

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Opinion No. 2012-UP-227 (S.C. Ct. App. Filed April 18, 2012)

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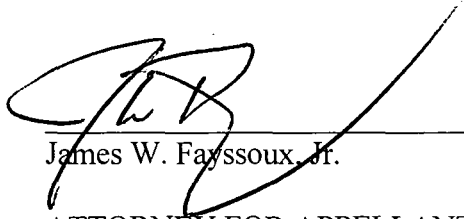
City of Greenville, ..... Respondent,  
v.  
Amrik Singh and SBPS, Inc. d/b/a Travel Inn, ..... Petitioner,

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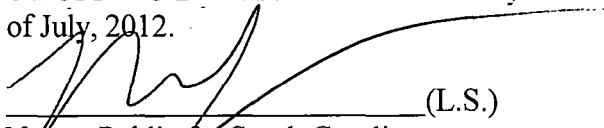
CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a true copy of the Appendix in the above-entitled case has been served upon, Ronald W. McKinney, Esquire, at City of Greenville, 206 S. Main Street, Greenville, South Carolina 29601 this 20th day of July, 2012.

  
James W. Fayssoux, Jr.  
ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 20th day  
of July, 2012.

  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: 06-16-12

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.....Petitioner,  
v.  
City of Greenville,  
.....Respondent,

**APPENDIX**

Vol. 1

James W. Fayssoux, Jr.  
FAYSSOUX LAW FIRM, P.A.  
P.O. Box 10207  
Greenville, SC 29603  
(864) 233-0445  
(864) 672-3706 (facsimile)  
Attorney for Petitioner

Ryan L. Beasley  
650 East Washington Street  
Greenville, S.C. 29601  
Attorney for Petitioner

Ronald W. McKinney  
City of Greenville  
426 North Main Street  
Greenville, SC 29601  
Attorney for Respondent

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Case No. 2007-CP-23-02755

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Amrik Singh and SBPS, Inc.  
d/b/a/ Travel Inn,

Respondents,

v.

City of Greenville,

Appellant.

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FINAL BRIEF OF APPELLANT

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Ronald W. McKinney  
Post Office Box 2207  
Greenville, South Carolina 29602  
(864) 467-4420  
Attorney for Appellant

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## STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE CITY'S REVOCATION OF TRAVEL INN'S BUSINESS LICENSE WAS UNREASONABLE, WHEN THERE WERE 918 POLICE CALLS TO THE MOTEL IN A LITTLE OVER TWO YEARS, AND THE SERIOUSNESS OF THE FINAL VIOLATIONS ARE CLEAR ON THEIR FACE.
- II. WHETHER THE CITY COUNCIL VIOLATED THE DELEGATION DOCTRINE BY ALLOWING THE CITY MANAGER TO REVOKE A CONDITIONAL A BUSINESS LICENSE, WHEN THE DOCTRINE DOES NOT APPLY TO MUNICIPALITIES AND LICENSING IS NOT A LEGISLATIVE FUNCTION BUT AN ADMINISTRATIVE ONE, WHICH STATE AND LOCAL LAW ASSIGN TO THE CITY MANAGER.
- III. WHETHER THE CITY MANAGER'S ADMINISTRATIVE DECISION TO TERMINATE TRAVEL INN'S PROBATIONARY BUSINESS LICENSE WAS ARBITRARY AND UNREASONABLE, WHEN THE MOTEL'S TWO AND A HALF YEAR PATTERN OF NUISANCE ACTIVITY WAS RESUMING WITH BLATANT AND SERIOUS ACTS AND OMISSIONS.

## STATEMENT OF THE CASE

On August 2, 2006, The City of Greenville's Interim Director of the Office of Management and Budget and Revenue Administrator sent a business license revocation notice to Amrik Singh as the owner and manager of SBPS, Inc., d/b/a Travel Inn, a motel located at 755 Wade Hampton Boulevard. (R. Vol. 1, pp. 51-52) The basis of the revocation was that allowing the numerous offenses and activities occurring at the premises to continue would constitute a nuisance detrimental to the health, safety, and welfare of the public. Pursuant to City Code § 8-44(b) the Travel Inn requested a hearing to contest the determination. (R. Vol. 1, pp. 53-54) The City Manager appointed a hearing officer to receive testimony and other evidence and prepare a report and recommendation. On August 29, 2006 the hearing officer presided over a hearing at which Mr. Singh appeared with counsel. The following day the hearing officer submitted to the City Manager findings and a recommendation to uphold the revocation by memorandum. (R. Vol. 3, pp. 1050-1051) The City Manager accepted the recommendation and by letter notified the Travel Inn of his decision on September 6, 2006. (R. Vol. 3, p. 1052)

Pursuant to City Code § 8-44(c), the Travel Inn appealed the City Manager's determination to the Greenville City Council. The full record was submitted to the City Council, which held a public hearing on the matter on November 13, 2006. After hearing arguments from counsel for Travel Inn and the City and deliberating on the matter, the Council did not reverse the City Manager's decision, but made the revocation subject to a probationary period during which the license would continue on conditional basis and be subject to revocation. Council set forth the framework for the conditional license,

instructed the City Manager to define further the terms of the initial probationary period of sixty days. At the end of that period the City Manager would review the circumstances and decide whether to proceed at that time with revocation or continue the probationary license. By letter dated February 20, 2007, counsel for the City notified counsel for the Travel Inn that the City Manager was providing that the probationary period and its conditions should continue for a year. (R. Vol. 3, pp. 1076-1077)

After reviewing four incidences occurring on the premises in early 2007, the City Manager on March 30, 2007, notified counsel for the Travel Inn that the he was terminating the business license and business operations would have to cease by April 30, 2007. (R. Vol. 3, pp. 1078-1080) The counsel made a request for an additional hearing before City Council, which was denied. (R. Vol. 1, pp. 108-109) By notice dated April 25, 2007, the Travel Inn appealed the revocation to the Greenville County Court of Common Pleas. (R. Vol. 1, p. 166) The appeal came before the Hon. Edward Miller on May 30, 2007. On June 19, 2007, the Hon. Edward Miller signed an order holding that extending the period of the conditional license was effectively the issuance of a new license and for that license to be terminated a new hearing would be required; the order then referred the matter back to the City for an additional hearing. (R. Vol. 1, p. 11-22)

Thereafter the City timely appealed to the South Carolina Court of Appeals. Counsel for the Travel Inn and for the City argued the case before a panel of the Court of Appeals on April 23, 2009. On July 29, 2009, the Court of Appeals reversed the decision of the Hon Edward Miller and ruled that “the one year extension did not act as a new business license” and that “the revocation was one continuous process.” The Court of Appeals remanded the matter to the Trial Court with instructions to determine whether

the City's "decision to revoke Singh's license was arbitrary, unreasonable, or an obvious abuse of discretion." The Appeals Court also allowed the Trial Court to consider the degree of discretion the City Council vested in the City Manager. *Amrik Singh v. City of Greenville*, 384 S.C. 365, 681 S.E.2d 921 (2009). (See Brief Appendix A)

Upon remand, the case went for hearing on November 17, 2009, before the Hon. Edward Miller at the Greenville County Court House. At the conclusion of the hearing the Trial Court instructed the City to provide, if feasible, comparable police calls for the same time period for all hotels, motels, and inns in the City. On December 9, 2009, the City submitted the requested information to the court and copied opposing counsel. (R. Vol. 2, pp. 482- 647) The Trial Court by email, dated April 13 2010, invited counsel for Travel Inn to make additional comments. On May 18, 2010, the Trial Court issued an order which concluded that the City of Greenville's revocation of the Travel Inn's business license was arbitrary and unreasonable. (R. Vol. 1, pp. 2-9) The City moved to alter or amend the judgment on May 24, 2010.(R. Vol. 3, pp. 743-746) By Order dated June 8, 2010, the Trial court denied the motion. (R. Vol. 1, p. 1) This appeal followed.

I. THE CITY'S REVOCATION OF TRAVEL INN'S BUSINESS LICENSE WAS NOT UNREASONABLE, WHEN THERE WERE 918 POLICE CALLS TO THE MOTEL IN A LITTLE OVER TWO YEARS, AND THE SERIOUSNESS OF THE FINAL VIOLATIONS ARE CLEAR ON THEIR FACE.

The central issue of this case is whether the Travel Inn has shown by clear and convincing evidence that the City of Greenville acted arbitrarily and unreasonably in revoking the motel's business license because of the ongoing nuisance activities from its location. The Travel Inn was a constant source of problems requiring police responses: thefts, break-ins, trespasses, prostitution, assaults, suspicious person reports, drug

offenses, threats, and 911 calls with hang ups. Some were minor, but the volume was overwhelming. Between April 1, 2004 and June 16, 2006 there were 918 police calls to the location.

Throughout that time Amrik Singh was in charge of the Travel Inn. Beginning in 2004 Amrik Singh personally signed for the Travel Inn's business licenses and represented himself as the responsible party for the license. (R. Vol. 2, pp. 474-481) From 2004 through May 2006 he served as manager of the premises owned by an absentee landowner. In May, 2006, Amrik Singh as head of his company transitioned into both manager and owner of the real property. (R. Vol. 3, pp. 979-983) At all times Amrik Singh through his business corporate entity, SBPS, Inc., was responsible for managing the Travel Inn.

In this context, the City's Revenue Administrator provided to Amrik Singh notice of a business license revocation. (R. Vol. 1, pp. 51-52) Mr. Singh requested a hearing to contest the determination. The City Manager, who appointed a hearing officer to take testimony from Mr. Singh, the police, and others with knowledge of the facts. The City provided to Mr. Singh ample notice of the proceeding and plenty of time to prepare. Mr. Singh was present and testified. He was actively represented by legal counsel in the proceeding. (R. Vol. 3, pp. 927-1049) The hearing officer prepared and submitted to the City Manager a recommendation to uphold the business license revocation. (R. Vol. 3, pp. 1050-1051) Upon review of the record and report, the City Manager accepted the hearing officer's recommendation and upheld the Revenue Administrator's revocation. (R. Vol. 3, p. 1052) Mr. Singh appealed to City Council. Council heard arguments from counsel for Mr. Singh and from an assistant city attorney. Members of City Council

asked questions of both lawyers and discussed with one another the character and significance of the ongoing necessity of police calls. In an effort to accommodate Mr. Singh as much as possible, the City Council extended the license for sixty days, with the condition that the City Manager would review it at the end of sixty days and has the authority to revoke it for lack of progress or to extend the probationary period further. City Council made it clear that the license would be subject to revocation if egregious circumstances warranted it. (R. Vol. 3, pp. 1065-1066, 1071-1072). Neither Mr. Singh nor his counsel objected at that time to that arrangement. There was no timely appeal by Travel Inn to the Circuit Court at that time. Mr. Singh signed a statement reciting and accepting the conditions. (R. Vol. 3, p. 1073)

At the end of the sixty day period the Chief of Police submitted a written report to the City Manager that the implementation of certain measures had been abided by for the first sixty days and that the vehicular traffic had been minimal and patrons few. (R. Vol. 3, pp. 1074-1075) The City Manager refrained at that time from revoking the license and allowed the motel to continue in business for an additional year of probation, provided there were no serious problems. (R. Vol. 3 pp. 1076-1077)

Within the span of a few weeks in early 2007, the serious problems began manifesting themselves: perhaps the most egregious was the harboring of a homicide suspect in one of the rooms registered to "Bill." The Travel Inn had allowed that guest to register without having to provide even a last name, much less meaningful identification. Perhaps the most blatant disregard for responsible conduct was the episode in which Mr. Singh's daughter, Maninder Kaur, was subject to arrest warrants being served by Greenville County Sheriff's deputies for multiple counts of credit card fraud. The

charges arose from an investigation showing the daughter's personal use of credit cards stolen from patrons of the Taste of India restaurant, where Ms Kaur worked and which was contiguous to the Travel Inn. When the deputies arrived at the motel, they were told that Ms. Kaur was on the road to a city about thirty miles away. A deputy placed a phone call to her cell phone in an effort to contact her while she was "in transit," only to realize she was talking from the very next room. (R. Vol. 2 pp. 382-473, R. Vol. 3, pp.1078-1080) Mr. Singh had said through his attorney in the hearing before City Council that his daughter would not be on the premises. Another instance involved Mr. Singh telling police that there was no problem occurring when the Police had arrived to address a disturbance involving a patron, one of whom was clearly intoxicated. The fourth matter referenced the arrests in the parking lot of persons with crack cocaine who were coming to the motel to deal with a person staying in a room. (R. Vol. 3, pp. 1078-1080) The City Manager provided notice that the probationary period was ending, and he gave Mr. Singh thirty days to wrap up business.

Nothing in this process rises to the level of arbitrary and unreasonable treatment. The City of Greenville provided Amrik Singh ample opportunity to correct his lack of management. Instead, he continuously abdicated his responsibility and allowed nuisance conditions to arise and to continue, all to the detriment of public safety. Far from picking on Mr. Singh, the City of Greenville exercised immense restraint. The City of Greenville should not be criticized, but commended for its sense of restraint in dealing with the ongoing problems of Amrik Singh at the Travel Inn.

Mr. Singh never made a showing by any standard of evidence that the findings of the City were deficient. He never refuted that repeatedly for two years there were events

at the motel requiring the police presence. He only sought to minimize their importance. He has never denied that his daughter was on the premises even though deputies were told that she was not there when deputies arrived with warrants for her arrest. He has never denied that the homicide suspect was indeed holding up in a motel room and that the registration book of the hotel simply showed the room as rented to "Bill."

Despite the perpetuation of the conduct leading to the initial revocation notice, the Trial Court's order never owned up to the serious nature of the ongoing conditions at the Travel Inn. Instead it gave a mere token reference to the outrageous circumstances. "Without question 901 calls are substantial and raise valid concern and action from the City,..."(R. Vol. 1, p. 8, line 3). That short allusion to the perpetual need for police to return to the premises over and over is the sum total of attention which the Trial Court paid to the fundamental issue of the case.

Following the Court of Appeals' remand of the case in July, 2009, the Trial Court held a hearing to receive arguments on the revocation in November, 2009. At the hearing the Trial Court instructed the City to supplement the record by delivering to the court the comparable data on police for all hotels and motels in the City for the same time period. (R. Vol. 3, pp. 783-785) The City complied. The data submitted showed that the Travel Inn had almost twice as many calls as the second worst motel in the City. (R. Vol. 3, pp. 482-647). Despite the trial court's having requested the data and despite the data confirming the bad conditions as represented by the City, the Trial Court never mentioned in its order the compilation of substantiating information. That omission is strange when the central issue of the case is whether the City acted unreasonably in shutting down the motel as a constant source of nuisance. The corroborating data

requested by the Trial Court makes clear the action was justified. The standard to which the City should be held is one of reasonableness and fairness, not one of perfection for every minute detail in its dealings with a very troubled location with a manager unwilling or unable to exercise control over the premises for which he is responsible. Yet the Trial Court's order is silent on the substantiation of findings by the City Revenue Administrator and the City Manager. The appellate courts of South Carolina have a long history of giving deference to the ordinances of local governments and reasonable procedures followed in implementing them, so long as they do not contradict specific provisions of statutory law. "When the city council of a municipality has acted after considering all of the facts, this court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion." *Amrik Singh & SBPS, INC. d/b/a Travel Inn v. City of Greenville*, 384 S.C. 365, 370, 681 S.E.2d 921, (2009), citing 924 *Gay v. City of Beaufort*, 364 S.C. 252, 254, 612 S.E.2d 467, 468 (Ct. App, 2005) Neither the Trial Court nor even the Travel Inn has challenged the underlying business license ordinance and its provisions for suspension and revocation. The Greenville City Council's interpretation and application of its own business license ordinance – including the revocation provisions - should receive great deference. Clearly, the Trial Court failed to provide that deference.

Argument summary: The City Council and the City Manager exercised immense restraint in affording to Amrik Singh clear notice and ample opportunity to be heard on all things leading up to City Council's hearing. City Council went the extra mile in refraining from a final termination of the Travel Inn's business license in November, 2006. The probationary extension of the Travel Inn's business license was not a

deprivation of Mr. Singh's rights, but a benefit offered in order to help him find a way to stay in business, provided he did not fall back into his old ways. At all relevant times Mr. Singh had legal counsel who argued on his behalf. Never did he or his counsel refute the accuracy of the facts. The facts on their face demonstrate the excessive number of police calls which reflected a continuing nuisance that threatened public health and safety.

II. THE CITY COUNCIL DID NOT VIOLATE THE NON-DELEGATION DOCTRINE BY ALLOWING THE CITY MANAGER TO REVOKE A CONDITIONAL A BUSINESS LICENSE, WHEN THE DOCTRINE DOES NOT APPLY TO MUNICIPALITIES AND LICENSING IS NOT A LEGISLATIVE FUNCTION BUT AN ADMINISTRATIVE ONE, WHICH STATE AND LOCAL LAW ASSIGN TO THE CITY MANAGER.

The Trial Court concluded that the Greenville City Council violated the law by allowing the City Manager to revoke Travel Inn's conditional business license. That court based its conclusion on the proposition that the City Council had delegated to the City Manager a legislative power which properly belonged to the Council and not the City Manager. (R. Vol. 1, pp. 3, 7, 8) That legal conclusion is wrong as a matter of law in view of applicable statutory and case law precedents. The non-delegation doctrine does not apply to municipalities, and licensing is not a legislative function but an administrative one, which is to be exercised by the City Manager as the chief administrative officer of the City.

