

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM ADMINISTRATIVE LAW COURT

DEBORAH BROOKS DURDEN, ADMINISTRATIVE LAW JUDGE

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

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William J. Montgomery, ..... Respondent,

v.

Spartanburg County Assessor, ..... Appellant.

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REPLY

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## Statement of the Case

The South Carolina Association of Counties (Association) filed a *Notice of Motion and Motion for Leave to File an Amicus Curiae Brief* to the South Carolina Court of Appeals on July 31, 2014. On September 18, 2014, Respondent William J. Montgomery submitted a brief in Opposition to the Motion. Respondent objected to the factual and opinion assertions of the Association in its brief. Additionally, Respondent attributed post-trial legal decisions to the Association that are irrelevant to the motion or brief.

## Argument

### **I. THE ASSOCIATION'S *AMICUS CURIAE* BRIEF IS APPROPRIATE AND WILL ASSIST THE COURT IN DETERMINING COMPLEX LEGAL ISSUES**

An *amicus curiae* is not a party to litigation, but participates only for benefit of court in cases of general public interest by making suggestions to court, providing supplementary assistance to existing counsel, and insuring a complete and plenary presentation of difficult issues so that court may reach a proper decision. *Alexander v. Hall*, 64 F.R.D. 152 (1974). The participation of the Association will provide the Court of Appeals with the insight and thoughts of the Association and its member counties which will be directly affected by the Court's decision.

*A. Respondent's Opposition Brief Raised Issues of Appellate Procedure The Amicus Party Was Not Authorized to Raise.*

The Respondent argues in part that the Association's brief should not be accepted because a similar case from Greenwood County considered by the Administrative Law Court, *Dotsy, LLC v. Greenwood County Assessor*, No. 13-ALJ-17-0061 would have been a better case for the Appellant to appeal. An *Amicus* party such as the Association is not a party to the litigation at issue. Only a party that is aggrieved by a court's order or decision has the right to appeal. Rule 201(b) SCACR. Therefore, any debate or suppositions, regarding the factual merits of the records of *Dotsy* compared to the Spartanburg County Assessor's case are irrelevant to the filing of the Association's amicus brief. The Association therefore asks this Court to look beyond the irrelevant issue of appellate authority and grant the motion and brief of the Association.

*B. The Association as an Amicus Party Was Not Required to Participate Before the Administrative Law Court.*

The Respondent next objected to portions of the amicus briefs because the Association's factual and legal assertions were not presented to the Administrative Law Court, not tested with cross examination, and not subjected to the Rules of Evidence. The Respondent has pointed to no court rule, or case citing a requirement that an *amicus* party participate at the trial level, or any other level of the legal proceeding. South Carolina courts have a long history of freely accepting briefs of *amicus curiae* at any stage of the appellate process. In a dissenting opinion in *Savannah Riverkeeper v. DHEC*, 400 S.C. 196, 733 S.E.2d 903 (2012), Justice Kittredge specifically recognized the importance of considering the discussion provided by *amicus* briefs, and the Supreme Court's standard practice of

accepting such briefs. *See also Crossman Communities of N.C. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011) (Court received “numerous amici briefs” following its initial decision.); *Babb v. Lee County Landfill SC, LLC*, 405 S.C. 129, 747 S.E.2d 468 (2013) (The Court accepted an *amicus* brief from the U.S. Chamber of Commerce on the Friday before oral argument.). The Respondent has pointed to no rule or precedent to require that any argument contained within an *amicus* brief be subject to cross examination or rules of evidence. Rule 213 requires only that a brief of an *amicus curiae* be filed only by leave of the appellate court, and that it be limited to argument of the issues on appeal. Rule 213 SCACR. The factual and legal assertions contained in the Association’s *amicus* brief each related directly to the issue of the proper method for the valuation of structures on land classified for property tax purposes as agricultural use. Specifically, the brief contained arguments as to the proper statutory interpretation of S.C. Code Ann. §12-43-220(d)(2)(A) and §12-37-930; the failure of the Administrative Law Court to give deference to the longstanding interpretation of these statutes by the S.C. Department of Revenue and the various County Assessors; and arguments related to the ALC’s violation of the S.C. Constitution by way of its order.

