

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Docket No. 13-ALJ-17-0104-CC

**RECEIVED**

AUG 18 2014

**SC Court of Appeals**

William J. Montgomery, ..... Appellants,

v.

Spartanburg County Assessor, ..... Respondents.

**RESPONDENT’S RETURN TO MOTION OF THE  
SOUTH CAROLINA ASSOCIATION OF COUNTIES  
FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE**

Respondent William J. Montgomery submits this Return to the Motion for Leave to File Brief of Amicus Curiae, filed by the South Carolina Association of Counties. Respondent objects to the Motion and to the proffered Amicus Brief for two reasons: first, the proposed amicus brief attempts to add the record assertions of alleged facts and opinions not presented to the Administrative Law Court; and second, the arguments of the proposed amicus brief are largely duplicative of the arguments raised by the Appellants.

First, statements of fact or opinion not presented to the Administrative Law Court are not appropriate for consideration by the appellate court. “The Record shall not, however, include any matter which was not presented to the lower court or tribunal.”

SCACR 210(c). “[T]he appellate court will not consider any fact which does not appear in the Record on Appeal.” SCACR 210(h).

[A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are **presented** to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court. *E.g., Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“It is axiomatic that an issue cannot be raised for the first time **on appeal**, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”); *Long v. Dunlap*, 87 S.C. 8, 68 S.E. 801 (1910) (Supreme Court will not consider any point which was **not presented** and considered below unless it involves jurisdiction of the court); *Gaffney v. Peeler*, 21 S.C. 55 (1884) (question of law which was **not presented** to or passed upon by the **trial court** cannot be raised **on appeal**); Rule 210(c), SCACR (record **on appeal** shall not include **matter** which was **not presented** to lower court).

*Elam v. South Carolina Dep't. of Transportation*, 361 S.C. 9, 23-24, 602 S.E.2d 772, 779-780 (2004) (emphasis in original).

Respondent objects to statements of fact or opinion in the proffered Amicus Brief because they were not presented to the Administrative Law Court. The first sentence under Background section on page 1 is an assertion of fact concerning the source of funding for counties in South Carolina. This is a factual assertion not presented to the Administrative Law Court.

On page 2, about two-thirds of the way down the page, the proposed amicus brief alleges a statement about what the General Assembly “recognized” when it enacted a particular statute. This assertion is without any evidentiary foundation, it was not subjected to cross-examination, and it was not presented to the Administrative Law Court.

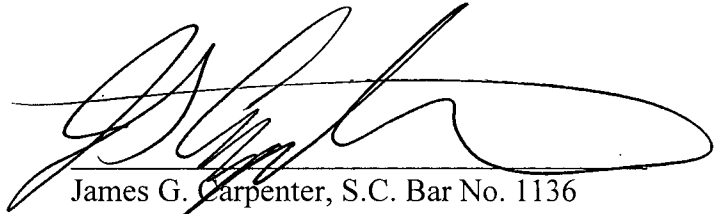
On page 4, about one-third of the way down the page, the proffered amicus brief asserts some facts about the historical interpretation of a statute by the Department of Revenue and county assessors, including the Spartanburg County Assessor. Similarly, on

page 10, the first paragraph under section III, the amicus brief asserts that its interpretation is “the long-standing interpretation . . . by the Department of Revenue and forty-six county assessors for the past 34 years.” This is an attempt to insert alleged expert testimony that was not submitted to the Administrative Law Court and not subjected to cross-examination. The whole of section III is based on this supposed factual assertion.

Second, the legal arguments in the brief do not add to the discussion “of the issues on appeal as presented by the parties.” Rule 213 SCACR. To the extent the amicus brief makes legal arguments, they are largely duplicative of the arguments raised by the Appellants herein, and do not advance the discussion “of the issues on appeal as presented by the parties.” Rule 213 SCACR.

**Wherefore**, Respondent objects to the proposed Amicus Brief by the South Carolina Association of Counties, opposes the Motion to file it, and prays the Court that the Motion be DENIED.

Respectfully submitted,  
THE CARPENTER LAW FIRM, P.C.



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Attorneys for Respondent Montgomery

August 13, 2014

CERTIFICATE OF SERVICE

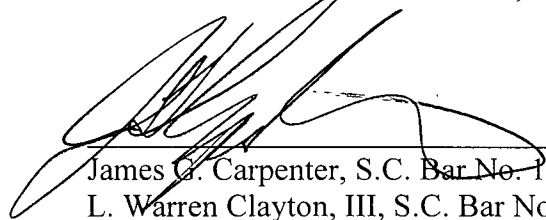
The undersigned attorney hereby certifies that he served a copy of the foregoing Respondent's Return to Motion for Leave to File Brief of Amicus Curiae upon counsel for the Appellants by first class mail, postage prepaid this August 13, 2014, addressed as follows:

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August 13, 2014  
The Honorable Jenny Abbott Kitchings  
Clerk, SC Court of Appeals  
PO Box 11629  
Columbia, SC 29211

Re: William J. Montgomery vs. Spartanburg County Assessor  
Docket No. 13-ALJ-17-0104-CC

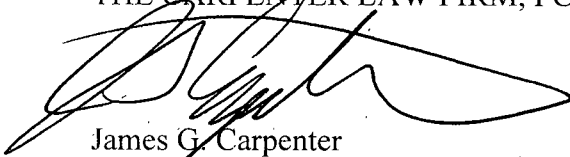
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Dear Ms. Kitchings:

Respondent encloses an original and six copies of the Respondent's Return to Motion for Leave to File Brief of Amicus Curiae by the South Carolina Association of Counties, with a certificate of service.

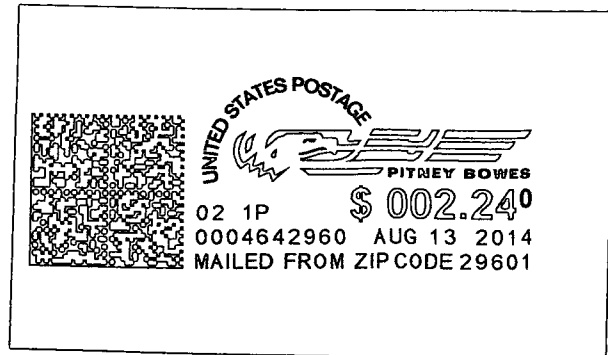
If you have any questions, please telephone me.

Sincerely yours,  
THE CARPENTER LAW FIRM, PC



James G. Carpenter

Enclosure  
CC w/ enclosure: opposing counsel



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The Honorable Jenny Abbott Kitchings  
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