

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Appellate Case No. 2013-002499

Anderson County, Appellant,

v.

Joey Preston and the South Carolina Retirement System, Respondents.

RESPONDENT JOEY PRESTON'S REPLY

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SC Court of Appeals

Pursuant to Rule 240(f) of the South Carolina Appellate Court Rules, Respondent Joey R. Preston ("Preston") respectfully submits the instant Reply in response to Anderson County's ("County") Return.

I. THE COUNTY'S RETURN MAKES SERIAL CONCESSIONS.

The County makes several important concessions in its Return to Preston's Motion to Dismiss ("Preston's Motion"). They include:

- The citations on pages 3-5 of Preston's Motion accurately reflect passages from the lower court's order. (Preston's Mot. at 3-5.)
- Wilson's voting on matters wherein she possessed a financial interest continues to subject her to financial and disciplinary sanctions under the Anderson County Code. (Preston Mot. at 3, FN2) (citing ACC §§1-7, 2-288, 2-90.)
- The passages attributed to Moore on pages 6-7 accurately reflect the evidence from the trial of the case. (Preston's Mot. at 6-7.)
- The Supreme Court's holding in Baird v. Charleston County, 333 S.C. 519, 535, 511 S.E.2d 69, 79 (1999) controls the issue of how to treat votes cast by officials with conflicts of interest. (Preston's Mot. at 8.)
- If counsel for the County filed a notice of appeal on Plaintiff's behalf without proper authorization, the notice of appeal filed by the County constitutes an unauthorized, *ultra vires* action, which was void *ab initio*. (Preston's Mot. at 8.)
- "The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." (Preston's Mot. at 9) (citing Elam v. S.C. DOT, 361 S.C. 9, 14-15 (2004).
- The issue of appellate jurisdiction to hear the instant case is a threshold issues for the Court to decide. (Preston's Mot. at 9) (citing Capital City Ins. Co. v. B.P. Staff, Inc., 382 S.C. 92, 100 (Ct. App. 2009).

The County's Return does not dispute any of the bullet points listed above.

II. THE COUNTY VIOLATED RULE 203(b)(1) SCACR, AS CITED IN PRESTON'S MOTION.

The County first contends Preston failed to identify any "Rule governing the appellate process" that Anderson County violated. (County Return at 3.) Not so. On page 8 of the Motion to Dismiss, Preston specifically stated: "Pursuant to Rule 203(b)(1), SCACR, the County was required, but did not, file a valid notice of appeal no later than December 8, 2013." (Preston Mot. at 9.)

To bolster its errant contention, the County cites the inapplicable decision of *Hartman v. City of Columbia*, 268 S.C. 44, 232 S.E.2d 15 (1977). *Hartman* has no application to facts *sub judice*. *Hartman* involved a zoning appeal (arising from an earlier appeal to the Circuit Court) where Respondent's counsel executed an acceptance of service of Appellant's notice of appeal. *Id.* at 47. After executing the same, Respondent's lawyer then tried to disavow the date on the acceptance of service he signed. *Id.* "Under [those] circumstances," the *Hartman* Court disallowed Respondent's counsel to challenge the timeliness of the appeal by impeaching "his own signature." *Id.* *Hartman*, a decision limited to its facts (*i.e.*, "under the circumstances" presented), has no application to the case at bar, which presents facts not even remotely similar.

Contrary to the County's suggestions, Preston has cited ample authority supporting his Motion to Dismiss. It is axiomatic, and the County's Return does not contest, that this Court must answer questions pertaining to its jurisdiction at the threshold. And, contrary to the County's suggestions, see County Return at 4, this Court has "no authority or discretion to 'rescue' the [County] by extending or ignoring

the deadline" imposed by 203(b)(1), SCACR. Elam v. S.C. DOT, 361 S.C. 9, 14-15 (2004); see also Canal Ins. Co. v. Caldwell, 338 S.C. 1, 5 (Ct. App. 1999) ("[F]ailure to [follow Rule 203(b), SCACR] divests this court of" jurisdiction and "results in dismissal of the appeal.")

III. THIS COURT MAKES DETERMINATIONS ABOUT ITS OWN APPELLATE JURISDICTION.

The County likewise argues Preston effectively has no remedy if the County--without proper authorization--files an *ultra vires* notice of appeal thereby depriving this Court of jurisdiction to act.¹ According to the County, Preston would have to pursue a whole "separate civil action, commenced in circuit court" in order to raise issues concerning this Court's jurisdiction to hear this appeal. (County Return at 5.) This analysis errs for several reasons.

First, contrary to the County's suggestions, Preston's Motion does not require this Court to make any factual findings whatsoever. To resolve Preston's Motion, this Court needs to consider:

- The Final Judgment and Order of Judge Roger Couch dated May 3, 2013;
- The South Carolina Ethics Act. See S.C. Code §8-13-700 et seq.;
- Anderson County Code §2-37(g)(4); and
- The undisputed citations set forth in Preston's Motion.

