

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Hon. Carmen T. Mullen, Circuit Court Judge

C.A. No.: 2013-002266

Jasper County Board of Education, Appellant,

v.

Jasper County Council and the Jasper County Auditor, Respondents.

BRIEF OF AMICUS CURIAE
SOUTH CAROLINA ASSOCIATION OF COUNTIES

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STATEMENT OF ISSUES ON APPEAL

The South Carolina Association of Counties (Association) adopts and incorporates by reference the Statement of Issues on Appeal as set out in the Initial Brief of the Respondent dated March 6, 2014.

STATEMENT OF THE CASE

The Association adopts and incorporates by reference the Statement of the Case as set out in the Initial Brief of the Respondent dated March 6, 2014.

STATEMENT OF FACTS

The Association adopts and incorporates by reference the Statement of Facts as set out in the Initial Brief of the Respondent dated March 6, 2014.

ARGUMENT

I. BACKGROUND

The issue before this Court is part of a nearly forty year struggle to answer the question of what governmental body was granted the authority to levy various taxes and to make budgetary appropriations after the transition from centralized control of local government by the General Assembly to County Home Rule. The specific taxes applicable to this appeal are the property taxes levied for educational purposes, and the authority of Jasper County Council to approve the annual budget to fund schools in Jasper County. This issue is not unique to Jasper County. Fiscal authority over the budgets of school districts, and

the establishment of property tax millage for educational purposes varies from county to county. The South Carolina School Boards Association surveyed the school districts statewide and found that 25 school districts (including Jasper County) have no fiscal authority to approve the annual budget and establish education millage. In 21 of those districts, the County Council approves the budget and establishes the educational millage. SCSBA Fiscal Authority March 2013, R. p. 84.

Since 1968, with the enactment of Act 982, 1968 S.C. Acts 2370, Jasper County Council has been authorized by the General Assembly to levy and collect taxes for both “corporate purposes and educational purposes.” *Act 982, Section 6 Powers and Duties.* Following the elimination of Dillon’s Rule and the adoption of local Home Rule throughout South Carolina, the counties were granted localized control of government services. Act 283, 1975 S.C. Acts 692. Specifically, the General Assembly granted the counties the authority, pursuant to S.C. Code § 4-9-30, to assess and levy property taxes within the county.

In 1971, after creating and empowering the local county council to govern Jasper County, the General Assembly created the Jasper County Board of Education, and provided for that bodies’ powers and duties. Act 601, 1971 S.C. Acts 1114. Among the specific powers granted the Board included the power to adopt annual budgets, and disburse educational funds. Absent from the Board’s powers were the powers to approve appropriations and to establish the property tax millage for educational purposes.

II. THE GENERAL ASSEMBLY DELEGATED THE AUTHORITY TO ASSESS PROPERTY AND LEVY PROPERTY TAXES FOR EDUCATIONAL PURPOSES TO JASPER COUNTY COUNCIL.

The fundamental question before the Court is a matter of statutory interpretation as to the proper governing body to levy property taxes and make appropriations for educational purposes in Jasper County. Jasper County Council's authority to approve the operating budget of the School District, and to assess and levy property taxes is originally derives from the General Assembly's creation of County Council in Act 982, 1968 S.C. Acts 2370. Section 6, Subsection 5 authorized the County Council to make appropriations and to levy taxes for corporate and educational purposes. Additionally, the Act requires the various county departments, including the School Board, to make detailed reports of financial activities, including their budgets and recommendations, to County Council. Section 8 Act 982, 1968 S.C. Acts 2370, 2373. Following the passage of Act 283, commonly referred to as the Home Rule Act, the authority of county councils over matters of taxes and appropriations was further clarified. The starting point for county taxing authority is found in SC Code §4-9-30(5)(a), originally found in §14-3703(5) of Act 283. 1975 S.C. Acts 693, 696.

SECTION 4-9-30. Designation of powers under each alternative form of government except board of commissioners form.

...(5)(a) to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and

distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above. (Emphasis added)

The General Assembly recognized that some counties already granted local home rule prior to 1975 had elected county councils possessing the power to levy taxes and make appropriations for educational purposes, while that power was granted to the legislative delegations or school boards in other counties. In an effort to ensure that there would be no confusion over the local governing body with taxing and appropriations authority for educational purposes, the Home Rule Act contained a provision now codified as §4-9-70. This section gives taxing authority for educational purposes to County Council, unless the School District establish the tax rate at the time the county's form of government was chosen. 1975 S.C. Acts 693, 701.

SECTION 4-9-70. Powers of county councils with regard to public school education; establishing school tax millage.