The non-delegation doctrine does not apply to municipalities. The Supreme Court has said that the non-delegation doctrine originates from South Carolina Constitution Article I, Section 8, which provides that the state shall have three branches of government which shall be forever separate and apart. "The [non-delegation] doctrine, which is based

on the constitutional requirement that the branches of government “be forever separate and distinct from each other, South Carolina Constitution, art. I, § 8, states simply that the Legislature may not delegate its power to make laws.” Bauer v. South Carolina State Housing Authority, 271 S.C. 219, 232, 246 S.E.2d 869, 877 (1978). See also Gale v. State Board of Medical Examiners, 282 S.C. 474, 479, 320 S.E.2d 35, 38 (1984); State ex rel. McLeod v. McInnis, 278 S.C. 307, 318, 295 S.E.2d 633, 639 (1982). Article I, § 8 of the South Carolina Constitution on its face applies *state* government. The Supreme Court has made clear that the non-delegation doctrine does *not* apply to municipal governments. “It has been held that this section of the Constitution refers to the government of the State and to State officers, and not the government of a Municipal Corporation.” Gaud v. Walker, 214 S.C. 451, 53 S.E.2d 316 (1949), citing City of Spartanburg v. Parris, 85 S.C. 227, 67 S.E. 246 (1910) and City of Greenville v. Pridemore, 86 S.C. 442, 68 S.E. 636 (1910).

However, the Constitution does provide that the General Assembly may set the forms and functions of local government through the general law of the state. See article VII, § 9. The General Assembly carried out the duty to provide for municipal government with the passage of the Home Rule Act, Act 692 of 1975, now codified as to municipalities in Title 5, “Municipalities” of the South Carolina Code of Laws (2004). The Home Rule Act established three forms of municipal government, one of which is the Council-Manager form of government, See Title 5, “Municipalities,” Chapter 13, “Council-Manager Form of Government,” of the South Carolina Code of Laws (2004). Under the Home Rule Act a city manager is the primary administrative officer of the municipality. “The city manager shall be the chief executive officer and head of the

administrative branch of government.” S.C. Code § 5-13-90 (2004) While Council may pass legislation and set policy, the Home Rule Act says “Neither the council nor any of its members shall in any manner be involved in the appointment or removal of any municipal administrative officers or employees whom the manager or any of his subordinates are empowered to appoint.” S.C. Code § 5-13-40(b) (2004). “Except for the purpose of inquiries and investigations, neither the council nor its members shall deal with municipal officers and employees who are subjected to the direction and supervision of the manager except through the manager...” S.C. Code § 5-13-40(c) (2004). Thus, under the council-manager form of government, administrative functions are for a *city manager* to perform.

This statutory role for a city manager is important to recognize because licensing is an administrative function. See *City of Columbia v. Abbott*, 269 S.C. 504, 238 S.E.2d 177 (1977). The Greenville City Code assigns the authority to issue and revoke licenses to the City Manager and to administrators subject to his supervision. “[T]he city manager, or his designee, shall have authority to deny or revoke any business license under the provisions set forth in this article.” Greenville City Code § 8-43 (a) (1) See generally, Greenville City Code §§ 8-42 - 8-44 (Copies provided in Brief Appendix B). These provisions of the state and municipal codes were in place long before Amrik Singh first applied for a business license for the Travel Inn, and it was the legislative framework that was in place when City Council undertook its review of the facts of the revocation. City Council had a right to rely upon a validly enacted framework in reviewing the appropriate administrative action needed to resolve the continuing Travel Inn problems.

Although a city manager is the primary administrative officer of a city, a city council may “make inquiries and make investigations,” S.C. Code § 5-13-40(c) into the operations of city government. In doing so a city council may direct that a city manager “[p]erform such other duties as may be proscribed by law or required of him by the municipal council, not inconsistent with the provisions of Chapters 1 through 17 [of Title 5].” In this case the Greenville City Code provided an opportunity for the City Council to “make inquiry or investigate” the performance of governmental duties through the business license appeals process. Council did not reverse the City Manager’s decision to revoke the Travel Inn’s business license but made the probationary continuance of the license dependent upon conditions to be administered by the City Manager, the chief administrative officer of the City of Greenville.

In determining that there had been an improper delegation of authority, the Trial Court relied upon language extracted from the case of South Carolina State Highway Department v. Harbin, 226 S.C. 585, 86 S.E.2d 466 (1955). In Harbin the Supreme Court concluded that the Highway Department had not been delegated rule making authority that would allow it to suspend or revoke a driver’s license based on a points system. In that case the state legislature delegated to a state agency the capacity to create rules of general applicability related to the granting, suspending, and revoking of drivers’ licenses. The delegating language of the 1930 act was indeed very broad. It said the Department could refuse a license to any person “for any cause satisfactory to the Department.” See Harbin, supra at 591 and 468. Thus, in the Harbin case the delegation pertained to creating the original basis of granting and revoking licenses, not in administering terms of probation once violations under an existing statutory scheme had

been determined and confirmed.

Regrettably, what the Trial Court failed to do was to recognize the subsequent qualification of *Harbin* that the Supreme Court made seven years later in *Cole v. Manning*, 240 S.C. 260, 125 S.E.2d 621 (1962).

As pointed out in the Davis and Harbin cases, *supra*, the difficulty that confronts the court when a delegated power is challenged lies not in the formulation of principles that should govern the decision, but in their application to the facts and circumstances of the particular case at hand. For it is apparent, from consideration of the numerous cases on the subject that the degree of authority that may lawfully be delegated to an administrative agency must in large measure depend upon such circumstances, including the legislative policy as declared in the statute, the objective to be accomplished and the nature of the agency's field of operation.

*Cole v. Manning, supra* at 265, 623. The Supreme Court went on to elaborate the analysis by saying "...some situations require the vesting of some discretion in public officials, as, for instance, where its is difficult or impracticable to lay down definite, comprehensive rule or the discretion relates to the administration of a police regulation and is necessary to protect the public morals, health, safety and general welfare." *Cole v. Manning supra*, at 265, 623, quoting 11 Am.Jur. Constitutional Law, Section 234, at page 949. The Supreme Court in *Cole v. Manning* upheld a statute saying very broadly:

It shall be unlawful for any person to furnish any prisoner under the jurisdiction of the Department of Corrections with any matter declared by the Director of the prison system to be contraband. Matters considered contraband with the meaning of this section shall be those matters determined to be such by the Director and published by him in a conspicuous place available to visitors at each correctional institution.

*Cole v. Manning, supra*, at 263,622. In upholding the language, The Supreme Court validated the convictions of three violators of the Director's contraband rules who had

been convicted of a felony and who thereby became subject to prison terms of one to ten years and a fine of one thousand to ten thousand dollars. Obviously the serious loss of liberty upheld in *Cole v. Manning* is far more significant than the mere temporary loss of driving privileges in *Harbin*. The opinion of *Cole v. Manning* recites the same language from *Harbin* as used by the Trial Court for the proposition that a decision on delegation the issue "...is not to be decided upon the assumption that the officer will use sound judgment in exercising his unregulated discretion with which the statute has invested him, but upon consideration of what things the statute affirmatively permits him to do." Trial Court Order at pp. 3-4; *Cole v. Manning, supra* at 267,624. The Supreme Court then clarified the statement when it added, "But that rule, too, must be interpreted in the light of the situation to which the statute is directed; in our opinion it does not require that the statute here under consideration be stricken down as unconstitutional. As we have stated, the power delegated to the Director is in our opinion not legislative, but administrative..." *Cole v. Manning, supra*, at 267,624. Aside from missing the point that the non-delegation doctrine does not apply to municipal governments, the Trial Court's order pays no attention to the distinction between delegated legislative duties and delegated administrative duties.

Finally, this situation is not one in which the City Council directed the City Manager to draw up new rules of general applicability. Rather, Council had reviewed the City Manager's handling of licensing enforcement as to particular circumstances and did not see cause to reverse his decision, but did see fit to set parameters on the record to allow a probationary extension of an existing license, under the condition that it could still be terminated if the administrative chief found egregious circumstances, or the bad

situation was resuming. (R. Vol. 3, pp. 1053-1070) Amrik Singh was present, represented by counsel, and did not appeal those terms and conditions.

Argument summary: The non-delegation doctrine does not apply to municipal governments for it is based on the separation of powers provisions applicable to the state government. The Trial Court wrongly rested its decision upon the proposition that the non-delegation doctrine applies to the relationship between a city council and a city manager. Moreover, the Trial Court failed to recognize that the non-delegation doctrine does not have the same application to administering statutes and ordinances in the particular and it does in creating rules of general applicability. Moreover, licensing is an administrative function and the general law of the state directs that city managers shall be the chief executive and chief administrative office of a city. The Greenville City Code assigns the administration of licensing and revocation to the City Manager. City Council in reviewing his findings and determinations as to the Travel Inn did not reverse him, but afforded Travel Inn a probationary status, absent deterioration or egregious circumstances. Amrik Singh agreed to that arrangement. The City Manger acted with restraint and was warranted in deciding that resumed nuisance activity was continuing those problems that led to the original revocation notice.

III. THE CITY MANAGER'S ADMINISTRATIVE DECISION TO TERMINATE TRAVEL INN'S PROBATIONARY BUSINESS LICENSE WAS NOT ARBITRARY AND UNREASONABLE, WHEN THE MOTEL'S TWO AND A HALF YEAR PATTERN OF NUISANCE ACTIVITY WAS RESUMING WITH BLATANT AND SERIOUS ACTS AND OMISSIONS.

After a short reprieve from nuisance activity under the constant checking of the Greenville Police Department, the Travel Inn resumed in early 2007 its pattern of

incidences requiring law enforcement attention. In January, the police received yet another disconnected 911 call from the premises of the Travel Inn. It became apparent that two patrons were causing a disturbance, and one of them was inebriated. Mr. Singh hindered the police in resolving the situation by denying that there was a problem going on. In February, an informant notified police that a homicide suspect was holding up in a room at the Travel Inn. The patron who rented the room was listed on the register simply as "Bill" and had provided no identification. There was a second noncompliance with registration requirements found. In March, the Greenville County Sheriff's Office notified the Police Department that Mr. Singh's daughter had resumed a presence at the Travel Inn and was arrested on charges of forgery. A week later three men were arrested in the Travel Inn parking lot on drug charges related to crack cocaine when they had come to "visit" a patron of the motel in his room. The Travel Inn was at it again. All of these events involved law enforcement calls to the scene.

Far from being vague about the reasons for the termination in light of these alarming events, the City Manager's letter of March 30, 2007 laid out the reasons with clarity. The letter stated that the resumed nuisance activities were triggering the revocation which had been put on hold in November. The action was reasonably related to the ordinance provisions prohibiting nuisance conduct and reasonably related to the initial charges against the Travel Inn.

Moreover, at the City Council hearing in November, City Council had made clear that noncompliance could result in immediate termination of the license. (R. Vol. 3, pp. 1053-1070) Mr. Singh and his attorney had both been present, as had the City Manager. The action taken was precisely that which had been outlined to Mr. Singh at the time had

a hearing before the City Council.

The City Manager did not act on mere whim or caprice. Mr. Singh's failure to get control of the premises set off the administrative action by the City Manager. He acted only after he had received reliable information, and did not try to pounce on the first instance of Amrik Singh's failure to manage. Instead, he waited until he could reasonably establish a bad trend was re-occurring.

The Court of Appeals has directed that the incidences of early 2007 should be seen in the context of all the hundreds and hundreds of earlier occurrences leading to police calls. "The four incidents that occurred within the month after the extension of the conditional license cannot, and should not, be viewed in isolation from the 918 other calls for service on which the license was initially revoked." *Amrik Singh & SBPS v. City of Greenville*, 384 S.C. 365, 681 S.E.2d 921 (2009).

Argument summary: The City Manager acted deliberately and without undue haste when on March 30, 2007 he sent a letter terminating the Travel Inn's probationary license. He outlined with care, the basis of the decision the approach was exactly what had been referenced in Council's deliberation on November 13, 2006, where Mr. Singh had been present and represented by counsel. The findings of the City manager were substantiated and related both to the policy and purpose of the underlying City Code provision on business licenses and to the Travel Inn's prior pattern of conduct. The action was not arbitrary or unreasonable. It was in accordance with the purposes of the ordinance and the clear admonitions earlier delivered to Mr. Singh.

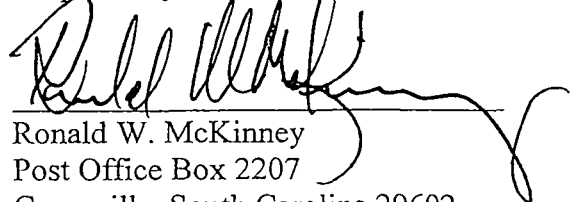
## CONCLUSION

The Trial Court's order based its decision on the constitutional principle of the non-delegation doctrine, which is not applicable to municipal governments. Even if it were applicable, the Trial Court failed to recognize the degree of discretion the Supreme Court has afforded to administrative officials carrying out administrative functions, especially in the context of carrying out police regulatory functions affecting the health, safety, and welfare of the public. The Trial Court in effect continued to assess the license revocation on the events after the extension of the probationary period instead of judging the whole pattern of events and police calls over two years, as the Court of Appeals had directed. The order reflects virtually no deference to the role and decisions of City Council in addressing the application of its own ordinance to nuisance conditions. Travel Inn has failed to show by compelling evidence that the City's action was arbitrary, unreasonable, and obviously and abuse of discretion.

For the reasons stated, this Court should reverse the judgment of the circuit court.

March 21, 2011

Respectfully submitted,



Ronald W. McKinney  
Post Office Box 2207  
Greenville, South Carolina 29602  
(864) 864-467-4420  
Attorney for Appellant

# APPENDIX A

C

Court of Appeals of South Carolina.  
AMRIK SINGH & SBPS, INC. d/b/a Travel Inn,  
Respondents,  
v.  
CITY OF GREENVILLE, Appellant.  
No. 4601.

Heard April 23, 2009.  
Decided July 29, 2009.

**Background:** Motel owner sought review of revocation of business license by city council. The Circuit Court, Greenville County, Edward W. Miller, J., granted owner a second set of business license revocation hearings. City appealed.

**Holdings:** The Court of Appeals, Hearn, C.J., held that:

- (1) city council's grant of a conditional license following revocation of owner's business license, did not act as a new license, but was merely a continuation of the previous revocation process, and
- (2) council's decision to reinstate revocation of business license did not violate owner's procedural due process rights.

Reversed and remanded.

West Headnotes

[1] Municipal Corporations 268 ↪104

268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(A) Meetings, Rules, and Proceedings in General

268k104 k. Appeal from Decisions. Most Cited Cases

When the city council of a municipality has acted after considering all of the facts, the Court of Appeals should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse

of its discretion.

[2] Innkeepers 213 ↪4

213 Innkeepers

213k4 k. Licenses and Taxes. Most Cited Cases  
City council's grant of a conditional license to motel owner following revocation on the basis that motel constituted a public nuisance, did not act as new license, but was merely a continuation of the previous revocation process; city council held revocation in abeyance provided manager complied with restrictions set forth by city council, extended conditional license following probationary period, but retained sole discretion to revoke license for noncompliance.

[3] Constitutional Law 92 ↪4287

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)12 Trade or Business

92k4266 Particular Subjects and Regulations

92k4287 k. Hotels, Motels, and Other Lodging. Most Cited Cases

Innkeepers 213 ↪4

213 Innkeepers

213k4 k. Licenses and Taxes. Most Cited Cases  
City council's decision to reinstate revocation of motel owner's business license did not violate owner's procedural due process rights; even though city council denied owner's request for a second hearing to appeal council's decision to reinstate revocation of owner's business license, owner had the right to appeal the revocation to the circuit court for a determination of whether or not the decision was arbitrary, unreasonable, or an obvious abuse of discretion. U.S.C.A. Const.Amend. 14.

[4] Courts 106 ↪4

106 Courts

106I Nature, Extent, and Exercise of Jurisdiction  
in General

106k3 Jurisdiction of Cause of Action

106k4 k. In General. Most Cited Cases

"Subject matter jurisdiction " is defined as the power of a court to hear and determine cases of the general class to which the proceedings in question belong.

\*\*922 Ronald W. McKinney, of Greenville, for Appellant.

James W. Fayssoux, Jr., and Ryan L. Beasley, both of Greenville, for Respondents.

HEARN, C.J.

\*366 The City of Greenville appeals an order from the circuit court granting Amrik Singh and SPBS, Inc., (collectively Singh), a second set of business license revocation hearings. We reverse and remand.

**FACTS**

Singh is the president and sole shareholder of SBPS, Inc., which owns and operates the Travel Inn Motel located at 755 \*367 Wade Hampton Boulevard in Greenville, South Carolina. In 2006, Jonathan Simons, Interim Director of Office Management and Budget for the City, notified Singh that his business license to operate the Travel Inn Motel was to be revoked.<sup>FN1</sup> Thereafter, Singh requested a hearing pursuant to section 8-44(b) of the City of Greenville Code of Ordinances.<sup>FN2</sup>

FN1. Section 8-43(b) of the City of Greenville Code of Ordinances gives the City the power to revoke a business license where the licensee's business amounts to a public nuisance.

FN2. Section 8-44(b) provides in relevant part: "The applicant or licensee may, within five working days from the date of the

notice, request a hearing to contest the grounds or request an extension of time to close the business. The hearing shall be held within 15 days unless additional time is allowed by the city manager."

A revocation hearing was held, and the City presented evidence that Singh had held a business license for the Travel Inn from 2004 to 2006. The City also presented testimony from Lieutenant Randle Evett, of the \*\*923 City of Greenville Police Department, who stated there was an abnormally high amount of calls for service coming from the Travel Inn since the beginning of 2004. Specifically, Evett testified the police department received 918 calls for service from the Travel Inn between April of 2004 and June of 2006.<sup>FN3</sup> Evett noted that in 2004 he had spoken to Singh's daughter, who was manager of the Travel Inn, about the number of calls, but that following the conversation, the number of calls for service actually increased,

FN3. A call for service is defined as a call or occurrence requiring an on-the scene Police response.

According to Simons, of the 918 calls, 194 required an incident report, including forty-six drug-related violations; thirty-four trespass after notice and notice given violations; twelve assaults; two assault and batteries with intent to kill; two armed robberies; nine stolen vehicles; fifteen petty larcenies; four disorderly conducts; and two controlled purchases of crack-cocaine by Singh's daughter.