¹ Throughout its Return, the County makes serial representations about what it "proved" during trial. Preston specifically denies the statements as baseless. After a week of trial and after the County spent well over three million dollars (\$3,000,000.00) pressing its lawsuit to nowhere, the County utterly failed—in every material respect—to prove any of its eleven (11) claims. To suggest on appeal that "Anderson County has shown indisputable and substantial financial improprieties" is, and has been for the past five (5) years, a complete and total canard.

For both Wilson and Moore, resolution of Preston's Motion presents legal determinations under the South Carolina Ethics Act and the Anderson County Code.

A. Wilson Had a Disqualifying Conflict of Interest.

As to Council Member Wilson ("Wilson"), the Court need only compare and contrast Judge Couch's Order with the State Ethics Act and Anderson County Code to determine whether Cindy Wilson possessed a conflict of interest, which disqualified her participation in the County's vote whether to pursue the instant appeal ("Appeal Vote"). Judge Couch's Order, the judgment the County now appeals, makes specific findings about Wilson's ethical conflicts of interest. The lower court found Cindy Wilson possessed a direct financial interest in Preston's Severance Agreement. (See Preston Mot. at 3-4.) Such finding—binding on the County--subjects Wilson to both financial and disciplinary sanctions under the Anderson County Code. See ACC §§1-7, 2-288, 2-90. The County does not dispute the same.

Wilson also should not have participated in the Appeal Vote for another reason. As noted above, Judge Couch's Final Order and Judgment, see Preston Mot. at Ex. 3, pp. 3-4, 6, 10-13, made a specific finding (*inter alia*) that Cindy Wilson had a conflict of interest when she voted on Preston's Severance Agreement. Wilson's participation in a vote about whether to appeal an Order—containing an adverse ethical finding about her--garnered a "substantial appearance of impropriety," which the Anderson County Code prohibited.² See ACC §2-37(g)(4); see also Preston Mot. at 2-5.

² The County mischaracterizes the trial court's ruling about Cindy Wilson as a *sua sponte* finding. As reflected by the Record, Preston argued Cindy Wilson and Bob Waldrep possessed conflicts of interest both at trial and in his written closing. There

The average Anderson County citizen cannot discern whether Wilson voted to pursue the appeal for the County's benefit or in an effort to vindicate her own ethical missteps. This is precisely the type of prohibition embraced by Anderson County Code §2-37(g)(4). Moreover, the fact that the County challenges the specific finding, see County Return at 10, makes the conflict more concrete, not less. That is to say, Wilson voted to perpetuate an appeal specifically seeking to reverse a finding of a conflict of interest about her.³

B. Moore Had a Disqualifying Interest.

The County does not contest a long train of unbecoming facts about Moore became public solely due to publicity surrounding the lawsuit against Preston. Instead, the County tries to spin Preston's argument to mean that Moore should not have voted because he was a bad guy. This is untrue.

No one can contest that an amazing amount of media coverage surrounded the lawsuit filed by the County. In that coverage, the facts that surfaced about Moore from the lawsuit (see e.g., providing false testimony in his deposition and other court proceedings, misrepresenting himself in campaign promotions as a licensed engineer when he never graduated from college, his former participation in the Klu Klux Klan,⁴

was nothing *sua sponte* about the ruling. The County's attempt to distort the Record, in this regard, is regrettable.

³ For some reason, the County references a quorum argument that it raised for the first time in a Motion to Reconsider. In a lengthy ruling, the lower court explained why the County's quorum argument had no merit. Yet, the County persists in raising the same even in response to the instant, unrelated Motion. Preston will respond fully to the quorum argument if this appeal goes forward but notes, for now, that the argument is baseless.

⁴ Moore's former participation in the Klu Klux Klan hit the national news.

serial documented efforts to "get Joey Preston") were *so* unbecoming and *so* highly publicized that Moore should have refrained from participating in any further votes about the case. Due to the facts that surfaced, and due to the attendant media coverage, Moore's vote became afflicted with a substantial appearance of impropriety under the Anderson County Code.

Regardless of how Moore voted, his participation appeared tainted. If Moore voted to continue the appeal, it would be perceived—by an average Anderson County citizen-- as an effort to vindicate himself and exacting political payback. If Moore voted to stop the appeal, it would be perceived—by an average Anderson County citizen--as a measure to thwart further dissemination of the facts unbecoming to him and surrounding media attention. Either way, Moore's participation gave rise to a substantial appearance of impropriety that this Court can and should adjudge based upon the undisputed facts before it.

Second, this Court has an unflagging duty to inquire into the existence of its own jurisdiction to act. Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 100 (Ct. App. 2009) (Noting Subject Matter Jurisdiction as a "threshold" issue requiring resolution at the onset.) Without power to hear the case, the instant appeal proves a nullity. And, as a litigant, Preston possesses both procedural and substantive Due Process Rights to seek a ruling on issues concerning whether this Court possesses the authority even to hear the County's appeal. To suggest otherwise, as the County attempts, is devoid of merit.