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.** (Emphasis added)

It has long been recognized by South Carolina's Courts that the determination of the 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 (1949). In cases of statutory

interpretation, the Court must 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 (1990). The Court need not look beyond the words of a statute when the intent of the legislature appears on the face of the statute. Wright v. Colleton County School Dist., 301 S.C. 282, 391 S.E.2d 564 (1990). The Supreme Court has previously held that the General Assembly, in enacting §4-9-70, intended to vest the power to determine the school tax levy in county council in all cases where it is not vested elsewhere. Stone v. Traynham, 278 S.C. 407, 297 S.E.2d (1982).

It is clear from the face of both §4-9-30(5)(a) and §4-9-70, that the power to assess property and levy taxes for educational purposes lies solely with Jasper County Council. Section 4-9-30(5)(a) granted county council the authority to assess and levy taxes, and since the School District did not possess a specific grant of taxing authority in the 1971 Act creating it, S.C. Code § 4-9-70 continued county council's taxing authority to establish the school tax millage.

III. THE JASPER COUNTY SCHOOL BOARD HAS NOT BEEN SPECIFICALLY DELEGATED THE POWER TO TAX OR ESTABLISH TAX MILLAGE RATES.

Local government entities only have the power to tax where the legislature has specifically delegated such authority. Hospitality Assoc. of S.C. v. Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995). Act 601 did not extend taxing powers to the Jasper County School Board. Section 2 of the Act provided the Board the authority to adopt “a system of budgetary controls”, the power to adopt an annual budget, and provide for disbursement of school district funds. 1971 S.C. Acts 1115. Section 5 of the same Act provided for the creation of a finance officer. This section required the finance officer to prepare budgets, allocate funds,

and to report quarterly the fiscal conditions of the school system to the county council. 1971 S.C. Acts 1117. In 1989, the General Assembly amended Act 601 with the enactment of Act 288. 1989 S.C. Acts 1685. Act 288 made no substantive changes to the powers or structure of the Jasper County Board of Education other than to change the Chief Administrative Officer to the Superintendent of Education. Section 2, subsections 7 and 8 relating to budgets and disbursement of funds remains nearly verbatim from the 1971 Act.

The Appellant School Board argues in their final brief in pages 18 and 19, that “[t]he local revenue budget and ad valorem tax rates are two sides of the same coin, and that the power to budget encompasses the power to determine ad valorem revenue.” The Appellant cites the case Lee County v. Stevens, 277 S.C. 421, 289 S.E.2d 155 (1982) as supporting their proposition. The Appellants seek to have this Court read into the language of Acts 601 and 288 the implication that the Board’s budgetary power extends to the power to tax. (Appellate Final Brief pp. 18-19). The Association believes however, that the Board fundamentally misapplies the facts of the Stevens case to the facts of this matter. In Stevens, a dispute occurred between the county Auditor and the County Council over the setting of the county millage based on the timing of the assessment of property value by the Auditor. The Court held that the County Council and not the Auditor possessed ultimate authority over both the power to budget and the power to tax. The Auditor’s authority was limited to establishing the assessed value of property to be taxed. In this case one governing body has been granted the power to establish a budget (the Board), but another governing body (the County Council) has been granted the power to tax. The Appellate’s argument that the 1971 and/or 1989 Acts by implication expands their authority to budget to the power to tax must

fail, because the Courts have long held that tax related statutes can not be extended by implication beyond the clear import of the language used. Adams v. Burts, 245 S.C. 339, 140 S.E.2d 586 (1965).

IV. THE AUTHORITY OF JASPER COUNTY COUNCIL TO LEVY TAXES AND MAKE APPROPRIATIONS FOR EDUCATIONAL PURPOSES DOES NOT VIOLATE ARTICLES VIII OR XI OF THE SOUTH CAROLINA CONSTITUTION.

The Association supports Jasper County's position that the constitutional arguments addressed by the Appellant have either been abandoned, or were never properly brought in the complaint. However, the Association will discuss each of the Appellant's constitutional challenges.

A. Article VIII Section 7 of the constitution is prospective, and did not repeal Act No. 982 of 1968.

Section 7 of Article VIII was ratified in 1973 and directs the General Assembly to provide for the powers and governmental form of counties. Section 7 also prohibited the General Assembly from enacting special legislation.