In response, Singh presented evidence that he owned the subject property for only three months prior to receiving the letter revoking his business license. Singh further stated that, while he managed the Travel Inn during the time frame \*368 in which the calls for service were accumulated, he did not have the authority to make the changes needed to address the issues. Singh maintained the letter from Simons was the first formal notice he had received informing him his business constituted a nuisance.

At the close of evidence, the hearing officer recommended Singh's business license revocation be upheld. Pursuant to section 8-44(c) of the Greenville Code of Ordinances,<sup>FN4</sup> Singh appealed that decision to the city council. In the meantime, Singh also unsuccessfully sought a temporary injunction in an effort to continue his business operations during the pendency of his appeal.

FN4. Section 8-44(c) of the Greenville Code of Ordinances provides in relevant part: "An appeal, which shall not stay the revocation, may be taken upon the written record to the city council. Notice of such appeal shall be served upon the city clerk within five days from the final action by the city manager, specifying the grounds for appeal and the action requested...."

On appeal to the city council, the city manager's decision to revoke Singh's business license was modified, allowing Singh to provisionally reopen his business for sixty days under a "Conditional Business License." The city council expressly allowed the city manager to establish the conditions<sup>FN5</sup> with which Singh had to comply, and stated that any deviation from \*369 the conditions would result in the automatic revocation of Singh's conditional license. The council further stated that after the sixty-day period, the Travel Inn would be placed on a "six-month Probation Period," as long as the city manager certified the business had been in complete compliance with the conditions during the sixty days. The city council gave the city manager full discretion to determine whether the conditions were in fact violated, with the police department to report any violations directly to the city manager.

FN5. The conditions included: (1) Maintain a log of persons placed on trespass notice, which Police will be able to inspect at anytime without notice and refuse to rent rooms to any person on this list; (2) require presentation of identification and motor vehicle tag number from all patrons upon registering for lodging; (3) require a

\$100.00 security deposit for patrons residing at Travel Inn for more than one week continuously; (4) prohibit hourly room rates; (5) maintain security cameras and record all activity for retrieval, as well as monitoring cameras twenty-four hours per day and allowing Police to monitor the cameras at anytime without prior notice; (6) provide written documentation that security personnel used by Travel Inn are licensed and bonded by the State of South Carolina and that security personnel must be on duty twenty-four hours per day, seven days per week, monitoring all parking lots and the sidewalk in front of Travel Inn to reduce prostitution; (7) submit names and addresses of security personnel and Travel Inn employees to the Police, and the employees must not have criminal convictions; (8) Police will be able to inspect all rooms before reopening November 20, 2006; (9) property owner and manager are responsible for maintaining the grounds and complying with the property maintenance code; (10) enforce all conditions in the Travel Inn policy submitted to the City of Greenville.

Upon expiration of the sixty-day period, the chief of the Greenville Police Department submitted an evaluation concerning the Travel Inn's compliance with the conditions set forth in the agreement. The evaluation stated\*\*924 the Department's vice and narcotics squads checked the Travel Inn and its premises on a daily basis, and ultimately found Singh had met the conditions outlined in the agreement.

Following the chief of police's report, the city manager extended the probationary period for one year under the existing terms and conditions. Approximately one month later, the city manager wrote to Singh informing him the Travel Inn's business license would be revoked based upon Singh's "inability or unwillingness to maintain a safe, drug-

free, and crime-free environment." The letter referenced four incidents which the manager determined constituted a continued nuisance, thereby necessitating revocation. Thereafter, Singh requested an appeal to the city council pursuant to section 8-44(c). The City denied Singh's request for a hearing, believing Singh's previous hearing constituted his appeal for this matter under section 8-44(c). Singh again sought a temporary injunction to allow him to continue to operate his business. Upon denial of this request, Singh appealed the revocation of his business license to the circuit court pursuant to Rule 74, SCRCP.<sup>FN6</sup>

FN6. Rule 74, SCRCP provides in relevant part:

Except for the time for filing the notice of appeal, the procedure on appeal to the circuit court from the judgment of an inferior court or decision of an administrative agency or tribunal shall be in accordance with the statutes providing such appeals. Notice of appeal to the circuit court must be served on all parties thirty days after receipt of written notice of the judgment, order or decision appealed from.

\*370 On appeal, Singh argued the revocation of his business license and the City's subsequent decision to deny a rehearing of his appeal, violated his right to procedural due process and thus was arbitrary. Singh further argued the City's abdication of its monitoring responsibilities, in ceding complete discretion to the city manager, created a means of evading meaningful appellate review.

The City again maintained that the entire process should not be viewed as anything other than one complete revocation process, and, therefore, Singh had already received a hearing before the city council in compliance with Rule 74 and attendant procedural due process. Additionally, the City argued the circuit court did not have jurisdiction to hear the appeal by virtue of an additional suit pending be-

fore it.

The circuit court found the city council was under no obligation to grant Singh a provisional license, but upon doing so, the provisional license acted as a new business license with its own set of unique conditions. Consequently, the circuit court reversed the city council's revocation of Singh's business license, finding that due process entitled Singh to a second hearing regarding the revocation of his conditional license. This appeal followed.

#### STANDARD OF REVIEW

[1] In reviewing the discretionary decision of a legislative body, our courts have been hesitant to substitute their judgment for that of elected representatives. *McSherry v. Spartanburg County Council*, 371 S.C. 586, 590, 641 S.E.2d 431, 434 (2007). "When the city council of a municipality has acted after considering all of the facts, this court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion." *Gay v. City of Beaufort*, 364 S.C. 252, 254, 612 S.E.2d 467, 468 (Ct.App.2005).

#### LAW/ANALYSIS

[2] The City contends the circuit court erred in finding the one year provisional business license acted as a new license thereby entitling Singh to a second set of business license revocation hearings. We agree.

\*371 At the initial hearing, the city manager revoked Singh's business license under section 8-43(b) finding the Travel Inn constituted a public nuisance. On appeal, city council voted to hold the revocation in abeyance provided Singh complied with the conditions as set forth by the city council. Following the initial 60-day probationary period, the city manager reviewed the police department's recommendation and ultimately extended Singh's conditional license by an additional year. In so extending, the city manager retained sole discretion to

revoke \*\*925 Singh's license immediately for non-compliance. Within one month of extending Singh's conditional license, the Travel Inn accumulated four additional incident reports. As a result, the city manager reinstated the revocation of Singh's license.

These facts clearly demonstrate the one year extension of the provisional license did not act as a new business license; instead, it was merely a continuation of the previous revocation process. The four incidents that occurred within the month after the extension of the conditional license cannot, and should not, be viewed in isolation from the 918 other calls for service on which the license was initially revoked. Consequently, it was error for the circuit court to find the conditional business license issued by the city council acted as a new license.

[3] Based on our decision that the revocation was one continuous process, Singh's concerns about the violation of his due process rights are misplaced. Singh still had the right to appeal the revocation to circuit court for a determination of whether or not the decision was arbitrary, unreasonable, or an obvious abuse of discretion. That review did not take place because the circuit court erroneously viewed the ultimate revocation as a new proceeding.

Therefore, on remand, the circuit court should review the initial complaints against Singh, in addition to the four subsequent complaints, in order to determine whether the city's decision to revoke Singh's license was arbitrary, unreasonable, or an obvious abuse of discretion. In reaching its decision, the court may also consider the actions of city council in relinquishing complete discretion to the city manager to determine issues of compliance, and the ability to extend the period for \*372 the conditional business license. Accordingly, the decision of the circuit court is

[4] REVERSED and REMANDED.<sup>FN7</sup>

FN7. The city also argues the circuit court lacked subject matter jurisdiction to hear

this matter by virtue of Singh filing two appeals. Subject matter jurisdiction is defined as "the power of a court to hear and determine cases of the general class to which the proceedings in question belong." *Dove v. Gold Kist*, 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994). Pursuant to Rule 74, SCRPC, it is clear the circuit court may hear an appeal from an inferior court, administrative agency, or tribunal. See Rule 74, SCRPC (providing the procedures for appeal to the circuit court from inferior courts, administrative agencies, and tribunals). Accordingly, we hold the circuit court had subject matter jurisdiction to hear this appeal.

PIEPER, J., and LOCKEMY, J., concur.  
S.C.App.,2009.

Amrik Singh & SBPS, Inc. v. City of Greenville  
384 S.C. 365, 681 S.E.2d 921

END OF DOCUMENT

# APPENDIX B

## Greenville City Code

### Sec. 8-43. Denial and revocation.

#### (a) Generally.

(1) The city manager, or his designee, shall have authority to deny or revoke any business license under the provisions set forth in this article.

(2) For a period of one year after a revocation of a business license, no new license shall be granted to:

a. The same licensee; or

b. The licensee's agent or any person who can be shown to be acting on the licensee's behalf in attempting to do business in the city.

(3) For a period of one year after a revocation, no business license shall be granted to any applicant for the operation of the same or similar type of business in the same location without a detailed report compiled from city departments with knowledge or information acquired on the new applicant and the proposed business activity. If the report supports a finding that the new applicant and proposed activity will circumvent the effect of the business license revocation, or that issuance of a new license will perpetuate the conditions giving rise to the revocation, then no new license shall be issued.

(b) Grounds for denial or revocation. A license application under this article may be denied, or an issued license may be suspended or revoked, upon any of the following grounds:

(1) Any principal involved with the business [who] has been convicted, forfeited bond, or plead guilty or nolo contendere within the last ten years for the violation of any local, state, or federal law for which there is a potential penalty of one year or more in jail. Any principal involved with the business [who] has been convicted, forfeited bond, or pled guilty or nolo contendere within the last five years, regardless of the length of potential penalty for a jail term, to the following offenses:

a. Sale, possession, storage, or transportation of intoxicating liquors, wine or beer;

b. Sale or possession of narcotics or other controlled substances;

c. Gambling or the sale of illegal lottery tickets;

d. Sale or promotion of obscenity;

e. Prostitution or soliciting for prostitution;

f. Sale or possession of weapons; or

g. Crime of dishonest conduct.

When the principal was convicted, forfeited bond, pled guilty or nolo contendere in another state jurisdiction or the jurisdiction within another country, then the offense shall be assessed on the potential jail sentence of the nearest comparable offense under South Carolina law.

For purposes of this section, the term "principal involved with the business" shall include the applicant, the licensee, and any owner of five percent or more of the business, the manager of business or financial operations, or the person directly in charge of the premises. The term may also include a major financier of the business when the financing arrangement has the appearance of masking actual ownership. The disqualification for prior offenses is not automatic, for good cause shown by the business, the denial, suspension, or revocation may be waived or withdrawn upon a finding of mitigating circumstances justifying the issuance in the public interest.

(2) The licensee's operation of the business constitutes a public nuisance, provided the determination of the public nuisance arises from one or more of the following activities on the premises or in the immediate vicinity thereof and the licensee has actual or constructive knowledge of the activities:

a. Frequent arrests of persons for crimes of violence, possession or sale of controlled substances, possession or sale of deadly weapons, the discharge of fire arms, excessive noise, disorderly conduct, prostitution, disturbance of the peace, and the illegal acts correspond with or relate to the hours of operation of the business operations of this licensee;

b. The police make an unusually high number of response calls, regardless of arrests, to the business premises, or to the immediate vicinity, and the high number of response calls corresponds with or relates to the hours of business operations of the licensee;

c. There are ongoing and significant deposits of litter and debris in the immediate vicinity, whether the persons making the deposits can be identified or not, when the litter and debris relate to the business operations of the licensee; and

d. Material violations of property maintenance codes, environmental codes, fire code, and building codes where violations are applicable to the business premises.

(3) Failure to provide sufficient security measures to protect people and property located on the premises and to protect people and property located in the immediate vicinity when the immediate vicinity is affected by the business operations of the licensee;

(4) The provision of materially false and inaccurate statements in the business license application or to a city official at the time of application;

(5) Failure to pay municipal taxes or fees applicable to the premises or business operations when due, including, but not limited to, personal and real property taxes, hospitality taxes, accommodation fees and accommodation taxes, property assessments, sewer fees, stormwater fees, and fire alarm and false alarm fees;

(6) Failure of an applicant or licensee to show current compliance with applicable state laws related to the operation of business activities, including, but not limited to, any requirement to maintain sanitary kitchen facilities, to be in compliance with permitting requirements for the service of alcoholic beverages, beer and wine, or to pay state taxes and fees related to business operations in a timely manner.

(7) Failure to provide full payment to the city within ten days of notice of a check returned to the city for insufficient funds. Full payment means the full amount due of the original check plus costs and fees assessed to the city by its bank for the return of the check presented, as well as any return check fee otherwise assessed by the city.

(8) Failure to provide substantiation, when asked by the city, that the actual business use of the location for which a business license has been applied for or granted, complies with what is allowed at the location under the city's zoning ordinance. Nothing in this provision shall be interpreted to abrogate or limit any variances, special exceptions, or lawful nonconforming uses, previously established under the city's zoning ordinance. In the case of amortization of signs, structures, and uses, the business owner must demonstrate that the amortization period has not expired. In instances requiring an interpretation of the zoning administrator, such interpretations may be rendered in accordance with the duties assigned to the zoning administrator under the zoning ordinance.

(Ord. No. 2004-44, § 2, 6-28-04; Ord. No. 2007-13, 3-19-07; Ord. No. 2009-97, § 3(Exh.), 12-14-09)

Editor's note: Ord. No. 2004-44, § 1, adopted June 28, 2004, repealed former § 8-43 of the Code in its entirety; § 2 of said ordinance added new provisions as § 8-43 as herein set out. Former § 8-43 pertained to revocation generally and derived from the 1985 Code, § 6-1-14.

Greenville City Code

Sec. 8-42. Term.

No license provided for in this article and the annual license tax schedule shall extend beyond the calendar year of its issue.

(Code 1985, § 6-1-13; Ord. No. 97-63, § 2, 10-22-97)

## Greenville City Code

Sec. 8-44. Notice of denial or revocation; hearing; appeals.

(a) Notice. Where grounds exist to deny or revoke a license under this article, the business license administrator shall provide written notice to the licensee or applicant setting forth the grounds, revoking the license effective 45 days from the date of the notice, and advising the licensee or applicant of appeal procedures.

(b) Hearing. The applicant or licensee may, within five working days from the date of the notice, request a hearing to contest the grounds or request an extension of time to close the business. The hearing shall be held within 15 days unless additional time is allowed by the city manager. The hearing officer shall be a supervisory employee designated by the city manager. The licensee or applicant may be represented by an attorney and may present witnesses, affidavits and any relevant documentary evidence. The licensee may view and copy any documentary evidence prior to the hearing. Formal rules of evidence shall not apply. The hearing officer shall prepare a summarized report of the hearing, to include his findings and recommendations, which shall be submitted to the city manager, who shall take final administrative action, notifying the licensee or applicant in writing. Unless extended in writing by the city manager, any revocation is effective 45 days from the date of the original notice to the licensee.

(c) Appeals. An appeal, which shall not stay the revocation, may be taken upon the written record to the city council. Notice of such appeal shall be served upon the city clerk within five days from the final action by the city manager, specifying the grounds for the appeal and the action requested. The record shall consist of the report of the hearing officer, any documentary evidence presented at the hearing, and the written appeal. The council may, in its discretion, hear oral arguments on the appeal.

(Ord. No. 2004-44, § 2, 6-28-04)

Editor's note: Ord. No. 2004-44, § 1, adopted June 28, 2004, repealed former § 8-44 of the Code in its entirety; § 2 of said ordinance added new provisions as § 8-44 as herein set out. Former § 8-44 pertained to notice of denial or revocation; hearing; appeals and derived from the 1985 Code, § 6-1-15.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Case No. 2007-CP-23-027550

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Amrik Singh and SBPS, Inc.  
d/b/a/ Travel Inn,

Respondents,

v.

City of Greenville,

Appellant.

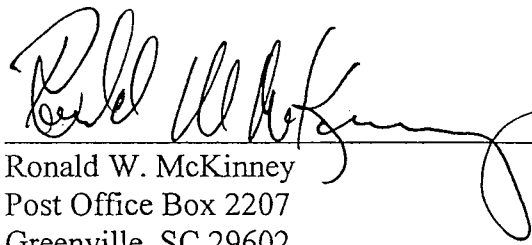
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CERTIFICATE OF COUNSEL

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The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

March 21, 2011

  
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Ronald W. McKinney  
Post Office Box 2207  
Greenville, SC 29602  
(864) 467-4420  
Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Case No. 2007-CP-23-02755

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Annals Singh and SEPS, Inc. d/b/a Travel Inn

Respondents

City of Greenville

Appellant

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FINAL BRIEF OF RESPONDENTS

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James W. Fayssoux, Jr. / S.C. Bar No. 16659  
T. Hunt Reid / S.C. Bar No. 77538  
FAYSSOUX LAW FIRM, P.A.  
P.O. Box 10207  
Greenville, SC 29603  
(864) 233-4566  
(864) 233-4781 (Fax)  
[wally@fayssouxlaw.com](mailto:wally@fayssouxlaw.com)  
[hunter@fayssouxlaw.com](mailto:hunter@fayssouxlaw.com)

Ryan L. Beasley / S.C. Bar No. 60387  
RYAN BEASLEY, P.A.  
650 East Washington Street  
Greenville, South Carolina 29601  
(864) 467-1001  
[rib@setmallawyers.com](mailto:rib@setmallawyers.com)

ATTORNEYS FOR RESPONDENTS

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## STATEMENT OF ISSUES ON APPEAL

- I. WHETHER CITY COUNCIL'S RELINQUISHMENT OF COMPLETE AND UNFETTERED DISCRETION TO THE CITY MANAGER TO DETERMINE THE TERMS, CONDITIONS, AND COMPLIANCE WITH RESPONDENT'S CONDITIONAL BUSINESS LICENSE AND PROBATIONARY PERIOD AMOUNTED TO AN IMPROPER DELEGATION OF AUTHORITY.
  
- II. WHETHER CITY MANAGER'S DECISION TO REVOKE RESPONDENT'S BUSINESS LICENSE WAS ARBITRARY, UNREASONABLE, OR AN OBVIOUS ABUSE OF DISCRETION, WHEN THE BASIS OF THE REVOCATION WAS FOR GROUNDS NOT ENMUERATED IN THE CITY ORDINANCE, AND SEPARATE FROM THOSE CASUES EXPLICITLY AGREED UPON BY THE CITY.