Third, Preston must raise the issue to the Court of Appeals, as only this Court (or the Supreme Court) can adjudge matters concerning appellate jurisdiction. Upon

the County's filing the notice of appeal, jurisdiction detached from the Circuit Court. Moreover, the County's suggestion that Preston must file a whole new action so as to collaterally attack—at the Circuit Court level—an appeal pending before this Court is obviously wrong. And, notably, the County cites no authority supporting the same.⁵

IV. PRESTON'S MOTION WAS TIMELY AND TIMING COULD NOT CREATE APPELLATE JURISDICTION WHERE NONE EXISTS.

The County, to no avail, next argues that Preston's Motion should be denied because it is prejudicially late.⁶ The County's argument fails for three (3) reasons:

A. Preston Filed His Motion in a Timely Manner.

Preston's Motion to Dismiss was not untimely. Preston filed his Motion to Dismiss as a timely response to the County's Initial Brief. For purposes of its Return, the County just invents non-existent timing restrictions. Preston's Motion fully

⁵ Preston believes the instant Motion to Dismiss raises concerns of sufficient public importance to warrant oral argument before any further proceedings are initiated. Accordingly, Preston would ask the Court for the same. Alternatively, if the Court finds further factual development is necessary to determine whether it has jurisdiction to hear this case, then Preston asks the Court to stay the appeal and remand the matter for the limited purpose of compiling evidence on whether the Notice of Appeal was appropriately authorized. In the second alternative, if for some reason the Court elects to have Preston raise the issues presented by his Motion in Respondent's Initial Brief, Preston would respectfully ask for a limited amount of additional time to incorporate the argument into Respondent's Initial Brief. To include the same will require structural editing to Preston's Brief.

⁶ In Footnote 1, the County suggests that Preston does not have standing to file a Motion to Dismiss in a lawsuit where he is a party. Unsurprisingly, the County fails to cite any authority for such a novel approach to the standing doctrine. The County is plainly wrong. To accept the County's argument would deny Preston the opportunity to be heard in connection with arguments pertaining to the Court's appellate jurisdiction.

complied with South Carolina's Appellate Court Rules.⁷ The County cites no South Carolina Rules supporting its argument. No South Carolina decision supports the County's position.⁸

Instead, to support its argument, the County cites: a 1943 opinion from Nevada; a 1919 opinion from Colorado; an Eighth Circuit opinion from 1962; Federal Circuit Rule 27; and 10th Circuit Rule 27.2(A). Yet, the instant appeal is not pending in: Nevada, Colorado, the Eighth Circuit, the Federal Circuit, or the 10th Circuit. None of what the County cites has any footing under South Carolina law. And, what the County does not cite is actual, relevant authority from South Carolina that supports a legal position that it simply invented.⁹

Without any supporting evidence, the County likewise suggests that it was unduly prejudiced somehow. Presumably, the County references the costs and fees it voluntarily incurred pursuing this appeal so far. Yet, even before filing its appeal, the County had spent over 3 Million Dollars (\$3,000,000.00) seeking the rescission of a \$1.14 Million Dollar severance package. The County's unsupported cry of financial "prejudice," on this backdrop, rings both hollow and untrue.

⁷ The County also notably omitted the fact that Preston freely gave it two (2) extensions to file its initial brief meaning that four of the six months of "delay" the County attributes to Preston were caused by the County or in awaiting the transcript.

⁸ The County instead resorts to citing a 1943 opinion from Nevada and a 1919 opinion from Colorado. Obviously, these opinions have no precedential value in this State.

⁹ As an aside, this is an ongoing theme for the County. For the past five (5) years, the County has cited over and over again law from states other than South Carolina in hopes of mixing and matching enough different legal theories to press its claims.

Moreover, the County knew of the defective vote of Wilson all along. As the County points out, Preston alerted the County to Wilson's tainted vote before it voted to pursue the instant vote. See Pitts' Affidavit, Ex. A (Davis' Letter dated July 18, 2013.) Even though the issue was raised at the time of the Appeal Vote, the County did not follow its procedure in determining whether Wilson had a conflict. See e.g., ACC §2-289 (County Attorney furnishes applicability opinion). Because the measure would not pass without Wilson's tainted vote, the County knowingly allowed Wilson to participate in violation of the State Ethics Act and the Anderson County Code. Now, the County attempts to whitewash the illegality of its actions by claiming the passage of time somehow cured the disqualified votes.

B. The Passage of Time Cannot Create Appellate Jurisdiction.

Issues concerning appellate jurisdiction such as those *sub judice* cannot be waived. Elam v. S.C. DOT, 361 S.C. 9, 14-15 (2004); see also Canal Ins. Co. v. Caldwell, 338 S.C. 1, 5 (Ct. App. 1999) ("[F]ailure to [follow Rule 203(b), SCACR] divests this court" of jurisdiction and "results in dismissal of the appeal.")¹⁰ Nor could the doctrines of estoppel or waiver operate to create appellate jurisdiction when none otherwise existed. In short, the County's argument that the passage of time could create appellate jurisdiction, where none otherwise exists, has no merit. And, notably, the County can supply no authority to support the position it advocates.

