

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

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JAN 13 2012

SC Court of Appeals

Case No. 2009-CP-04-01693

Michael Cunningham

Appellant

v.

Anderson County

Respondent

**AMICUS CURIAE BRIEF
OF
SOUTH CAROLINA CITY AND COUNTY MANAGEMENT ASSOCIATION**

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STATEMENT OF AMICUS CURIAE ISSUE

I. DID THE CIRCUIT COURT ERR IN INTERPRETING SOUTH CAROLINA LAW TO PROHIBIT A COUNTY FROM CONTRACTING WITH ITS ADMINISTRATIVE HEAD?

STATEMENT OF THE CASE

Appellant sued Respondent for, among other things, breach of contract because of Respondent's terminating Appellant from Appellant's employment as the Anderson county administrator. Respondent answered denying liability and raising affirmative defenses. Ultimately, the parties filed cross-motions for summary judgment. The Circuit Court granted Respondent's motion, in part, finding: South Carolina law prohibits a county from contracting with the county's administrative head. Appellant timely appealed.

Amicus Curiae submits this Brief, according to Rule 213, South Carolina Appellate Court Rules, seeking this Court's resolution of that particular issue.

STATEMENT OF FACTS

Amicus Curiae raises a single, purely legal issue: whether South Carolina law permits a county to contract with its administrative head, *i.e.*, the county administrator.

Thus, other than the most basic facts:

(a) Respondent is a “county” under South Carolina law (undisputed in this appeal);

(b) Respondent operates in the “council-administrator” form of government (undisputed in this appeal);

(c) Appellant, for the relevant period, was Respondent’s County Administrator, that is, administrative head (undisputed in this appeal); and

(d) Appellant and Respondent are disputing, in part, whether South Carolina law permits a county to contract with a person to serve as the county’s administrative head (undisputed because of the existence of this appeal),

the other facts involved in this dispute are largely irrelevant for this Court’s determining Amicus Curiae’s issue.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN INTERPRETING SOUTH CAROLINA LAW TO PROHIBIT A COUNTY FROM CONTRACTING WITH ITS ADMINISTRATIVE HEAD.

- A. *The Home Rule Act's plain language permits a county to contract with its administrative head.*

South Carolina Constitution, Article VIII, section 7, in relevant part, states:

The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties. Alternate forms of government, not to exceed five, shall be established. No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government.

Article VIII continues:

The provisions of this Constitution and *all laws concerning local government shall be liberally construed* in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.

S.C. Const. art. VIII, § 17 (emphasis added); *Hospitality Ass'n of S.C. v. County of Charleston*, 320 S.C. 219, 225 n. 4, 464 S.E.2d 113, 117 n. 4 (1995) (adopting, without gloss or interpretation, Article VIII, section 17's rule of liberal construction).

As required by Article VIII, section 7's constitutional mandate, the General Assembly enacted South Carolina Code Annotated sections 4-9-10 through -1230 ("Home Rule Act"). Act No. 283, 1975 S.C. Acts 692, § 1. *See also, e.g., Neel v. Shealy*, 261 S.C. 266, 276, 199 S.E.2d 542, 547 (1973) (recognizing Article VIII was not self-effecting).¹

¹Prior to Article VIII's adoption, Dillon's Rule applied to county and municipal governance. Dillon's Rule had provided that, as a creature of statute, a local government:

Article VIII, section 17 established the theme for home rule and expressed the mandate for liberal interpretation of home rule powers: a mandate the State's electorate's approved. The General Assembly identified its legislative intent when codifying South Carolina Code Annotated section § 4-9-25:

All counties of the State, *in addition to the powers conferred to their specific form of government, have authority . . . respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.*

(emphasis added). *See Hospitality Ass'n*, 320 S.C. at 225-26, 464 S.E.2d at 117-18 (“Article VIII essentially left it up to the General Assembly to decide what powers local governments should have. Acting under this authority, the General Assembly enacted various statutes regarding the powers of counties and municipalities. [Section 4-9-25 provides a] broad grant of power . . . in addition to the powers conferred to a county's specific form of government under S.C. Code Ann. § 4-9-30, and is limited only by the requirement that the regulation, resolution, or ordinance be consistent with the Constitution and general law of this State.” (internal quotations, citations and alterations omitted)).

In essence, home rule permits a county to act as specifically set out in statute *and*

has only the powers expressly granted it, those which are necessarily or fairly implied in or incident to the express powers, or those powers essential to the accomplishment of its purpose.