## STATEMENT OF THE CASE

Respondent Amrik Singh is the owner of real property located at 755 Wade Hampton Boulevard, Greenville, SC. He is the sole shareholder of SBPS, Inc. and owns and operates the Travel Inn Motel located on the subject property. Respondent Singh invested his life savings and purchased the subject property in May of 2006. (R. p. 890, line 24 – p. 891, line 4). He owned and operated the motel for only ninety-three days when he received his first written notice from the Appellant concerning the status of his business license. (R. p. 891, lines 4 – 8). In a letter from the Appellant City's Office of Management and Budget dated August 2, 2006, the interim Director notified Respondent that Appellant City was revoking the Travel Inn's business license effective September 16, 2006, on grounds that numerous offenses and criminal activities had occurred on the property in the previous two years, and that its existence constituted a nuisance detrimental to the health, safety and welfare of the public under Greenville Code of Ordinance § 8 - 43. (R. p. 1050).

### 1. Procedural History and Facts

Pursuant to the appeals process set forth in Greenville City Ordinance § 8-44, Respondent Singh requested and received a Business License Revocation Hearing on August 29, 2006. Respondent Singh presented evidence that he had owned the property ninety-three (93) days prior to the City's letter revoking his business license. This was the first formal notice where the City considered his establishment to be a nuisance. (R. pp. 983 – 990). Despite his requests not to punish his family for incidents occurring prior to his total operation, ownership and control of the Travel Inn, the Hearing Officer recommended that the City Manager uphold the business license revocation. (R. p.

1050). The City Manager informed the Respondent of his decision to uphold the revocation by way of letter dated September 6, 2006 and further informed the Respondent that he believed the history of incidents at Travel Inn constituted a violation of § 8-43 and that the license was revoked as of September 16, 2006. (R. p. 1052).

Respondent Singh timely appealed this decision to City Council pursuant to the administrative relief process set forth in the Ordinance. (R. p. 29). Also, Respondent Singh sought a temporary injunction in the Greenville County Circuit Court because the business license was scheduled to terminate prior to Mr. Singh's opportunity to be heard on appeal by the City Council. The Honorable D. Garrison Hill denied the motion by Order dated September 15, 2006 and the subsequent Motion to Reconsider by Order dated September 30, 2006. (R. p. 25).

The Travel Inn shut down and was not allowed to conduct business after September 16, 2006, the effective date of the revocation. On November 13, 2006, Respondent Singh was heard on appeal before Greenville's City Council. On appeal, the Council disagreed with the City Manager's outright revocation and determined that Mr. Singh should be granted another opportunity to improve conditions at the Travel Inn. Council then voted to "modify the City Manager's decision for business license revocation by granting an extension of 60 days for a conditional permit." (R. pp. 1065 – 1066). This decision was set forth in a November 15, 2006 letter from Lillian Brock Flemming, City Council's Mayor Pro Tem. (R. p. 1071). The terms of the conditional business license were formally agreed to in writing and signed by a representative of the City and Respondent Singh. (R. p. 1073). Under the new conditional license, Mr. Singh was required to:

- (1) Maintain a log of persons placed on Trespass Notice and refuse to rent rooms to any person on this list. Police will be able to inspect this list at any time without prior notice;
- (2) Require presentation of a personal identification card or Driver's License and motor vehicle tag number from all patrons upon registering for lodging;
- (3) Require a \$100.00 Security Deposit for those patrons that reside at this location for more than one week continuously;
- (4) Prohibit hourly room rates;
- (5) Maintain security cameras and record all activity for retrieval
  - a. Monitor cameras twenty-four hours per day
  - b. Police will be able to monitor cameras at any time without prior notice;
- (6) Provide written documentation that the security company used by Travel Inn is licensed and bonded by the State of South Carolina
  - a. Security personnel must be on duty 24 hours a day / 7 days a week
  - b. Security personnel must monitor all parking lots and the sidewalk in front of the Travel Inn to reduce prostitution;
- (7) Names and addresses of security personnel and Travel Inn employees must be submitted to Police. Security Personnel must not have criminal convictions;
- (8) Police will be able to inspect the rooms before reopening on November 20, 2006;
- (9) The property owner and manager are responsible for maintaining the grounds and complying with the property maintenance code;
- (10) Enforce all conditions in the Travel Inn Policy submitted to the City of Greenville;

Except for a minor change in 6(a) which only required security personnel on the premises from 3:00 p.m. to 5:00 a.m. until December 5, 2006, the aforementioned items were the only conditions and requirements for Mr. Singh to maintain his new conditional business license. In reliance upon this agreement and the contractual promises of both

parties, Mr. Singh incurred further debt and invested the remainder of all his financial resources in a good faith effort to comply with the parties' agreement. (R. p. 892, line 18 – p. 893, line 6).

In addition to setting forth the terms of the conditional license, the City required that the Chief of Police inspect the subject property to ensure Mr. Singh's strict compliance with the agreement. Following the initial sixty day evaluation period, Chief Willie L. Johnson, of the City's Police Department, submitted his written evaluation to Mr. Bourey measuring Travel Inn's compliance with the agreement's conditions and City Council's demands to reduce nuisance activities. (R. p. 15). Chief Johnson's memorandum indicates that "immediately following council's action to allow the Travel Lodge and Motel to operate on a 60 day probationary period I assigned our vice and narcotics bureau to keep a daily check on the premises." (R. p. 1074). The Chief reported that the rooms were much cleaner, the parking lot was being pressure washed during inspection, and the security guards were uniformed and visible. His ultimate finding and report to City Council was that based on the Departments announced and unannounced inspections, "Mr. Singh has lived up to the conditions outlined in the November 17, 2006 meeting . . ." (R. p. 1074).

On February 20, 2007, by way of letter from City Attorney Deborah Gammons, the City Manager arbitrarily decided to extend the probationary period for one year and further reiterated the previous terms and conditions. (R. p. 1076). Then, on March 30, 2007, without any further communication, hearings or due process, the City Manager revoked the conditional business license effective April 30, 2007. The stated grounds were based upon the City Manager's assertion that Mr. Singh had shown an "inability or

unwillingness to maintain a safe, drug-free, and crime-free environment.” (R. p. 1078). The letter referenced four (4) alleged incidents that the Manager contends constituted a nuisance; however, letter did not reference a specific violation of any city ordinance, statute or other condition previously agreed upon by the parties. (R. p. 1078).

Pursuant to Greenville Code of Ordinance §8-44, Respondent Singh immediately requested an appeal of this revocation, but was denied any such administrative review. (R. p. 1081). Then, Respondent filed a Complaint and Motion for a Temporary Restraining Order seeking relief pending the disposition of the case on the merits or his administrative appeals. This Motion was denied by form Order of the Honorable Larry R. Patterson dated April 24, 2007. (R. p. 23). Upon this denial, Respondent timely appealed the revocation of his business license to the Court of Common Pleas, pursuant to Rule 74 of the South Carolina Rules of Civil Procedure (R. p. 166).

## 2. Appeal of City Council’s Decisions to the Circuit Court

The Honorable Edward W. Miller heard the first appeal on June 19, 2007. The Court received exhibits and exhaustive arguments from both parties and determined that the City had in fact granted Respondent Singh a conditional business license that was subject to procedural due process requirements. The Court ruled that “the only procedural modification to Section 8-44 under these conditions was a modification of the notice requirement under § 8-44(a) and that the conditional business license was “entitled to the same safeguards and due process as any other license;” and further that Respondent Singh was entitled to the administrative appeals available pursuant to Greenville County Ordinance § 8-44. As stated in the Greenville Code of Ordinances, § 8-44(b), “[t]he applicant or license may, within five working days from the date of the notice, request a

hearing to contest the grounds or request an extension of time to close the business. The hearing shall be held within 15 days unless additional time is allowed by the city manager.”

Accordingly, Judge Miller held that Respondent Singh was entitled to a new hearing on the revocation of the conditional business license if the same was requested within five (5) days of his Order. (R. p. 11).

Defendant immediately requested an administrative hearing on June 22, 2007, and, as a showing of good faith, the Defendant agreed not to re-open his motel for new business until such review was heard.

Appellant refused to grant Respondent Singh the requested hearing and filed a Notice of Appeal of Judge Miller’s Order to the South Carolina Court of Appeals on July 13, 2007. Then, Appellant issued both verbal and written warnings to the Respondent that it would arrest and criminally prosecute Respondent Singh if he attempted to re-open his business while he waited for this appeal to be heard. The Respondents again sought a Temporary Restraining Order from the Circuit Court to prevent any attempts to interfere with the Respondents’ attempts to salvage his business during the pendency of this appeal. The Court denied the Motion by Order of the Honorable Edward G. Welmaker upon grounds that the matter was under appeal and the Circuit Court lacked jurisdiction. (R. p. 10). The Travel Inn has remained closed since May of 2007, the subject property was lost in foreclosure, and the Singh family was left destitute.

### 3. Appeal of Circuit Court’s Order to South Carolina Court of Appeals

The Court of Appeals reversed the Circuit Court’s order on July 29, 2009, finding the conditional business license and its subsequent revocation should be viewed as a

continuous revocation process. The case was remanded to Court of Common Pleas for Greenville County to determine whether the City's decision to revoke Respondent's license was arbitrary, unreasonable, or an obvious abuse of discretion. The Court of Appeals also permitted the Circuit Court to consider the City Council's actions in relinquishing complete discretion to the City Manager to determine issues of compliance and the ability of City Manager to extend the period for the conditional business license.

#### 4. Remand Hearing and Order of the Circuit Court

The Honorable Edward W. Miller presided over the remand hearing on November 17, 2009. The Circuit Court took the matter under advisement and instructed the City to explain the alleged discrepancy with their representation of certain numerical statistics related to Travel Inn. In response to the Court, on December 18, 2009, City Attorney provided a statistical breakdown of the Travel Inn's "911 Call Log," as well as similar analyses of comparable hotels within Greenville's city limits. The City Attorney's report concluded that there were actually 901 phone calls attributed to Travel Inn, and only 390 calls were designated as "serious" in nature (R. p. 650).

On May 18, 2010, after oral arguments and written submissions from both parties, the Circuit Court issued an Order of the Court, and concluded that the City of Greenville's revocation of the Respondent's business license was arbitrary and unreasonable, and that the City's relinquishment and delegation of compliance decisions unto a single individual would be improper. This appeal followed.

## ARGUMENT

### I. THE TRIAL COURT CORRECTLY HELD THAT CITY COUNCIL'S RELIQUISHMENT OF ABSOLUTE, UNREGULATED AND UNDEFINED DISCRETION TO THE CITY MANAGER TO DETERMINE COMPLIANCE WITH THE "CONDITIONAL BUSINESS LICENSE" AND "PROBATIONARY" PERIOD AMOUNTED TO AN IMPROPER DELEGATION OF AUTHORITY.

The City of Greenville has a council-manager form of city government established under the South Carolina Code of Laws. In the council-manager form of city government "[a]ll legislative powers of the municipality and the determination of all matters of policy shall be vested in the municipal council, each member, including the mayor, to have one vote." S.C. Code Ann. § 5-13-30 (2007); *see also* Todd v. Smith, 305 S.C. 227, 231, 407 S.E.2d 644, 646 (1991). Thus, a City Manager does not have the authority to set legislation or city policy. Todd, 305 S.C. at 231, 407 S.E.2d at 646-47. Here, it was an improper delegation of authority for the City Council to relinquish complete and unfettered discretion to the City Manager to determine the terms, conditions, and compliance with the "Conditional Business License." It was also an abuse of discretion for the City Manager to extend the terms and conditions into a one year "probationary" period, and then revoke the license for a cause not enumerated. The circuit court correctly held that the "revocation of the [Respondent's] business license resulted from the City's inappropriate relinquishment of complete discretion to its city manager which amounted to an unlawful delegation of legislative authority." (R. p. 8).

The Respondent appealed the initial revocation to the City Council, who did not uphold the City Manager's decision. Instead, it modified the decision, and permitted the

Respondent to reopen his business for 60 days under a “Conditional Business License.” (R. p. 1071). However, the City Council did not follow their own ordinances to establish the terms and conditions of the Conditional Business License. Instead, Appellant expressly relinquished to their city manager absolute, unregulated, and undefined discretion to establish the terms and conditions of the “Conditional Business License,” and then delegated to City Manager the unregulated authority to determine whether the Respondent complied with those terms and conditions. (R. p. 1071). In so doing, the City Council improperly delegated its legislative and policy making powers to the City Manager, S.C. Code Ann. § 5-13-30 (2007); Todd, 305 S.C. at 231, 407 S.E.2d at 646-47 (finding that under a council-manager form of city government a city council does not have the authority to delegate matters of policy or customs). Greenville’s City Council should not have permitted its city manager to invent new business license policies.

In Todd, the Supreme Court was presented with the issue of whether a municipality was liable under 42 U.S.C. §1983 (1994) for the actions of its city manager in disregarding the city’s procedures in removing certain artwork from display, thereby depriving an artist of due process. The Court in Todd did not find the city liable because “the city manager did not have the authority to set city policy, nor [could his] acts be said to represent official policy in view of the legislative authority granted to the municipal council.” Todd, 305 S.C. at 231, 407 S.E.2d at 646-47. In this case, the Trial Court used the same reasoning as used in Todd by finding that Greenville’s City Council improperly delegated its legislative authority. Furthermore, in light of the ruling in Todd, the fact that Greenville’s City Council ceded its legislative powers to the city manager should act to reinforce the Trial Court’s findings.

According to the letter from City Council, the Respondent would be placed on a six month “probation” period, if the Respondent complied with the conditions established by the City Manager to the City Manager’s satisfaction. (R. p. 1071). Yet, the City Manager put Respondent on a term of “probation” for an additional year, even though City Council never authorized such a license. The city manager determined *sua sponte* that the conditions of this “Probation Period” would be the same as he established for the 60-day “Conditional Business License” period. (R. p. 1076). Then, the city manager created an entirely new standard of maintaining compliance for a business license and applied it exclusively to Respondent’s business. The city manager’s actions with respect to this license confirm the ability of a single person to abuse their authority. Therefore, trial court was correct in concluding that the City Council’s relinquishment of absolute, unregulated, and undefined discretion to the City Manager was an improper delegation of authority.

The Appellant’s entire argument centers on the contention that the non-delegation doctrine in Article I, § 8 of the South Carolina Constitution does not apply to municipalities. The Appellant therefore concludes that the City Council may delegate to the City Manager legislative and policy making power. Such a statement contradicts Article I, §8 of the South Carolina Constitution, but also conflicts with Title 5 of the South Carolina Code of Laws, which defines the respective powers afforded the city council and city manager for a council-manager form of government. Under Title 5, and in accordance with Todd, it is expressly impermissible under the applicable statutes for the City Council to delegate legislative and policy making power to the City Manager. §§ 5-13-30, 5-13-90, 5-7-260 (2007); Todd, 305 S.C. at 231, 407 S.E.2d at 647.

Furthermore, the Appellant appears to be challenging the Trial Court's use of common law principles to determine legal disputes. The "non-delegation doctrine" derives from the constitutional requirement that the branches of government "be forever separate and distinct from each other", South Carolina Const. art. I, §8, and simply states that "the Legislature may not delegate its power to make laws." Bauer v. S.C. St. Housing Authority, 271 S.C. 219, 232, 246 S.E.2d 869, 876 (1978). The City Council of Greenville is the legislature, and all legislative powers and matters of municipal policy are vested exclusively, and without limitation, within the city council. The trial court was instructed at the remand hearing to consider the council's actions in relinquishing complete discretion unto the city manager - viz. abdicating to city manager the final authority regarding the creation, maintenance and Respondent's compliance with a conditional business license, thereby inventing a new city policy. The trial court simply applied non-delegation doctrine's principles to the matter at hand and found a blatant constitutional and common law vice by ruling that "[j]ust as legislature can not relinquish such arbitrary discretion to an administrative body, the City cannot grant similar discretion to its manager."

Also, the Appellant cannot cite one authoritative case to support its proposition that the non-delegation doctrine does not apply to municipalities. In fact, each authoritative case cited by the Appellant upholds the non-delegation principle, as it derives from the separation of powers clause, Art. I, § 8 of the South Carolina Const. See, Bauer ("it is well settled that [the] legislature may not delegate its power to make laws. . . .") 271 S.C. at 232, 246 S.E.2d at 876; See also, McLeod v. McInnis, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982) ("one of the prime reasons for separation of powers

is [that] . . . it prevents the concentration of power in the hands of too few.”); Gale v. State Board of Medical Examiners of S.C., 282 S.C. 474, 479, 320 S.E.2d 35, 38 (Ct. App. 1984)(“‘non-delegation’ doctrine prohibits the vesting of unbridled, uncontrolled or arbitrary power in an administrative agency.”). Additionally, each of these Supreme Court decisions adopts the analysis used by the Court in S.C. St. Hwy Dept. v. Harbin, to determine whether the administrative action at issue amounted to the arbitrary exercise of legislative authority. 226 S.C. 585, 86 S.E.2d 466 (1955); Bauer, 271 S.C. at 233, 246 S.E.2d at 877; Gale, 282 S.C. at 480, 320 S.E.2d at 39. Again, the Appellant has failed to controvert the lower court’s ruling, which also relied upon the Harbin analysis.

Instead, the Appellant has mistakenly relied upon irrelevant case law that predates the creation of municipal governments in the Home Rule Act, Act, 692 of 1975. The holdings used by the Appellant in Gaud v. Walker, 214 S.C. 451, 53 S.E.2d. 316 (1949), City of Greenville v. Pridmore, 86 S.C. 442, 68 S.E.2d 636 (1910), and City of Spartanburg v. Parris, 85 S.C. 227, 67 S.E.2d 246 (1910), to state that “the non-delegation doctrine did not apply to governments local in scope” are no longer applicable because the South Carolina State Legislature no longer controls municipalities. The cases cited above and relied upon by the Appellant are irrelevant, inapplicable, and immaterial to the matter at hand.