¹⁰ Consider Elam, for example. In Elam, the Court raised the timeliness of the Notice of Appeal *sua sponte*. By the County's analysis, the Court in Elam would automatically have jurisdiction by operation of the amount of time that had lapsed. Not so. No South Carolina authority supports the County's unusual legal argument.

V. NEITHER THE COUNTY ADMINISTRATOR NOR THE COUNTY ATTORNEY COULD AUTHORIZE THE INSTANT APPEAL.

Neither the County Administrator nor the County Attorney possessed the legal authority to authorize the filing of a legal action. First, the County Administrator and the County Attorney both suggest that if the County Council voted against pursuing the appeal, they could somehow veto the legislative body's directive. Untrue.¹¹

A. The County Administrator and County Attorney Must Abide By County Council's Directive.

Both the County Administrator and Attorney serve at the will of the County Council to execute the directives of the council, not *vice versa*. See, e.g., S.C. Code §4-9-620 (Administrator shall serve "at the pleasure of the council"); S.C. Code §4-9-630 (Administrator shall "execute the policies, directives, and legislative actions..."); ACC §2-178(a) ("The County attorney is hereby authorized to represent...the County...") Once a matter is conferred to the County Council and the Council makes a decision, one way or another, neither the County Administrator or the County Attorney possess the authority to override the County Council's directive, nor do they possess the authority to veto the will of the County Council. Both must follow the directive of the County Council. Candidly, it is extremely odd that the County now suggests otherwise.¹²

¹¹ If Wilson's vote is disqualified, then the vote authorizing the filing of the Notice of Appeal failed 3 to 3. If Moore's vote is disqualified, then the vote failed 3 to 2.

¹² Moreover, the County's Return also suggests that the nature of the vote did not prohibit the County Administrator and Attorney from pursuing the appeal. (County Return at 9.) The County's efforts to justify its actions betray what is really going on here—a *post facto* rationalization to legitimize its illegitimate actions. When the County voted whether to pursue the appeal, the vote failed but for the disqualified votes. Everything else the County now advances is empty wordplay.

B. Omitted by Appellant, County Council Placed Express Restrictions on the County Administrator's Authority to Authorize Legal Filings.

The County altogether failed to inform the Court that express restrictions exist over what the Anderson County Administrator could authorize by way of legal actions *without* Council's direction. By operation of Ordinance 2013-005 (enacted in March of 2013), the County Administrator's authority in legal actions was limited to authorizing debt collection actions in Magistrate's Court.¹³

As the County Attorney, a current affiant, himself stated during the initial reading of Ordinance 2013-005:

County Attorney: Yes, sir, Mr. Chairman. This is the first reading of an ordinance that would give the administrator limited authority to approve the filing of debt collection lawsuits in small claims court, which is our Magistrate's Court....So it would only be for debts seventy-five hundred dollars or less that would allow the administrator to give the green light to file those collection actions...

(Ex. A, 2/23/2013 Meeting Minutes, 37:19-34.)¹⁴

Regarding Ordinance 2013-005, council member Francis Crowder noted, "And this does not give the administrator the right to file legal suits...Well, only in the case of collection of a debt...And only in Magistrate's Court...So, you know you've got two

¹³ In actuality, the County Administrator's authority was broadened by Ordinance 2013-005 since prior to its enactment the County Administrator had no authority over such matters. See also Ex. D (2/5/2013 Anderson Independent Mail Article (The ordinance "approved by the county council does not give [County Administrator] Burns the authority to approve any high-dollar lawsuits, [County Attorney] Pitts said. Indeed, Every major decision in this case did, in fact, receive a vote of the County Council.

¹⁴ Preston would supply the Court with a link to the full transcript of the meetings if that were possible. However, for some reason, the three meetings where Ordinance §2013-005 was enacted have been removed from Anderson County's website.

safeguard[s] there." Id. at 38:2-16.¹⁵ The County enacted Ordinance 2013-005 on March 5, 2013 by third reading. See Ex. C (3/5/2013 Meeting). It is both telling and troubling that the County—which submitted the affidavits of both its County Administrator and County Attorney--would omit disclosing an Ordinance restricting the County Administrator's ability to authorize legal filings while simultaneously representing the County Administrator had such authority.

C. Like Every Other Attorney, the County Attorney Merely Represents the County; He Does Not Make Decisions for His Client.

The County cites ACC §2-178 to support the argument that the County Attorney possessed legal authority to authorize the instant appeal. Plainly untrue. Like every other attorney in the State of South Carolina, the County Attorney is an agent of the County, his principal. ACC §2-178 proves the point. The Ordinance merely authorizes the County Attorney "to represent" the County. Id.

The County Attorney, by operation of ACC §2-178, does not magically transform into the client/principal in the attorney-client relationship. Just like every other attorney in the State of South Carolina, the County Attorney must receive and abide by the directive of his client, his principal. To suggest otherwise, as the County currently does, has no basis whatsoever and ignores the exact provisions the County itself cites.