Piedmont Pub. Serv. Dist. v. Cowart, 319 S.C. 124, 131, 459 S.E.2d 876, 880 (Ct. App. 1995) (citing *Creech v. S.C. Pub. Serv. Auth.*, 200 S.C. 127, 20 S.E.2d 645 (1942)). Article VIII's adoption abolished Dillon's Rule. *Williams v. Town of Hilton Head*, 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993). As a result, neither Dillon's Rule nor any of the cases applying or relying on Dillon's Rule are relevant to deciding this appeal.

otherwise as the county deems appropriate for, among other reasons, the county's convenience, peace, order, or good government. These powers are interpreted in the context of constitutional and legislative mandates that a county's power to act be liberally construed in favor of the county's action being constitutionally and statutorily permissible. Article VIII's point was to give a county broad discretion in determining how to govern itself. *See, e.g., Duncan v. York County*, 267 S.C. 327, 228 S.E.2d 92 (1976) (discussing home rule as embodied in S.C. Const. art. VIII, § 7 and the Home Rule Act); *Knight v. Salisbury*, 262 S.C. 565, 206 S.E.2d 875 (1974) (recognizing the State's citizens, in enacting S.C. Const. art. VIII, § 7's, intended to provide for broad discretion in local government).

Unlike Dillon's Rule, the Home Rule Act does not curtail a county's authority to act unless the Home Rule Act does so specifically. *Hospitality Ass'n*, 320 S.C. at 219, 464 S.E.2d at 113 (holding, although section 5-7-30 lists various specific powers possessed by municipalities, the broad grant of power stated at section 5-7-30's beginning is not limited by the specifics of that section as required by the liberal rule of construction mandated by Article VIII, section 17).

Under a "council-administrator" form of government, South Carolina Code Annotated section 4-9-620 requires that the county council:

employ an administrator who shall be the administrative head of the county government and shall be responsible for the administration of all the departments of the county government which the council has the authority to control. He shall be *employed* with regard to his *executive* and administrative qualifications only, and need not be a resident of the county at the time of his *employment*. The term of *employment* of the administrator shall be *at the pleasure of the council* and he shall be entitled to such compensation for his services as the council may

determine. The council may, in its discretion, employ the administrator for a definite term.

(emphasis added).

To decide the issue that the Amicus Curiae raises, this Court need not look any further than section 4-9-620's plain language. Section 4-9-620: (a) required Respondent to hire an administrator, (b) required Respondent to compensate that administrator as Respondent determined, and (c) permitted Respondent, "in its discretion, [to] employ the administrator for a definite term." *See also, e.g., State v. Leopard*, 349 S.C. 467, 471, 563 S.E.2d 342, 344 (Ct. App. 2002) ("When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning").

Neither Article VIII nor the Home Rule Act limits that definite term. As a result, any court-imposed gloss or limitation is an impermissible invasion of the General Assembly's province in enacting the statutory language, as written, and Respondent's discretion in determining the appropriate nature of compensation and length of the definite term.

When statutory language is clear, evidencing an unambiguous legislative intent, South Carolina courts must apply the statute as written. *S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (2010); *Media Gen. Commc'n, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); *Ward v. W. Oil Co., Inc.*, 387 S.C. 268, 273, 692 S.E.2d 516, 519 (2010); *King v. Am. Gen. Fin., Inc.*, 386 S.C. 82, 90, 687 S.E.2d 321, 325 (2009); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Moreover, "[a] statute as a whole must receive a

practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *Beattie v. Aiken County Dep’t of Soc. Servs.*, 319 S.C. 449, 452, 462 S.E.2d 276, 278 (1995) (quoting *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992)). “In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.” *McGee v. S.C. Dep’t of Motor Vehicles*, 389 S.C. 540, 543, 698 S.E.2d 841, 843 (Ct. App. 2010) (citing *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)). Further, our courts do not read statutory language in a manner that would render the language without meaning or containing idle verbiage or superfluous language. *Cain v. Nationwide Prop. & Cas. Ins. Co.*, 378 S.C. 25, 661 S.E.2d 349 (2008) (in construing a statute, the appellate court must presume that the General Assembly did not intend to perform a futile thing).

This Court need not devote any time glossing, interpreting, or constructing section 4-9-620: its plain language should conclude the relevant analysis. Respondent, in its discretion, determined to employ Appellant for a definite term with certain compensation. This Court should reverse the Circuit Court’s Order to the extent that Order interprets South Carolina law to prohibit a county from contracting with its administrative head.

B. The Home Rule Act does not specifically prohibit a county from contracting with its administrative head.

Home rule permits a county to act unless the Home Rule Act prohibits the specific action that the county intends to take. *Hospitality Ass’n*, 320 S.C. at 219, 464 S.E.2d at 113. No specific prohibition exists in this case.

When approving Article VIII, section 17, the electorate stated its clear intent: provide each county with the power to govern itself and have that power liberally

construed in favor of the county's authority to act. The General Assembly did likewise when it adopted section 4-9-25. Then, the General Assembly provided a specific legislative authorization for a county to act in *the county's discretion* to employ an administrative for a definite term and compensate that administrator as Respondent determined. S.C. Code Ann. § 4-9-620. The result is clear: a county is entitled to contract with its administrative head.

This Court must reverse the Circuit Court because the Circuit Court improperly embraced an interpretation of section 4-9-620 that would render a legislative (and constitutional) mandate meaningless. *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.”) Further, the Circuit Court’s ruling on this issue is not a “fair interpretation consonant with the purpose, design, and policy of the lawmakers” in adopting the Home Rule Act or of the electorate when amending the South Carolina Constitution to provide for home rule. *See Beattie*, 319 S.C. at 452, 462 S.E.2d at 278.