Moreover, the Appellant’s position that the non-delegation doctrine is inapplicable to the present case, fails to recognize that its own ordinances abide by the separation of powers. The clearest example lies in the city’s ordinance at issue.

Although Greenville City Ordinance §8-43<sup>1</sup> grants the City Manager authority to revoke a business license, G.C.O. §8-44 limits this authority by making a revocation subject to an initial hearing, and appellate review by city council. Another example on point would be, §5-13-30, which mandates that all legislative powers be vested in a council, which §5-13-40 balances by prohibiting council-members holding other offices during their term. S. C. Code Ann. (2007). The checks and balances that derive from the separation of powers clause is the genesis of our republic, the very purpose of democracy, and a citizens' most cherished protection against its government. A decision that promotes the delegation of legislative authority into an appointed administrator would destroy the foundation of a democratic government.

The only statutory basis cited by Appellant that would allow a city manger to act as a legislator would be to broadly interpret §5-13-90(5), which grants specific responsibilities to a city manager, stating that the city manager shall “[p]erform such other duties as may be prescribed by law or required of him by the municipal council, **not inconsistent with the provisions of Chapters 1 through 17.**” S.C. Code Ann. § 5-13-90(5) (2007) (bold added). However, a cursory glance at the S.C. Code would reveal that City Council’s grant of legislative and policy-making power to the City Manager would be inconsistent with several provisions in Chapters 13 and 7, including: (i) all legislative and policy making power shall be vested in the city council. S.C. Code Ann. §§ 5-13-30 and 5-7-160; (ii) city council is required to act by ordinance in order to adopt or amend

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<sup>1</sup> The Appellant attached only the current version of the Code of Ordinances to its brief, and states that these were the statutes that the City Council considered “when [it] undertook its review.” (Appellant’s Initial Brief, p. 12). However, the current version of the Code is not the same version that was in place at the time of revocation. Ordinance Numbers 2007-13 and 2009-97 modified § 8-43 after the “City Council undertook its review.” (See Appendices A and B).

its administrative code. S.C. Code Ann. §5-7-260; (iii) every emergency ordinance shall be enacted by the affirmative vote of at least two-thirds of council members present. S.C. Code Ann. §5-7-250; (iv) forms and procedures for introducing and passing ordinances. S.C. Code Ann. §5-7-270; and (v) requirement that council act by ordinance in order to abate conditions creating a public nuisance. S.C. Code Ann. §5-7-80. The Appellant and this Court must disregard each of these statutes in order to arrive at their conclusion that a municipal council may delegate its authority with respect to legislation or policy.

Furthermore, the Appellant's reliance on Cole v. Manning, 240 S.C. 260, 125 S.E.2d 621 (1962), is misplaced. In Cole, the state legislature enacted law, formerly known as S.C. Code Ann. §55-14 (1952), which granted the Director of the State Board of Corrections the discretion to determine "matters considered contraband." 240 S.C. at 263, 125 S.E.2d at 622. In that case, the Director of the prison system was only left to make the "determination from time to time of what things should be forbidden to be furnished to the prisoners." Cole, 240 S.C. at 267, 125 S.E.2d at 624. The Supreme Court in Cole went on to explain that for appropriate delegation of authority "it is necessary that the statute declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative officer or body must conform, with a proper regard for the protection of the public interest and with such degree of certainty as the nature of the case permits, **and enjoin a procedure under which, by appeal or otherwise, both public interests and private rights have due consideration.**" Id., at 264, 125 S.E.2d at 623 (bold added); Harbin, 226 S.C. at 594, 86 S.E.2d at 470; Gale, 282 S.C. at 479-81, 320 S.E.2d at 38-39. Likewise, in discussing both Harbin and Cole, the Supreme Court stated that "[t]he first question then becomes

whether [the applicable law] is a ‘law complete in itself,’ laying down a legislative policy and primary standards, to which the [administrative body] must conform.” Johnson v. Roberts, 269 S.C. 119, 125, 236 S.E.2d 737, 739 (1977).

What happened here is not the type of administrative authority granted to the Director in Cole permitting him “to fill up the details” of a prescribed law. See S.C.S.H.D. v. Harbin, 226 S.C. 585, 594, 86 S.E.2d 466, 470 (1955). Moreover, the Cole Court concluded this was not the same as the absolute, unregulated, and undefined discretion discussed in S.C.S.H.D. v. Harbin, because it was an administrative power rather than legislative. See Cole, 240 S.C. at 267, 86 S.E.2d at 624. In the instant case, there are no city ordinances proscribing the terms of a “Conditional Business License” laying down the City Council’s legislative policy and primary standards, to which the City Manager must conform. Moreover, City Council’s November 15, 2006 letter is not a “law complete in itself” laying down policy and primary standards to which the City Manager must conform. (R. p. 1071).

Instead, the sole basis articulated by the city manager for revocation was Respondent’s “unwillingness and inability to maintain a ‘safe, crime-free and drug-free environment.” (R. p. 1078). This was a subjective standard that is absent from the applicable city ordinances, and therefore in no way controls or guides the discretion by which city manager was so vested. When the city manager created this utopia standard he effectively amended both the ordinance and council’s resolution of the matter. The city council could have adopted this standard or ratified the city manager’s decision, but it has not done so. Respondent respectfully submits to this Court that city manager’s actions

amounted to new legislation, which the Appellant improperly delegated in contradiction of the laws of South Carolina and its Constitution.

“As a general rule, ‘[a] statute which in effect reposes an absolute, unregulated, and undefined discretion in an administrative body bestows arbitrary powers and is an unlawful delegation of legislative powers.’” Harbin, 226 S.C. at 595, 86 S.E.2d at 471 (quoting Am.Jr., page 343); Bauer, 271 S.C. at 233, 246 S.E.2d at 876; Gilstrap v. S.C. Budget & Control Board, 310 S.C. 210, 423 S.E.2d 101 (1992). The South Carolina Supreme Court has held “invalid ordinances attempting to vest such arbitrary powers in municipal authorities.” Harbin, 226 S.C. at 595, 86 S.E.2d at 471 (citing Henderson v. City of Greenwood, 172 S.C. 16, 172 S.E. 689 (1934); Schloss Poster Advertising Co. v. City of Rock Hill, 190 S.C. 92, 2 S.E.2d 392 (1939)); City of Florence v. George, 241 S.C. 77, 127 S.E.2d 210 (1962).

Here, legislative authority was improperly granted to the City Manager in violation of the South Carolina Code. Thus, circuit court correctly held that this “relinquishment and delegation of authority to a single individual, to exercise at his own whim, [was] improper in that it reserved in its city manager arbitrary power without guidance from any uniform rules or regulations applying to all businesses similarly situated. In effect, the City committed itself to the unfettered and unrestrained will of a single individual to determine compliance for any reason deemed satisfactory by him.” (R. pp. 6 – 7).

The trial court carefully reviewed all the evidence and applied concrete laws to find that Greenville’s City Council improperly delegated to its city manager the absolute, unregulated and undefined discretion to determine Respondent’s compliance with the

Conditional Business License. The Appellant has failed to controvert the court's order with any authority. Accordingly, the trial court's ruling should be affirmed.

**II. THE TRIAL COURT CORRECTLY HELD THAT CITY MANAGER'S ADMINISTRATIVE DECISION TO REVOKE THE "CONDITIONAL BUSINESS LICENSE" WAS ARBITRARY, UNREASONABLE AND AN OBVIOUS ABUSE OF DISCRETION.**

The City Manager revoked the Conditional Business License on grounds different from the terms agreed upon in the issuance of the provisional license and beyond the scope of the revocation grounds set forth in the G.C.O § 8 – 43. This appellate court specifically instructed this Court to review the City's overall revocation decision with scrutiny as to whether the City acted within its lawful authority and in a manner that was not arbitrary or capricious, and whether the City's actions in relinquishing complete discretion to the city manager was in itself arbitrary. The Trial Court correctly held that the City Manager's grounds for revocation were arbitrary and unreasonable, and exhibited an obvious abuse of discretion in light of G.C.O. §8-43 and the expressed agreement with City Council.

The City has held Singh to a harsher standard than any other business by applying standards that are outside of G.C.O §8 – 43 and the conditional business license agreement. "Generally, where a statute or ordinance authorizes revocation of a license for causes enumerated, such license cannot be revoked on any ground other than the causes specified." Burley v. City of Annapolis, 182 Md. 307, 34 A.2d 603 (1943); *see also*, Peterson Outdoor Advertising v. City of Myrtle Beach, 327 S.C. 230, 489 S.E.2d 630 (1997). Yet the City of Greenville is asking the Court to uphold its license

revocation for causes not enumerated in G.C.O. § 8 – 43. The Court should be concerned when a licensing authority points specifically to certain causes in its ordinance for which a license can be revoked, and then summarily revokes a license for other causes. Burley, at 310, 604.

The Court in Burley understood there to be “a wide distinction between a statute or ordinance under which a licensee knows that he holds his license at the pleasure of the governing authority, and a statute or ordinance which contains no such provision. In the one case, revocation is not arbitrary because it is part of the condition upon which the license was obtained. In the other case, it may be extremely arbitrary, and if permitted, leaves a licensee with no security or redress.” Id.

In this case, Mr. Singh had a right to believe that only certain conditions within the Ordinance and conditional business license agreement could trigger revocation, and that his license would not be taken away for other reasons. If the City could revoke his license at any time for any reason, it would not be necessary for it to specify causes for revocation in the ordinance. The fact that the City codified G.C.O § 8 – 43 without expressly reserving a general power of arbitrary revocation shows that the City did not contemplate the exercise of such a power. Furthermore, City Council was not required to extend to Respondent a conditional business license, but upon doing so, they bound themselves to the added terms set forth in that contractual agreement. The conditions enumerated in the City’s provisional license were accomplished by Mr. Singh and verified by the Chief of Police. By Respondent accomplishing the same, the City became obligated to apply the controlling standards of G.C.O. § 8 – 43 and its pledge to

Respondent that he could maintain his license so long as he continued to uphold his end of the bargain.

Thus, Appellant and Respondent must be bound to the expressed terms of the conditional business license and the conditions for revocation set forth in the ordinance. A contrary application by the City would be patently arbitrary, and to permit the City to reject its contractual obligations after Mr. Singh has complied would make its agreement illusory.

As explained by the Supreme Court in Morrison v. Rawlinson, 193 S.C. 25, 7 S.E.2d 635 (1940), “the power to declare what shall be a nuisance and to abate it is ordinarily not a self executing one. It must be exercised only in accordance with ordinances or by-laws regularly and legally adopted applicable alike to all of the class.” *See also*, Schloss Poster Advertising Co. v. City of Rock Hill, 190 S.C. 92, 2 S.E.2d 392 (1939). “We have found no authority dissenting from the general proposition that the power to declare a nuisance must be exercised by an ordinance general in its character operating uniformly upon all persons and upon all property of the same character within the city. And it is generally held that a municipal corporation cannot make a thing a nuisance by merely declaring it to be such” Morrison, 7 S.E.2d at 639.

Here, such relinquishment and delegation of authority to a single individual, to exercise at his own whim, would be improper because it reserved in the City Manager arbitrary power without guidance from any uniform rules or regulations applying to all businesses similarly situated. In effect, the City committed itself to the unfettered and unrestrained will of a single individual to determine compliance for any reason deemed satisfactory by him. As a result, the sole basis articulated by the City Manager for

revocation was Singh's "unwillingness and inability" to maintain a "safe, crime-free and drug-free environment;" a subjective standard that is absent from the applicable city ordinances, and therefore in no way controls or guides the discretion by which City Manager was so vested. For a body of city councilmen to relinquish their proscribed authority into a single person, they permitted the City Manager to cloth himself with the uncontrolled power to capriciously permit a license to some and deny it to others. The inherent danger here is that it creates precedent for arbitrary discriminations and abuses of discretion, depending upon no standard whatsoever, other than the self-executing will of the City Manager to become the touchstone by which its validity is to be tested.

This unregulated power became so great that when Respondent attempted to challenge the accusations that he failed to uphold certain contractual obligations, he was flatly denied by the City Manager and the City Attorney to present a defense or any extenuating circumstance. This behavior flies in the face of constitutional guarantees, the purpose of our judicial system, and the City's own ordinances, and should not be condoned by this Court.

Nonetheless, the City Manager has introduced a new, heightened standard of compliance under the municipal code *sua sponte*, and unreasonably applied that standard in a manner that segregates Mr. Singh from every other licensee in the City. The City Council had the opportunity to set a benchmark for the number of calls Mr. Singh should not exceed during his conditional license, but specifically chose not to implement one (R. p. 1062). But rather than focusing on the rate of calls, City Council determined that the agreed upon conditions would be sufficient.

The only evidence in the record concerning whether the Respondent complied with Conditional Business License Terms are the continuing reports of the police sent to monitor Mr. Singh and the summary memorandum by the Chief of Police *confirming* his compliance. Interestingly, the Initial Brief of Appellant never mentions or references Chief Johnson's report, the only person assigned by City Council to inspect the hotel. Of course, this has been the City's attitude throughout- *viz.*, avoid mentioning the Conditional Business License agreement and the reports so that they do not have to recognize Respondent's compliance. On the other hand, Respondent in good faith invested all of his remaining resources to comply with the strict terms set forth by City Council's final decision and fairly assumed that his provisional license, in which he so heavily invested his time and resources, would be afforded something other than the whim of a City official.

Despite these efforts, the City Manager essentially changed the terms and rules of the conditional business license and relevant Ordinance so as to achieve the desired end result of closing Mr. Singh's business. The Manager's March 30, 2007 revocation letter states that "the basis for the revocation is the management's inability or unwillingness to maintain a safe, drug-free and crime-free environment" (R. p. 1078). This is not a standard set forth in the agreed-to provisional license terms or in the subject ordinance. In conformity with the Appellant's egalitarian nature, the standard was arbitrarily decided and then unreasonably applied to Respondent.

It is well-established that municipal decisions that are made on sweeping and general conclusions which are not based on specific criteria in an ordinance are necessarily arbitrary and unenforceable. *See, Peterson Outdoor Advertising v. City of*

Myrtle Beach, 327 S.C. 230, 489 S.E.2d 630 (1997). In Peterson the Supreme Court held that a City's administrative decision based on no objective standards or based on the unfettered will of the City was arbitrary and would not pass constitutional muster. A "complete abandonment of any standard and the substitution of unfettered and undefined will" is a perfect characterization of the City Manager's decisions with regard to the Travel Inn.

Although this Court has already ruled that Respondent's license should be viewed as one continuous revocation process, such should not preclude this Court from examining Respondent's business during 2006 license-year as distinctive from 2004 – 2005. It is important to distinguish the 2006 license year because the Respondent was not the Travel Inn's business owner<sup>2</sup> until 2006, and Appellant has repeatedly attributed 918 police calls to Respondent's place of business over a two and a half year period, from 2004-2006 without establishing a basis for such a figure. First, "[a] municipality's license revocation decision is deemed arbitrary or capricious if it is not supported by substantial evidence in the record." 14<sup>th</sup> Street Gym, Inc. v. Salt Lake City Corp., 183 P.3<sup>rd</sup> 262, 264 (Utah Ct.App. 2008). In 14<sup>th</sup> Street Gym, Inc., the only other reported case concerning a city's revocation of a probationary business license, the Utah Supreme Court reversed Salt Lake City's revocation of a probationary business license as arbitrary and capricious for lack of substantive evidence to support its decision.

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<sup>2</sup> Additionally, city manager revoked Respondent's license in 2006 pursuant to G.C.O. § 8 – 43(b) (Ord. No. 2004 – 44) which did not apply to Respondent in 2004 or 2005 because he was merely the business manager. Recognizing the flaw in their ordinance, City Council amended G.C.O. § 8 – 43(b) in 2009 (Ord. No. 2009 – 97) so as to apply to any "principal involved with the business," including business managers like Respondent. The two editions of G.C.O. §8-43 are attached hereto in Appendices A and B.

Similarly, this Court has good reason to doubt the evidence supporting city manager's revocation decision, particularly the accuracy of number of response calls. At every single hearing related to Travel Inn the Respondent has demanded the production of evidence supporting the allegation of 918 response calls, but the Appellant refused to submit any empirical data until the Trial Court demanded its submission *at the remand hearing*. When the City Attorney finally submitted his report, it revealed that only 901 phone calls were somehow attributed to Travel Inn, with only 390 calls designated as "serious" in nature (R. p. 650). Other comparable hotels receiving "serious" calls during the City's chosen time frame included: Value Lodge (aka Relax Inn) – 347; Hyatt Regency – 165; Regal Inn – 146; and Super 8 – 112 (R. p. 667). Additionally, when scrutinizing the Conditional Business License, it is clear from the record that the Travel Inn only had four (4) police response calls for the duration of its provisional license. The City's standard for Appellants' four (4) calls in six months qualifying it as a nuisance under G.C.O. §8 – 43 is substantially harsher than those standards being applied to all other hotels within the City limits.

Second, this Court should note that every business license within the City of Greenville must be renewed annually. This fact necessarily implies that the Appellant or city manager renewed Respondent's business license in 2006 with full knowledge of Travel Inn's past record of calls and potential nuisance. The record is silent as to Appellant taking issue with Respondent's business or his management of the business prior to August 2, 2006, and the Greenville City Police Department has never complained to Appellant that response calls to the Travel Inn have threatened the public's health and safety or burdened the police department. Thus, Respondent's 2006 license must be

viewed in isolation from the previous years. Specifically, in 2006-2007 during the period of Mr. Singh's conditional business license, the following motel/hotels in Greenville's city limits received the following complaints: (i) Regal Inn-35, (ii) Value Lodge-108, (iii) Westin Poinsett-12, (iv) Budget Inn-17, (v) Days Inn-28, (vi) Embassy Suites-13, (vii) Hilton-14, (viii) Holiday Inn Express-17, (ix) Hyatt-29, (x) Inn at Orchard Park-15, (xi) Quality Inn-16 (R. p. 665). The City does not dispute these figures yet continues to repeatedly label the appellant as a nuisance requiring a revocation of its business license. Moreover, the figures cited above support the trial court's conclusion that Respondent achieved "the best incident record in the City for the provisional period." (R. p. 8). The City Manager's revocation decision is arbitrary and capricious when compared to the analysis above. If the city manager's standard applied his standard throughout Greenville, then every hotel or motel should be shut-down for business.

