Jones, Esq.
Jasper County Attorney
P.O. Box 420
Ridgeland, SC 29936


Lonna M. Coufal

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

JASPER COUNTY BOARD
OF EDUCATION,)

Plaintiff,)

vs.)

JASPER COUNTY COUNCIL)
and)
JASPER COUNTY AUDITOR)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE No.: 2013-CP-27-362

AFFIDAVIT OF JUDITH M. FRANK

2013 AUG 20 AM 9:44
MARBA T FOSTER
CLERK OF COURT
JASPER COUNTY SC

FILED

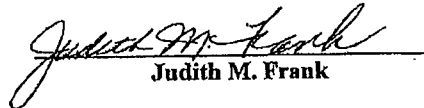
Personally appeared Judith M. Frank, who being duly sworn deposes and says:

1. I am Judith M. Frank. I am the duly appointed and serving Clerk to Council for Jasper County. I was appointed Clerk to Council on January 5th, 1998, and have served continuously since that time.
2. A part of my duties include serving as custodian of and maintaining the official records of Jasper County Council. Jasper County Council collects and retains in its records its meeting minutes, ordinances, resolutions and other records relevant to its responsibilities.
3. Each record attached to this Affidavit was found by me in the Council records and the attachments are true copies of each such record.
4. Based upon records in my possession, Jasper County adopted the Council - Administrator form of government on or about June 25, 1976 (See Resolution of Jasper County Council dated 25 June 1976 (Exhibit #1); Resolution to Provide for the Office of County Administrator of Jasper County Council dated 4 October 1976 (Exhibit #2); and Code of Ordinances Jasper County South Carolina Sec. 2 - 1 (2009 as amended) (Exhibit #3).
5. At the time that the Council Administrator form of government became effective in Jasper County, the Jasper County Council set the Board of Education and school operating budget and millage. See each of the following:
 - a) On June 16, 1975, the Jasper County Council adopted a budget for Fiscal Year 1975 - 76, in which items 6 and 16 provided County

support to the Board of Education and public schools (copies attached hereto as Exhibit #4).

- b) On June 21, 1976 the Jasper County Council adopted a budget for Fiscal Year 1976 – 77, dated June 21, 1976, in which items 6 and 16 provided County support to the Board of Education and public schools (copies attached hereto as Exhibit #5); and
- c) On June 27, 1977, the Jasper County Council adopted a budget for Fiscal Year 1977 – 78 in which items 6 and 16 provided support to the Board of Education and public schools (Exhibit #6).

Further Affiant sayeth not.


Judith M. Frank

SWORN to before me this 28th
day of August 2013.

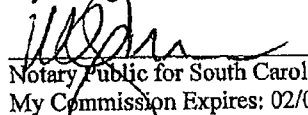
 (SEAL)
Notary Public for South Carolina
My Commission Expires: 02/08/2017

EXHIBIT 1

RESOLUTION

ADOPTING THE COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT FOR THE COUNTY OF JASPER PURSUANT TO TITLE 14, SECTION 3701 (b) OF THE CODE OF LAWS OF SOUTH CAROLINA.

WHEREAS, Section 14-3701(b) of the Code of Laws provides that unless otherwise determined by referendum prior to July 1, 1976, the county shall begining on that date have the form of government including the method of election, number, composition and terms of the governing body most nearly corresponding to the form in effect in the county immediately prior to that date; and

WHEREAS, the General Assembly has determined in Section 14-3701(b) of the Code of Laws that Jasper County was operating under the Council-Administrator form immediately prior to the date of July 1, 1976; and

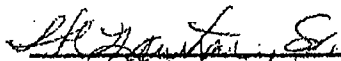
WHEREAS, the governing body of Jasper County consisted of five (5) members, elected at-large; provided, that at least one member of the council shall be a resident of each of the four townships of the county and one member having no residency requirement; for four (4) year terms; and

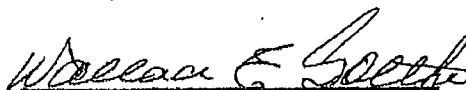
WHEREAS, there has not been a referendum held in Jasper County to determine a form prior to July 1, 1976.

NOW THEREFORE BE IT RESOLVED in accordance with Section 14-3701(b) that Jasper County hereby adopts the Council-Administrator form of government.

BE IT FURTHER RESOLVED that the County shall be composed of five (5) members to be elected at large; provided, that at least one member of the council shall be a resident of each of the four townships of the county and one member having no residency requirement; for four (4) year terms.

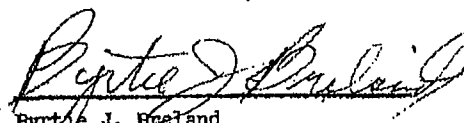
ADOPTED THIS 25th DAY OF JUNE, 1976.


Henry C. Lawton, Chairman


Wallace E. Goethe


Henry C. Simmons


L. Martin Sauls III, Vice-Chairman


Byrte J. Breland
ATTEST:

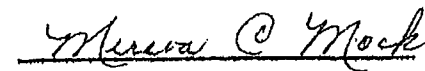

Mervea C. Mock, Clerk

EXHIBIT 2

Misc. 6 - 304

RESOLUTION

TO PROVIDE FOR THE OFFICE OF COUNTY ADMINISTRATION AND TO ESTABLISH THE DUTIES OF THE OFFICE PURSUANT TO SECTIONS 14-3740 THROUGH 14-3746 OF ACT 283 OF 1975.

WHEREAS, the County Council has by resolution dated June 25, 1976, formally adopted the Council-Administrator form of government in accordance with the provisions of Act 283 of 1975; and

WHEREAS, Sections 14-3740 through 14-3746 provide for the mandatory employment of an Administrator and establish certain duties of that office; and

WHEREAS, by an Attorney General's opinion dated September 16, 1976, it has been ruled that the County Supervisor could be assigned the duties of the Administrator by the Council.

NOW THEREFORE BE IT RESOLVED that the County Council of Jasper County does hereby appoint Marvin E. Vaigneur as acting Administrator with duties in concert with those described in Sections 14-3740 through 14-3746 of Act 283 of 1975.

BE IT FURTHER RESOLVED that in addition to the duties assigned by Act 283 of 1975 the Council also extends the following:

- 1) The acting Administrator shall be entitled to employment benefits based on his total years of service to the County and in accordance with regulations issued for all County employees;
- 2) The County shall furnish an automobile and shall pay operational expenses incurred while on official business;
- 3) The County shall pay expenses, based on official policy, for any meetings which the Administrator may be required to attend to represent the interests of Jasper County;
- 4) That the Administrator is encouraged to participate in meetings and educational programs which will ultimately improve governmental service in Jasper County.
- 5) That the salary for the acting Administrator shall be established by Council and review on a yearly basis.
- 6) That acceptance of the title of acting Administrator shall in no way be construed as an abandonment by Marvin E. Vaigneur of his position of elected Supervisor until after the expiration of his current term as Supervisor.

Page 2-

BE IT FURTHER RESOLVED that the Jasper County Council reserves the right to assign such other duties to the acting Administrator as may be consistent with that position.

Adopted this 4th day of October, 1976.

Attest

Mareva C. Mack
Clerk of Council

H. Houston, Jr.
Chairman

Henry C. Linn

L. Martin Sauls, III

Wesley Goette

The within instrument has been filed
this 16 day of May
1979 at 4:00 o'clock P M., and
recorded in Book 1246 Page 304
Mary C. Conner
C. of C. P. & G. S., Jasper County, S. C.

EXHIBIT 3

ADMINISTRATION

§ 2-3

ARTICLE I. IN GENERAL

Sec. 2-1. Form of government.

Pursuant to S.C. Code 1976, § 4-9-10 the form of government for the county shall be the council-administrator form as provided in S.C. Code 1976, § 4-9-610 et seq.
(Res. of 6-25-76, § 1)

Sec. 2-2. Debt review procedure for debt setoff collection program.

(a) *Notification of debtor.* All notices of debts to be included in the debt setoff collection program shall advise the debtor of the debt review procedure established by this section. All notices must contain the name, telephone number and address of the county official to contact to request a review of the debt.

(b) *Request for review.* Any person notified of a debt to be included in the debt setoff collection program must notify the debt setoff collection program coordinator of his wish for a review of the debt within seven calendar days of the date of notification either by telephone or in writing. Any person requesting a review of a debt shall furnish his correct mailing address and a telephone number at which he can be reached during normal business hours. For purposes of calculating the time periods set forth in this section, the time period begins to run the day following the deposit of the notice in the mail or the date of delivery if it is sent by other means. The request for review must be received by the debt setoff collection program coordinator within the seven-day period.

(c) *Notice of meeting.* Upon notification that a person wishes a review of a debt, the debt setoff collection coordinator shall have seven calendar days to telephone or send written notice of the debt review meeting.

(d) *Conduct of meeting.* At the debt review meeting, the debtor and the debt setoff collection program coordinator shall discuss the debt and any matters which are necessary to determine whether the debt is correctly charged to the person.

(e) *Action by program coordinator.* Following the debt review meeting, the debt setoff collection program coordinator is authorized to adjust any debt reviewed and certify the correct amount of the debt, if any, for inclusion in the debt setoff collection program. The debtor must be notified of the coordinator's decision in writing.

(Res. of 12-6-93, §§ 1—5)

Sec. 2-3. Grievance procedure.

(a) The following grievance procedure is established to meet the requirements of Section 504 of the Rehabilitation Act as amended and the Americans With Disabilities Act of 1990 (ADA).

(b) According to these laws the county, as recipient of a South Carolina Community Development Block Grant (CDBG) funds, certifies that every citizen shall have the right to submit a grievance when he or she believes the county has discriminated against him or her on the basis of disability in policies or practices of the county, or has denied him or her access to, or created or permitted barriers to: Employment, services, activities, facilities or benefits provided by the county.

EXHIBIT 4

The following is an ordinance passed by the Jasper County Council this 16th day of June, 1975, after published in the County Newspaper for twenty days.

Section 1. There is hereby levied upon all the taxable property of Jasper County a sufficient number of mills by the auditor from assessment of the property therein which, together with fines, forfeitures and taxes collected by various officers and all income of the county shall raise the amount therein appropriated and for the purpose herein stated.

Item 1. Roads and Bridges..... \$ 57,500.00
Plus new equipment balance from prior year. Provided that the maintenance and operation of the Supervisor's vehicles will be paid from this account upon the approval of the County Council.

Item 2. Clerk of Court:
Salary - Clerk of Court..... 9,057.00
Salary - Deputy Clerk..... 5,000.00
Salary - Help for 2 days a week during Court on on a need basis..... 300.00
Total..... 14,357.00

Item 3. Sheriff's Office:
Salary - Sheriff..... 9,403.00
Salary - Deputy Sheriff's (5)..... 39,652.00
Salary - Clerk..... 5,000.00
Vehicle maintenance, Operation and Insurance..... 10,000.00
Provided the jailor may wear uniform only during sessions of county court and on out-of-county trips on official business of the Sheriff and Deputy Sheriffs' and shall clearly be marked. Provided further, that funds accruing from the sale of confiscated property shall be kept in a separate account by the County Treasurer to be used by the Sheriffs' Department for Law Enforcement.
Total..... 64,055.00

Item 4. Treasurer's Office:
Treasurer's Salary - an amount sufficient to supplement the amount provided by the State, so as to make his total salary \$9,057.00..... 2,300.00
Salary - Clerk..... 5,000.00
Total..... 7,300.00

Item 5. Auditors' Office:
Auditor's Salary - an amount sufficient to supplement the amount provided by the state, so as to make her total salary \$9,057.00..... 2,300.00
Salary - Clerk..... 5,000.00
Total..... 7,300.00

<u>Item 6. Board of Education:</u>	
Salary - Clerk (Supplement).....	\$ 2,400.00
Members - Board of Education (Chm.) \$1200; 8 mbrs. \$1000.	9,200.00
School Lunch Program.....	1,500.00
Total.....	<u>13,100.00</u>
<u>Item 7. Judge of Probate's Office:</u>	
Salary - Judge of Probate.....	9,057.00
Salary - Deputy Clerk.....	5,000.00
Carry balance forward - Indexing Probate Books Account	
Total.....	<u>14,057.00</u>
<u>Item 8. Coroner's Office:</u>	
Salary - Coroner.....	2,119.00
<u>Item 9. County Council:</u>	
Salary - Supervisor & Adm. Assistant to Council*.....	12,000.00
Salary - Council Members (5).....	16,828.00
Council Members - \$25.00 per diem per meeting.....	5,000.00
Salary - Office Manager.....	6,736.00
Miscellaneous Account.....	300.00
Total.....	<u>40,864.00</u>
* Provided that Gillisonville Square, Courthouse grounds shall be maintained and kept up by the Supervisor.	
<u>Item 10. Magistrates:</u>	
Salary - Hardeeville.....	5,000.00
Salary - Grays.....	2,500.00
Salary - Ridgeland.....	9,057.00
Salary - Tillman.....	2,500.00
Salary - Secretary for Ridgeland Magistrate.....	4,750.00
Total.....	<u>23,807.00</u>
<u>Item 11. Law Enforcement Center:</u>	
Salary - Jailor.....	5,902.00
Provided, that the Sheriff may use jailor as a deputy when deemed advisable.	
Dieting of Prisoners (\$2.25 per day).....	8,000.00
Jail Expense.....	600.00
Total.....	<u>14,502.00</u>
<u>Item 12. Court Expense:</u>	
Court Expense.....	3,000.00
Provided that bailiff and jurors be paid seven dollars per day.	
<u>Item 13. Health Department:</u>	
Health Unit.....	7,318.00
Salary - Clerk (Supplement).....	1,926.00
Travel -	1,200.00
Total.....	<u>10,444.00</u>

Item 14. Public Buildings:

Maintenance.....	\$ 2,600.00
Insurance.....	9,500.00
Utilities, Office Equipment.....	60,000.00
Total.....	<u>72,100.00</u>

Any official serving Jasper County whose duties may require long distance calls after office hours will be provided with a credit card issued by the County Council.