C. *Because Article VIII, as enabled through the Home Rule Act, abolished Dillon’s Rule, any cases applying or relying on Dillon’s Rule are irrelevant to deciding this appeal.*

As noted above, prior to Article VIII’s adoption, Dillon’s Rule applied to county governance. *Hospitality Ass’n*, 320 S.C. at 225 n. 4, 464 S.E.2d at 117 n. 4 (“Prior to ratification of Article VIII, courts of this State strictly and narrowly construed any grant of local government power under what was commonly referred to as ‘Dillon’s Rule.’”); Article VIII abolished Dillon’s Rule. *Williams*, 311 S.C. at 421, 429 S.E.2d at 804. As a result, reliance on: (a) a pre-home rule case, (b) a case involving a non-home rule governmental entity; or (c) a case that improperly applied Dillon’s Rule to a post-home

rule situation, is misplaced. *See, e.g., Evins v. Richland County Historic Pres. Comm'n*, 341 S.C. 15, 19 & n. 7, 532 S.E.2d 876, 878 & n. 7 (2000) (“Home Rule applies only to counties and municipalities, not special purpose districts. . . . To the extent that *D.W. Flowe* can be read to apply Home Rule to special purpose districts, it is overruled.” (citing *D.W. Flowe & Sons v. Christopher Constr. Co.*, 326 S.C. 17, 482 S.E.2d 558 (1997))); *City of Beaufort v. Beaufort-Jasper County Water & Sewer Auth.*, 325 S.C. 174, 480 S.E.2d 728 (1997) (involving water and sewer authority); *Newman v. McCullough*, 212 S.C. 17, 46 S.E.2d 252 (1948) (involving a pre-home rule situation); *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995), *aff'd*, 324 S.C. 239, 241, 478 S.E.2d 836, 837 (1996).

Even to the extent Dillon’s Rule applies, our Supreme Court recognized an exception to the Dillon’s Rule concept that “an employment contract cannot extend beyond the terms of the members of the local governing body.” *Piedmont Pub. Serv. Dist. v. Cowart*, 324 S.C. at 241, 478 S.E.2d at 837 (citing *Newman*). Our Supreme Court explained:

Newman allows an exception, however, where the enabling legislation clearly authorizes the local governing body to make a contract extending beyond its members’ own terms.

Id. at 241, 478 S.E.2d 836 at 838.

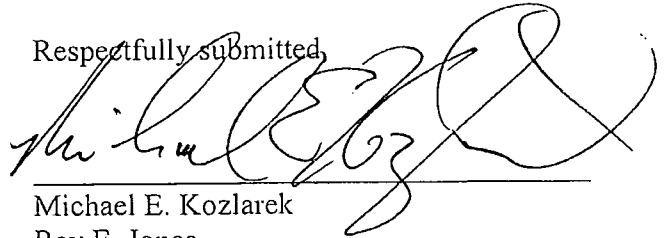
Accordingly, the Circuit Court either improperly resurrected and applied Dillon’s Rule to this dispute or incorrectly ignored the exception to Dillon’s Rule that would have permitted a county to contract with its administrative head according to the plain language of section 4-9-620.

CONCLUSION

For the reasons stated, this Court should reverse the Circuit Court's Order to the extent the Order interprets South Carolina law to prohibit a county from contracting with its administrative head and, if necessary, remand this matter to the Circuit Court for proceedings consistent with this Court's opinion.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael E. Kozlarek", written over a horizontal line.

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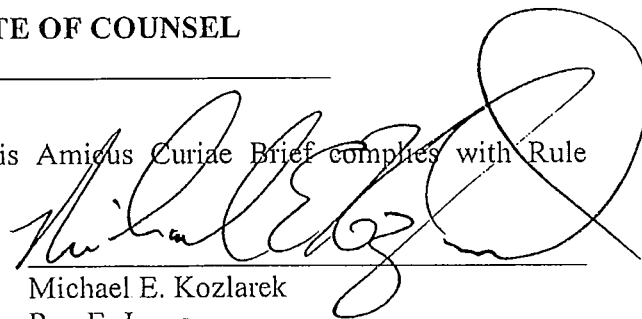
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Amicus Curiae Brief complies with Rule 211(b), SCACR.



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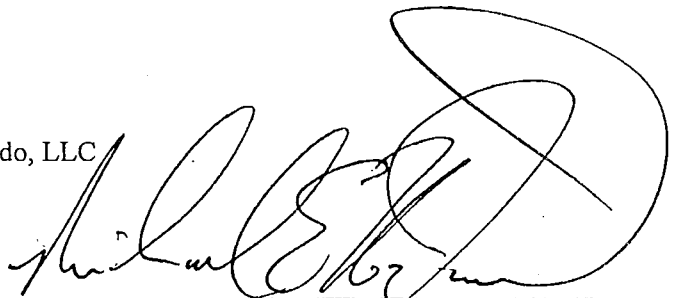
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