

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM JASPER COUNTY  
Court of Common Pleas

Honorable Carmen T. Mullen, Circuit Court Judge

---

C.A. No.: 2013-002266

---

**RECEIVED**

SEP 08 2014

SC SUPREME COURT

JASPER COUNTY BOARD OF EDUCATION ..... Appellant

v.

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

---

**RESPONDENT'S RETURN TO  
APPELLANT'S MOTION FOR CERTIFICATION  
BY THE SUPREME COURT**

---

Marvin C. Jones  
South Carolina Bar Number 003201  
Jasper County Attorney  
Post Office Box 420  
Ridgeland, South Carolina 29936  
(843) 726-5403  
Attorney for Respondents

**RECEIVED**

SEP 08 2014

**SC Court of Appeals**

Other Counsel of Record:

Childs & Halligan, P.A.  
Kenneth L. Childs, S.C. Bar No. 1217  
William F. Halligan, S.C. Bar No. 2607  
Keith R. Powell, S.C. Bar No. 69292  
Post Office Box 11367  
Columbia, South Carolina 29211  
Attorney for Appellant.

Robert E. Lyon, Jr., General Counsel  
John K. DeLoache, Staff Attorney  
Alexander W. Smith, Staff Attorney  
South Carolina Association of Counties  
Post Office Box 8207  
Columbia, South Carolina 29202  
Attorneys for *Amicus Curiae*.

## RETURN TO MOTION FOR CERTIFICATION

By their Motion of August 28, 2014, the Appellants now seek certification of this case for review by the Supreme Court. The Notice of Appeal was filed on November 22, 2013, and the Appellant's Final Brief was filed on or about April 23, 2013.

South Carolina Appellate Rule 204 (b) provides as follows:

**Certification by the Supreme Court.** In any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals. Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance. The effect of such certification shall be to transfer jurisdiction over the case to the Supreme Court for all purposes.<sup>1</sup>

Rule 204 (b) identifies two classes of cases the certification of which to the Supreme Court would be "normally appropriate." The first of these is cases of significant public interest and the second is cases in which there is a legal principal of major importance. While the Supreme Court has issued Rule 204 (b) certifications from time to time, we found no cases in which the Court gave guidance beyond the text of the Rule, as to what issues in a case might be of the sorts described in the Rule.<sup>2</sup> Thus we rely upon the language of the Rule.

---

<sup>1</sup> Identical but for grammatical differenced to Code of Laws of South Carolina § 14-8-22 (1976 as amended).

<sup>2</sup> See for example, Donald C. Austin, Respondent v. STOKES-CRAVEN HOLDING CORP., d/b/a Stokes Craven Ford, Appellant, 406 S.C. 187, 750 S.E.2d 78; LaSALLE BANK NATIONAL ASSOCIATION, as Trustee for Certificate Holders of Dear Stearns Asset Backed Securities Trust 2006-1, Asset Backed Certificates, Series 2006-1, Respondent v. Edward M. DAVIDSON, aka Ed Davidson; Sheryl L. Peterson-Davidson, aka Sheryl Davidson; WCRSI, LLC; and The Farm at Wescott Homeowners Association, Inc., Appellants, 386 S.C. 276, 688 S.E.2d 121; In re NOVEMBER 4, 2008 BLUFFTON TOWN COUNCIL ELECTION, Fred Hamilton, Jr., and Allyne Mitchell, Respondents v. Jeff Fulgham, Normand Thomas, and the Beaufort County Board of Elections and Voter Registration of whom Jeff Fulgham and Normand Thomas are Petitioners, 385 S.C. 632, 686 S.E.2d 683; and Nancy S. LAYMAN, David M. Fitzgerald, Vicki K. Zelenko, Wyman M. Looney and Nancy Ahrens, on behalf of themselves and all others similarly situated, Petitioners, v. The STATE of South Carolina and The South Carolina Retirement System, Respondents, 368 S.C. 631, 630 S.E.2d 265.

This case is clearly one of public importance to the people of Jasper County. However, it is not likely to draw significant interest elsewhere in the State. The reason is that at its bottom, the case is one of statutory interpretation. It poses the question does the statute extending powers to the Jasper County Board of Education include the power to tax?<sup>3</sup> Indeed, this was asserted by the Appellant who stated to the Court of Common Pleas, “We think this is a case of statutory construction.”<sup>4</sup> None of the briefs in this case point to other statutes granting powers to other school districts which are similar to the Jasper County Board of Education statute. Therefore, it does not seem likely that the case would provide any precedential or interpretational value applicable to other school districts within the State. As such, it is difficult to conceive of how it could be important to people beyond the confines of Jasper County.

Neither can it be said that the case involves unresolved legal principals of major importance. This is because if the power to tax has not been delegated to the Board of Education, that triggers S.C. Code Ann. § 4-9-70 (1986). This Statute provides in relevant part:

“[P]rovided, 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.”