Item 15. Farm and Home Demonstration Work:

Boys' 4-H Club Work.....	250.00
Girls' 4-H Club work and Farm Womens' work.....	250.00
Demonstration supplies for Home Demonstration agent.....	150.00
Corn Contest.....	100.00
Equipment lost in remodeling of Old Hospital.....	400.00
Total.....	<u>1,150.00</u>

<u>Item 16. County's Portion of Support to Public Schools:</u>	548,348.00
Athletic Association indebtedness (Final Payment).....	5,300.00
Total.....	<u>553,648.00</u>

Provided, that all school budgets will be submitted to the County Board of Education prior to February first of each year. Provided further, that the County Board of Education shall advise the Council of the school needs for each fiscal year prior to March first of each year.

Miscellaneous:

County Attorney.....	2,437.00
Provided, he shall handle all small county cases and advise all county officials, except the Sheriff, on criminal matters.	

County Service Officer (Supplement Salary).....	2,100.00
Janitorial Service.....	5,405.00
(Service at Courthouse and grounds)	
Provided, that this shall be taken care of by the Supervisor.	
Overtime pay during court and night meetings.....	270.00
Total.....	<u>5,675.00</u>

Forestry Wardens - Six @ \$525.....	3,150.00
Provided, that all wardens receiving this travel must be under the supervision of the Jasper County Forestry Board.	

Travel Outside County..... \$ 750.00

The following county officials when traveling outside Jasper County on official business, shall be paid twelve cents per mile and expense. Senators, Representatives, Sheriff, Deputy Sheriff, Supervisor, Finance Officer, Judge of Probate, Auditor, Treasurer, Clerk of Court, County Attorney, and Service Officer. Also these officials may draw seven dollars per day for expenses when they are out of county on official business overnight. Provided, that all claims are approved by the County Council. Provided further, that prior approval of the Supervisor shall be obtained for the purpose of making trips outside the county, except for law enforcement officers.

Council Travel (.12 per mile when on county business)..... 750.00

Tax Assessor's Office:

Salary - Tax Assessor.....	9,057.00
Travel - Tax Assessor.....	500.00
Clerk - Salary.....	5,000.00
Field Assessors (2) Salary.....	15,000.00
Field Assessors (2) Travel.....	2,400.00
Office Supplies, Maps and etc.....	1,000.00
Tax School.....	420.00
<u>Total</u>	<u>33,377.00</u>

Board of Assessors and Equalization:

6 members @ \$350.00 each plus 12¢ per mile.....	3,200.00
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<u>Department of Social Services</u>	3,000.00
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Provided, this shall be paid when approved by the Department of Social Services Board, and further that a list of patients and the amount be made available to the County Council on or before the first Monday of each month. The emergency and welfare funds are combined and will be disbursed from the Council Office.

<u>Attendance Teacher Charity Fund</u>	600.00
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<u>Coosawhatchie Fire Department</u>	1,500.00
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<u>Grays Fire Department</u>	1,000.00
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<u>Ridgeland Fire Department</u>	1,500.00
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<u>Tillman Fire Department</u>	1,500.00
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<u>Hardeeville Fire Department</u>	1,500.00
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<u>Hardeeville Marine Rescue Squad</u>	\$ 1,000.00
<u>Jasper County Rescue Squad</u>	
(Carry Balance forward)	
Postmortems, Inquest and Lunacies.....	2,000.00
Provided, that the Sheriff shall serve civil and criminal papers pertaining thereto. In the event that the Coroner of Jasper County is sick or otherwise disqualified, the Magistrate of Ridgeland shall hold postmortems and inquest without compensation; provided, further that the examining physician shall be paid \$10.00 per examination. Provided coroner's and magistrate's jurors shall be paid two dollars per day.	
<u>Vital Statistics</u>	100.00
<u>Physicians</u>	500.00
<u>Printing, Postage, Stationery and Advertising</u>	6,500.00
<u>State Retirement System</u>	19,000.00
<u>Social Security</u>	16,000.00
<u>Jasper County Farm Bureau Marketing Commission</u>	200.00
<u>Library Funds:</u>	
Funds to Regional Library.....	5,351.00
Librarian.....	5,509.00
Library Fund to Jasper County.....	50.00
Custodial servile for Library.....	300.00
Travel - County Librarian and Trustees.....	100.00
Total.....	<u>11,310.00</u>
<u>National Gaurd Fund and Janitorial Service</u>	1,000.00
<u>Jasper County Development Board</u>	10,000.00
Plus balance from previous year.	
<u>Bond Premiums</u>	1,200.00
<u>Burial Expense, Paupers</u>	300.00
Provided, that this expense be approved by the Department of Social Services Board.	
<u>Fire Tower Wardens</u>	889.35
<u>Forestry Ranger</u>	370.65

<u>Miscellaneous Contingent Fund</u>	\$ 56,000.00
<i>Provided, that this fund shall be used upon written approval by the County Council as it deems necessary to supplement any account except salaries.</i>	
<u>Audit of County Books</u>	8,500.00
<u>Miscellaneous County Fund</u>	1.00
<u>Lowcountry Regional Planning Council</u>	6,537.00
<u>Item 18. Civil Defense</u>	9,000.00
<i>Provided, that the Director shall perform other duties as directed by the County Council.</i>	
<u>Item 19. Registration Board:</u>	
Salary - 3 members @ \$440 each.....	1,320.00
Salary - Clerk (Supplement).....	2,500.00
Total.....	<u>3,820.00</u>
<u>Item 20. Interest on County Indebtedness</u>	1.00
<u>Item 21. Coastal Mental Health Center</u>	12,000.00
<u>Item 22. Secretary - Circuit Judge and Assistant Solicitor's Salary</u>	1,500.00
<u>Airport - Supplement for retiring indebtedness</u>	1,000.00
<u>Beaufort-Jasper Soil & Water Conservation</u>	300.00
<u>RCSD - Lowcountry Resources Conservation & Development</u> ..	300.00
<u>Employees Insurance</u>	15,000.00
<u>Jasper County Joint Planning Commission:</u>	
plus balance from previous year.....	1,680.00
<u>Election Commission</u>	650.00
<u>Secretary to Delegation: (\$600 each Senator and \$1200 for Representative)</u>	2,400.00
<u>Jasper County Council on Aging</u>	7,000.00
<u>Public Defender: (Supplement to State funds)</u>	1,500.00
<u>Camp St. Mary's Human Development Center - Teen Nutrition:</u>	3,000.00
<u>Jasper County General Hospital - Weekend doctor service..</u>	10,000.00

Computer Funds:

Computer Programmers Salary.....	\$ 9,057.00
Computer Maintenance.....	3,120.00
Computer Programmers' Travel.....	300.00
Computer Office Supplies.....	259.00
Total.....	<u>12,736.00</u>

Janitorial Service: (Department of Social Services,
Health Department, and County Office Building) \$800 each... 2,400.00

Coosawhatchie Day Care Center..... 7,152.00

Ridgeland Little League Football..... 1,000.00

Jasper County Fire Prevention..... 10,923.00

Bl-Centennial..... 1,400.00

F H A Clerk Salary..... 1,500.00

Balance needed for salary through December 31, 1975.

Rural Transportation..... 5,000.00

Mental Retardation Program..... 4,000.00

Grand Total.....\$1,218,012.00

Less estimated revenue other than taxes:

Fines and Licenses..... 110,960.52

Income Tax..... 101,652.69

Beer and Wine Tax..... 9,252.26

Liquor Tax..... 36,087.36

Gasoline Tax (1 cent)..... 76,120.14

Miscellaneous..... 80,720.10

Total Revenues..... 414,793.07

Amount to be raised by taxation..... 670,164.00

Section 2. The council is hereby prohibited from issuing a check to any magistrate until the magistrate has filed with him a statement of the names of all parties for whom warrants have been issued during the previous months and the disposition of each and a receipt from the treasurer. As of February 20, 1973, Council approved paying the first check in the month and holding the last check until the magistrates turn in their report at the end of the month.

Section 3. The County Council shall employ a competent auditing firm to complete and audit the county books. The treasurer is hereby empowered to pay for same from the county general fund. Provided, that a copy of this audit shall be furnished to each member of County Council immediately upon completion of the report. The county attorney is to approve the legality of the contract.

Section 4. It is hereby made unlawful for the supervisor, the finance officer, the County Council, or any other officer of the county to exceed the appropriation set forth. If anyone overspends an appropriation for any other purpose not specifically provided herein, it shall be deemed an act of official misconduct and will constitute grounds for an action of impeachment.

Section 5. The clerk of court is hereby authorized and required to pay jurors twelve cents mileage for each day's attendance upon court.

Section 6. No claim shall be paid by the Council unless the same are itemized and probated.

Section 7. Any county official or employee who falsifies any claim against the county shall be subject to immediate dismissal or removal from office.

Section 8. The farm demonstration agent and the home demonstration agent shall be appointed by proper authorities by and with the consent of Jasper County's Legislative Delegation.

Section 9. In order to meet the appropriations provided for in this ordinance, the treasurer, supervisor and the County Council of Jasper County are authorized and empowered to borrow, as and when needed, such sums as may be necessary, not exceeding the prevailing present rate per annum to meet the appropriations and expenditures herein made. The officers shall execute notes for Jasper County as evidence of such indebtedness and may pledge the taxes herein levied.

Section 10. The Supervisor of Jasper County before purchasing or placing an order for equipment, material, supplies, goods, ware, merchandise, or for anything whatsoever needed and used for county purposes in an amount in excess of three hundred dollars, shall have presented the same at a regular meeting of the County Council and have the approval of a majority of the Council.

Section 11. The treasurer of Jasper County, upon written direction of a majority of the Jasper County Council, is hereby authorized and empowered to lend from any available funds of Jasper County to the County Board of Education or any school district in need of funds.

Section 12. The county supervisor is hereby authorized to grant up to ten days annual leave with pay to county employees and up to ten days annual sick leave with pay, according to Personnel Policy, provided the employee is under a doctors' care.

Section 13. Should the County Council in any subsequent year fail to enact an appropriations ordinance for Jasper County, the appropriations and tax levy herein set forth shall be the appropriations ordinance for such subsequent year for Jasper County.

Section 14. Should a deficit result from the appropriations made in the 1975-76 County appropriations Act, there is hereby appropriated a sufficient amount to cover this deficit.

Section 15. The treasurer of Jasper County is authorized upon the written approval of the County Council to borrow such sums as may be necessary to meet the obligations set forth in the county appropriations beginning July 1, 1975.

Section 16. The Jasper County Council may add items and transfer from the contingent funds for the payment thereof to subsection Miscellaneous County Funds in the Miscellaneous section of this ordinance.

Section 17. All work on privately-owned property by the supervisor shall have approval of the full County Council thirty days prior to such work.

Section 18. All gasoline used by the sheriff's department and the county supervisor will be supplied from a tank at the county equipment garage. This tank shall be equipped with individual keys and individual meter so that the sheriff, the deputy sheriff, and supervisor shall present to the County Council a monthly statement of gasoline consumption. In case there should be an emergency on the road the individuals of these departments are permitted to purchase gasoline and oil and are required to furnish an itemized statement for reimbursement for same.

Section 19. Each agency or department of the county receiving appropriated funds under this ordinance shall at the end of this fiscal year file with the County Council an accounting for the use of such funds. This accounting shall be available for examination or inspection by the citizens of Jasper County.