Finally, the plain language used in G.C.O. 8 – 43(b)(2) requires some culpability on the part of the business licensee when it states, "[t]he licensee's operation of the business constitutes a public nuisance, provided. . . the licensee has actual or constructive knowledge of the activities." Thus, the city's own code authorizes license revocations only when a violation can be attributed in some way to the licensee. None of the four response calls during the probationary license term, being cited in part as the basis of final revocation, show culpability on the part of the Respondent. Each of these four response calls were caused by the surreptitious acts of third person whom the Respondent had no control over. More importantly, both the ordinance itself, and the agreed upon Conditional Business License Terms, fail to give notice that a license may be conditioned on the conduct of person's outside a licensee's knowledge or control. To the extent that

Respondent's probationary license may depart from the general ordinance requiring culpability, the expressed agreement should have given the Respondent fair notice.

Any of the foregoing reasons cited above would support the trial court's finding that the city manager's revocation decision was arbitrary, capricious, and an abuse of discretion. Accordingly, the trial court's ruling should be affirmed.

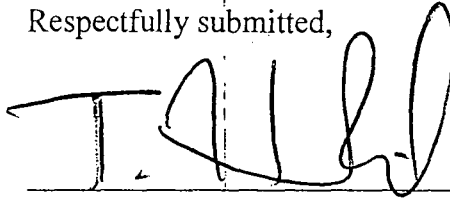
### CONCLUSION

The non-delegation doctrine clearly applies to municipal governments, and in accordance with this principle, a city council cannot delegate its legislative and policy making authority to its city manager. In this case, the city manager was not simply acting within his administrative role of denying and revoking licenses by applying the standards set forth in G.C.O. §8-43. Instead, the City Council permitted its city manager to exercise its legislative authority to set city policy with respect to business licenses and to create new standards of compliance. The trial court was correct in finding the City of Greenville's delegation of authority was improper in that "it reserved in its city manager arbitrary power without guidance from any uniform rules or regulations applying to all businesses similarly situated."

Furthermore, the City Manager's revocation of the Respondent's business license based upon a standard not found anywhere in the relevant Ordinances, nor applied to any other business in the City of Greenville, was patently arbitrary, discriminatory, unreasonable and an obvious abuse of discretion.

Accordingly, the trial court's ruling should be affirmed.

Respectfully submitted,



March 23, 2011

James W. Fayssoux, Jr. / S.C. Bar No. 16659  
T. Hunt Reid / S.C. Bar No. 77538  
FAYSSOUX LAW FIRM, P.A.  
P.O. Box 10207  
Greenville, SC 29603  
(864) 233-4566  
(864) 233-4781 (Fax)  
[wally@fayssouxlaw.com](mailto:wally@fayssouxlaw.com)  
[hunter@fayssouxlaw.com](mailto:hunter@fayssouxlaw.com)

Ryan L. Beasley / S.C. Bar No. 60387  
RYAN BEASLEY, P.A.  
650 East Washington Street  
Greenville, South Carolina 29601  
(864) 467-1001  
[rlb@sctriallawyers.com](mailto:rlb@sctriallawyers.com)

ATTORNEYS FOR RESPONDENTS

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**APPENDIX  
A**

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Greenville City Ordinances §8 – 43

**(Ord. No. 2004 – 44)**

## Sec. 8-43. Denial and revocation.

### (a) *Generally.*

(1) The city manager, or his designee, shall have authority to deny or revoke any business license under the provisions set forth in this article.

(2) For a period of one year after a revocation of a business license, no new license shall be granted to:

a. The same licensee; or

b. The licensee's agent or any person who can be shown to be acting on the licensee's behalf in attempting to do business in the city.

(3) For a period of one year after a revocation, no business license shall be granted to any applicant for the operation of the same or similar type of business in the same location without a detailed report compiled from city departments with knowledge or information acquired on the new applicant and the proposed business activity. If the report supports a finding that the new applicant and proposed activity will circumvent the effect of the business license revocation, or that issuance of a new license will perpetuate the conditions giving rise to the revocation, then no new license shall be issued.

(b) *Grounds for denial or revocation.* A license application under this article may be denied, or an issued license may be suspended or revoked, upon any of the following grounds:

(1) The applicant, the licensee, or the person directly in charge of the business premises for the licensee, within the last ten years has been convicted, forfeited bond, or plead guilty or nolo contendere for the violation of any local, state, or federal law, pertaining to the following offenses:

a. Sale, possession, storage, or transportation of intoxicating liquors, wine or beer;

b. Sale or possession of narcotics or other controlled substances;

c. Gambling or the sale of illegal lottery tickets;

d. Sale or promotion of obscenity;

e. Prostitution or soliciting for prostitution;

f. Sale or possession of weapons; or

g. Crimes of violence, including but not limited to homicide, assault; and battery, criminal sexual conduct, or attempts to commit such acts.

However, a minor offense, subject to the jurisdiction of municipal and magistrates courts, shall not be considered a basis for denial or revocation when the conviction, plea, or forfeiture is more than five years old.

(2) The licensee's operation of the business constitutes a public nuisance, provided the determination of the public nuisance arises from one or more of the following activities on the premises or in the immediate vicinity thereof and the licensee has actual or constructive knowledge of the activities:

a. Frequent arrests of persons for crimes of violence, possession or sale of controlled substances, possession or sale of deadly weapons, the discharge of fire arms, excessive noise, disorderly conduct, prostitution, disturbance of the peace, and the illegal acts correspond with or relate to the hours of operation of the business operations of this licensee;

b. The police make an unusually high number of response calls, regardless of arrests, to the business premises, or to the immediate vicinity, and the high number of response calls corresponds with or relates to the hours of business operations of the licensee;

c. There are ongoing and significant deposits of litter and debris in the immediate vicinity, whether the persons making the deposits can be identified or not, when the litter and debris relate to the business operations of the licensee; and

d. Material violations of property maintenance codes, environmental codes, fire code, and building codes where violations are applicable to the business premises.

(3) Failure to provide sufficient security measures to protect people and property located on the premises, and to protect people and property located in the immediate vicinity when the immediate vicinity is affected by the business operations of the licensee;

(4) The provision of materially false and inaccurate statements in the business license application or to a city official at the time of application;

(5) Failure to pay municipal taxes or fees applicable to the premises or business operations when due, including but not limited to personal and real property taxes, hospitality taxes, accommodation fees and accommodation taxes, property assessments, sewer fees, stormwater fees, and fire alarm and false alarm fees;

(6) Failure of an applicant or licensee to show current compliance with applicable state laws related to the operation of business activities, including but not limited to any requirement to maintain sanitary kitchen facilities, to be in compliance with permitting requirements for the service of alcoholic beverages, beer and wine, or to pay state taxes and fees related to business operations in a timely manner.

(7) Failure to provide full payment to the city within ten days of notice of a check returned to the city for insufficient funds. Full payment means the full amount due of the original check plus costs and fees assessed to the city by its bank for the return of the check presented, as well as any return check fee otherwise assessed by the city.

(8) Failure to provide substantiation, when asked by the city, that the actual business use of the location for which a business license has been applied for or granted, complies with what is allowed at the location under the city's zoning ordinance. Nothing in this provision shall be interpreted to abrogate or limit any variances, special exceptions, or lawful nonconforming uses, previously established under the city's zoning ordinance. In the case of amortization of signs, structures, and uses, the business owner must demonstrate that the amortization period has not expired. In instances requiring an interpretation of the zoning administrator, such interpretations may be rendered in accordance with the duties assigned to the zoning administrator under the zoning ordinance.

(Ord. No. 2004-44, § 2, 6-28-04; Ord. No. 2007-13, 3-19-07)

**Editor's note:** Ord. No. 2004-44, § 1, adopted June 28, 2004, repealed former § 8-43 of the Code in its entirety; § 2 of said ordinance added new provisions as § 8-43 as herein set out. Former § 8-43 pertained to revocation generally and derived from the 1985 Code, § 6-1-14.

#### **Sec. 8-44. Notice of denial or revocation; hearing; appeals.**

(a) *Notice.* Where grounds exist to deny or revoke a license under this article, the business

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**APPENDIX  
B**

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Greenville City Ordinances § 8 – 43

**(Ord. No. 2009 – 97)**

Greenville City Code

Sec. 8-43. Denial and revocation.

(a) Generally.

(1) The city manager, or his designee, shall have authority to deny or revoke any business license under the provisions set forth in this article.

(2) For a period of one year after a revocation of a business license, no new license shall be granted to:

a. The same licensee; or

b. The licensee's agent or any person who can be shown to be acting on the licensee's behalf in attempting to do business in the city.

(3) For a period of one year after a revocation, no business license shall be granted to any applicant for the operation of the same or similar type of business in the same location without a detailed report compiled from city departments with knowledge or information acquired on the new applicant and the proposed business activity. If the report supports a finding that the new applicant and proposed activity will circumvent the effect of the business license revocation, or that issuance of a new license will perpetuate the conditions giving rise to the revocation, then no new license shall be issued.

(b) Grounds for denial or revocation. A license application under this article may be denied, or an issued license may be suspended or revoked, upon any of the following grounds:

(1) Any principal involved with the business [who] has been convicted, forfeited bond, or plead guilty or nolo contendere within the last ten years for the violation of any local, state, or federal law for which there is a potential penalty of one year or more in jail. Any principal involved with the business [who] has been convicted, forfeited bond, or pled guilty or nolo contendere within the last five years, regardless of the length of potential penalty for a jail term, to the following offenses:

a. Sale, possession, storage, or transportation of intoxicating liquors, wine or beer;

b. Sale or possession of narcotics or other controlled substances;

c. Gambling or the sale of illegal lottery tickets;

d. Sale or promotion of obscenity;

e. Prostitution or soliciting for prostitution;

f. Sale or possession of weapons; or

g. Crime of dishonest conduct.

When the principal was convicted, forfeited bond, pled guilty or nolo contendere in another state jurisdiction or the jurisdiction within another country, then the offense shall be assessed on the potential jail sentence of the nearest comparable offense under South Carolina law.

For purposes of this section, the term "principal involved with the business" shall include the applicant, the licensee, and any owner of five percent or more of the business, the manager of business or financial operations, or the person directly in charge of the premises. The term may also include a major financier of the business when the financing arrangement has the appearance of masking actual ownership. The disqualification for prior offenses is not automatic, for good cause shown by the business, the denial, suspension, or revocation may be waived or withdrawn upon a finding of mitigating circumstances justifying the issuance in the public interest.

(2) The licensee's operation of the business constitutes a public nuisance, provided the determination of the public nuisance arises from one or more of the following activities on the premises or in the immediate vicinity thereof and the licensee has actual or constructive knowledge of the activities:

a. Frequent arrests of persons for crimes of violence, possession or sale of controlled substances, possession or sale of deadly weapons, the discharge of fire arms, excessive noise, disorderly conduct, prostitution, disturbance of the peace, and the illegal acts correspond with or relate to the hours of operation of the business operations of this licensee;

b. The police make an unusually high number of response calls, regardless of arrests, to the business premises, or to the immediate vicinity, and the high number of response calls corresponds with or relates to the hours of business operations of the licensee;

c. There are ongoing and significant deposits of litter and debris in the immediate vicinity, whether the persons making the deposits can be identified or not, when the litter and debris relate to the business operations of the licensee; and

d. Material violations of property maintenance codes, environmental codes, fire code, and building codes where violations are applicable to the business premises.

(3) Failure to provide sufficient security measures to protect people and property located on the premises and to protect people and property located in the immediate vicinity when the immediate vicinity is affected by the business operations of the licensee;

(4) The provision of materially false and inaccurate statements in the business license application or to a city official at the time of application;

(5) Failure to pay municipal taxes or fees applicable to the premises or business operations when due, including, but not limited to, personal and real property taxes, hospitality taxes, accommodation fees and accommodation taxes, property assessments, sewer fees, stormwater fees, and fire alarm and false alarm fees;

(6) Failure of an applicant or licensee to show current compliance with applicable state laws related to the operation of business activities, including, but not limited to, any requirement to maintain sanitary kitchen facilities, to be in compliance with permitting requirements for the service of alcoholic beverages, beer and wine, or to pay state taxes and fees related to business operations in a timely manner.

(7) Failure to provide full payment to the city within ten days of notice of a check returned to the city for insufficient funds. Full payment means the full amount due of the original check plus costs and fees assessed to the city by its bank for the return of the check presented, as well as any return check fee otherwise assessed by the city.

(8) Failure to provide substantiation, when asked by the city, that the actual business use of the location for which a business license has been applied for or granted, complies with what is allowed at the location under the city's zoning ordinance. Nothing in this provision shall be interpreted to abrogate or limit any variances, special exceptions, or lawful nonconforming uses, previously established under the city's zoning ordinance. In the case of amortization of signs, structures, and uses, the business owner must demonstrate that the amortization period has not expired. In instances requiring an interpretation of the zoning administrator, such interpretations may be rendered in accordance with the duties assigned to the zoning administrator under the zoning ordinance.

(Ord. No. 2004-44, § 2, 6-28-04; Ord. No. 2007-13, 3-19-07; Ord. No. 2009-97, § 3(Exh.), 12-14-09)

Editor's note: Ord. No. 2004-44, § 1, adopted June 28, 2004, repealed former § 8-43 of the Code in its entirety; § 2 of said ordinance added new provisions as § 8-43 as herein set out. Former § 8-43 pertained to revocation generally and derived from the 1985 Code, § 6-1-14.

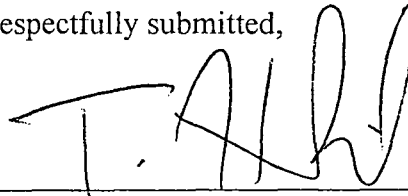
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RESPONDENT'S CERTIFICATE OF COUNSEL

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Respondent hereby certifies that Respondent's Final Brief complies with Rule 211 (b), SCACP.

Respectfully submitted,



March 23, 2011

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James W. Fayssoux, Jr. / S.C. Bar No. 16659  
T. Hunt Reid / S.C. Bar No. 77538  
FAYSSOUX LAW FIRM, P.A.  
P.O. Box 10207  
Greenville, SC 29603  
(864) 233-4566  
(864) 233-4781 (Fax)  
[wally@fayssouxlaw.com](mailto:wally@fayssouxlaw.com)  
[hunter@fayssouxlaw.com](mailto:hunter@fayssouxlaw.com)

Ryan L. Beasley / S.C. Bar No. 60387  
RYAN BEASLEY, P.A.  
650 East Washington Street  
Greenville, South Carolina 29601  
(864) 467-1001  
[rlb@sctriallawyers.com](mailto:rlb@sctriallawyers.com)

ATTORNEYS FOR RESPONDENTS



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Case No. 2007-CP-23-02755

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Amrik Singh and SBPS, Inc.  
d/b/a/ Travel Inn,

Respondents,

v.

City of Greenville,

Appellant.

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FINAL REPLY BRIEF OF APPELLANT

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Ronald W. McKinney  
Post Office Box 2207  
Greenville, South Carolina 29602  
(864) 467-4420  
Attorney for Appellant

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**I. THE RESPONDENT'S BRIEF - LIKE THE TRIAL COURT'S ORDER - FAILS TO COMPLY WITH THE COURT OF APPEALS' DIRECTIVE THAT THE BUSINESS LICENSE REVOCATION ISSUE SHOULD BE DECIDED BY LOOKING AT THE RECORD AS A WHOLE AND THE FINAL INCIDENTS SHOULD NOT BE TREATED IN ISOLATION.**

In July, 2009, the Court of Appeals remanded this case with the following unconditional instruction: "The four incidents that occurred within the month after the extension of the conditional license cannot, and should not, be viewed in isolation from the 918 other calls for service on which the license was initially revoked." Singh & SBPS, Inc. d/b/a Travel Inn v. City of Greenville, 384 S.C. 365, 371, 681 S.E.2d 921, 925. (2009). The Court of Appeals added "Therefore, on remand, the circuit court should review the initial complaints against Singh, in addition to the four subsequent complaints, in order to determine whether the city's decision to revoke Singh's license was arbitrary, unreasonable, or an obvious abuse of discretion." Singh, supra, at 371, 925. The statements were directives, not suggestions or requests.

Despite these directives, the Trial Court's Order pays only *de minimis* attention to the hundreds of police calls of the first two years that the Travel Inn was under the management of Amrik Singh. In a six page order, only two sentences pertain to those ongoing problems. (R. Vol. 1, pp. 2-9, ¶1, lines 1-5) The Trial Court's Order simply dismissed the continuing nuisance at the Travel Inn by saying, "Without question, 901 calls are substantial and raise valid concern and action from the City, *provided* it follows the protocols and procedures in place to guarantee adequate due process." (R. Vol. 1, p. 8) The Trial Court Order then gave no attention to the due process steps afforded by the City in providing written notice of the revocation, providing for an appeal to the City Manager, allowing an evidentiary hearing before a hearing officer, affording Mr. Singh an opportunity to testify in his own behalf, assuring an opportunity for representation by counsel who cross examined witnesses and presented witnesses on behalf of Travel Inn, providing for the City Manager's review of the record and the hearing officer's recommendation, and guaranteeing an appeal to City Council, which itself allowed oral arguments in addition to its review of the record. Had the Trial Court complied with the Court of Appeals' directive, those things would have been evaluated. Moreover, the Trial Court's Order gives no recognition to the prior ruling on due process by the Court of

Appeals: “Singh's concerns about the violation of his due process rights are misplaced. Singh still had the right to appeal the revocation to circuit court for a determination of whether or not the decision was arbitrary, unreasonable, or an obvious abuse of discretion.” *Singh, supra*, at 371, 925.

