

THE STATE OF SOUTH CAROLINA
In The SUPREME COURT

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

William Paul Keesley, Circuit Court Judge

Case No: 2008-CP-41-0004
Appellate Case Number: 2012-212790

Dennis N. Lambries Respondent,

v.

Saluda County Council, T. Hardee Horne, Chairman, William "Billie" Pugh, Councilman,
Steve Teer, Councilman, Jacob Schumpert, Councilman, and
James Frank Daniel, Sr., Councilman, Petitioners

PETITION FOR REHEARING

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S.C. SUPREME COURT

Dennis N. Lambries (“Lambries”), by and through his undersigned counsel, does hereby move before the South Carolina Supreme Court, pursuant to Rule 221 of the South Carolina Appellate Court Rules (the “Rules”) requesting that the Court rehear and reconsider its Ruling in the above-captioned matter as provided for in its opinion dated June 18, 2014. Lambries believes that the Court overlooked and misapprehended the following items:

1. The Supreme Court found that the “Court of Appeals ... majority [found] ... an agenda is required for regularly schedule meetings”. Advance Sheets p. 21. The Court of Appeals decision made no such finding. Instead, the Court of Appeals recognized that when there were no items of business or discussion to be brought up at a meeting, no agenda was necessary and none needed to be posted. However, if items of business or discussion were to be brought up at a meeting, that list of items (commonly referred to as an agenda), “must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings”. S.C. Code Ann. §30-4-80 (Law. Co-op. 2007).

2. The Supreme Court, while recognizing the Freedom of Information Act’s purpose and the requirement that the act “be construed so as to make it possible for citizens ... at a minimum cost or delay to ... access ... meetings,” S.C. Code Ann. §30-4-15 (Law. Co-op. 2007), overlooks this purpose in determining the proper interpretation of its text. Under the Court of Appeals decision, the minimum cost to the public body was to simply post on a bulletin board the list of items of business or discussion to be brought up at a meeting. Such a reading would allow for the public body to amend the agenda for a future meeting to be held no sooner than within 24 hours. Thus, citizens would know what meetings they needed to attend. Instead, the Supreme Court has placed the heavy cost upon the citizens to attend every regularly scheduled meeting of every public body, regardless

of any announced list of items of business or discussion, on the speculative chance that the public body will address the issues that are of particular concern to the individuals.

3. The Supreme Court holds that regularly scheduled meetings are not called meetings. In so holding, the Court overlooks the implication of this holding upon numerous statutes that require certain actions by public bodies only occur at “called” meetings. Under the Supreme Court’s ruling, these actions can no longer take place at regularly scheduled meetings. Specifically, S.C. Code Section 6-25-115(F) provides that special purpose districts have the authority to issue a “construction note ..., but such a construction note may not be issued without the prior approval of a majority of the commissioners of the joint system present and voting at a duly called meeting of it.” S.C. Code Ann. §6-25-115(F) (Law. Co-op. 2007). The issuance of a construction note can no longer take place at regularly scheduled meetings because they are no longer called meetings. Similarly, S.C. Code Section 59-19-80 relates to the authority of school districts. This section states “[n]o teacher or other employee shall be employed or any purchase made except in a duly called meeting of the board.” S.C. Code Ann. §59-19-80 (Law. Co-op 2007). Again, under the Supreme Court’s ruling, the hiring of teachers and the purchasing of items for the school districts can not be accomplished at “regularly scheduled” meetings because they are not “called” meetings. The resulting creation of “called” meetings and “regularly scheduled” meetings as dissimilar will have an effect on other statutes that was overlooked by the Supreme Court.