¹⁵ On February 19, 2013, the County Attorney stated: "This is second reading on an ordinance that would give the county administrator the authority to file debt collection lawsuits on behalf of the County, as long as it was just a debt collection suit. And it was a matter within the Magistrate's Court jurisdiction, which like small claims court, and that's seventy-five hundred dollars." (Ex. B, 2/19/2013 Minutes, 15:31-39.)

VI. PRESTON CARRIED THE BURDEN ON HIS MOTION AND THE COUNTY FAILED TO REBUT THE SAME.

Preston discussed the specific claims regarding Wilson and Moore above in Section III. Preston incorporates his prior discussion herein by reference. As discussed *supra*, the issues pertaining to Wilson and Moore constitute legal conclusions that this Court can make upon the fixed Record presented to it. The County does not contest the factual issues cited in Preston's Motion (*i.e.*, the Court's findings and the unbecoming and public evidence about Moore). It is both necessary and required for the Court to make these preliminary determinations so as to evaluate whether appellate jurisdiction exists.

CONCLUSION

For nearly five years, the County has been willing to do and say just about anything to prop-up its baseless lawsuit against Preston. The County's Return proves no different. The County knew Wilson and Moore had conflicts of interest when they participated in the Appeal Vote. The County did not care. In violation of state law and local ordinance, the County pressed the Appeal Vote and allowed Wilson and Moore to participate without even addressing the conflict of interest. The County did so because it knew if Wilson and Moore did not participate, the vote would fail.

When the Court applies the Baird decision to the instant facts, the Appeal Vote fails. Accordingly, this Court should: inquire into its own jurisdiction; grant an oral argument on Preston's Motion; determine the notice of appeal was not properly authorized; and then dismiss this appeal for want of jurisdiction. Alternatively, if this Court determines further factual development is warranted regarding the jurisdictional issue, then the Court should stay

the instant appeal and remand the case for the limited purpose of developing a record at the Circuit Court level concerning whether the County properly authorized its Notice of Appeal. In the second alternative, if for some reason the Court elects to have Preston raise the issues presented by his Motion in Respondent's Initial Brief, Preston would respectfully ask for a limited amount of additional time to incorporate the argument into Respondent's Initial Brief.

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June 17, 2014

EXHIBIT A

1 ROBERT CARROLL: I just noticed one item and
2 it's just a mistype, but I'll bring it to your
3 attention. Just so you'll know, on page eight of
4 thirteen. ---
5 FRANCIS CROWDER: Eight of thirteen.
6 ROBERT CARROLL: --- Section 2.640. I want
7 to make sure you understand that is twenty-five hundred
8 and not twenty-five thousand. So don't anybody get
9 alarmed there.
10 FRANCIS CROWDER: Yeah. Yeah.
11 ROBERT CARROLL: It's twenty-five hundred.
12 FRANCIS CROWDER: Thank you, sir. All those
13 in favor on first reading to move it forward? Let the
14 record show it was unanimous. Thank you.
15 All right. We now move to ---
16 TOMMY DUNN: D.
17 FRANCIS CROWDER: Yeah. At this time it's
18 2013-005, Mr. Pitts?
19 MIKE PITTS: Yes, sir, Mr. Chairman.
20 This is first reading of an ordinance that would give
21 the administrator limited authority to approve the
22 filing of debt collection lawsuits in small claims
23 court, which is our Magistrate's Court. This came up
24 because we have a tenant at the airport that owes us
25 some money. And despite attempts to collect the debt,
26 we need to go forward and file a small claim action to
27 collect the debt in the Magistrate's Court. And we
28 thought it might be more efficient to pass a blanket-
29 type ordinance for small claims like this. In the
30 Magistrate's Court jurisdiction, it's seventy-five
31 hundred dollars. So it would only be for debts
32 seventy-five hundred dollars or less that would allow
33 the administrator to give the green light to file those
34 collection actions.
35 FRANCIS CROWDER: Do I have a motion?
36 CINDY WILSON: Second.
37 FRANCIS CROWDER: We have a motion by Ms.
38 Wilson. Do we have a second?
39 TOMMY DUNN: Second.
40 FRANCIS CROWDER: Discussion?
41 EDDIE MOORE: Mr. Chairman?
42 FRANCIS CROWDER: Yes, sir.
43 EDDIE MOORE: I just want to make sure
44 that when stuff like that is going to happen that we're
45 notified, the county council is notified. We don't
46 want to get in a situation of the past administrator
47 filing all these lawsuits on people. I want to know
48 about it.
49 FRANCIS CROWDER: Well, keep in mind, I agree
50 with that fully. But I've already talked to several