*C. The Association is Not A Party in Interest and Its Motion and Brief Serve Solely to Assist the Court.*

The Respondent’s final argument in opposing the acceptance of the Association’s *amicus* brief attacks the perceived interest of the Association. The Respondent suggests that the *amicus* brief was filed for the purpose of being an “adversarial weapon”, and misleads this Court by stating that the Association is directly interested in the outcome of the case due to its involvement in the collection of property taxes. This is patently wrong. The Association

has no direct interest in this case. The Association was formed in 1967 pursuant to South Carolina's non-profit corporation laws. The Association possesses no legal authority to enact or enforce any of the laws of South Carolina. The Association represents the interests of all forty-six counties. The Association's members believe that the correct and proper interpretation of property tax statutes is vital to the interests of every county. The participation by the Association as an *Amicus* in this case was requested by the governing body of Spartanburg County as a member of the Association.

The Association's brief is intended to assist this Court reach a well-reasoned decision by offering constitutional and statutory interpretation, discussion, and other related insights that are not found or fully developed in the parties' briefs. "Such an organized presentation of the issues could greatly expedite the court's consideration of this case." *Alexander* at 159. Each of the arguments presented by the Association relate directly to the ultimate issue on appeal, namely the correct interpretation of South Carolina's constitution and statutes governing the valuation of structures on land classified as agricultural use.

**II. THE RESPONDENT'S RETURN IS UNTIMELY AND THE ASSOCIATION OF COUNTIES AS THE MOVING PARTY HAS NEVER BEEN SERVED WITH A COPY OF THE RETURN.**

A party opposing a motion has ten (10) days from the date of service to file copies of its return with the Court, and must serve a copy on all parties. Failure of the party to timely file the return may be deemed a consent to the motion. Rule 240(e) SCACR. The Association filed its *Notice of Motion and Motion for Leave to File an Amicus Curiae Brief* with the South Carolina Court of Appeals on July 31, 2014. Copies of the motion and brief were served on all parties, including the Respondent, by first class mail concurrently with the

Court filing. Respondent's return opposition to the Association's motion was filed with the Court of Appeals well past the ten day limit. Respondent's counsel filed his Brief in Opposition to the Briefs<sup>1</sup> of *Amicus Curiae* on September 18, 2014, more than a month later. Additionally, the Association, as the moving party to the motion, has never been formally served by the Respondent. The Certificate of Service indicates that the brief was served on the counsel for the County Assessor and Spartanburg County's in-house attorneys. The Association has not been served with a copy. The Association only learned of Respondent's actions from the counsel for the County Assessor. The Association requests this Court deem the Respondent's failures a consent to the motion to file an amicus brief.

### **Conclusion**

The Association's participation as an *Amicus Curiae* will assist this Court in reaching a well-reasoned decision by offering discussion of the State Constitution and applicable statutes governing the valuation of real property for purposes of collection of county property taxes, as well as other related insights. An organized presentation of the issues as interpreted by a third-party could greatly expedite the court's consideration of this case. Each of the arguments presented by the Association relate directly to the correct interpretation of the process of valuation of structures on land classified as agricultural use.

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<sup>1</sup> In addition to the motion and brief of the SC Association of Counties, the S.C. Department of Revenue had also earlier submitted a motion to file an amicus brief.

Respectfully submitted,

SOUTH CAROLINA  
ASSOCIATION OF COUNTIES



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Robert E. Lyon Jr., General Counsel  
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October 16, 2014


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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above Notice of Motion and Motion for Leave to File an Amicus Curiae Brief was mailed this 16<sup>th</sup> day of October, 2014 via United States Postal Service, First Class Postage Prepaid, to the following counsel of record:

  
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