4. The Supreme Court finds that the phrase “if any” is synonymous with “if there is one” and rephrases the operative language of Section 30-4-80(a) as “[a]n agenda, *if there is one*, must be posted as least twenty-four hours before the meeting.” The Court then simply ignores the operative verb in this sentence. The verb used by the legislature is “*must*”. There is no discretion in the word

“must”. The interpretation by the Supreme Court overlooks the well settled maxim of statutory interpretation that “the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and **each one given effect.**” *Centex Int'l, Inc. v. S. Carolina Dep't of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013), reh'g denied (Sept. 20, 2013)(emphasis added). If, as interpreted by the Supreme Court, a public body may or may not create an agenda which “must” be posted, a public body may simply choose to never create an agenda, whether or not they plan to take formal action. Such a result renders meaningless the legislature’s requirement of posting an agenda. Such broad discretion granted to the governing body removes any effect of the requirement to post an agenda.

5. Further, the legislature’s failing to explicitly prohibit amending an agenda is interpreted by the Supreme Court as, in fact, granting such a right. Such a reading strains a reasonable understanding of the rest of the statute. By allowing amendments to the agenda within twenty four hours of the meeting, the Supreme Court renders the posted agenda insignificant. Such an agenda provides a benefit to noone. There is no reason for the legislature to require through the language “must” the posting of an agenda if such agenda has no significance. Such a reading would also render the requirement for an agenda contained in the required notice of Section 30-4-80(a) meaningless.

6. Further, the lack of such a restriction to amend the agenda misses the point. If there is an agenda, the public has a right to know what the agenda is twenty-four hours before the meeting. That twenty-four hour notice requirement is the only restriction. The purpose of the Freedom of Information Act is not just “to prevent government business from taking place in secret”, it is also to “be construed so as to make it possible for citizens ... at a minimum cost or delay to ... access ...

meetings.” S.C. Code Ann. §30-4-15 (Law. Co-op. 2007). Requiring the public body to amend agendas no later than twenty four hours before a meeting can hardly be construed as more than a minimum cost or delay. As such the Supreme Court overlooks the entire purpose of the Freedom of Information Act in its decision.

7. The Supreme Court misapprehends the application of the notice requirements within Section 30-4-80(a). The Supreme Court delineates the notice requirements to the particular type of meeting as opposed the timing of said notice. By doing so, the Supreme Court holds that Section 30-4-80(a) provides for notice of “regularly scheduled meetings” to only be required “at the beginning of each calendar year.” The requirement for posting an agenda, if any, twenty-four hours before such a meeting contrasts the legislature’s design in providing notice at the beginning of the calendar year and closer to the date of the meeting. “The statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. *Rosenbaum v. S–M–S* 32, 311 S.C. 140, 427 S.E.2d 897 (1993). Reading the notice requirements to better comport with the Freedom of Information Act’s design, the Supreme Court should have found the separate mentions of notice to not be affiliated with the nature of the meeting, but rather the timing of the notice.

8. The Supreme Court discusses with favor the case of *City of Midwest City v. House of Realty, Inc.*, 198 P.3d 886, 891 n.6 (Okla. 2007) when it discusses the Oklahoma statute that uses the word “shall”. Our legislature did not use the word “shall”. Our legislature chose to use the word “must”. Is there really a difference between the use of the word “shall” and the use of the word “must”?

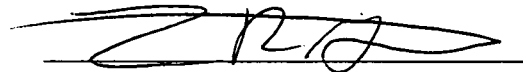
Here, there is no reason to exclude regular meetings from the requirement that the governing

body give notice, through an agenda, of what they intend to speak about and decide.

CONCLUSION

In finding that there is no requirement for the publication of an agenda twenty four hours prior to a regularly scheduled meeting, even when an agenda exists, the Supreme Court removes an important component to open government. Maybe the only right given by the Freedom of Information Act to the public is to allow them to be present when a government body seeks to discuss a particular issue. Maybe the only right given by the Freedom of Information Act is to allow a citizen the right to look their government official in the eye when that government official is casting his vote on a topic important to the citizen. Unfortunately, under the Supreme Court's ruling, even that minimal right is being taken away.

By:



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July 1, 2014

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PROOF OF SERVICE

I certify that I have served Respondent's Petition for Rehearing by depositing a copy of it in the United States Mail, postage prepaid, on July 1, 2014, addressed to its attorney of record as follows:

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