Section 20. Prisoners serving time in Jasper County Law Enforcement Center may be used by the county supervisor's office for work on public buildings, grounds and roads upon the approval of the sheriff.

Section 21. The County Council of Jasper County shall determine the cost of license for non-resident fireworks salesmen.

Section 22. All persons responsible for the care and maintenance of any motor vehicle registered in the name of Jasper County or any entity of the County shall file with the County Council proof that the vehicle is covered with the minimum liability insurance required by law.

Section 23. The compensation of all elected or appointed county officials and their respective staffs appropriated herein are for full time employment. Any such person who works less than full time shall have his compensation pro-rated on the basis of the amount so appropriated.

Section 24. All county offices with two or more employees shall stagger their noon hour so as to have offices in the courthouse open at all times during working hours.

Approved: Jasper County Council

Henry C. Lawton, Sr., Chairman

L. Martin Sauls, III, Vice-Chairman

Wallace E. Goethe

Byrtie J. Breland

Henry C. Simmons

EXHIBIT 5

The following is an ordinance passed by the Jasper County Council this 21st day of June, 1976, after being published in the county newspaper for twenty days.

Section 1. There is hereby levied upon all the taxable property of Jasper County a sufficient number of mills by the auditor from assessment of the property therein which, together with fines, forfeitures and taxes collected by various officers and all income of the county shall raise the amount therein appropriated and for the purpose herein stated.

Item 1. Roads and Bridges.....\$ 65,500.00
 Plus new equipment balance from prior year. Provided, that the maintenance and operation of the Supervisor's vehicles will be paid from this account upon the approval of the county council.

Item 2. Clerk of Court
 Salary - Clerk of Court 9,500.00
 Salary - Deputy Clerk 5,250.00
 Total 14,750.00

Item 3. Sheriff's Office:
 Salary - Sheriff..... 9,873.00
 Salary - Deputy Sheriffs' (5) 41,635.00
 Salary - Clerk 5,250.00
 Vehicle maintenance, Operation, and Insurance..... 15,000.00
 Provided, the jailor may wear uniform only during sessions of county court and on out-of-county trips on official business of the sheriff and deputy sheriffs' and shall clearly be marked. Provided further, that funds accruing from the sale of confiscated property shall be kept in a separate account by the county treasurer to be used by the Sheriff's Department for Law Enforcement.
 Total 71,758.00

Item 4. Treasurer's Office:
 Salary - Treasurer - County supplement to State salary 2,415.00
 Salary - Clerk 5,250.00
 Total 7,665.00

Item 5. Auditor's Office:
 Salary - Auditor - County supplement to State salary 2,415.00
 Salary - Clerk 5,250.00
 Total 7,665.00

Item 6. Board of Education:
 Members - Board of Education - (Chrm.) \$1200; 8 memb. \$1000,.. 9,200.00
 School Lunch Program 1,500.00
 Total 10,700.00

<u>Item 7. Judge of Probate's Office:</u>	
Salary - Judge of Probate	\$ 9,500.00
Salary - Deputy Clerk	5,250.00
Supplies	1,000.00
Family Court	1,000.00
Carry forward balance - Indexing Probate Books account	
Total	<u>16,750.00</u>

<u>Item 8. Coroner's Office:</u>	
Salary - Coroner	2,225.00

<u>Item 9. County Council:</u>	
Salary - Supervisor & Adm. Assistant to Council*	12,600.00
Salary - Council Members (5)	18,511.00
Council Members - \$25.00 per diem per meeting	5,000.00
Salary - Office Manager	7,300.00
Miscellaneous Account	500.00
Total	<u>43,911.00</u>

*Provided that Gillisonville Square, Courthouse grounds shall be maintained and kept up by the Supervisor.

<u>Item 10. Magistrates:</u>	
Salary - Hardeeville	5,250.00
Salary - Grays	2,625.00
Salary - Ridgeland	9,500.00
Salary - Tillman	2,625.00
Salary - Clerk to Ridgeland Magistrate	5,000.00
Rent & Utilities - Hardeeville Magistrate	650.00
Total	<u>25,650.00</u>

<u>Item 11. Law Enforcement Center:</u>	
Salary - Jailer	6,197.00
Provided, that the Sheriff may use the jailer as a deputy when deemed advisable.	
Misting of Prisoners (\$2.25 per day)	8,000.00
Provided that 24 hours constitutes a day.	
Jail Expense	800.00
Total	<u>14,997.00</u>

<u>Item 12. Court Expense:</u>	
Court Expense	3,000.00
Provided that bailiff and jurors be paid seven dollars per day.	

<u>Item 13. Health Department:</u>	
Health Unit	7,318.00
Salary - Clerk (Supplement)	1,926.00
Travel	1,200.00
Total	<u>10,444.00</u>

Item 14. Public Buildings:

Maintenance	\$ 5,600.00
Insurance	18,000.00
Utilities, Office Equipment	65,000.00
Total	<u>88,600.00</u>

Any official serving Jasper County whose duties may require long distance calls after office hours will be provided with a credit card issued by the County Council.

Item 15. Farm and Home Demonstration Work:

Boys and Girls 4-H Work	250.00
Demonstration Materials	250.00
Farm Womens' Work	150.00
Corn Contest	100.00
Total	<u>750.00</u>

Item 16. County's Portion of Support to Public Schools: 572,000.00

Provided, that all school budgets will be submitted to the County Board of Education prior to February 15, of each year. Provided further, that the County Board of Education shall advise the Council of the school needs for each fiscal year prior to February 15; of each year.

Miscellaneous:

County Attorney:	2,559.00
Provided, he shall handle all small county cases and advise all county officials, except the Sheriff, on criminal matters.	

County Service Officer (Supplement Salary)	2,205.00
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Janitorial Service	5,675.00
Service at Courthouse and grounds. Provided, that this shall be taken care of by the Supervisor.	
Overtime pay during court and night meetings	270.00
Total	<u>5,945.00</u>

Forestry Wardens - Six @ \$525	3,150.00
Provided, that all wardens receiving this travel must be under the supervision of the Jasper County Forestry Board.	

Travel Outside County	1,000.00
The following county officials when traveling outside Jasper County on official business, shall be paid twelve cents per mile and expense. Senators, Representatives, Sheriff, Deputy Sheriff, Supervisor, Judge of Probate, Auditor, Treasurer, Clerk of Court, County Attorney, and Service Officer. Also, these officials may draw seven dollars per day for expenses when they are out of county on official business overnight. Provided, that all claims are approved by the County Council. Provided, further, that prior approval of the Supervisor shall be obtained for the purpose of making trips outside the county, except for law enforcement officers.	

Council Travel	\$ 1,000.00
(\$.12 per mile when on county business)	
<u>Tax Assessor's Office:</u>	
Salary - Tax Assessor	9,500.00
Travel - Tax Assessor	500.00
Clerk - Salary	5,250.00
Field Assessors (2) Salary	15,750.00
Field Assessors (2) Travel	2,400.00
Office Supplies, Maps and etc.	1,000.00
Tax School	450.00
Total	34,850.00
<u>Board of Assessors and Equalization:</u>	
6 members @ \$367.50 each plus 12¢ per mile.....	3,200.00
<u>Department of Social Services.....</u>	
Provided, this shall be paid when approved by the Department of Social Services Board, and further that a list of patients and the amount be made available to the County Council on or before the first Monday of each month. The emergency and welfare funds are combined and will be disbursed from the Council office.	3,000.00
<u>Attendance Teacher Charity Fund.....</u>	600.00
<u>Coosawhatchie Fire Department</u>	1,500.00
<u>Grays Fire Department</u>	1,500.00
<u>Ridgeland Fire Department</u>	1,500.00
<u>Tillman Fire Department</u>	1,500.00
<u>Hardeeville Fire Department</u>	1,500.00
<u>Hardeeville Marine Rescue Squad.....</u>	1,000.00
<u>Postmortems, Inquest and Lunacies</u>	2,000.00
Provided, that the Sheriff shall serve civil and criminal papers pertaining thereto. In the event that the Coroner of Jasper County is sick or otherwise disqualified, the Magistrate of Ridgeland shall hold postmortems and inquest without compensation; provided, further that the examining physician shall be paid \$10.00 per examination. Provided, Coroner's and Magistrate's jurors shall be paid two dollars per day.	
<u>Vital Statistics</u>	100.00
<u>Physicians</u>	1,200.00
<u>Printing, Postage, Stationery and Advertising.....</u>	9,500.00

<u>State Retirement System</u>	\$ 20,500.00
<u>Social Security</u>	19,000.00
<u>Jasper County Farm Bureau Marketing Commission</u>	200.00
<u>Library Funds:</u>	
Funds to Regional Library	5,351.00
Librarian	5,784.00
Library Fund to Jasper County	50.00
Custodial service for Library	300.00
Travel - County Librarian and Trustees	100.00
Hardeeville Library	2,681.00
Total	14,266.00
<u>National Guard Fund and Janitorial Service</u>	1,000.00
<u>Jasper County Development Board</u>	10,000.00
<u>Bond Premiums</u>	1,500.00
<u>Burial Expense, Paupers</u>	300.00
Provided, that this expense be approved by the Department of Social Services Board.	
<u>Fire Tower Wardens</u>	890.00
<u>Forestry Ranger</u>	371.00
<u>Miscellaneous Contingent Fund</u>	69,000.00
Provided, that this fund shall be used upon written approval by the County Council as it deems necessary to supplement any account except salaries.	
<u>Audit of County Books</u>	10,000.00
<u>Miscellaneous County Fund</u>	1.00
<u>Low-Country Regional Planning Council</u>	6,537.00
<u>Item 18. Disaster Preparedness Agency</u>	9,000.00
Provided, that federal funds become available which supports one half of the program. Provided further, that the Director shall perform other duties as directed by the County Council.	
<u>Item 19. Registration Board:</u>	
Salary - 3 members @ \$462 each	1,386.00
Salary - Clerk (Supplement)	2,750.00
Total	4,136.00
<u>Item 20. Interest on County Indebtedness</u>	1.00

Item 21. <u>Coastal Empire Mental Health Center</u>	\$ 7,500.00
Item 22. <u>Secretary - Circuit Judge and Asst. Solicitor's Salary</u> .	1,500.00
<u>Airport</u>	1,000.00
<u>Beaufort-Jasper Soil & Water Conservation</u>	300.00
<u>RC&D - Lowcountry Resources Conservation & Development</u>	300.00
<u>Employees Insurance</u>	18,000.00
<u>Jasper County Joint Planning Commission</u>	5,000.00
<u>Plus balance from previous year.</u>	
<u>Election Commission</u>	650.00
<u>Secretary to Delegation: \$600 each Senator & \$1200 Representative</u>	2,400.00
<u>Jasper County Council on Aging</u>	7,000.00
<u>Public Defender: (Supplement to State Funds)</u>	1,500.00
<u>Camp St. Mary's Human Development Center - Teen Nutrition</u>	3,000.00
<u>Jasper County General Hospital - Weekend Doctor Service</u>	10,000.00
<u>Computer Account:</u>	
<u>Computer Operator's Salary</u>	8,000.00
<u>Computer Maintenance - (Carry Balance Forward)</u>	5,000.00
<u>Computer Operator's Travel</u>	300.00
<u>Total</u>	13,300.00
<u>Janitorial Service: (Department of Social Services, Health</u> <u>Department, and County Office Building) \$1,000.00 each</u>	3,000.00
<u>Coosawhatchie Day Care Center</u>	5,326.00
<u>Jasper County Fire Prevention</u>	5,000.00
<u>(Carry balance forward)</u>	
<u>Mental Retardation Program</u>	4,000.00
<u>Coastal Zone Planning Council</u>	3,529.71
<u>Law Enforcement Storage Room</u>	1,730.00
<u>Lowcountry Senior Citizens</u>	2,000.00
<u>Matthew West Football Field</u>	20,000.00
<u>Solid Waste Program</u>	32,500.00

Drainage Channel Maintenance	\$ 2,900.00
<u>Litter Officer's Salary</u>	5,600.00
<u>Grand Total</u>	\$1,358,911.71
Less estimated revenue other than taxes:	
Fines and Licenses	152,636.00
Income Tax	96,146.00
Beer and Wine Tax	9,973.00
Liquor Tax	27,936.00
Gasoline Tax (1 cent)	76,858.00
Miscellaneous	<u>150,785.43</u>
Total Revenues	\$514,334.43
Amount to be raised by taxation	844,577.28

Section 2. The council is hereby prohibited from issuing a check to any magistrate until the magistrate has filed with him a statement of the names of all parties for whom warrants have been issued during the previous months and the disposition of each and a receipt from the treasurer. As of February 20, 1973, Council approved paying the first check in the month and holding the last check until the magistrates turn in their report at the end of the month.