More significant for this argument, there was absolutely no elaboration in the Trial Court’s Order on the harm to the police and to the public that came from such repeated instances of nuisance conditions, including prostitution, drug transactions, assaults, and robbery, and the innumerable hang up calls. Thus the Trial Court’s Order substantively violates the unconditional directive of the Court of Appeals to consider all the events throughout the time period in reaching its conclusion about arbitrary conduct.

Although the Appellant’s Brief identified these conspicuous omissions, the Respondent’s Brief pays them no attention or is dismissive toward them. The Respondent’s Brief – like the Trial Court’s Order - never denies, nor meaningfully discusses, the perpetual need for police responses to the premises that Amrik Singh was supposed to be managing during the period leading up to the initial formal notice of revocation. The fact that there were so very many police calls to the motel meets the statutory definition of nuisance activity contained in the Greenville City Code Section 8-43, which includes “an unusually high number of police calls” to the business premises. The Respondent’s Brief is tepidly silent on both the shocking number of calls and the seriousness of many of them. That brief never acknowledges that the conditions met the definition of public nuisance contained in Section 8-43.

Instead, the Respondent’s Brief tries to redirect this Court’s attention elsewhere. That brief rests its case on two argument headings, both of which relate solely to events *after* the two year period leading up to the initial action by the City Manager. The first argument contends that the City Council’s treatment of the extension period under the supervision of the City Manager was an improper delegation of legislative and policy making authority. The second argument says that the City Manager’s final notification to the Travel Inn did not conform to the bases for revocation enumerated in the City Code or the conditions of the extension. (See Statement of Issues on Appeal in Respondent’s Brief.) Neither argument heading in the Respondent’s Brief touches upon what the Court of Appeals specifically directed: that the hundreds of police calls leading to the initial

notice of revocation should be reviewed. In this context the word *review* should mean to study, to examine, to consider, and to evaluate. It should not mean to allude to in passing or to pay mere lip service to. Thus even though the Court of Appeals specifically directed the 900 plus calls be considered, the Respondent's Brief looks away from the critical issue as though it did not exist.

Argument summary. The Respondent's Brief – like the Trial Court's Order – fails to address the Court of Appeals' directive: "Therefore, on remand, the circuit court should review the initial complaints against Singh, in addition to the four subsequent complaints to determine whether the city's decision to revoke Singh's license was arbitrary, unreasonable, or an obvious abuse of discretion." To accept the approach presented by the Respondent's Brief is to ignore the directive of the Court of Appeals. It ignores the hardship placed upon the community by the motel's operations and upon police officers in having constantly to respond to conditions there. The City established unequivocally on the record that the Travel Inn under Amrik Singh was engaged in nuisance activity as defined by the City Code, and the Respondent's Brief did not address the central issue of the proceeding.

## **II. THE RESPONDENT'S BRIEF FAILS TO DEMONSTRATE THAT THE REVOCATION OF THE TRAVEL INN'S BUSINESS LICENSE WAS ARBITRARY, UNREASONABLE, OR AN OBVIOUS ABUSE OF DISCRETION.**

If one reads the Respondent's Brief as a whole, one comes away with the impression that the City – and the City Manager in particular – one day decided to pick on Mr. Singh for little or no reason. However, the facts of the record refute both the substance and tone of that representation. When the Trial Court on remand directed the City to supplement the record by compiling all police calls to all hotel locations throughout the City during the same time period, the City complied. That compilation and its substantiating documentation make clear that the Travel Inn had hundreds more calls than any other hotel and six times as many as the average of all other hotels in the City (150.5). (R. Vol. 2, pp. 482-647)

Once the appeal of the revocation came before City Council, the Council was neither arbitrary nor complacent in considering Mr. Singh's situation. To the contrary,

City Council bent over backwards trying to afford him an opportunity to manage a nuisance-free premises. The initial period of sixty days was reasonable for determining whether there could be an improvement at the location, and the extended period for a provisional license was reasonable for determining whether the improvement could be sustained.

The Respondent's Brief, in its isolated focus upon the City's ending the provisional period of operation, argues, "[T]he City Manager essentially changed the terms and rules of the conditional business license and relevant Ordinance so as to achieve the desired end result of closing Mr. Singh's business." (Respondent's Brief, p. 22). The same paragraph goes on to quote the City Manager's letter of March 30, 2007, as saying, "the basis for the revocation is the management's inability or unwillingness to maintain a safe drug-free and crime free environment." The brief then asserts, "This is not a standard set forth in the agreed to provision license terms or the subject ordinance." Whereupon the writer proclaims derisively, "In conformity with the Appellant's egalitarian nature, the standard was arbitrarily decided and then unreasonably applied to Respondent." (Respondent's Brief, p. 22). These assertions invite a closer look at the facts to which they refer.

The City Manager's letter of March 30, 2007, did indeed say that the provisional extension of the license was being terminated because of the motels "management's inability or unwillingness to maintain a safe, drug free and crime free environment." (R. Vol. 3, pp. 1078-1080) What the Respondent's Brief omits explaining to the reader is that the City Manager then itemized the recent occurrences that evidenced a return to the motel's old ways and led to the City Manager's decision. There was the instance of the homicide suspect holding up in a room registered only to a first name ["Bill"], even though the terms of the conditional extension required the presentation of personal identification or driver's license for each registrant. (R. Vol. 3, p. 1073) There was the instance of Mr. Singh's daughter –whom he assured council at his hearing would no longer be on the premises – being arrested on the premises by sheriff's deputies (not police). The arrest warrants and substantiating documentation indicate that she was stealing customers' credit cards and making charges on them for her personal use. At the time of her arrest she had been speaking to the deputies from another room on premises

while representing that she was out of town. (R. Vol. 2, p. 446) There was the drug arrest in the parking lot of three men returning to the motel to engage a motel patron, even though a term of the provisional license was to maintain security and around the clock monitoring of cameras on the premises so that recurrences of prior activities would not re-occur. *See also* City Code 8-43(b)(3). In addition, the police on one occasion had received another disconnect 911 call related to a disturbance involving an inebriated patron. When the police arrived, Mr. Singh denied that anything was going on, even though he had involved himself with the disputing parties when the disturbance began. It is important to note that the City Manager did not pounce on a solitary occasion as a pretext to end the provisional period. Instead, he continued to observe and assess for a month. However, after assessing such on-going problems during February and March, he had to recognize that the old practices were resuming. Unquestionably, the resumed pattern of conduct was not acceptable.

Argument summary. There is a strong evidentiary record of on-going nuisance conditions on the premises of the Travel Inn. The City demonstrated and substantiated those conditions before the hearing officer designated by the City Manager, before the City Council, and before the Trial Court. The Respondent has never refuted the facts of those conditions, and the Respondent's Brief fails to demonstrate that the City's action in addressing them was arbitrary, unreasonable, or an abuse of discretion.

### **III. THE RESPONDENT'S BRIEF FAILS TO RECOGNIZE THAT THE NON-DELEGATION DOCTRINE, WHICH IS THE CORNERSTONE OF THE TRIAL COURT'S ORDER, DOES NOT APPLY TO COUNCIL'S DIRECTIVE TO THE CITY MANGER.**

The Court of Appeals in its prior order said that on remand "the court may also consider the actions of city council in relinquishing complete discretion to the city manager to determine issues of compliance, and the ability to extend the period for the conditional business license." *Singh, supra*, at 371-372, 925. On remand, the Trial Court made the cornerstone of its Order the proposition that the City Council violated the Constitutional doctrine of non-delegation of legislative powers when it authorized the City Manager to oversee and act upon if necessary the extension of the conditional business license. In contrast to the two sentences mentioning the hundreds of police calls

to the premises, the Trial Court's Order dedicates two and a half of its six pages to a discussion of the non-delegation doctrine and its application to this case. The Trial Court's Order provides no other basis for its conclusions about the actions of City Council, and the Respondent's Brief offers no alternative. For the reasons set forth here, that analysis is fatally flawed.

In its original brief on this appeal, the Appellant raised for this Court the fallacy of that argument by pointing out that the South Carolina Supreme Court has ruled that the non-delegation principle does not apply to municipal governments. *Gaud v. Walker*, 214 S.C. 451, 53 S.E.2d 316 (1949); *City of Spartanburg v. Parris*, 85 SC 227, 67 S.E. 246 (1910). (See Appellant's brief, pp.10-11.) The doctrine derives from the separation of powers provision of the state constitution, South Carolina Constitution, Article I, Section 8, which on its face applies solely to the government "of this State," with no reference to its political subdivisions. See also *Gaud v. Walker and City of Spartanburg v. Parris, supra*. In an effort to defend the cornerstone of the Trial Court's Order, the Respondent's Brief says those cases are "no longer applicable because the South Carolina Legislature no longer controls municipalities," after the adoption of the Home Rule Act. That brief says accordingly the cases "are irrelevant, inapplicable, and immaterial to the matter at hand." (Respondent's Brief, p. 13)

Strangely, the Respondent's Brief ignores that all powers granted to municipalities under the Home Rule Act come from the General Assembly, which regulates them through the general law: "The structure and organization, powers, duties, functions, and responsibilities of the municipalities shall be established by general law;" South Carolina Constitution, Art. VIII, Section 9. See also, Art. VIII, Section 8, whereby the General Assembly provides for the incorporation for municipalities and the readjustment of municipal boundaries. The Home Rule Act itself is a grant of powers by the General Assembly to local governments. It is *not* a self imposed restraint upon the General Assembly in shaping the powers, duties, and structure of local governments. It is the General Assembly which directs that municipalities must have one of three types of government. S.C. Code Sec. 5-5-10 (2004). It is the General Assembly that provides for the powers and duties of city councils in relation to a city manager. Chapter 13 of Title 5 of the South Carolina Code of Laws. That chapter provides that a city council "employs"

a manager (Section 5-13-30 and 5-13-50) and shall “fix his compensation.” (Section 5-13-50.) The same chapter also provides, “the term of employment of the manager shall be *at the pleasure of the council* and he shall be entitled to such compensation for his services as the council may determine.” (Section 5-13-70, emphasis added). It is a city council, and not a city manager, which the General Assembly has authorized to “create, change, and abolish offices, departments or agencies of municipal government...” (Section 5-13-100). Under the Home Rule Act, a city manager is not an elected office holder and has no veto. A city manager must “[p]erform such other duties as may be prescribed by law or required of him by the municipal council...” (Section 5-13-90). In short, a city manager is the chief administrative officer of a municipality who follows the directives of council in accordance with the provisions of Chapter 13 of Title 5, but he does not head a separate branch of government. The separation of powers doctrine applies to the federal and state government, but not to political subdivisions of the state. Thus the foundation of the Trial Court’s Order and half of the Respondent’s Brief is a principle of law that is inapplicable to municipalities and is simply wrong as a matter of law. The non-delegation doctrine is not in operation here, and the Trial Court Order and the Respondent’s Brief present no other basis for how they address the action of City Council.

In short, the Trial Court made a choice as to how it would analyze an issue the Court of Appeals had permitted it to consider: The City Council’s action in deciding that the City Manager would be responsible for determining compliance with the provisional license and for any extension of the license. Once the Trial Court made that choice, the Trial Court’s Order must be judged in terms of whether an erroneous conclusion of law can be upheld on review.

Another choice to analyze the same issue is to recognize how the City Code provides for a role for both the City Manager and for the City Council in business license revocations. Actually, the Greenville City Council acted through the City Code years ago to assign to the City Manager responsibility for business license revocations: “The city manager, or his designee, shall have authority to deny or revoke any business license under the provisions set forth in this article.” Greenville City Code Sec. 8-43 (a)(1). (R. Vol. 2, p. 224) Pursuant to that referenced article, the City Manager’s designee sent

notice of the revocation to Travel Inn; Travel Inn requested and received a hearing before a hearing officer designated by the City Manager; the hearing officer made a written recommendation to uphold the revocation after holding a hearing where the licensee was represented by counsel who cross examined witnesses; the City Manager accepted the recommendation; the Travel Inn appealed to Council; and the Council heard arguments and after deliberation modified the revocation to provide Amrik Singh a second chance. The hearings before the hearing officer and before City Council were meaningful and fair and they complied with the City Code. The transcript of the original hearing, and the minutes of Council's meeting give evidence to that fact. Indeed, City Council's minutes reflect not a hasty effort by Council members to rid themselves of a public nuisance, but a deliberative effort to review all circumstances and to afford Mr. Singh an opportunity to bring and keep his premises under control. The conditions were to be "realistic and achievable and would include the security devices already in place and in their full and usual operation." (R. Vol. 3, p. 1065) Both the City Council and the City Manager exercised their roles responsibly and fairly and in compliance with the City Code.

In this context, City Council was not acting to legislate or to set general policy for the public at large. It was exercising its authority to review a particular decision made by the City Manager to determine if other action might be taken by City Council in its reviewing capacity. In this case, there was no improper delegation of by City Council of legislative – as opposed to administrative – duties to the City Manager. The duties are those he already exercised under the City Code.

At the time of City Council's action, the Travel Inn raised no assertions that the action was improper. Travel Inn could have –but did not – make a timely appeal of City Council's directions to the City Manager within thirty days of the event. Instead, Mr. Singh accepted the concept of a provisional license under the City Manager's administration and by his signature acceded to the provisions the City Manager laid out. (R. Vol. 3, p. 1073)

Argument summary. The City Council did not act in a legislative capacity when it directed the City Manager to be responsible for overseeing the Travel Inn's continued operation under provisional conditions. Council acted under the powers vested to it to review the operations of the City, and the duties assigned were administrative not

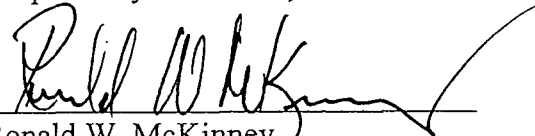
legislative. Under the City Code, it is the City Manager who issues and revokes business licenses. Council's role in particular instances is limited to one of exercising review. Moreover, the Trial Court's Order sole basis for analyzing council's action was under the non-delegation doctrine arising under Article I, Section 8, which on its face and under the cases interpreting it does not apply to municipalities. The cornerstone of the Trial Court's Order is erroneous.

### CONCLUSION

The Respondent's Brief – like the Trial Court's Order – fails to comply with the Court of Appeals' directive that the business license revocation issue should be decided by looking at the record as a whole, and the final incidents should not be treated in isolation. The Respondent's Brief fails to demonstrate that the revocation of the Travel Inn's business license was arbitrary, unreasonable, or an abuse of discretion. The Respondent's Brief fails to recognize that the non-delegation doctrine, which is the cornerstone of the Trial Court's Order, does not apply to Council's directives to the City Manager. With the City of Greenville having shown it acted rationally and fairly and the Respondent having failed to show the City acted in a manner that was arbitrary, unreasonable, or an abuse of discretion, the Trial Court's Order should be reversed and the business license revocation should be sustained.

March 21, 2011

Respectfully submitted,



Ronald W. McKinney  
Post Office Box 2207  
Greenville, South Carolina 29602  
(864) 864-467-4420  
Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Case No. 2007-CP-23-027550

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Amrik Singh and SBPS, Inc.  
d/b/a/ Travel Inn,

Respondents,

v.

City of Greenville,

Appellant.

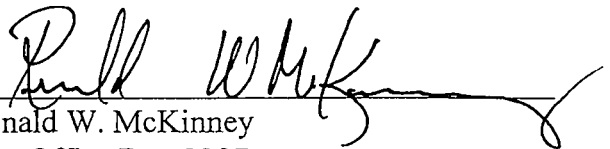
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CERTIFICATE OF COUNSEL

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The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.

March 21, 2011

  
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Ronald W. McKinney  
Post Office Box 2207  
Greenville, SC 29602  
(864) 467-4420  
Attorney for Appellant



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
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V. CLAIRE ALLEN  
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POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

April 18, 2012

Ronald W. McKinney, Esquire  
City of Greenville  
P.O. Box 2207  
Greenville, SC 29602

James Walter Fayssoux, Jr., Esquire  
Fayssoux Law Firm, P.A.  
209 E. Washington St.  
Greenville, SC 29601

Ryan Lewis Beasley, Esquire  
Ryan L. Beasley, Attorney At Law, PA  
650 E Washington St  
Greenville, SC 29601-2931

Re: Singh, Amrik v. City of Greenville

Dear Counsel:

Enclosed is the opinion of the Court of Appeals in this case. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Greenville County after fifteen (15) days, exclusive of the date of filing of this opinion.

No extension for a Petition for Rehearing will be granted except in the most extraordinary circumstances and, except in the rarest cases, with seven days' notice.

Sincerely,

A handwritten signature in cursive script that reads "Tonisha E. Fuller". The signature is written in black ink and is positioned above the printed name of the signatory.

Tonisha E. Fuller  
Administrative Assistant

JAK/tf

cc: The Honorable Edward W. Miller

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Amrik Singh and SBPS,  
Inc. d/b/a Travel Inn, Respondents,

v.

City of Greenville, Appellant.

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Appeal From Greenville County  
Edward W. Miller, Circuit Court Judge

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Unpublished Opinion No. 2012-UP-227  
Heard March 15, 2012 – Filed April 18, 2012

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**REVERSED**

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Ronald W. McKinney, of Greenville, for Appellant.

James Walter Fayssoux, Jr., and Ryan Lewis Beasley,  
both of Greenville, for Respondents.

**PER CURIAM:** The City of Greenville (the City) appeals from an order of the circuit court reversing the City's revocation of a business license for the operation of Travel Inn at 755 Wade Hampton Boulevard. The circuit court issued its order following a hearing on remand from this court, pursuant to the opinion in Amrik Singh & SBPS, Inc. v. City of Greenville (Singh I), 384 S.C. 365, 681 S.E.2d 921 (Ct. App. 2009). In Singh I, this court directed the circuit court to review all police response calls to Travel Inn, from April 2004 through March 2007, to determine whether the City's decision to revoke Singh's license was arbitrary, unreasonable, or an obvious abuse of discretion. 384 S.C. at 371, 681 S.E.2d at 925. The circuit court did not rule on this issue; instead, it concluded that City Council's directive to the City Manager to determine compliance with certain conditions placed on the license was an unlawful delegation of legislative authority. The circuit court also concluded that the City Manager's subsequent revocation determination was arbitrary. On appeal, the City challenges both of these conclusions, as well as the circuit court's failure to address the merits of City Council's revocation decision. We reverse.