1 people on the telephone that heard about it. And this
2 does not give the administrator the right to file legal
3 suits.
4 EDDIE MOORE: Yes, it does in ---
5 FRANCIS CROWDER: Well, only in the case of
6 collection of a debt.
7 MIKE PITTS: It's limited to debt
8 collection.
9 TOMMY DUNN: And only in Magistrate's
10 Court.
11 FRANCIS CROWDER: And only in Magistrate's
12 Court.
13 MIKE PITTS: It's only in Magistrate's
14 Court. That's right.
15 FRANCIS CROWDER: So, you know, you've got two
16 safeguard there.
17 MIKE PITTS: And, also ---
18 FRANCIS CROWDER: It's got to be a debt and
19 it's got to be in Magistrate's Court.
20 TOM ALLEN: Mr. Chairman.
21 FRANCIS CROWDER: Yes, sir.
22 EDDIE MOORE: Excuse me.
23 TOM ALLEN: Oh, I'm sorry. Go ahead,
24 Eddie.
25 FRANCIS CROWDER: Yes, sir. Go ahead, Mr.
26 Moore.
27 EDDIE MOORE: That's fine. Well, you
28 know, being the recipient of numerous lawsuits, I'm a
29 little touchy about that.
30 FRANCIS CROWDER: Yeah. I understand, yeah.
31 GRACIE FLOYD: You ought to be.
32 CINDY WILSON: Don't forget I exceed you.
33 TOM ALLEN: Mr. Chair?
34 FRANCIS CROWDER: Yes, sir, Mr. Allen.
35 TOM ALLEN: I just have a question. How
36 was this done prior?
37 FRANCIS CROWDER: Pardon?
38 TOM ALLEN: How was this done prior to
39 this ordinance? Who filed the suit?
40 MIKE PITTS: We haven't had to file one
41 since I've been the county attorney. This is the first
42 time it's popped up with this particular tenant at the
43 airport. But it certainly has the potential to repeat
44 itself into the future, especially as the airport
45 starts doing more business. And then credit, things
46 like that.
47 TOM ALLEN: Okay. Thank you.
48 FRANCIS CROWDER: All right. Any other
49 discussion? We've had a motion and a second. All
50 those in favor? Let the record show it was unanimous.

EXHIBIT B

1 conflicted with other things. And quite frankly, I,
2 individually, I concurred with that since the Chairman
3 and the Vice Chairman has to be at the opening. I would
4 prefer to come on a date that we already had an activity
5 going on instead of having to designate every Friday as a
6 time to be here.
7 CINDY WILSON: Okay.
8 FRANCIS CROWDER: So self-preservation, to be
9 honest. So any other questions? So at this particular
10 point in time, do we vote on the amended motion first?
11 TOMMY DUNN: Yes, sir.
12 MIKE PITTS: I think we need to close the
13 public hearing, Mr. Crowder, just so the record's clear.
14 FRANCIS CROWDER: All right. Yes, sir, I was --
15 are there any other discussions? Hearing no other
16 discussions, I close the public hearing. At this time do
17 I have a motion to accept the amended motion to the
18 ordinance?
19 TOMMY DUNN: I second your amendments.
20 FRANCIS CROWDER: You second. All right. Any
21 further discussion? All those in favor of the amended
22 motion, please raise your right hand. Let the record
23 show it was unanimous.
24 Now we have to vote on the motion. Do I have a
25 second for the ---
26 TOMMY DUNN: Second.
27 FRANCIS CROWDER: We have a second by Mr. Dunn.
28 All those in favor of the motion, please raise your right
29 hand. Let the record show it was unanimous. Thank you.
30 All right. Item (c) is 2013-005. Mr. Pitts?
31 MIKE PITTS: Yes, sir. I'll just give a
32 quick overview before we go into the public hearing, Mr.
33 Chairman. This is second reading on an ordinance that
34 would give the county administrator the authority to file
35 debt collection lawsuits on behalf of the county, as long
36 as it was just a debt collection suit. And it was a
37 matter within the Magistrate's Court jurisdiction, which
38 is like small claims court, and that's seventy-five
39 hundred dollars.
40 FRANCIS CROWDER: All right. Do I have a motion
41 ---
42 TOMMY DUNN: Motion to move forward.
43 FRANCIS CROWDER: Motion by Mr. Dunn to move
44 forward. Do I have a second?
45 CINDY WILSON: Second.
46 TOM ALLEN: Second.
47 FRANCIS CROWDER: A second by Ms. Wilson this
48 time. She beat you, Mr. Allen.
49 TOM ALLEN: Okay.
50 FRANCIS CROWDER: Any discussion?