Section 3. The County Council shall employ a competent auditing firm to complete and audit the county books. The treasurer is hereby empowered to pay for same from the county general fund. Provided, that a copy of this audit shall be furnished to each member of County Council approve the legality of the contract.

Section 4. It is hereby made unlawful for the supervisor, the County Council, or any other officer of the county to exceed the appropriation set forth. If anyone overspends an appropriation for any other purpose not specifically provided herein, it shall be deemed an act of official misconduct and will constitute grounds for an action of impeachment.

Section 5. The clerk of court is hereby authorized and required to pay jurors twelve cents mileage for each day's attendance upon court.

Section 6. No claim shall be paid by the Council unless the same are itemized and probated.

Section 7. Any county official or employee who falsifies any claim against the county shall be subject to immediate dismissal or removal from office.

Section 8. The farm demonstration agent and the home demonstration agent shall be appointed by proper authorities by and with the consent of Jasper County's Legislative Delegation.

Section 9. In order to meet the appropriations provided for in this ordinance, the treasurer, supervisor and the County Council of Jasper County are authorized and empowered to borrow, as and when needed, such sums as may be necessary, not exceeding the prevailing present rate per annum to meet the appropriations and expenditures herein made. The officers shall execute notes for Jasper County as evidence of such indebtedness and may pledge the taxes herein levied.

Section 10. The Supervisor of Jasper County before purchasing or placing an order for equipment, material, supplies, goods, ware, merchandise, or for anything whatsoever needed and used for county purposes in an amount in excess of three hundred dollars, shall have presented the same at a regular meeting of the County Council and have the approval of a majority of the Council.

Section 11. The treasurer of Jasper County, upon written direction of a majority of the Jasper County Council, is hereby authorized and empowered to lend from any available funds of Jasper County to the County Board of Education or any school district in need of funds.

Section 12. The county supervisor is hereby authorized to grant up to ten days annual leave with pay to county employees and up to ten days annual sick leave with pay, according to personnel policy, provided the employee is under a doctor's care.

Section 13. Should the County Council in any subsequent year fail to enact an appropriations ordinance for Jasper County, the appropriations and tax levy herein set forth shall be the appropriations ordinance for such subsequent year for Jasper County.

Section 14. Should a deficit result from the appropriations made in the 1976-77 County appropriations Act, there is hereby appropriated a sufficient amount to cover this deficit.

Section 15. The treasurer of Jasper County is authorized upon the written approval of the County Council to borrow such sums as may be necessary to meet the obligations set forth in the county appropriations beginning July 1, 1976.

Section 16. The Jasper County Council may add items and transfer from the contingent funds for the payment thereof to subsection Miscellaneous County Funds in the Miscellaneous section of this ordinance.

Section 17. All work on privately-owned property by the supervisor shall have approval of the full County Council thirty days prior to such work.

Section 18. All gasoline used by the sheriff's department and the county supervisor will be supplied from a tank at the county equipment garage. This tank shall be equipped with individual keys and individual meters so that the sheriff, the deputy sheriff, and supervisor shall present to the County Council a monthly statement of gasoline consumption. In case there should be an emergency on the road the individuals of these departments are permitted to purchase gasoline and oil and are required to furnish an itemized statement for reimbursement for same.

Section 19. Each agency or department of the county receiving appropriated funds under this ordinance shall at the end of this fiscal year file with the County Council an accounting for the use of such funds. This accounting shall be available for examination or inspection by the citizens of Jasper County.

Section 20. Prisoners serving time in Jasper County Law Enforcement Center may be used by the county supervisor's office for work on public buildings, grounds and roads upon the approval of the sheriff.

Section 21. All persons responsible for the care and maintenance of any motor vehicle registered in the name of Jasper County or any entity of the County shall file with the County Council proof that the vehicle is covered with the minimum liability insurance required by law.

Section 22. The compensation of all elected or appointed county officials and their respective staffs appropriated herein are for full time employment. Any such person who works less than full time shall have his compensation pro-rated on the basis of the amount so appropriated.

Section 23. All county offices with two or more employees shall stagger their noon hour so as to have offices in the courthouse open at all times during working hours.

Approved: Jasper County Council

Henry C. Lawton, Sr., Chairman

L. Martin Sauls, III, Vice-Chairman

Wallace E. Goethe

Ryrtle J. Breland

Henry C. Simmons

EXHIBIT 6

JASPER COUNTY
OPERATIONAL BUDGET
Fiscal Year 1977-78

The following is an ordinance passed by the Jasper County Council this 27th day of June, 1977, after being published in the county newspaper for fifteen days.

Section 1. There is hereby levied upon all the taxable property of Jasper County a sufficient number of mills by the auditor from assessment of the property therein which, together with fines, forfeitures and taxes collected by various officers and all income of the county shall raise the amount therein appropriated and for the purpose herein stated.

Item 1. <u>Roads and Bridges</u>	\$ 75,000.00
Plus new equipment balance from prior year. Provided, that the maintenance and operation of the Roads & Bridges Department vehicles will be paid from this account upon the approval of the county council.	
Telephone utilities.....	360.00
Total.....	75,360.00

Item 2. <u>Clerk of Court</u>	
Salary - Clerk of Court.....	10,100.00
Salary - Deputy Clerk.....	5,850.00
Special deputy for court.....	300.00
Operating Expense(Funds received for copies to be returned to this account)	6,000.00
Telephone Utilities.....	330.00
Witness Pay	600.00
Court Expense.....	14,906.00
The last 2 accounts will be disbursed by Clerk of Court.	
Total.....	38,086.00

Item 3. <u>Law Enforcement Department</u>	
Sheriff's Salary.....	10,473.00
(5) Deputies.....	45,000.00
(1) Deputy - Juvenile Officer.....	7,500.00
Duties: Per Sheriff that this deputy would stay within the office, or when on special assignment be assisted by another deputy.	
Clerk.....	5,850.00
(2) Jailers (Provided, there is 24 hour coverage).....	12,000.00
(1) Part-time Jailer.....	3,500.00
Jail Supplies.....	1,500.00
Dieting of Prisoners (2.25 per day - 24 hours constitutes a day)	8,000.00
Vehicle Maintenance, Operation and Insurance.....	15,000.00
Postage.....	312.00
Telephone Utilities.....	2,500.00
Provided, that funds accruing from the sale of confiscated property shall be kept in a separate account to be used by the sheriff for Law Enforcement.	
Total.....	111,635.00

Item 4. <u>Treasurer's Office</u>	
Salary - Treasurer (supplement).....	3,042.22
Salary - Clerk	5,850.00
Office Supplies, and Filing Cabinet.....	1,275.00
Telephone Utilities.....	275.00
Total.....	10,442.22

<u>Item 5. Auditors Office</u>	
Salary - Auditor	\$ 3,042.22
Salary - Clerk.....	5,850.00
Office Supplies.....	982.28
Telephone Utilities.....	233.00
Total.....	10,107.50
 <u>Item 6. Board of Education</u>	
Chairman - \$1200; 8 members @ \$1,000 each.....	9,200.00
School Lunch Program.....	1,500.00
Total.....	10,700.00
 <u>Item 7. Judge of Probate</u>	
Salary - Judge of Probate.....	10,100.00
Salary - Deputy Clerk.....	5,850.00
Office Supplies.....	1,000.00
Telephone Utilities.....	250.00
Total.....	17,200.00
*	
<u>Item 8. Coroner's Salary</u>	2,825.00
 <u>Item 9. County Council and Administrative Office</u>	
Salary - Administrator	14,500.00
Salary - Chairman of Council.....	5,824.00
Council Members 4 @ \$5200 each	20,800.00
Office Manager and Clerk to Council.....	8,800.00
Council Miscellaneous Account.....	1,000.00
Council Travel	2,500.00
Office Supplies.....	1,000.00
Telephone Utilities.....	2,500.00
Total.....	56,924.00
 <u>Item 10. Magistrates</u>	
Chief of Magistrates - Ridgeland - Salary.....	10,100.00
Secretary to Magistrate Jones - Salary.....	5,850.00
Office Supplies and Equipment.....	1,323.00
Judicial Education.....	500.00
Telephone Utilities.....	420.00
<u>Magistrate - Hardeeville - Salary</u>	5,850.00
Office Supplies.....	125.00
Rent and Utilities.....	650.00
<u>Magistrate - Grays - Salary</u>	3,225.00
<u>Magistrate - Tillman-Salary</u>	3,225.00
Total.....	31,268.00
 <u>Item 11. County Attorney - Salary</u>	3,159.00
 <u>Item 12. Jasper County General Hospital</u>	
Weekend Doctor Service	10,000.00
 <u>Item 13. Health Department</u>	
Health Unit - (Contingent)	6,000.00
Salary Supplement - Clerk	1,926.00
Janitorial Service.....	1,200.00
Vital Statistics	100.00
Telephone Utilities	2,500.00
Total	11,726.00

* Indexing Probate Books account - Carry balance forward.

Item 14. Public Buildings

Maintenance.....	\$ 5,600.00
Insurance.....	18,000.00
Utilities, Equipment, Supplies, etc.....	50,000.00
Janitor (Courthouse) - Salary.....	6,275.00
Overtime pay during Court and Night Meetings.....	270.00
Courthouse Repair Account.....	150.00
Janitorial Service (County Office Building).....	1,200.00
Total.....	81,495.00

Item 15. Farmwork

Boys and Girls 4-H Work.....	250.00
Demonstration Materials.....	150.00
Women's Farm Work.....	250.00
Corn Contest.....	100.00
Telephone Utilities.....	1,200.00
Total.....	1,950.00

Item 16. County's Portion of Support to Public Schools

618,900.00 ✓

Provided, that all school budgets will be submitted to the County Board of Education prior to March 15, of each year. Provided, further, that the County Board of Education shall advise the Council of the school needs for each fiscal year prior to March 15, of each year.

Career School..... 62,431.00

Provided, the total one-third share does not exceed \$62,431.00 and Beaufort County comes up with their two-thirds share.

Item 17. Miscellaneous

Forestry

Warden's Travel (7) @ \$525 each..... 3,675.00
(Limit of total funds - if additional wardens are hired during the year - travel expense will be prorated at the beginning of next fiscal year.)

Provided, that all wardens receiving this travel must be under the supervisor of the Jasper County Forestry Board.

Fire Tower Wardens (2) - Supplement Salary..... 890.00

Forest Ranger - Supplement Salary..... 371.00
Total..... 4,936.00

Out of County Travel..... 1,000.00

The following county officials when traveling outside Jasper County on official business, shall be paid fourteen cents per mile and expense. Sheriff, Deputy Sheriff, Administrator, Judge of Probate, Auditor, Treasurer, Clerk of Court, County Attorney. Provided, that all claims are approved by the County Council. Provided, further, that prior approval of the Administrator shall be obtained for the purpose of making trips outside the county, except for law enforcement officers.

Veteran Affairs

Veteran Affairs Officer - Salary Supplement..... 3,066.00

Office Supplies..... 25.00

Travel and Meals..... 75.00

Telephone Utilities..... 225.00

Total..... 3,391.00

<u>Tax Assessor's Office</u>	
Salary - Tax Assessor.....	\$ 10,100.00
Travel - Tax Assessor.....	900.00
Salary - Appraiser/Draftsman.....	8,000.00
Travel - Appraiser/Draftsman.....	1,800.00
Salary - Clerk I.....	5,850.00
Salary - Clerk II.....	5,850.00
Tax Commission School.....	460.00
Office Supplies and Postage.....	2,000.00
Act 208 - Assessment Expenses.....	1,865.00
Telephone Utilities.....	500.00
Total.....	37,325.00
<u>Board of Appeals</u>	
(6) Members @ \$367.50 each plus travel.....	3,200.00
@ fourteen (14) cents per mile to regular meetings only.	
<u>Department of Social Services</u>	
Emergency Funds.....	3,000.00
Janitorial Service (2 buildings).....	1,800.00
Supplies.....	500.00
Rent (1 Building)	2,220.00
Telephone Utilities.....	2,400.00
Total.....	9,920.00
<u>Hardeeville Rescue Squad</u>	1,000.00
<u>Jasper County Rescue Squad</u>	1,000.00
<u>Rural Fire Department</u>	24,351.00
<u>Attendance Teacher Charity Fund</u>	600.00
<u>Postmortems, Lunacies and Inquest</u>	2,500.00
<u>Physicians</u>	1,200.00
<u>Printing, Postage and Advertising</u>	
Includes \$1500 for postage in Treasurer's Office.....	7,500.00
<u>State Retirement</u>	22,000.00
<u>Social Security</u>	20,000.00
<u>Regional Library (To be disbursed quarterly)</u>	15,450.50
Miscellaneous (Supplies and Postage).....	200.00
Travel Expense - Librarian and Board Members.....	100.00
Repairs and upkeep to Building and Grounds.....	1,100.00
Janitorial Services.....	300.00
Telephone Utilities.....	420.00
Total.....	17,570.50
<u>Hardeeville Library</u>	2,681.00
<u>National Gaurd</u>	1,000.00
Telephone Utilities.....	600.00
Total.....	1,600.00