The City first argues that City Council's November 15, 2006 decision to confirm the City Manager's initial revocation, but to allow Singh a probationary period of operation under a Conditional Business License, was reasonable and fair. After the circuit court failed to address this issue on remand pursuant to Singh I, the City filed a motion pursuant to Rule 59(e), SCRPC, requesting a ruling on the issue. However, the circuit court declined to do so. We now address the issue and uphold City Council's decision.

Section 8-43(b)(2) of the Greenville City Code (2004) includes "public nuisance" as one of the grounds for license revocation, provided that the licensee has actual or constructive knowledge of one or more of the activities listed in the ordinance as constituting a public nuisance. Further, section 8-43(b)(2)(b) provides that an "unusually high number of response calls" by law enforcement qualifies as an activity from which a public nuisance arises. In an effort to examine all available information relevant to this standard, the circuit court, on remand from this court, requested the City to supplement the record with data showing the volume and character of calls to all hotels in the

City from 2004 to 2006.<sup>1</sup> The City submitted the requested data, which included calls from April 1, 2004 through June 16, 2006, the same period covered by the testimony given by Lieutenant Randle Evett of the Greenville Police Department in the administrative proceedings before the City Manager's hearing officer.

While the number of response calls shown in the supplemental data, i.e., 901 calls, was slightly less than the 918 calls previously indicated by Lieutenant Evett, this number nonetheless corroborated Lieutenant Evett's testimony that there was an unusually high volume of calls to the location when compared to other hotels in the City during the period in question. The number of calls made to Travel Inn, 901, was by far the highest in the City.<sup>2</sup> The second highest number of calls made to a hotel in the City was 581, and the third highest was 407. Law enforcement made less than 300 calls to each of the other hotels in the City.

The data also indicated 390 of the 901 calls to Travel Inn, over forty percent, were considered by the City to be "serious." Singh points to the numbers of serious calls to four other hotels in the City: 347; 165; 146; and 112, respectively. In our view, it is reasonable to characterize the 390 "serious" calls made to Travel Inn as "an unusually high number." Further, we agree with the City that all of the calls, serious and non-serious, to each hotel potentially diverted law enforcement resources from responding to

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<sup>1</sup> Because the City did not object to the circuit court's request to supplement the administrative record, we express no opinion on the propriety of the request.

<sup>2</sup> In his testimony before the City Manager's hearing officer, Lieutenant Evett estimated that approximately ten percent of the calls originated from Travel Inn management. He also stated that in 2004, he had spoken to Singh's daughter, Maninder Kaur, a/k/a "Lucky," who was acting as manager of Travel Inn, about the high number of calls. Subsequently, however, the number of calls for service increased. Two of the numerous calls requiring incident reports resulted in criminal charges against Lucky for selling crack-cocaine in March 2006. On another occasion, Lucky gave a statement in which she admitted fabricating an armed robbery at Travel Inn in May 2006 for the alleged purpose of obtaining bail money for a friend.

crimes in progress at other locations in the community. Notably, the language in section 8-43(b)(2)(b) of the Greenville City Code does not differentiate between the types of service calls included in the "unusually high number."

The foregoing data provides strong support for City Council's determination that Travel Inn constituted a public nuisance requiring license revocation pursuant to section 8-43(b)(2). Therefore, the City's decision to revoke Singh's license was reasonable. See id. (listing a public nuisance as a ground for revocation, provided the licensee has actual or constructive knowledge of one or more of the listed activities qualifying as a public nuisance);<sup>3</sup> Gay v. City of Beaufort, 364 S.C. 252, 254, 612 S.E.2d 467, 468 (Ct. App. 2005) ("Where the city council of a municipality has acted after considering all of the facts, the court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion.").

As evidenced by the minutes of the public hearing, City Council carefully weighed the adverse effect of revocation on Singh's livelihood against the impact of Travel Inn's operation on the public welfare. City Council attempted to accommodate both considerations in a reasonable and fair manner. City Council acted well within its discretion in giving Singh another opportunity to correct the unsafe conditions at Travel Inn while providing for an automatic license revocation upon deviation from the terms of the conditional business license.

Further, we find no delegation of legislative authority in City Council's directive to the City Manager to determine Singh's compliance with the conditions for Travel Inn's continued operation.<sup>4</sup> This directive was no

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<sup>3</sup> The record contains ample evidence showing, at the very least, Singh's constructive knowledge of the number of police response calls to Travel Inn during the period in question.

<sup>4</sup> Section 5-13-30 of the South Carolina Code (2004), which applies to the council-manager form of government, provides that all legislative powers of a municipality and the determination of all policy matters shall be vested in the municipal council. Our supreme court interpreted section 5-13-30 in Todd v. Smith and stated that the city council for the City of Myrtle Beach

different from the administrative authority granted to the City Manager under section 8-43(a)(1) of the Greenville City Code (2004). Section 8-43(a)(1) states: "The city manager . . . shall have authority to deny or revoke any business license under the provisions set forth in this article." Singh has not challenged this provision, which is consistent with statutory and case law. See S.C. Code Ann. § 5-13-90 (2004) ("The manager shall be the chief executive officer and head of the administrative branch of the municipal government. He shall be responsible to the municipal council for the proper administration of all affairs of the municipality[.]"); Greenville City Code § 2-195(a)(2) (imposing on the City Manager the duty to "[s]ee that the ordinances of the city and the laws of the state are enforced therein"); City of Columbia v. Abbott, 269 S.C. 504, 508, 238 S.E.2d 177, 179 (1977) ("It is generally held that the granting of a license is an administrative function . . .").

Moreover, implicit in City Council's decision to place Singh's license on probationary status were the requirements that (1) Travel Inn avoid triggering any of the factors establishing a public nuisance under section 8-43(b)(2) of the Greenville City Code (2004) and (2) the City Manager should be guided by those factors, in addition to the special conditions imposed on Singh's operation of Travel Inn. The City Manager's discretion in determining compliance with the business license ordinance was properly limited by the ordinance's express guidelines for determining whether Singh's operation of Travel Inn constituted a "public nuisance."

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did not have the authority to delegate matters of policy and the city manager did not have the authority to set city policy. 305 S.C. 227, 231, 407 S.E.2d 644, 646-47 (1991). In the present case, because this court may analyze the question of the alleged delegation of legislative authority under section 5-13-30, we need not address whether Article I, section 8 of the South Carolina Constitution, addressing separation of powers, applies to municipalities. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting an appellate court need not address an appellant's remaining issues when its determination of a prior issue is dispositive).

Singh argues that the arbitrary nature of the City Manager's decision resulted from City Council's failure to "set a benchmark for the number of calls Mr. Singh should not exceed." However, section 8-43(b)(2)(b) provides a sufficiently objective benchmark, i.e., "an unusually high number of response calls," that can be determined by comparison with other businesses in the community. Travel Inn met this threshold prior to the revocation hearing before City Council. Accordingly, when City Council granted Singh a conditional license, it justifiably set the triggering event for automatic revocation as being any deviation from the conditions. This directive left little room for the exercise of judgment by the City Manager. The City Manager was essentially left with the ministerial task of determining whether Travel Inn deviated, even once, from the license conditions City Council had placed on it. Therefore, the circuit court erred in concluding that City Council improperly delegated legislative authority to the City Manager.

Finally, we agree with the City that the City Manager's March 30, 2007 decision to terminate Singh's probationary license was reasonable. In Singh I, this court stated: "The four incidents that occurred within the month after the extension of the conditional license cannot, and should not, be viewed in isolation from the 918 other calls for service on which the license was initially revoked." 384 S.C. at 371, 681 S.E.2d at 925. Further, the City Manager's March 30, 2007 letter properly focused on the seriousness of the four incidents and how they reflected a resumption of the previous nuisance pattern from 2004 to 2006 and its adverse effect on the community. For example, on or about March 7, 2007, police found Lucky living at Travel Inn despite the previous representation of Singh's counsel that Lucky would not be allowed to resume her residence at Travel Inn due to her criminal activity there. On this date, Lucky was arrested and charged with two counts of forgery for stealing credit cards from customers at her restaurant, "Taste of India," which adjoined Travel Inn. Police learned that prior to her arrest, she had been hiding inside the hotel office while talking to deputies on the phone and representing to them that she was out of town.

Singh's argument that he did not have full control over decisions affecting Travel Inn's operation until he obtained the deed to the property is unavailing. Singh was the licensee from 2004 through most of 2006. On his business license applications, Singh listed himself as the owner of the

business. Further, Singh's 2004 agreement with the owner of the real property gave him the option to buy the property, and he consistently made payments toward ownership of the property. In December 2004, a representative of the property's owner advised the business license supervisor for the City that the property owner was "no longer responsible for the license because [Singh] had an option to buy." Singh does not point to any evidence in the record showing precisely how the prior property owner interfered with Singh's managerial decisions or impeded Singh's investment in improvements necessary to maintain a nuisance-free business.

Based on the foregoing, we reverse the circuit court's decision and uphold the City's decision to revoke Singh's privilege of operating Travel Inn so that the City may fulfill its duty to protect the public. See Carter v. Linder, 303 S.C. 119, 122, 399 S.E.2d 423, 424 (1990) ("A license tax upon persons and businesses is an excise tax on the privilege of doing business . . . .") (emphasis added); cf. Summersell v. S.C. Dep't of Pub. Safety, 334 S.C. 357, 366, 513 S.E.2d 619, 624 (Ct. App. 1999), vacated in part on other grounds, 337 S.C. 19, 522 S.E.2d 144 (1999) (holding that a driver's license is not a property right but a mere privilege subject to reasonable regulations under the police power in the interest of the public safety and welfare and such a privilege is always subject to revocation or suspension for any cause relating to public safety).

**REVERSED.**

**PIEPER, KONDUROS, and GEATHERS, JJ., concur.**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

AMRIK SINGH and SBPS,  
INC. d/b/a TRAVEL INN,

RESPONDENT,

V.

CITY OF GREENVILLE,

APPELLANT.

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

Opinion No. 2012-UP-227

Filed April 18, 2012

PETITION FOR REHEARING

**RECEIVED**  
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SC Court of Appeals

Pursuant to Rule 221(a), SCACR, counsel for Amrik Singh and SBPS, Inc. d/b/a Travel Inn, petitions the Court for rehearing. This Court misapprehended the lower court’s findings on remand that the City Manager’s revocation of the probationary license was arbitrarily determined. The order clearly states that after “careful consideration of all the evidence this Court finds the city manager’s revocation of [Singh’s] business license was arbitrary . . . .” (R. at 3). The lower court order went on to state that the court “viewed the entire process as one continuous revocation proceeding, taking into consideration every complaint attributed to Travel Inn’s property during the relevant periods.” (R. at 8). In reaching this conclusion the lower court considered that the “city

manager actually revoked the license on standards completely separate from the parties' written agreement . . ." citing this as one of its basis for determining the city manager's substantive decision was arbitrary. (R. at 8). This Court even recognized in its opinion that the "circuit court also concluded that the City Manger's subsequent revocation determination was arbitrary." Therefore, it was incorrect to determine that the lower court declined to address the merits of the revocation, and the lower court's findings should not be disturbed unless found to be without evidence to support its conclusion. )

It is undisputed in this matter that the city manager did not base its revocation decision on Respondent's deviation from the special conditions imposed on the business. The lower court concluded that decision was unreasonable. Likewise, this Court's opinion drew out a similar conclusion – viz., that automatic revocation would be triggered by (i) deviation from municipal ordinance §8 – 43(b), or (ii) any deviation from the special conditions. However, this Court, like the lower court, concluded that Respondent had triggered revocation pursuant to §8 – 43(b) prior to the city manager's subsequent revocation of March 30, 2007, and accordingly narrowed its opinion to "when City Council granted Singh a conditional license, it justifiably set the triggering event for automatic revocation as being any deviation from the conditions."

Since Respondent never triggered revocation by failing any special conditions and §8 – 43(b) had been triggered prior to city council's grant of a probationary license, the city manager must base the subsequent revocation on the grounds cited within municipal ordinance §8 – 43(b). But it cannot. This was precisely the problem discovered by the lower court. If the fallback position for revocation, post probationary license, lies in Respondent's deviation from the nuisance standard in §8 – 43(b), then the substantive determination of deviation would not be ministerial but

rather discretionary, thereby triggering a substantive review pursuant to ordinance §8 – 44 which did not occur.

However, this Court has erroneously concluded twice that Respondent resumed a pattern of nuisance by having four incidents at the business after receiving the probationary license, thus triggering automatic revocation pursuant to the ordinance. The misapprehension by this Court regarding the Respondent's alleged resumption of nuisance activity lies in the failure to distinguish the first 60-day probationary period from the subsequent one-year extension. The 60-day provisional license was granted by City Council on November 15, 2006. Afterwards, city manager granted a one-year extension on February 20, 2007. Yet two of the alleged four incidents cited by Appellant and this Court as evidence of resumed nuisance occurred on January 3<sup>rd</sup> and February 11<sup>th</sup>, before the city manager extended the probationary license for another year on February 20, 2007. It would be inappropriate for this Court or the Appellant to categorize Respondent's business as a continuing nuisance upon only two incidents, or to retroactively apply any number of police response calls to Respondent after city manager's considered all these incidences prior to granting the probation extension.

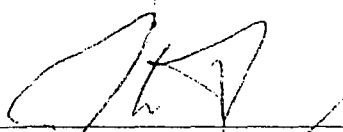
In addition, this Court overlooked the record on appeal in finding that Respondent failed to show precisely how the prior property owner interfered with Respondent's managerial decisions or impeded Respondent's ability to make improvements to the business' operation. There is ample evidence in the record that Respondent was not the owner of the business until May, 2006, that because he was not authorized as manager to spend funds necessary to implement certain changes to the business, and that unable to invest money to bring about the desired improvements as (R. 355 – 359).

Finally, this Court's opinion ignores its previous opinion in Amrik Singh and SBPS, Inc. v. City of Greenville (Singh I), 384 S.C. 365, 681 S.E.2d 921 (Ct. Appl. 2009), and the lower court's compliance with the explicit instructions therein. In Singh I, this Court instructed the lower court to "consider the actions of city council in relinquishing complete discretion to the city manager to determine issues of compliance, and the ability to extend the period for the conditional business license." Id. at 371 – 72, 925. Accordingly, the lower court found that "the relinquishment and delegation of authority unto a single individual, to exercise at his own whim, would be improper in that it reserved in its city manager arbitrary power without guidance from any uniform rules or regulations applying to all businesses similarly situated." (R. at 6). The lower court addressed both the substantive revocation decision and the process employed by the city in reaching that decision, finding both to be unreasonable.

Positive case law in this state holds that city policy is a legislative matter and that city managers or administrators do not have the authority to set city policy under a council-manager municipality, otherwise such action constitutes an unlawful delegation of legislative authority. See, Todd v. Smith, 305 S.C. 227, 231, 407 S.E.2d 644, 646 – 47 (1991); S.C. Code of Laws §5-13-30 (2004). This is the precise rationale used by the lower court in finding relinquishment of policy decisions unto the city manager was unlawful and that the manager's subsequent revocation decision was arbitrary. Nonetheless, this Court did not distinguish Todd v. Smith in reversing the lower court's ruling.

Based on the foregoing, Respondent seeks rehearing to address these issues and for this Court affirm the finding of the circuit court judge.

Respectfully submitted,



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James W. Fayssoux, Jr.  
Attorney for Respondent

This 3<sup>rd</sup> day of May, 2012.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Greenville County  
Edward W. Miller, Circuit Court Judge  
\_\_\_\_\_

AMRIK SINGH and SBPS,  
INC. d/b/a TRAVEL INN,

RESPONDENT

v.

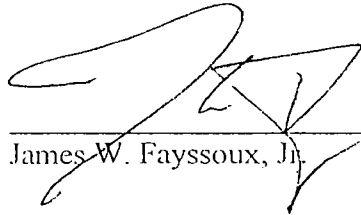
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APPELLANT

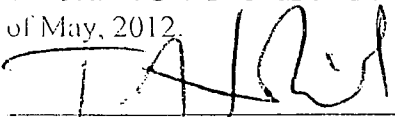
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CERTIFICATE OF SERVICE  
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The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon, Ronald W. McKinney, Esquire, at City of Greenville, 426 North Main Street, Greenville, South Carolina 29601 this 3rd day of May, 2012.

  
\_\_\_\_\_  
James W. Fayssoux, Jr.  
ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 2nd day  
of May, 2012.

  
\_\_\_\_\_  
(L.S.)

Notary Public for South Carolina,  
My Commission Expires: 04/26/20

# The South Carolina Court of Appeals

Amrik Singh and SBPS, Inc. d/b/a Travel Inn,  
Respondents,  
v.  
City of Greenville, Appellant.


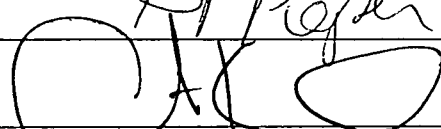
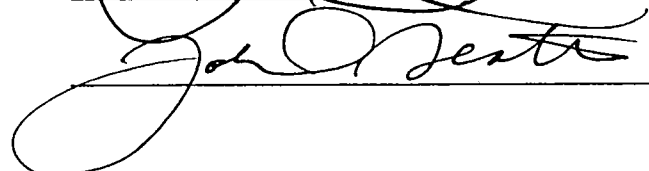
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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_. J.  
  
\_\_\_\_\_. J.  
  
\_\_\_\_\_. J.

Columbia, South Carolina

cc:  
Ryan Lewis Beasley  
Ronald W. McKinney  
James Walter Fayssoux, Jr.  
Paul B. Wickensimer

**FILED**

*May 25, 2012*  
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