1 MIKE PITTS: Mr. Chairman, I believe there
2 is a pubic hearing on this, as well.
3 FRANCIS CROWDER: At this time, I open a public
4 hearing for any citizen to be able to comment on this
5 particular item. If you have comments, please step
6 forward and approach the Mic. Hearing no citizens step
7 forward, I declare that the public hearing is closed.
8 So at this time, do I go back and ask for the
9 second? Parliamentary Procedure.
10 MIKE PITTS: Yes, sir. Just get a second
11 and y'all can discuss it then.
12 FRANCIS CROWDER: All right. Do I have a
13 second?
14 TOM ALLEN: Second.
15 FRANCIS CROWDER: I have a second by Mr. Allen.
16 Thank you.
17 TOM ALLEN: I got it that time.
18 FRANCIS CROWDER: I know. I'm going to owe you
19 money between you and Mr. Dunn. He first and you second.
20 The floor is open for any discussion. Hearing no
21 discussion, all those in favor of this motion, please
22 raise your right hand. Let the record show it was
23 unanimous.
24 All right. The next one is 2013-006, an
25 ordinance amending Chapter 38, Article V of the Anderson
26 County Code. Mr. Rusty Burns. Oh, this is a public
27 hearing. At this time, I declare a public hearing. Are
28 there any citizens who would like to address the proposed
29 change to the storm water ordinance? If they would,
30 please step forward and address council.
31 GRACIE FLOYD: Yes. Is the public -- wait a
32 minute. Excuse me. I can speak at this time as a
33 citizen, but I won't. Are we still in public hearing?
34 Yeah, I'll wait.
35 FRANCIS CROWDER: Okay. Seeing no citizens step
36 forward, I declare the public hearing closed. At this
37 time, do I have a motion?
38 CINDY WILSON: So moved.
39 FRANCIS CROWDER: I have a motion by Ms. Wilson.
40 TOMMY DUNN: Second.
41 FRANCIS CROWDER: Second by Mr. Dunn. Now
42 discussion.
43 CINDY WILSON: Mr. Chairman.
44 GRACIE FLOYD: The young man ---
45 CINDY WILSON: May we ask that Mr. John
46 Batson ---
47 GRACIE FLOYD: I'd asked for the floor.
48 FRANCIS CROWDER: All right. Yes, ma'am, you
49 did. Go ahead, Ms. Floyd.
50 GRACIE FLOYD: Thank you. Mr. Batson, would

EXHIBIT C

1 TOMMY DUNN: Yes, sir.
2 FRANCIS CROWDER: Okay. I'm just looking at
3 who's name is down ---
4 TOMMY DUNN: Yes, sir, they do that. But
5 this is in District 5. It's off of Centerville Road.
6 We've had two readings on this already. This is -- the
7 citizens over there went through, followed the proper
8 procedures for our county ordinance to get their roads
9 brought up to standards where the county can take them
10 in. So I put this in the form of a motion to move it
11 forward.
12 TOM ALLEN: Second.
13 FRANCIS CROWDER: A motion by Mr. Dunn. A
14 second by Mr. Moore. Any discussion? Hearing no
15 discussion, all those in favor? Let the record show it
16 was unanimous.
17 Item 10(b), Number 2013-004, an Ordinance
18 amending Chapter 2, Article V, of the Anderson County
19 Code pertaining to purchasing in order to provide for
20 an increased level of competition including competition
21 by local vendors, and matters related thereto. I
22 understand that you want to make a ---
23 TOM ALLEN: Mr. Chairman?
24 FRANCIS CROWDER: Yes, sir.
25 TOM ALLEN: Yes, I would. I would like
26 to make a motion at this time to table this because
27 we've come up with some -- there are relatively minor,
28 but changes to this. And I'd like for all of the
29 council members to have a chance to look at it and they
30 were just handed out earlier today. So I'd like to
31 table this until the next meeting. And I put that in
32 the form of a motion.
33 KEN WATERS: Second. I'll make a second.
34 FRANCIS CROWDER: All right. All those in
35 favor? All right. Let the record show that those in
36 favor were Ms. Wilson, Mr. Allen, Mr. Moore, Ms. Floyd,
37 Mr. Dunn and Mr. Waters. Opposed, Francis Crowder.
38 All right. Moving on to Item 10(c), 2013-005,
39 an Ordinance to allow the county administrator limited
40 authority to approve filing of legal actions for the
41 collection of certain debt on behalf of the county, and
42 matters related thereto. Mr. Pitts?
43 MIKE PITTS: Mr. Chairman, this is third
44 reading of an ordinance that would allow the
45 administrator to authorize the filing of a debt
46 collection action as long as the amount is under
47 seventy-five hundred dollars.
48 TOMMY DUNN: Mr. Chairman?
49 FRANCIS CROWDER: All right. Do I have a
50 motion?

1 TOMMY DUNN: I make a motion to move this
2 forward.
3 TOM ALLEN: I second.
4 FRANCIS CROWDER: We have a motion by Mr.
5 Dunn. Do we have a second?
6 TOM ALLEN: Second.
7 FRANCIS CROWDER: We have a second by Mr.
8 Allen. Discussion? Hearing no discussion, all those
9 in favor raise your right hand. Let the record show
10 that it was unanimous.
11 All right. Item (d), 10(d), 2013-006, an
12 ordinance amending Chapter 38 Article V of the Anderson
13 County ---
14 CINDY WILSON: Mr. Chairman?
15 TOM ALLEN: That was pulled.
16 FRANCIS CROWDER: We've set that aside.
17 TOMMY DUNN: This is the time we talked
18 with the representatives.
19 FRANCIS CROWDER: I'm sorry. Yeah. We did.
20 I apologize. I should have marked it. Set aside.
21 All right. Moving on to Item Number 11,
22 Ordinance 2nd reading. I declare this a public
23 hearing. It's an ordinance for the adoption of the
24 Royal American Overlay District Regulation and matters
25 related thereto. If any citizen would like to speak,
26 either for or against this item, please come forward to
27 the stand and express your views. The floor is open
28 for the public hearing. Seeing -- oh, come right
29 ahead, Mr. Brissey.
30 BILL BRISSEY: Ladies and Gentlemen of the
31 Council, I'm Bill Brissey. I'm hungry because all
32 we've had here tonight is some kind of food
33 proclamation or serving food or reading from the
34 newspaper. I'm about to starve to death.
35 FRANCIS CROWDER: I understand that, brother.
36 BILL BRISSEY: I'm here tonight to talk a
37 little bit about this overlay district that's up in the
38 -- it's the property that's behind the Royal American
39 Inn on Clemson Boulevard. We've had property up there
40 now for about fifteen years. And, of course, we bought
41 this property, it was developed in the commercial
42 tract. And, of course, now we seem to be getting some
43 opposition about being able to develop it without
44 putting a lot of restrictions on this commercial
45 property. Different restrictions, over and above what
46 we already have to do.
47 In order to develop something into a
48 commercial tract, we go through an enormous amount of
49 work with engineers trying to get it ready to develop.
50 With all the new state regulations now it seems that