<u>Jasper County Development Board</u>	\$ 10,000.00
<u>Jasper County Farmers Marketing Commission</u>	200.00
<u>Lowcountry Council of Governments</u>	6,537.00
<u>Bond Premiums</u>	1,500.00
<u>Burial Expense</u>	300.00
<u>Miscellaneous Contingent Fund</u>	65,000.00
<u>Audit of County Books</u>	12,000.00
<u>Miscellaneous County Fund</u>	1.00
Item 18. Disaster Preparedness Agency.....	7,000.00
Provided, that federal funds become available which supports one half of the program. Provided further, that the Director shall perform other duties as directed by the County Council.	
Item 19. <u>Registration Board</u>	
(3) Members @ \$462.00 each.....	1,386.00
Clerk Salary Supplement.....	3,350.00
Office Supplies.....	106.00
Telephone Utilities.....	216.00
Total.....	*5,058.00
Item 20. <u>Interest on County Indebtedness</u>	1.00
Item 21. <u>Coastal Empire Mental Health</u>	7,500.00
<u>Assistant Solicitor</u> (Supplement salary and travel expense).....	1,500.00
<u>L. Mendel Rivers Airport</u>	1,000.00
<u>Resources Conservation & Development</u>	300.00
<u>Resources Conservation & Development (Local)</u>	150.00
<u>Jasper Soil and Water Conservation</u>	2,000.00
<u>Election Commission</u>	650.00
<u>Jasper County Council on Aging</u>	10,000.00
<u>Employees Insurance</u>	18,000.00
<u>Secretary to Delegation</u>	2,800.00
(\$600 each Senator and \$1600 to Representative)	
<u>Public Defender</u>	1,500.00
<u>Camp St. Mary's</u>	3,000.00
<u>Jasper County Joint Planning Commission</u>	5,000.00
Plus balance from previous year	

<u>Data Processing Expense</u>	
Data Processing Supervisor.....	\$ 10,100.00
Data Processing Supervisor's Travel.....	300.00
Clerk's Salary	5,850.00
Office Supplies.....	5,225.00
Computer Services.....	8,500.00
Payments and Maintenance.....	<u>10,000.00</u>
Total.....	39,975.00
 <u>Coosawhatchie Day Care Center</u>	 5,326.00
<u>Lowcountry Senior Citizens</u>	1,750.00
<u>Mental Retardation Program</u>	4,000.00
<u>Coastal Zone Planning Council</u>	5,640.00
<u>Sergeant Jasper Festival</u>	750.00
<u>Hardeeville Catfish Day</u>	750.00
<u>Litter Officers Salary</u>	7,200.00
<u>Probation Office (Telephone Utilities)</u>	540.00
<u>Drainage Channel Maintenance</u>	3,000.00
<u>Family Court Judge (Expense for Office Space)</u>	2,000.00
<u>Recreation</u>	20,000.00
<u>Ambulance</u>	6,700.00
<u>Emergency Medical Service</u>	48,000.00
<u>Ridgeland Drainage</u>	5,813.00
<u>Ridgeland Water System</u>	5,000.00
<u>701 Grant</u>	2,334.00
<u>Mitchellville Drainage</u>	26,000.00
<u>Annual Leave Fund</u>	500.00
<u>Intake Officer</u>	500.00

Grand Total.....\$1,662,758.22

Less estimated revenue other than taxes:

Fines and Licenses..... 150,311.74

Income Tax..... 94,411.17

Beer and Wine..... 10,135.49

Liquor Tax..... 30,849.03

Gasoline Tax..... 77,302.19

Miscellaneous..... 200,000.00

Total Revenues.....\$563,009.62

Amount to be raised by taxation.....\$1,099,748.60

Section 2. The council is hereby prohibited from issuing a check to any magistrate until the magistrate has filed with him a statement of the names of all parties for whom warrants have been issued during the previous months and the disposition of each and a receipt from the treasurer. As of February 20, 1973, Council approved the paying the first check in the month and holding the last check until the magistrates turn in their report at the end of the month.

Section 3. The County Council shall employ a competent auditing firm to complete and audit the county books. The treasurer is hereby empowered to pay for same from the county general fund. Provided, that a copy of this audit shall be furnished to each member of County Council immediately upon completion of the report. The county attorney is to approve the legality of the contract.

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Section 8. The farm demonstration agent and the home demonstration agent shall be appointed by proper authorities by and with the consent of Jasper County's Legislative Delegation.

Section 9. In order to meet the appropriations provided for in this ordinance, the treasurer, Administrator, and the County Council of Jasper County are authorized and empowered to borrow, as and when needed, such sums as may be necessary, not exceeding the prevailing present interest rate per annum to meet the appropriations and expenditures herein made. The officers shall execute notes for Jasper County as evidence of such indebtedness and may pledge the taxes herein levied.

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Section 13. Should the County Council in any subsequent year fail to enact an appropriations ordinance for Jasper County, the appropriations and tax levy herein set forth shall be the appropriations ordinance for such subsequent year for Jasper County.

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Section 16. The Jasper County Council may add items and transfer from the contingent funds for the payment thereof to subsection Miscellaneous County Funds in the Miscellaneous section of this ordinance.

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Approved: Jasper County Council

David P. Lowther, Chairman

M. F. Gray, Vice-chairman

Wallace Goethe

William Davis

Joe Vaigneur

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS

Jasper County Board of Education,)
)
Plaintiff,)

C.A. No. 2013-CP-27-00362

vs.)

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION FOR JUDGMENT
ON THE PLEADINGS**

Jasper County Council and Jasper County)
Auditor,)
)
Defendants.)

I. INTRODUCTION

This declaratory judgment action was filed July 15, 2013, by the Jasper County Board of Education ("Board"). The Board asks this Court to declare rights, status and other legal relations with regard to setting the school property tax rate for the Jasper County School District ("School District"). An acceptance of service from each defendant (Jasper County Council ("Council") and Jasper County Auditor ("Auditor")) have been filed with the Court, and the defendants filed their Answers on August 30, 2013.

"The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar." S.C. R. Civ. P. 57. Time is of the essence because the Auditor has the power and duty, before September 30, to "make up and complete the tax books of the county" (§ 12-39-140) and to prepare and deliver to the County Treasurer the county tax duplicate imposing ad valorem taxes (S.C. Code Ann. §§ 12-39-150, -180, -190).¹ The Board contends that it (*i.e.*, *not* the Council) has the legal authority to determine the *ad valorem* millage rate for

¹ The "rights, status and other legal relations" therefore affect the responsibilities and official activities of the Auditor, who is therefore a made party pursuant to S.C. Code Ann. § 15-53-80. There is no quarrel between the Plaintiff and the County Auditor, save the necessity of the County Auditor being bound to the declaratory judgment on account of that office's role in levying taxes.

school operations for the School District, and to transmit it to the County Auditor to use for the tax duplicate.²

For fiscal year 2013-2014 (tax year 2013) the Jasper County Board of Education adopted a budget and millage rate of 172 mills for school operating *ad valorem* taxes.³ Defendant Jasper County Council has adopted a county budget that also purports to set the school operating millage rate at 166 mills. The school operating *ad valorem* revenue for fiscal year 2014 (tax year 2013) is projected to be \$444,000 less under the Council's ordinance than under the Board's budget.

A. Declaratory Judgment Act Generally.

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

- a. "Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. §15-53-20.
- b. An interested party whose, "... rights, status or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute, ... and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. §15-53-30.
- c. "Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper." S.C. Code Ann. § 15-53-120.

² More specifically, the Board contends that only the Board's adopted budget and rate for ad valorem school operating taxes constitute the "statements of the rates and sums to be levied by the Defendant Jasper County Auditor ("Auditor") for" school operating purposes of the School District for tax year 2013 (fiscal year 2013-2014) pursuant to S.C. Code Ann. § 12-39-180.

³ The Board's adopted millage rate complies with the general law capping the annual increase in an operating millage rate. See, S.C. Code Ann. § 6-1-300(3), -320. Indeed, there is *no* increase in the Board's rate for Tax Year 2013.

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

B. Judgment on the Pleadings/Summary Judgment Principles.

This case turns on the meaning of statutes within our state constitutional structure, not the resolution of factual disputes. Indeed, both parties have moved for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.⁴ "A motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue."⁵ If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.⁶ The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder.⁷ A motion for summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.⁸

The issue of interpretation of a statute is a question of law for the court.⁹ The key to statutory interpretation is to "ascertain and effectuate the intent of the legislature."¹⁰ The cardinal

⁴ S.C. R. Civ. P. 12.

⁵ *Rosenthal v. Unarco Indus., Inc.*, 278 S.C. 420, 297 S.E.2d 638, 640 (1982).

⁶ S.C. R. Civ. P. 12.

⁷ *Cunningham v. Anderson Cnty.*, 402 S.C. 434, 441, 741 S.E.2d 545, 549 (Ct. App. 2013).

⁸ *Health Promotion Specialists, LLC v. S. Carolina Bd. of Dentistry*, 2011-200626, 2013 WL 2631075 (S.C. June 12, 2013) (citing Rule 56(e), SCRCP).

⁹ *Catawba Indian Tribe of S. Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

¹⁰ *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

rule of statutory construction is that words used therein must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation.¹¹

II. ARGUMENT

All *ad valorem* taxation power is delegated from the General Assembly: "The General Assembly may provide for the *ad valorem* taxation by the State or any of its subdivisions of all real and personal property." S.C. Const. art. X, § 1. "[T]he General Assembly may vest the power of assessing and collecting taxes in all of the political subdivisions of the State, including counties, ... and school districts." S.C. Const. art. X, § 6.

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

On March 7, 1973, the "Home Rule Amendment" to the South Carolina Constitution rewriting Article VIII was ratified.¹² Section 1 of Article VIII of the South Carolina Constitution provides: "The powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law." The General Assembly thereafter enacted the "Home Rule Act," Act No. 283 of 1975, codified now as Sections 4-9-10 through 1230 of the Code of Laws. In *Duncan v. York County*, 267 S.C. 327, 228, S.E.2d 92 (1976), the Court held that section 1 of Article VIII allowed the General Assembly to legislate to bring about an orderly *transition* to local home rule government, but that such authority was *temporary* and extended only so far as necessary to place Article VIII fully into operation. Not later than July 1, 1976, all county governments were transitioned to the new

¹¹ *Wright v. Colleton County*, 301 S.C. 282, 391 S.E.2d 564 (1990); *Burns v. State Farm Mut. Auto Ins. Co.*, 297 S.C. 520, 377 S.E.2d 569 (1989); *Bryant v. City of Charleston*, 295 S.C. 408, 368 S.E.2d 899 (1988). The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Multi-Cinema, Ltd. v. S.C. Tax Comm'n*, 292 S.C. 411, 357 S.E.2d 6 (1987); *Hitachi Data Sys. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

uniform "home rule" system. S.C. Code Ann. § 4-9-10. On June 25, 1976, the then-extant special-law Jasper County Council decided that, "Pursuant to S.C. Code 1976, § 4-9-10 the form of government for the county shall be the council-administrator form as provided in S.C. Code 1976, § 4-9-610, *et seq.*"¹³

After the choice of the council-administrator form of county government, "the structure, powers, duties, functions and responsibilities of county government under the council-administrator form *shall be as prescribed* in Article 1 of this chapter." S.C. Code Ann. § 6-9-670. (*Emphasis added.*) Thus, after July 1, 1976, the "powers, duties, functions and responsibilities" of the Jasper County Council were "prescribed" by the general, statewide law of §§ 4-9-10 through 190, and not special Act 982 of 1968.

Implementing Article VIII has precipitated numerous disputes, like this one, requiring judicial resolution. "It undoubtedly was unforeseen in the early stages of home rule legal development that the full shift to legally constituted county governments might prove so frustratingly complex. The goal in all this legal activity is simply to establish an initial, legal county government." *Horry County v. Cooke*, 275 S.C. 19, 267 S.E.2d 82 (1980); *Van Fore v. Cooke*, 273 S.C. 136, 255 S.E.2d 339 (1979); *Infinger v. Edwards*, 268 S.C. 375, 234 S.E.2d 214 (1977) (Home Rule contemplates "uniformity" and "complete local autonomy").

A key component of the "frustrating complexity" was, and remains, the allocation of powers and duties of governmental entities and political subdivisions in alignment with the 1973 constitutional changes. Counties and school districts are separate and distinct governmental, corporate entities and are separately subject to constitutional and statutory provisions applicable to each.¹⁴

¹² S.C. Act No. 63 of 1973.