S.C. Code Ann. § 4-9-70 (1986)

More than thirty years ago, the Supreme Court interpreted that language as follows: “The clear intent is to vest the power to determine school tax levy in county council in all cases

---

<sup>3</sup> Act No. 601, 1971 S.C. Acts 1114; amended by Act No. 288, 1989 S.C. Acts 1685.

<sup>4</sup> Tr. p. 6, lines 1-6, p. 56 lines 1-6.

where it is not vested elsewhere.” Stone v. Traynham, 278 S.C. 407, 410, 297 S.E.2d 420, 422 (S.C. 1982). Thus, whatever the importance of this issue may have been, it is one that has long since been clearly resolved.

For these reasons, we request that the Court deny this motion.

Respectfully submitted,



---

MARVIN C. JONES  
Jasper County Attorney

South Carolina Bar Number 03201  
Post Office Box 420  
Ridgeland, South Carolina 29936  
(843) 726-5403  
Attorney for Respondents

04 September 2014

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 JASPER COUNTY AUDITOR ..... Respondents.

---

**PROOF OF SERVICE**

---

I certify that I have served the Respondent's Return to Appellant's Motion for Certification by the Supreme Court by depositing same in the United States Mail, postage prepaid, on September 04, 2014, addressed to William F. Halligan, Childs & Halligan, P.A., Post Office Box 11367, Columbia, South Carolina 29211, Attorneys for the Appellant and John K. DeLoache, Staff Attorney, South Carolina Association of Counties, Post Office Box 8207, Columbia, South Carolina 29202.

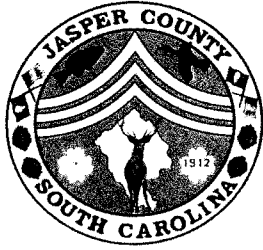
  
\_\_\_\_\_  
**MARVIN C. JONES**  
Jasper County Attorney

South Carolina Bar No. 3201  
Post Office Box 420  
Ridgeland, SC 29936  
(843) 726-5403

Attorney for the Respondents SEP 08 2014

**RECEIVED**

**SC Court of Appeals**



OFFICE OF THE JASPER COUNTY ATTORNEY

Post Office Box 420  
358 Third Avenue, Suite 203  
Ridgeland, South Carolina 29936  
Telephone 843-726-5403 or 717-3688  
Facsimile 843-726-3240

**RECEIVED**

SEP 08 2014

Marvin C. Jones  
County Attorney

[mjones@jaspercountysc.gov](mailto:mjones@jaspercountysc.gov)

04 September 2014 **S.C. SUPREME COURT**

South Carolina Court of Appeals  
Honorable Jenny Abbott Kitchings  
Clerk of Court  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**

SEP 08 2014

**SC Court of Appeals**

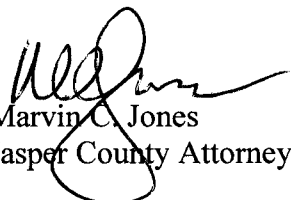
RE: Jasper County Board of Education v. Jasper County Council and Jasper County Auditor  
SC Court of Appeals Case Number: 2013-002266

Dear Ms. Kitchings:

Please find for filing in the above referenced, the original and eight (8) copies of the Respondent's Return to Appellant's Motion for Certification by the Supreme Court, and the original and one copy of a Proof of Service. I am serving opposing Counsel by copy of this correspondence and the enclosure.

Also enclosed please find a self-addressed postage paid return envelope for the return of one each of the clocked documents. Thank you in advance for your kind attention. Should you have any questions or need anything further, please do not hesitate to contact me.

Yours very truly,

  
Marvin C. Jones  
Jasper County Attorney

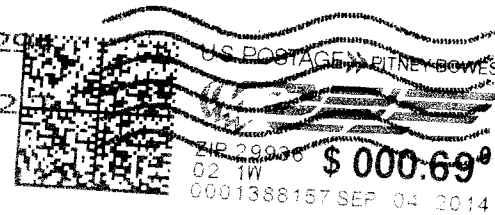
MCJ:bl  
Enclosures

cc: The Honorable Daniel E. Shearouse  
William F. Halligan, Esquire  
John K. DeLoache, Esquire



OFFICE OF  
 THE JASPER COUNTY ATTORNEY  
 P.O. Box 420  
 Ridgeland, South Carolina 29936

CHARLESTON SC 29404  
 04 SEP 2014 PM 2:57



The Honorable Daniel E. Shearouse, Clerk  
 South Carolina Supreme Court  
 Post Office Box 11330  
 Columbia, South Carolina 29211

**RECEIVED**

SEP 08 2014

**SC Court of Appeals**

29211+1330

