

**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 EDUCATIONAppellant

v.

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

INITIAL REPLY BRIEF OF APPELLANT

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I. STATEMENT OF ISSUE ON APPEAL

Which political subdivision has the authority to determine the school operating tax levy and millage rate for the School District of Jasper County - the Jasper County Board of Education or the Jasper County Council?

II. STATEMENT OF THE CASE

See Appellant's main brief.

III. STATEMENT OF FACTS

See Appellant's main brief.

IV. ARGUMENTS

A. Appellant Has Not Waived Its Claim For A Statutory Interpretation Consonant With The Constitution.

The key error in Respondents' arguments is to equate the requirement that the statutes be construed as *consistent* with the constitution, with an argument that the statutes are *un-constitutional*. Appellant is not trying to get a law declared unconstitutional, but Appellant has never abandoned or waived the bedrock principle of constitutional consonance in statutory interpretation.

As indicated in the excerpt quoted in Respondents' brief, Appellant told the court, "You could apply the express language of each bill, give them all effect."¹ The controversy over the statutes can be resolved only in harmony with the constitutional structure of Articles VIII, X, and XI. Appellant has never deviated from this point. School districts sometimes challenge various special acts pertaining to the school district as *unconstitutional*. *E.g., Bd. of Trustees of Sch. Dist. of Fairfield Cnty. v. State*, 395 S.C. 276, 718 S.E.2d 210 (2011); *Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 561,

¹ Respondents' Brief at 18.

713 S.E.2d 604, 609 (2011). This is not one of those cases.² A proper declaratory judgment both includes and construes harmoniously all statutes and constitutional provisions, in light of their history.

The Circuit Court's Order, at 1 (R. p. ____), says, "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." This idea of "abandonment" of "constitutionality" is grossly overstated, as shown below.³ Moreover, this passage in the Order simply begs the real question in dispute – *i.e.*, what is the "delegation of powers ... respecting the determination of the School District operating revenue and tax millage"?

Tax delegation under Article X is the heart of the controversy that both parties have asked the Court to resolve by declaratory judgment. The Complaint notes that Appellant is an Article XI entity and Respondent is an Article VIII entity, which difference defines their relations under law.⁴ The *first* statement in Appellant's Argument section of its memorandum in support of its motion for judgment was,

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

² Accordingly, Appellant was not required to serve the Attorney General with this civil action: "If the statute, ordinance or franchise is alleged to be *unconstitutional* the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard." S.C. Code Ann. § 15-53-80 (*emphasis added*).

³ The Appellants did not pursue the section of their Complaint stating, "Act No. 982 of 1968 is unconstitutional special legislation, pursuant to Article VIII, § 7 and Article III, § 34 of the State Constitution." (Complaint ¶ 12(f).)

⁴ Complaint ¶¶ 2-3, 10, 12(b), 12(d)), 19 (R. p. ____).

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, § 6.⁵

Appellant apprised the Circuit Court that the case required resolution of

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.⁶

Appellant argued,

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.⁷

Appellant also argued that,

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.⁸

In its Supplemental Memorandum, Appellant stated, "The Court should seek to harmonize the constitutional provisions and general and special laws at issue."⁹

Appellant also argued,

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 [and that] education is a function of state government, not county

⁵ Plaintiff's Memorandum in Support of Motion for Judgment on the Pleadings at 4 (R. p. ___)

⁶ (*Id.* at 5.) (R. p. ___)

⁷ (*Id.* at 12.) (R. p. ___)

⁸ (*Id.*)

⁹ Plaintiff's Supplemental Memorandum of Law in Support of Motion for Judgment on the Pleadings at 1 (R. p. ___).

government, under the division of the Constitution, Art. XI, § 3 and Art. VIII.¹⁰

In its Motion to Alter or Amend Judgment, Appellant sought a favorable declaration that,

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."¹¹

At the hearing on the dispositive motions, Appellant stressed that its briefs "went through the ... constitutional amendments and so on,"¹² and proposed an outcome that "recognized the importance of the constitutional division between schools [and] counties ..."¹³ Appellant told the court that "in 1973, we change[d] our constitution to grant home rule to cities and counties."¹⁴ Appellant argued that its position "gives effect to the constitutional separation of powers [of counties and school districts]."¹⁵ Appellant noted,

Now, the statutory interpretation in determining intent, that's what you're always trying to do, but you're also doing it within constitutional lines. In other words, what they say and what's constitutional are sometimes very different.¹⁶

...

So, I mean, the Court's responsibility in every level is to try to interpret it constitutionally and get through this wicket, these wickets of meaning.¹⁷

At the hearing, Respondents themselves said, "local governmental authorities only have the power to attach [*sic*] where the General Assembly specifically delegates that

¹⁰ (*Id.* at 3) (R. p. ____.)

¹¹ Plaintiff's Notice of Motions and Motions to Alter or Amend Judgment Pursuant to S.C. R. Civ. P. 52(b) and 59(e) at 2 at R. p. ____ ("Motion to Alter or Amend Judgment").