¹³ *Jasper County Code of Ordinances* § 2-1.

¹⁴ S.C.A.G. Op. 2003 WL 21471504 (2003).

As a county government under the Home Rule, Council may "levy ad valorem property taxes ... and make appropriations for functions and operations of the *county*" S.C. Code § 4-9-30(5) (*emphasis added*). Education is *not* included in the § 4-9-30(5) list of county functions and operations, nor could it be.

School districts exist not under Article VIII, but under Article XI, § 3 of the South Carolina Constitution, which provides that: "[t]he General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public institutions of learning, as may be desirable."¹⁵ The separate nature of school districts was confirmed in clear language by the Supreme Court:

Creation of different provisions for school districts does not impinge upon the 'home rule' amendment because public education is not the duty of the counties, but of the General Assembly. The General Assembly has not been mandated by any constitutional amendment to enact legislation to confer upon the counties the power to control the public school system. To the contrary, the command of new Article XI, Section 3, is 'The General Assembly shall provide for the maintenance and support of a system of free public schools.' ...

The contrast between Article XI and Article VIII should be obvious. In Article XI the General Assembly is charged with the duty to provide for a system of public education, whereas, *in Article VIII the General Assembly is required to confer powers upon the counties so that they may carry out local functions*. Moreover, a reading of Article XI, which deals specifically with public education, as a whole, in light of the historical background of public education in this State, and attempting to harmonize the entire Article and extract the impact of each section, it is clear that the provisions of Article VIII, which deal solely with local government, have no application to the matter currently before us.

Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975) (*emphasis added*).¹⁶

¹⁵ Article XI, § 3 was ratified on February 21, 1973. S.C. Act No. 42 of 1973. Article XI therefore pre-dates Article VIII "Home Rule."

¹⁶ See also *Horry Cnty. Sch. Dist. v. Horry Cnty.*, 346 S.C. 621, 552 S.E.2d 737, 742 (2001) (public

South Carolina Code Ann. § 59-17-10 states that a school district is a body politic. Section 59-1-160 defines a school district as an area encompassing a legal entity whose sole purpose is that of providing free school education and the area of which constitutes a complete tax unit. "School districts and their governing boards are generally considered political subdivisions of the State and hence may properly be vested with the State's taxing power." *Crow v. McAlpine*, 277 S.C. 240, 285 S.E.2d 355 (1981). The State Constitution requires that, "each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year." S.C. Const. art. X, § 7.

Thirteen years after Jasper County's transition to uniform Home Rule, and pursuant to Article XI, the General Assembly amended S.C. Act No. 601 of 1971 by adopting S.C. Act No. 288 of 1989, which provides in pertinent part:

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

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

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

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

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

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

education is not the duty of the counties, but of the General Assembly) and *Charleston Cnty. Sch. Dist. v. Charleston Cnty.*, 297 S.C. 300, 376 S.E.2d 778, 780 (1989).

the operation of the public schools of Jasper County ...;

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

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

From these powers arises this Declaratory Judgments action. A party whose "rights, status or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute, ... and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. §15-53-30.

The primary concern in interpreting a statute is to ascertain and effectuate legislative intent. All rules of statutory construction are subservient to the rule that legislative intent must prevail if it can reasonably be discovered in the language used, and that language must be construed in light of the intended purpose of the statute. As in this case, where a statute is complete, plain, and unambiguous, legislative intent must be determined from the language of the statute itself.

Charleston Cnty. Parents for Pub. Sch., Inc. v. Moseley, 343 S.C. 509, 541 S.E.2d 533, 536 (2001). The power of third-party fiscal oversight must be stated in the statute in "explicit terms" expressing a "clear intent" in "specific terms." *Id.*

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

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

Taxes for meeting public expenses are annually determined in a budget set by a particular governing body

Property taxes are levied to help provide the necessary revenue to meet the expenditure found in the budget. ...

In general terms, the appropriate tax rate is reached by dividing the assessed value of the property to be taxed into that part of the *budget* to be generated by property taxes.

Lee Cnty. v. Stevens, 277 S.C. 421, 289 S.E.2d 155 (1982).¹⁷ In order for the Board to perform its exclusive budgeting powers under Act No. 288 of 1989 and to "determine ... the educational program," (§ 2 ¶ (5)) the Board must have the power to establish the millage rate for school operations. Not only is this power implicit in § 2 ¶ (7) of the local law, but it is also included within the general grant of powers and responsibilities in § 2 ¶ (18) of the same local law. Particularly after Home Rule, any attempt by the County to claim oversight of the millage rate by default is irreconcilable with the plain language and meaning of "annually adopt a budget, with power to revise when necessary, sufficient to meet the educational needs of the county" as given to the Board along with "any other duties and responsibilities not inconsistent with local and state laws which may be necessary to meet the educational needs of the county."

Thus, straightforward statutory construction shows that the County's choice of the council-administrator form of government eliminated the Council's power and duties under special Act No. 982 of 1968; the Council's powers then were "prescribed" by § 4-9-30(5) which eliminated the Council's power to levy property taxes for education, and Act 288 of 1989 authorizes the elected Board to establish the tax levy as part of its budgetary authority.

The Board's statutory construction is not affected by one of the most cryptic passages in the Home Rule Act, codified at S.C. Code Ann. § 4-9-70:

¹⁷ See also, 2012 WL 4711426 (S.C.A.G.) (millage derived mathematically from the budget in order to ensure sufficient tax revenue to cover the projected expenses), S.C. Code § 6-1-80 (budget adoption notices) and S.C. Constitution, art. X, § 7(b); *c.f.*, *Gould v. Barton*, 256 S.C. 175, 201, 181 S.E.2d 662,

The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public school education, and all school districts, boards of trustees and county boards of education shall continue to perform their statutory functions in matters related thereto as prescribed in the general law of the State; provided, however, that except as otherwise provided for in this section the county council shall determine by ordinance the method of establishing the school tax millage except in those cases where boards of trustees of the districts or the county board of education established such millage at the time one of the alternate forms of government provided for in this chapter becomes effective. In counties containing more than one school district, where all such districts are located wholly within the boundaries of the county, council may be ordinance establish county-wide school tax millage....

The first phrase states that Chapter 9 does not create any additional authority of councils over school districts or boards, and reaffirms their functions "as prescribed in the general law of the State." This is followed by three qualifying "provided" clauses with sequential exceptions addressing the five methods of establishing school district millage rates: school district boards, county boards of education, county councils, legislative delegations, and electors directly by meeting or referendum. The first "provided" clause begins with "except as otherwise provided in this section (*i.e.*, § 4-9-70)," council "shall determine by ordinance the method of establishing school tax millage" followed by the exceptions within § 4-9-70 where the council's duty to establish a method does not seem to apply:

- (1) school district or county boards which already established the school tax millage on July 1, 1976;
- (2) counties "containing more than one district" all within the county where the council "may" establish the county-wide millage;
- (3) legislative delegations under the second "provided" clause (not quoted above); and

674 (1971) (a power to approve a budget carries with it power to disapprove until the budget conforms to the legislative wish).

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

Thus, under § 4-9-70, the most authority that the Council could retain after Home Rule is "to ~~determine the method of establishing the school tax millage.~~" Since Jasper County contains only one school district, the clause concerning counties with more than one school district does not apply. Section 4-9-30(5) and the constitutional separation of counties and school districts eliminates the authority of Council to establish "the method" by arrogating to itself the authority to establish the school millage.

It is also possible to construct § 4-9-70 so that the Board falls within the first exception of school boards which already established the school millage, since the Board's budgetary authority under Act 601 of 1971, which was effective on July 1, 1976, was in all relevant parts identical to its authority under Act 288 of 1989.

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

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

*constitutionally vest control of that power in appointed boards of education.*¹⁸

The Board, by contrast, was elected at the time of Home Rule and has continued to be elected ever since.¹⁹ To any extent taxing power was not already invested in the Board (discussed *infra*), there was *no* constitutional impediment under Art. X, § 5, to reposing the power of school taxation in the Board.

The Supreme Court has not looked at a situation where an *elected* school board, already possessed of explicit budgetary authority at the time of Home Rule, has contested with a county government attempting to rely on § 4-9-70. However, *Moye v. Caughman*, 265 S.C. 140, 217 S.E.2d 36 (1975) clearly resolves any doubt or equipoise about the proper constitutional locus of the school tax power as between two elected bodies, one of which is expressly part of Article XI, § 3, and one of which is not.

The unique special legislation for Jasper County resolves this issue without resort to broad constitutional declarations. Any power the Council could have retained after Home Rule under this provision was limited to a power to "determine by ordinance the *method* of establishing the school tax millage."²⁰

In summary, even if a rump of County tax power for school operations survived the ratification of Article XI, § 3 and Article VIII, § 1, the subsequent statutory roll-out of uniform county governmental powers in the Home Rule Act eliminated that rump. The Home Rule Act provides only that Council may "levy ad valorem property taxes ... and make appropriations for functions and operations of the *county*" S.C. Code Ann. § 4-9-30(5). No Council power to levy school taxes survived the Home Rule Act, which was *subsequent* to the adoption of Section 1 of Article VIII of the South Carolina Constitution providing that: "powers possessed by all

¹⁸ *Stone*, 297 S.E.2d at 422 (*emphasis added*).

¹⁹ See S.C. Act No. 601, § 1 (1971).

²⁰ S.C. Code Ann. § 4-9-70 (*emphasis added*).

counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue *until changed* in a manner provided by law." (*Emphasis added.*) This *change* to delimit County tax power to the realm of "functions and operations of the county"²¹ wrought by the Home Rule Act in *implementing* the transition required by new Article VIII erased any preexisting County power to tax for school operations.

With no express statement of the *method* of determining the millage (*see* § 4-9-70) and the 1971 and 1989 legislation granting the Board its budgeting powers, there are only four viable options that are consistent with the foregoing analysis, each of which entitles the Board to judgment:

- (1) that the power to transmit the Board's "statements of the rates and sums to be levied for the current year" directly to the County Auditor pursuant to S.C. Code Ann. §12-39-180 is inherent in its budgeting power under Act 288 of 1989 and Act 601 of 1971;
- (2) that the power to transmit the Board's "statements of the rates and sums to be levied for the current year" directly to the County Auditor pursuant to S.C. Code Ann. §12-39-180 is one of the Board's "duties and responsibilities not inconsistent with local and state laws which may be necessary to meet the educational needs of the county" under Act 288 of 1989 and Act 601 of 1971;
- (3) that the Council has a ministerial duty to adopt an ordinance that provides a method whereby the Board shall transmit its "statements of the rates and sums to be levied" for each fiscal year to the County Auditor; or
- (4) that the Council has a ministerial duty to adopt an ordinance that provides a method for the Board's budgeted *ad valorem* revenue and the Board's adopted school operating rate to be included with the Council's own "statements of the rates and sums to be levied for the current year" each fiscal year when the Council transmits them to the County Auditor.

²¹ S.C. Code Ann. § 4-9-30(5).

III. REMEDIES

A. Mandamus

The Plaintiff is entitled to a writ of mandamus compelling the Auditor to enter a school operating levy corresponding to the Board's budget. The Auditor's role and duty is ministerial; the Auditor,

after receiving statements of the rates and sums to be levied for the current year from the department and from other officers and authorities legally empowered to determine the rate or amount of taxes to be levied for the various purposes authorized by law, shall immediately proceed to determine the sums to be levied upon each tract and lot of real property and upon the amount of personal property, monies, and credits listed in his county in the name of each person.²²

The Auditor then has the power and duty before each September 30 to "make up and complete the tax books of the county"²³ and to prepare and deliver to the County Treasurer the county tax duplicate imposing *ad valorem* taxes.²⁴

"The writ of mandamus issuing out of the Courts of common law is the proper remedy to enforce the performance of such official acts as are of absolute obligation upon the officers called upon to perform them, and are essential to a due administration of the government, when performance has been improperly refused." *Runion v. Latimer*, 6 S.C. 126, 6 Richardson 126 (1875); *Sanford v. South Carolina State Ethics Com'n*, 385 S.C. 483, 685 S.E.2d 600 (2009).

In *Willimon v. City of Greenville*, 243 S.C. 82, 132 S.E.2d 169 (1963), the South Carolina Supreme Court explained that: "[w]here the only doubt that clouds the issue consists in the construction of the statute which confers the right or imposes the duty, the writ will issue if the Court, after considering the law, concludes that it confers the right claimed or imposes the duty asserted"

²² S.C. Code Ann. §12-39-180.

²³ S.C. Code Ann. §12-39-140.

²⁴ S.C. Code Ann. §§ 12-39-150, -180, -190.