The courts have previously held that the language of Section 7 did not act to repeal legislative acts enacted prior to the ratification of Article VIII. In Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 (1973), the S.C. Supreme Court was clear that there is a presumption that constitutional provisions, like statutory enactments, are to be considered prospective unless there is a clear intention from the terms of the provision that it be made retrospective. In Neel, the Court was asked to decide whether an existing act creating a county council was valid. The Court in ruling that Section 7 was only prospective only pointed to the fact that

almost the entirety of (the then existing) Section 14 of the Code of Laws, would have to be invalidated. This would have invalidated “a great majority” of the county governments that existed at that time, a result that the Court found “is against all reason and flies in the face of all logic.” *Id* at 274. Based on court precedent, the Appellant’s argument that the 1973 ratification of Section 7 of Article VIII repealed Act 982 of 1968 would create the absurd result of invalidating the duly created form of government of Jasper County forty-two years later.

B. The General Assembly delegated the power to assess and levy taxes for educational purposes to Jasper County Council in Section 6 of Act No. 982 of 1968, and such power does not violate Article XI of the S.C. Constitution.

Article XI, Section 3 of the state constitution provides that the “General Assembly shall provide for the maintenance and support of a system of free public schools.” While the constitution requires the General Assembly to provide a system of free public schools, it has the freedom to choose the methods of best meeting the educational needs of the community. The courts have been so far unwilling to place unnecessary burdens on the legislature. In Richland County v. Campbell, 294 S.C. 346, 364 S.E.2d 470 (1988), taxpayers challenged the Education Finance and Education Improvement Acts as unconstitutional pursuant to Article XI. These Acts required local contributions for essentially statewide educational programs based on school district wealth formulas. The Court held that such contributions were valid as a proper exercise of the General Assembly’s authority to provide for an equalized public education system. The Richland Court citing language from Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133 (1946) and Hilderbrand, et al. v. High School Dist. No.

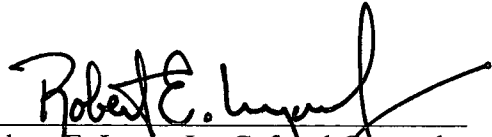
32 et al., 138 S.C. 445, 136 S.E. 757 (1927) held that the constitution “places very few restrictions on the powers of the General Assembly in the general field of public education”, and that the details of providing for education are left at their discretion.

The General Assembly has chosen to delegate the taxation and appropriation for educational purposes to Jasper County Council. By enacting Section 6(5) of Act 982 of 1968, Jasper County Council was directed to make appropriations and to levy taxes for educational purposes. There have been a number of legislative acts enacted by the General Assembly granting other county councils fiscal authority over school district appropriations since ratification of Article XI: Abbeville County by Act 755 (1988 S.C. Acts 6386); Dorchester County by Act 593 (1992 S.C. Acts 3616); and Saluda County by Act 493 (1998 S.C. Acts 3386). As the Court held in Campbell, it is a cardinal principal that courts “will presume the legislative act to constitutionally valid, and every intendment will be indulged in favor of the act’s validity” by the courts.” 394 S.C. 346, 349, 364 S.E.2d 470, 472 (1988). The delegation to Jasper County Council of fiscal authority for educational purposes was a valid exercise of the General Assembly’s constitutional authority. Therefore, Act 982 does not violate Article XI of the constitution.

CONCLUSION

Jasper County Council was initially granted the authority by the General Assembly to approve the budget, and establish the property tax millage for the county school district by 1968 Act No. 982. The authority of county council was continued with the enactment of S.C. Code §4-9-70 of the Home Rule Act. 1971 Act No. 601, and its amendment by 1989 Act No. 288, did not specifically extend the power to establish the tax millage for educational purposes to the School Board. For the foregoing reasons the decision of the Circuit Court should be affirmed.

Respectfully submitted,



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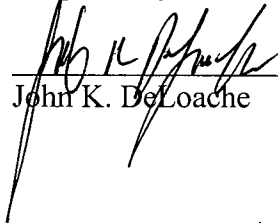
v.

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CERTIFICATE OF COUNSEL

The South Carolina Association of County's counsel hereby certifies that the Brief of Amicus Curiae complies with SCACR Rules 208(b), 211 and 213.

Respectfully Submitted,



John K. DeLoache

Dated: June 12, 2014

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SC Court of Appeals

CERTIFICATE OF SERVICE

I, John K. DeLoache, an employee for The South Carolina Association of Counties and Attorney for the *Amicus Curiae* in the above-captioned case, certify that I have this 12th day of June 2014, mailed copies of the South Carolina Association of Counties' *Amicus Curiae* Brief to the following via U.S. Mail with sufficient postage attached thereto to the below listed attorneys.

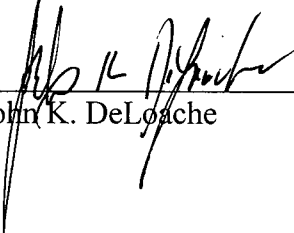
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