¹² (Tr. 6:16-17 at R. p. ____.)

¹³ (Tr. 7:1-3 at R. p. ____.)

¹⁴ (Tr. 9:6-8 at R. p. ____.)

¹⁵ (Tr. 14:10-11 at R. p. ____.)

¹⁶ (Tr. 28:11-15 at R. p. ____.)

authority"¹⁸ Respondents confirmed the core issue in the case is constitutionally permissible delegation of tax authority (*i.e.*, Article X), while arguing the County should benefit from the proposition that, "where the General Assembly grants power to a subordinate authority without express limitation, the power is exercised in the discretion of the entity, subject to actions being taken in good faith."¹⁹ Then, the Respondents told the Court:

All of the arguments that have been made thus far about powers of counties, powers of schools, Article 11 versus Article 8, those kinds of arguments, are resolved by asking yourself this question: does the General Assembly have the power to give to county councils the power to impose school millage. The answer to that is clearly yes, because the General Assembly has the power to delegate under Article 11. The case [*sic*] are myriad that say this is the responsibility not of counties; this is the responsibility of the General Assembly. And this Court's [*sic*] give wide authority to the General Assembly to resolve those issues, if they choose to. It is clearly within the power of the General Assembly to do what they have done. And in this case, I would submit to your Honor, Jasper County Council is well within its authority, within the directives of the General Assembly, to pass upon and make decisions about the revenue side of the Jasper County School Board budget.²⁰

The Circuit Court's order discusses tax delegation by the General Assembly on every single page, and concludes with, "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." The Circuit Court's Order, however, does not

¹⁷ (Tr. 28:22-24 at R. p. ____.)

¹⁸ (Tr. 19:18-20 at R. p. ____.) (in context, the quoted word "attach" should have been transcribed as "tax").

¹⁹ (Tr. 23:24 to 24:3 at R. p. ____.)

²⁰ (Tr. 25:15 to 26:9 at R. p. ____.)

mention Articles VIII, X, or XI, and makes no attempt to harmonize any of the disputed statutes with any of them.

As part of its Motion to Alter or Amend Judgment, Appellant incorporated its own proposed order in an attempt to advert the Circuit Court to the constitutionally valid construction of the statutes. Appellant cited the principle, "The Court should also seek to harmonize the constitutional provisions and general and special laws at issue."²¹ Also included was a proposed declaration that,

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 [XI], § 3 of the South Carolina Constitution, not Article VIII.²²

The entire discussion at pp. 6-9 (R. pp. ___) of Appellant's proposed order concerns delegation (*i.e.*, Article X) in light of the constraints and purposes of Article VIII ("Home Rule") and XI (public education). The proposed order includes the conclusion,

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 [288] 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.²³

In sum, there is no merit to the argument that the declaratory judgments sought before the trial court did not include the constitutional constraints repeatedly argued to the trial court. Both parties argued complete resolution of their legal relationship, which

²¹ (*Id.* at 2-3.) (R. p. ___.)

²² (*Id.* at 4.) (The referenace to Article X § 3 is a typographical error and should have been Article XI § 3.)

²³ (*Id.* at 12, R. p. ___) (*emphasis added*). (The reference to Act 982 of 1989 is a typographical

because of the very nature of the parties as political subdivisions inherently requires consideration of the constitutional structure in order to construe the General Assembly's statutes pertaining to that relationship. "The people of this State, in their sovereign capacity have, by the Constitution, entrusted the taxing power to the General Assembly and except by express permission of the sovereign authority, this power cannot be delegated to any subordinate agency." *Crow v. McAlpine*, 277 S.C. 240, 243, 285 S.E.2d 355, 357 (1981). The interpretation of the statutes in light of the constitution was squarely before the Court and remains so.

The purpose of the Declaratory Judgments Act is "to settle legal rights and remove uncertainty and insecurity from legal relationships." *Williams Furniture Corp. v. S. Coatings & Chem. Co.*, 216 S.C. 1, 6, 56 S.E.2d 576, 578 (1949). Declaratory judgment jurisdiction, "should be liberally exercised to effectuate the purposes of the statute and thereby afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." *Aetna Cas. & Sur. Co. v. Quarles*, 92 F.2d 321, 324 (4th Cir. 1937); *see also Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 468 (2004) (Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships.) Declaratory judgments "are especially appropriate where, as here, the meaning of a statute is in question." *Ott v. Tindal*, 297 S.C. 395, 398, 377 S.E.2d 303, 305 (1989).