B. Injunction

The Board is entitled to a permanent prohibitory injunction to restrain the Council from making or attempting to make any change in the Board's budget and the Board's school operating millage. An injunction is proper to restrain a public officer or municipality from acting under an unconstitutional or otherwise invalid statute, or ordinance.²⁵ A prohibitory injunction is defined as an injunction that forbids or restrains an act.²⁶ "County and town officers and agencies may be enjoined from acting without authority or illegally An injunction will lie where the conduct of county and town officers results in irreparable injury and the complainant does not have another adequate remedy. It may also lie where injunctive relief is the most direct, prompt, and complete remedy." 43A C.J.S. Injunctions § 207.

IV. CONCLUSION

For the reasons given above, the Board requests the Court to issue its declaratory order finding that the Board is the legally appropriate body to set the school operating millage rate for the Jasper County School District, its writ of mandamus to the Auditor to levy the Board's school operating millage for Tax Year 2013 and thereafter, its permanent prohibitory injunction against the Council to refrain from any interference with the Board's budget and the school operating rate, and such other and further relief as the Court may deem appropriate or necessary to effectuate its declaratory judgment.

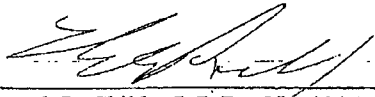
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²⁵ 43A C.J.S. Injunctions § 231.

²⁶ *Sanford v. S. Carolina State Ethics Comm'n*, 385 S.C. 483, 496, 685 S.E.2d 600, 607 *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009).

Respectfully submitted,

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September 4, 2013

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CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing **PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 4th day of September, 2013:

Marvin C. Jones, Esq.
Jasper County Attorney
P.O. Box 420
Ridgeland, SC 29936

Lonna Coufal

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS

Jasper County Board of Education,

Plaintiff,

vs.

Jasper County Council and Jasper County
Auditor,

Defendants.

C.A. No. 2013-CP-27-00362

**PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR JUDGMENT ON THE
PLEADINGS**

This case can be resolved as a matter of statutory construction without affecting any other school district or county, and without raising any constitutional questions. The complexity of school funding constitutional issues is on full display in the majority and dissenting opinions of the South Carolina Supreme Court in *Home Builders Ass'n of S.C. v. School Dist. No. 2 of Dorchester Co.*, No. 2011-195208 (September 11, 2013) (attached).

The Court should seek to harmonize the constitutional provisions and general and special laws at issue. "Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and given effect, if it can be done by any reasonable construction." *Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken*, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003). "It is the duty of the court to harmonize statutory conflicts." *Neel v. Shealy*, 261 S.C. 266, 276, 199 S.E.2d 542, 547 (1973). "Moreover, if possible, we must construe a statute so that it is valid." *Bodman v. State*, 403 S.C. 60, 66, 742 S.E.2d 363, 365-66 (2013).

All that is necessary to rule in favor of the Plaintiff Board is to determine that the provisions of Act 288 of 1989 preclude any discretionary role for the Defendants: the Council must include the school tax revenue and tax rate determined by the Board, and the Auditor must

levy that rate. Having the same constituents, the Board, Council and Auditor certainly are well served to agree where possible prior to the finalization of rates, but in the event of disagreement the Board's powers are final, subject to the ultimate control of the voters. This resolution is in harmony with all of the statutes involved and the constitutional law separating educational purposes from local government purposes.

Act No. 601 of 1971, reaffirmed by Act No. 288 of 1989, provides the Board, as set forth in more detail in its Memorandum dated September 4, 2013, with the exclusive power to "determine and evaluate the educational program in the schools and provide a systematic program of curriculum development and revision designed to provide maximum educational opportunities for each child in the county; [to] adopt a system of budgetary controls and annually adopt a budget, with power to revise when necessary, sufficient to meet the educational needs of the county; [and to] perform any other duties and responsibilities not inconsistent with local and state laws which may be necessary to meet the educational needs of the county." The local revenue budget and *ad valorem* tax rate are two sides of the same coin. *Lee Cnty. v. Stevens*, 277 S.C. 421, 289 S.E.2d 155 (1982). General law, independent of the Defendants, limits increases in Plaintiff's *ad valorem* tax rate and *ipso facto* its budget. S.C. Code Ann. §§ 6-1-300, -320.

The pre-Home Rule special act providing for a government for Jasper County (S.C. Act No. 982 of 1968) authorized the pre-Home Rule council to "make appropriations and ... levy taxes therefor for corporate purposes *and* for educational purposes ..." *id.*, § 6(5) (emphasis added). The separate listing of "educational purposes" indicates an understanding of the legal distinction between the two categories. Section 8 of the 1968 county government bill provided that the Board would "make a ... report of its financial status ... together with its budget and recommendations for the coming year, to the county council. ... The county council shall, from the reports, prepare a budget for the operation of the *county* for the ensuing year" (emphasis added). The county budget reference in § 8 omits the "educational purposes" reference in § 6(5)

of the same act. Thus, the 1968 act did not provide that the then-extant county council could revise any budget for the schools adopted by the Board or otherwise interfere in matters within the Board's exclusive responsibility.

Thus, by the time of Home Rule (and § 4-9-70) it was far from clearly established that the Council, as successor to the 1968 county governing body, had a *discretionary* role in "establishing the school tax millage" in Jasper County for purposes of § 4-9-70. Through the 1971 legislation, reaffirmed in 1989, clear, broad, and exclusive budgetary and fiscal powers, as well as educational responsibility, had been given to the Board, while the Council had the narrow role of making appropriations and levying a property tax for educational purposes.

The 1973 Home Rule Constitutional Amendment, Article VIII, and the 1975 implementing general law, especially S.C. Code §§ 4-7-30(5), 70 and 670, can be construed in harmony with the construction of the Jasper County Council special legislation.

As set forth in Plaintiff's Memorandum, dated September 4, 2013, Sections 4-9-670 and 4-7-30(5) restrict the Council's authority to make appropriations and levy property taxes to "functions and operations of the county"; education is a function of state government, not county government, under the division of the Constitution, Art. XI, § 3 and Art. VIII. Section 4-7-90 preserves a role for Council in educational matters only to the extent of determining "the method of establishing school tax millage." The constitutional separation of counties and school districts, the limitation of Section 4-9-30(5), and the explicit terms of Acts 601 of 1971 and 982 of 1989 exclusively empowering the Board, prevent the Council from using its power to "determine the method" to claim for itself the discretion to reduce the revenue or tax rate determined by the Board to be necessary to fulfill its responsibilities to the students of Jasper County.

This construction is the fourth option described on page 13 of the Board's September 4, 2013 Memorandum. In short, this construction:

- (1) gives effect to the Board's exclusive powers and duties under Act 288 of 1989, subject to the general laws limiting tax rate increases, §§ 6-1-300, 320;
- (2) recognizes the Council's authority to make appropriations and levy taxes for education under Act 982 of 1968, without giving Council by implication discretionary authority it does not have by express language;
- (3) respects the constitutional division of governmental functions in Articles XI and VIII;
- (4) respects the exclusion of county authority over education under Section 4-9-30(5); and
- (5) gives effect to the Council's authority under Section 4-9-70 to establish a method of establishing school tax millage, consistent with all of the foregoing laws.

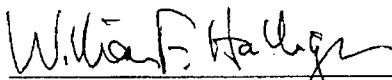
No law is repealed, suspended, or given a strained interpretation, and neither the Board nor the Council is given powers by implication that are not stated by express language.

The Board submits that this is the only statutory construction that gives effect to all of the general and local laws and constitutional provisions, and it does so without having any effect on any other school board or county council. The narrowest effective relief in this case is to declare that the Council must incorporate into its taxing ordinance the Board's local revenue budget and corresponding tax rate for school operations.

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Respectfully submitted,

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Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The Home Builders Association of South Carolina and
the Charleston-Trident Home Builders Association, Inc.,
Appellants,

v.

School District No. 2 of Dorchester County and the
Board of Trustees for Dorchester School District No. 2,
Respondents.

Appellate Case No. 2011-195208

Appeal from Dorchester County
Edgar W. Dickson, Circuit Court Judge

Opinion No. 27315
Heard February 6, 2013 – Filed September 11, 2013

REVERSED

Frederick A. Gertz and Phong Thi Van Nguyen, both of
Gertz & Moore, LLP, of Columbia, for Appellants.

Sarah Patrick Spruill, of Haynsworth Sinkler Boyd, PA,
of Greenville, and Charlton De Saussure, Jr. of
Haynsworth Sinkler Boyd, PA, of Charleston, for
Respondents.

JUSTICE PLEICONES: This is an appeal from an order granting respondents' motion for a judgment on the pleadings under Rule 12(c), SCRCP, and dismissing appellants' complaint. Because we find issues of fact raised by the complaint that

must be resolved before the constitutionality of 2009 Act No. 99 (Act) can be determined, we reverse and remand for further proceedings.

The Act permits respondent School District to impose an impact fee to be paid by developers on "new residential dwelling units constructed within the school district." Respondent Trustees adopted the impact fee by resolution effective June 23, 2009. Appellants, each an organization of home builders, brought this declaratory judgment suit seeking injunctive relief against respondents challenging the constitutionality of the Act under provisions of the state constitution requiring statewide uniformity (S.C. Const. art. VIII, § 14(6))¹ and limiting special legislation (S.C. Const. art. III, § 34).

Respondents moved for a judgment on the pleadings under Rule 12(c). A judgment on the pleadings shall be granted "where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor." *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009) citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). A judgment on the pleadings is "a drastic procedure." *Russell, supra*, cited in *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000). The circuit judge granted the motion.²

South Carolina Const. art. III, § 34(IX), provides that "where a general law can be made applicable, no special law shall be enacted." Legislation regarding education is not exempt from this requirement even though art. XI, § 3, gives the General Assembly more discretion with respect to legislation impacting a school district

¹ Appellants do not rely on this ground on appeal.

² In fact, the court went further and actually declared the Act constitutional. The dissent falls prey to this same error, and in so doing far exceeds the scope of the matter before us. Among other things, the dissent recaps two publications primarily authored by Professor Ulbrich, cites other school district legislation, and improperly cites to York County ordinances. *See Harkins v. Greenville County*, 340 S.C. 606, 533 S.E.2d 886 (2000) (reiterating well-settled rule that appellate court cannot take judicial notice of local ordinance). In its zeal to reach the merits of the Act, the dissent writes extensively on matters which are not in dispute, including the General Assembly's authority and responsibility to enact special legislation to benefit public education. In so doing, the dissent loses sight of the sole issue before the Court in this appeal: does the complaint raise any issue of fact which, if resolved in appellants' favor, would entitle them to a judgment. Neither the wisdom nor the constitutionality of the 2009 Act is at issue at this juncture.

than it has in other areas. *Charleston County School Dist. v. Harrell*, 393 S.C. 552, 558, 713 S.E.2d 604, 607-608 (2011) (internal citation omitted). *Charleston County* holds that a constitutional challenge predicated on a special legislation claim is analogous to one based upon equal protection. Special legislation is not unconstitutional if there is "a substantial distinction having reference to the subject matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded In other words, the General Assembly must have a logical basis and a sound reason for resorting to special legislation." *Horry County v. Horry County Higher Educ. Comm'n*, 306 S.C. 416, 419, 412 S.E.2d 421, 423 (1991) (citations omitted) cited with approval in *Charleston County*, 393 S.C. at 558-559, 713 S.E.2d at 608.

The Act itself is silent on any unique or special funding needs of respondent School District.³ Further, the complaint alleges the Act applies only to respondent School District, and that the district's funding needs are no different from many other districts in the state, that it does not have unique funding requirements, and that other similarly situated school districts are faced with the same issues. It specifically alleges:

The Act's application to a single school district without any peculiar or unique conditions, resulting in special treatment, violates the provisions of the South Carolina Constitution, in particular art. III, § 34 (limiting "special legislation") and art. VIII, § 14(6) (requiring statewide uniformity).

The complaint thus alleges facts which, if proven, would render the Act unconstitutional special legislation.

The circuit court and respondents rely on a single sentence found in *Bradley v. Cherokee School Dist. No. One*, 322 S.C. 181, 470 S.E.2d 570 (1996): "A law that is special only in the sense that it imposes a lawful tax limited in application and incidence to persons or property within a certain school district does not contravene the provisions of Article III, § 34(IX)." Here, we are concerned with an

³ The order finds the impact fee warranted by "The public education improvements necessitated by rapid population growth" This finding is taken from the resolution, however, not the Act, and thus does not represent a basis or reason for the legislature to have resorted to the Act. *Charleston County*, *supra*.

impact fee, not a tax, and one that is placed on only some persons and not others.⁴ Moreover, since *Bradley* was decided, we have clarified that all challenges to education-related special legislation are subject to the test set forth in *Kizer v. Clark*, 360 S.C. 86, 600 S.E.2d 529 (2004). *Charleston County, supra*.