EXHIBIT D

County leaders give final nod to Tri-County land lease at airport

Council takes less than five minutes to approve Tri-County plan

By Nikie Mayo

Tuesday, February 5, 2013

ANDERSON — County council members took less than five minutes Tuesday night to give final approval to a long-in-the-works lease that allows Tri-County Technical College to use some land at the Anderson Regional Airport for a highway-construction training program.

The land will be used by students who are learning to operate heavy equipment used in roadwork. One of the skills students will learn is how to lay asphalt.

The lease allows the college to lease five acres at the airport for five years. It also gives Anderson County the option to tell Tri-County to leave the work site if a business is interested in using the same acreage for an economic-development project.

If that were to happen, interim administrator Rusty Burns has said, the county would make provisions for the college to move its work site "a little farther down the road," but still on the same property.

Council members hope for a "light business and industrial park" near the airport. When the college first asked for land out there more than a year ago, county leaders hesitated — and studied — before they answered.

The county commissioned a \$4,000 study then to determine if leasing land to the college was a good idea.

William McCoy of F&S Surveyors, Engineers and Planners prepared the study.

"As development proceeds on the total tract, the instructional buildings for this facility — which would be of an attractive modular construction — could be easily relocated with grading," McCoy said in the study.

"Utilization of experience-oriented training from this alliance," McCoy said, "would be a strong benefit to the county and Tri-County Tech."

College officials have a long-term goal of asking for about 70 more acres at the

airport. The land would be used for research facilities. The college did not have a representative speak about the lease Tuesday night.

The lease requires the county and the college to give each other sufficient notice if one of the parties wants to terminate the agreement.

In other business, the Anderson County Council gave Burns the authority to "approve the filing of legal actions" on behalf of the county — as long as those actions are related to collecting debts of \$7,500 or less.

County attorney Mike Pitts said the council's resolution gives Burns "limited authority" to approve filings made on behalf of the county in Magistrate Court.

Pitts said the need for that authority arose because the county is trying to collect money from a person who has used services at the airport but has thus far refused to pay.

The resolution approved by the county council does not give Burns the authority to approve any high-dollar lawsuits, Pitts said.

Still, council member Eddie Moore said he wants to know about any small-claims cases that Burns approves going forward.

"Being the recipient of numerous lawsuits," Moore said, "I'm a little touchy about it."



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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Appellate Case No. 2013-002499

Anderson County, Appellant,
v.
Joey Preston and the South Carolina Retirement System, Respondents.

PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondents, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Respondent Joey Preston's Reply

Counsel Served:

J. Theodore Gentry

Troy A. Tessier
Alice W.W. Parham
Wade S. Kolb II

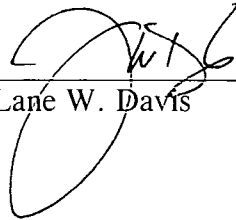
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SC Court of Appeals

WYCHE, PA
44 East Camperdown Way
Greenville, SC 29601

David K. Avant
South Carolina Budget and Control Board,
South Carolina Retirement Systems
202 Arbor Lake Drive
Columbia, SC 29223



Lane W. Davis

June 17, 2014

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June 17, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
PO Box 11629
Columbia, SC 29211

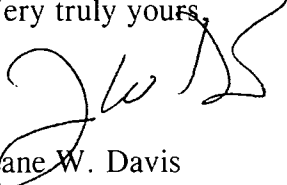
RE: Anderson County v. Joey Preston and the South Carolina Retirement System
Appellate Case No. 2013-002499
Our File No. 31268/01501

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of Respondent Joey Preston's Reply in the above-referenced matter.

Please return a file stamped copy in the enclosed envelope.

Very truly yours,


Lane W. Davis

LWD:ap

Enclosures

cc: J. Theodore Gentry (w/enclosure)
Troy A. Tessier (w/enclosure)
Alice W.W. Parham (w/enclosure)
Wade S. Kolb II (w/enclosure)
David K. Avant (w/enclosure)

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SC Court of Appeals