Respondents' attempt to hide from the constitution would, if successful, wholly fail "to settle legal rights and remove uncertainty and insecurity from legal relationships." *Williams Furniture Corp.*, 216 S.C. at 6, 56 S.E.2d at 578. "Declaratory relief should not

be accorded 'to try a controversy by piecemeal, or to try particular issues without settling the entire controversy.'" *Id.* 216 S.C. at 7, 56 S.E.2d at 578 quoting *Aetna Cas. & Sur. Co.*, 92 F.2d at 325. The Order on appeal is a "piecemeal" declaration. Respondents certainly do not mind this now that they have secured it, but it fails to resolve the controversy.²⁴

Once the parties present their justiciable controversy, "[t]he duty rests upon this court to endeavor to harmonize not only legislative enactments with the Constitution, but the various provisions of the Constitution itself." *Hildebrand v. High School Dist. No. 32*, 132 S.C. 445, 136 S.E.2d 757, 760 (1927). Courts "will, if possible, construe a statute so as to render it constitutional." *Disabato v. S. Carolina Ass'n. of Sch. Adm'rs.*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013); see also *State v. McGrief*, 378 S.C. 320, 329, 663 S.E.2d 15, 19 (2009) ("a possible constitutional construction must prevail over an unconstitutional interpretation"). "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).

Accordingly, in seeking a complete statutory interpretation consistent with the constitution, Appellant raised, argued, and preserved the issues it argues on appeal. The Court must reject the attempt by Respondents to now evade the "declaration of rights,

²⁴ See, *Charleston Cnty. Sch. Dist. v. Thomas*, 277 S.C. 145, 146, 283 S.E.2d 441, 442 (1981) (justiciability of declaratory judgment claims).

status or other legal relations," S.C. Code Ann. § 15-53-30, that both parties require and request to settle their controversy.

B. Suspension Of Education Improvement Act Local Revenue Requirements Affects This Case.

A recent change in the authority to set millage rates for public schools explains how a controversy of this nature could arise in 2013, and renders Respondent's historical account irrelevant. (Respondents' Brief at 4.) The issue of substantive budget and rate authority is much more current than a cursory look at the statutes' dates and Respondent's background discussion suggests.

The Education Improvement Act of 1984 ("EIA Minimum Local Effort"), S.C. Code § 59-21-1030 imposed a statutory formula which strictly limited a county council's authority to control a school district's budget and millage rate. The EIA Minimum Local Effort required the county auditor to levy a millage rate sufficient to assure that the school district received, per pupil, at least the same amount of local property tax revenue as it received the previous year, adjusted upward for an inflation factor. *Laurens Cnty. Sch. Districts 55 & 56 v. Cox*, 308 S.C. 171, 417 S.E.2d 560 (1992); *Richland Cnty. Sch. Dist. One v. Richland County Council*, 310 S.C. 106, 425 S.E.2d 747 (1992). This formula established a "floor" under every school district's property tax revenue and often dictated the operating millage rate to be set by the county auditor. Except for the margin above the EIA requirements, neither local school operating revenue nor operating millage rate was subject to *anyone's* discretion.

However, the EIA Minimum Local Effort has been suspended by budget proviso each fiscal year since 2008-09. *See, e.g.,* Act No. 310 of 2008, Part 1B, Proviso 1.45 ("For Fiscal Year 2008-2009, Section 59-21-1030 is suspended."); Act No. R-330 of

2012, Part 1B, Proviso 1.38 ("For the current fiscal year, Section 59-21-1030 is suspended."). For nearly twenty-five (25) years, from 1984-5 until 2008-9, the locus of substantive authority over school property tax revenue and millage rates was far less important than now. While S.C. Code Ann. § 6-1-320, as amended in 2006, sets an upper limit on increases in property tax millage rates for school district operations, whether established by a county council or school board, the suspension of the EIA Minimum Local Effort has removed the floor on reductions.

With suspension of the EIA Minimum Local Effort formula, every fiscal year demands a new act of school governance determining the resources for the schools. It then requires a *local* exercise of the full political judgment behind exercising the "high power"²⁵ of taxation. It has been said,

The taxing power must be regarded as the primary power of government.... This results from the fact that its end is the acquisition of means upon which the exercise of all the powers of the government practically depend. It is indispensable, because the validity of the government depends upon it. The inexorable necessity that is laid upon it is to get adequate revenue.

State v. Hayne, 4 S.C. 403, 412-13 (1873). These requirements, not coincidentally, are exactly what Act 288 of 1989 requires of the Board. As the stakes in local revenue for school operations have greatly increased in this new environment, the need for the determinative declaratory judgment on this issue requested by both the Board and Council has increased accordingly.

²⁵ *Gaud v. Walker*, 214 S.C. 451, 466, 53 S.E.2d 316, 322 (1949).

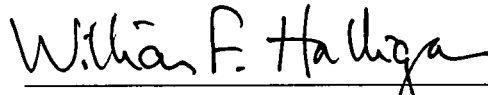
This observation also affects Respondents' discussion of other school districts' statutory situations. (Respondents' Brief at 12). Categorization of school districts depends on construction of different local statutes, and controversies may be freshly provoked by the suspension of the EIA Minimum Local Effort requirement. What is certain is that the language in Act 288 of 1989 makes Appellant's proposed construction of the constitution and statutes lawful and correct for the Jasper County School District.

V. CONCLUSION

For the reasons stated above and in the Appellant's main brief, the Circuit Court's declaratory judgment is erroneous and an appropriate declaratory judgment should be entered.

Respectfully submitted,

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