We find the complaint alleges facts which, if resolved in appellants' favor, would result in a declaration that the Act is unconstitutional. The order granting respondents' Rule 12(c) motion is therefore

REVERSED.

BEATTY and HEARN, JJ., concur. KITTREDGE, J., concurring in result only. TOAL, C.J., dissenting in a separate opinion.

⁴We now overrule *Bradley* to the extent it relies upon *Hay v. Leonard*, 212 S.C. 81, 46 S.E.2d 653 (1948). *Hay*, like *McElveen v. Stokes*, 240 S.C. 1, 124 S.E.2d 592 (1962) and the other pre-1973 cases relied upon by the dissent, were decided under the pre-Home Rule state constitution. Prior to 1973, article XI of the constitution contained the education-related provisions. Article XI, § 6 provided in its last sentence "Any school district may by the authority of the General Assembly levy an additional tax for the support of schools." In other words, at the time *Hay* was decided, it was impossible for a school district tax act to constitute an unlawful special law under art. III, § 34(IX) in light of the specific authorization of art. XI, § 6. This article was repealed by 1973 Act No. 42, and § 6 was not reenacted elsewhere in the post-Home Rule constitution. *Bradley* erred in relying on *Hay*, decided under the pre-1973 version of S.C. Const. art. XI, § 6, and the dissent would perpetuate this error.

CHIEF JUSTICE TOAL: Respectfully, I dissent. I would affirm the circuit court's grant of respondents' motion for a judgment on the pleadings under Rule 12(c), SCRCP, because, in my assessment, appellants' complaint does not raise an issue of fact that would entitle appellants to judgment if resolved in their favor. The majority finds appellants' allegation that respondent School District does not have unique funding needs, if proven, would render the Act unconstitutional special legislation. In doing so, it is my opinion the majority improperly applies the constitutional prohibition of special legislation to education-related legislation.

Article III, section 34(IX) of the South Carolina Constitution prohibits the General Assembly from enacting local laws "where a general law can be made applicable." S.C. Const. art. III, § 34(IX). However, "special legislation is not unconstitutional where there is 'a substantial distinction having reference to the subject matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded.'" *Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 558–59, 713 S.E.2d 604, 608 (2011) (quoting *Horry Cnty. v. Horry Cnty. Higher Educ. Comm'n*, 306 S.C. 416, 419, 412 S.E.2d 421, 423 (1991)). Thus, "the General Assembly must have a logical basis and sound reason for resorting to special legislation." *Id.* The purpose of restricting local or special legislation is to promote uniformity in state laws where possible, and to avoid duplicative or conflicting laws on the same subject. *Med. Soc'y of S.C. v. MUSC*, 334 S.C. 270, 279, 513 S.E.2d 352, 357 (1999).

This Court is deferential to the General Assembly when determining the constitutionality of a local law and will not declare it unconstitutional "unless its repugnance to the Constitution is clear beyond a reasonable doubt" or "there has been a clear and palpable abuse of legislative discretion." *Id.* at 279, 513 S.E.2d at 357; *Sirrine v. State*, 132 S.C. 241, 248, 128 S.E. 172, 174 (1925), *overruled on other grounds*, *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). Even greater deference is given when evaluating local laws related to school matters. *See McElveen v. Stokes*, 240 S.C. 1, 10, 124 S.E.2d 592, 596 (1962). The Court has explained that in evaluating local legislation involving public education, the constitutional restrictions on special legislation must be viewed in light of the General Assembly's Article XI duty to "provide for the maintenance and support of a system of free

public schools open to all children in the State." S.C. Const. art. XI, § 3; *McElveen*, 240 S.C. at 10, 124 S.E.2d at 596. These cases and constitutional provisions make clear the scope of legislative power is broader on the topic of schools, and consequently, this Court has traditionally sustained local laws related to the state's public education system. See *Bradley v. Cherokee Sch. Dist.*, 322 S.C. 181, 470 S.E.2d 570 (1996); *Smythe v. Stroman*, 251 S.C. 277, 162 S.E.2d 168 (1968); *Moseley v. Welch*, 209 S.C. 19, 39 S.E.2d 133 (1946); *Walker v. Bennett*, 125 S.C. 389, 118 S.E. 779 (1923).

By passing the Act allowing respondent School District to impose an impact fee, the General Assembly signaled its belief that conditions present in Dorchester County's School District Number Two made it necessary to impose an impact fee to support its public education system. That is, the General Assembly opined that in order to fulfill its Article XI duty to provide for the "maintenance and support of a system of free public schools," an impact fee was necessary to offset the additional demand for public facilities created by new developments in Dorchester County. See S.C. Const. art. XI, § 3; *McElveen*, 240 S.C. at 10, 124 S.E.2d at 596. We have always provided great deference to the General Assembly in making these decisions, and the same respect should be afforded here.

In footnote two, the majority opines "the dissent loses sight of the sole issue before the Court in this appeal: does the complaint raise any issue of fact which, if resolved in appellants' favor, would entitle them to a judgment." The majority finds appellants' allegation that respondent School District is without unique funding needs, if proven, would entitle them to relief. However, in *Bradley*, this Court stated, "A law that is special only in the sense that it imposes a lawful tax limited in application and incidence to persons or property within a certain school district does not contravene the provisions of Article III, § 34(IX). Individual districts may impose a legal tax limited in application and incidence to persons or property within the prescribed area." *Bradley*, 322 S.C. at 186, 470 S.E.2d at 572 (internal citations omitted); see also *Moye v. Caughman*, 265 S.C. 140, 144, 217 S.E.2d 36, 38 (1975) (noting that although the appellant did not raise the issue in his brief, "[s]ection 34 does not deal with matters specifically covered by Article XI") (citing *Thorne v. Seabrook*, 264 S.C. 503, 216 S.E.2d 177 (1975); *McElveen*, 240 S.C. 1, 124 S.E.2d 592; *State v. Huntley*, 167 S.C.

476, 166 S.E. 637 (1932)). Notably, *Bradley* did not condition its holding on a school district having "unique or special funding needs"; rather, *Bradley* simply stated a tax that applies only to persons or property in a single school district is constitutional special legislation.

Accordingly, appellants' allegation that respondent School District is without unique funding needs, even if true, would not entitle them to judgment. *See* Rule 12(c), SCRCF. Therefore, under *Bradley*, the circuit court's grant of respondents' Rule 12(c) motion was proper, as is an analysis of the Act's constitutionality at this stage of the litigation. The majority properly notes the case at hand is different from *Bradley* in that we are evaluating the propriety of an impact fee rather than a tax; however, I find no reason why the impact fee should be treated differently. Subdivisions of local authority, including school districts, have the ability to raise funds, which should include the utilization of an impact fee.⁵

The majority now takes the view that *Bradley* should be overruled to the extent it relies on *Hay v. Leonard*, 212 S.C. 81, 46 S.E.2d 653 (1948), because at the time *Hay* was issued, Article XI, section 6 expressly provided school districts with the power to levy an additional tax for the support of schools. However, while Article XI, section 6 was subsequently repealed, school districts continue to have taxing power under South Carolina's Constitution. For example, Article X, section 6 states, "Except as otherwise provided in this section, the General Assembly may vest the power of assessing and collecting taxes in all of the political subdivisions of the State, including . . . school districts." S.C. Const. art. X, § 6. Further, Article X, section 7(b) directs school districts to prepare and maintain annual budgets, and in the event a district's expenses exceed its projected income, *requires* the school district to "provide for levying a tax in the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year

⁵ York County currently imposes a school impact fee. York, S.C., Code §§ 153.75–82 (1996); *see also In re Nov. 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 637 n.3, 686 S.E.2d 683, 686 n.3 (2009) (stating the principle of law that courts will not take judicial notice of a municipal ordinance does not apply where the cited ordinance is not dispositive of the outcome of the case).

together with the estimated expenses for such ensuing year." S.C. Const. art. X, § 7(b).

These constitutional provisions align with South Carolina's history of allowing the General Assembly to take an individualized approach to the manner in which school districts are funded and operate. For example, in 2004, the General Assembly passed legislation allowing Lexington County school districts to impose a penny tax, Lexington County School District Property Tax Relief Act, Act No. 378, 2004 S.C. Acts 3142, and in 2011 renewed this legislation for an additional seven years. The General Assembly also enacted legislation in 2010, over the Governor's veto, tailored to the fiscal operations of Fairfield County schools. Act No. 308, 2010 S.C. Acts 2845 (adding legislative appointees to the Fairfield County School Board and transferring fiscal authority to a financial council appointed by the legislative delegation).

Because each school district is unique and faces its own distinct challenges, it is important that the General Assembly retain its ability to legislate, when necessary, on an individualized basis. Eighty-five school districts provide education services in this State. Holley H. Ulbrich et al.; *Local Governments and Home Rule in South Carolina* 8 (2011). Prior to the 1950s, South Carolina had more than 1,200 school districts, but in recent years, many of those districts have consolidated.⁶ *Id.* Some counties maintain a single countywide school district, while others are comprised of multiple districts, ranging from two to seven in number. *Id.* Further, several school districts serve small parts of neighboring counties. *Id.*

Unsurprisingly, South Carolina's eighty-five districts vary in size and population, which affects operating costs per student. Holley H. Ulbrich, *School District Organization and Governance in South Carolina* 9 (2010). National studies have shown operating costs per pupil can dramatically decrease when small districts consolidate, while savings may dwindle with larger consolidating districts. *Id.* Instructional costs vary based on the number of students per classroom, and a district's geographic size greatly affects its transportation costs. *Id.* at 11. In 2005, the General Assembly

⁶ Recent consolidations have occurred in, among others, Marion, Orangeburg, and Sumter Counties. *Id.*

created a temporary committee to study the sizes and costs of South Carolina's school districts. *Id.* at 12. The study revealed significant differences in spending per pupil between the twenty smallest and twenty largest districts—an estimated average difference of \$277 per student. *Id.*

Moreover, fiscal authority amongst South Carolina's various school districts ranges from complete fiscal authority to no fiscal authority whatsoever. Ulbrich, *Local Governments and Home Rule in South Carolina* 13. Twenty-three districts have total fiscal independence to approve their own budgets and set their own millage rates, while twenty-nine districts have no fiscal authority. *Id.* at 13–14. Further, the power to raise millage rates varies greatly from one school district to another, depending on the local legislation that governs school districts in that particular county. *Id.*

With these considerations in mind, South Carolina has historically taken an individualized approach regarding school-related legislation. Our districts vary in size, population, functionality, and most important to the issue at hand, operating costs. Moreover, with district lines being constantly redrawn through local legislation, our districts will inevitably continue to evolve. If the General Assembly is to fulfill its Article XI duty to maintain and support a free public school system for all children, we must continue to provide the level of deference necessary to legislate based on the evolving needs and unique capacities of each school district. *See* S.C. Const. art. XI, § 3; *Bradley*, 322 S.C. at 186, 470 S.E.2d at 572; *McElveen*, 240 S.C. at 10, 124 S.E.2d at 596. *Bradley* recognizes this principle and, in my view, should not be overruled. The majority's departure from *Bradley* will have detrimental effects on the operations and funding of our school districts.

Therefore, I would find the Act is sustainable under Article III, section 34(IX) as constitutional special legislation. Accordingly, I would affirm the circuit court's grant of respondents' Rule 12(c), SCRCP, motion for a judgment on the pleadings because appellants' assertion that respondent School District is without unique funding needs would not entitle appellants to judgment. *See Bradley*, 322 S.C. at 186, 470 S.E.2d at 572 ("A law that is special only in the sense that it imposes a lawful tax limited in application and incidence to persons or property within a certain school district does not contravene the provisions of Article III, § 34(IX).").

CERTIFICATE OF SERVICE BY MAIL

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing **PLAINTIFF'S SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 17th day of September, 2013:

Marvin C. Jones, Esq.
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Lonna Coufal

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JASPER COUNTY
CLERK OF COURT
COURT HOUSE
JASPER COUNTY
SC 29936

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge

C.A. No.: 2013-002266

JASPER COUNTY BOARD OF EDUCATION, ...Appellant.

v.

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

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.



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April 21, 2014

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM JASPER COUNTY
Court of Common Pleas**

The Honorable Carmen T. Mullen, Circuit Court Judge

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JASPER COUNTY BOARD OF EDUCATION, ...Appellant.

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PROOF OF SERVICE

I certify that I have served a copy of the RECORD ON APPEAL on counsel for Respondents, by depositing a copy of it in the U.S. Mail, postage prepaid, on April 21, 2014, addressed to Marvin C. Jones, Esq., P.O. Box 420, Ridgeland, SC 29936.

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