

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Honorable J. Ernest Kinard, Jr , Circuit Court Judge

Case No. 2013-CP-27-00322

George M. Hood,

Appellant,

v.

Jasper County,

Respondent.

INITIAL BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. **Did the Circuit Court err in holding Article 1 Section 8 of the South Carolina Constitution does not apply to counties as the cases the Circuit Court relied on pre-date the Home Rule Act?**
- II. **Did the Circuit Court err in holding a county council operating under the Council/Administrator form of government can abolish the deputy county administrator position?**
- III. **Did the Circuit Court err by failing to address the impropriety of Respondent's budget amendment enacted midyear solely for the purpose of abolishing one County job position?**
- IV. **Did the Circuit Court err in holding that under the County/Administrator form of government a County Council can terminate the employment of an employee who reports to the County Administrator simply because that employee is an at-will employee?**

STATEMENT OF THE CASE

Appellant filed an Amended Complaint on December 3, 2014 seeking a declaratory judgment that Respondent County Council violated state law and Article 1, Section 8 of the State Constitution when it terminated Appellant's employment as Deputy County Administrator by defunding his position midyear (Am. Compl.) Appellant asserted Respondent acted in violation of state law and the constitution when it amended the County's approved budget midyear to remove the amount of money equal to Appellant's salary and abolish his job position, thus resulting in his termination. (*Id.*) A bench trial in this matter was scheduled for December 1, 2014 in Beaufort County. (Trial Transcript.) The parties agreed on the record before the bench trial began that the material facts of this matter were not in dispute and the matter should be decided by the Court based on the law. (*Id.* at 5-6.) The parties also agreed to stipulated facts and exhibits. (*Id.*, Stipulation of Facts and Exhibits.) Judge J. Ernest Kinard, Jr. signed an

Order on January 16, 2015 granting Respondent Declaratory Judgment. (Order.) Judge Kinard's Order was filed with the Jasper County Clerk of Court on January 30, 2015. (*Id.*) Appellant filed and served a Notice of Appeal from Judge Kinard's Order on February 19, 2015. (Notice of Appeal.)

STATEMENT OF FACTS

The parties jointly stipulated to the following facts and exhibits (Stipulation of Facts.)

1. Jasper County operates under the council-administrator form of government. Jasper County Council is made up of five members elected at-large from the County.

2. Council voted to approve a budget that included funding for a deputy county administrator position in its Fiscal Year ("FY") 2011-2012 budget.

3. The County's fiscal years begin on July 1 and end on June 30 of the following calendar year.

4. Immediately prior to Council approving funding for a deputy county administrator position in the FY 2011-2012 budget, the County did not have a deputy county administrator. Several years prior to 2011, the County had two deputy county administrators. From approximately 2006 to 2010, the County had four deputy county administrators, each responsible for various departments of the County administration. In approximately 2010, Council changed the titles of the four deputy county administrators to directors. The deputy county administrator position that was funded in the FY 2011-2012 budget was the first such position to have all departments of the County administration report to a single deputy county administrator.

7 Before and after council's vote to fund the deputy county administrator position, there was dissent both on council and among the public over whether the position of Deputy County Administrator was needed. The vote approving the FY 2011-2012 budget was 3 to 2, with Councilmembers Blackshear, Gregory and Drayton for, and Councilmembers Etheridge and Saul against the budget. A copy of the June 20, 2011 council minutes approving the budget is included as exhibit 1.

8. The County posted the deputy county administrator position and sought applicants for the position over the Summer and Fall of 2011.

9 County Administrator Andy Fulghum selected and hired Plaintiff George Hood for the position, notifying him on December 1, 2011 that his employment would begin December 12, 2011. A copy of the letter is included as exhibit 2 to this Stipulation.

10. Council funded the deputy county administrator position in the FY 2012-2013 budget. The FY 2012-2013 budget passed by a vote of 3 to 2, with Councilmembers Blackshear, Gregory and Drayton for, and Councilmembers Etheridge and Saul against it. A copy of the June 28, 2012 council budget workshop and meeting minutes approving the budget are included as exhibit 3.

11. Council elections were held in June 2012. As a result of the elections, two new councilmembers were seated. Councilmembers Blackshear and Gregory were replaced by councilmembers Clark and Johnson. The new councilmembers were seated in January 2013.

12. After the new councilmembers were seated in January 2013, Council passed an ordinance amending its FY 2012-2013 budget to remove funding for and eliminate the deputy county administrator position. The ordinance reads in relevant part:

BE IT ORDAINED by the Jasper County Council in council duly assembled and by the authority of the same:

1. The FY 2012-2013 Budget of Jasper County is hereby amended so as to reduce from Department 051 – Administration – all funding for salary and wages, FICA – Employer, SC Retirement, Medical, for the position of Deputy County Administrator not committed for services provided through the effective date hereof; provided however, nothing herein shall be construed so as to prohibit the Finance Director from disbursing sums authorized to be disbursed pursuant to Section 14 of the Jasper County Personnel Policies and Procedures Manual for the position of Deputy County Administrator.

2. It is hereby ordered that the job description of the Deputy County Administrator shall be and it is stricken [sic] from the approved list of job descriptions for Jasper County.

A copy of the Ordinance is included as exhibit 4 to this Stipulation.

13. The ordinance was approved on January 28, 2013 by a vote of 4 to 1, with Councilmembers Etheridge, Saul, Clark and Johnson voting for, and Councilmember Drayton voting against. Since approving the ordinance, Council has not included funding for the deputy county administrator position in any subsequent fiscal year budget.

14. There was never an ordinance adopting a job description for the deputy county administrator position.

15. The County has an employee Classification and Compensation Plan which states in part:

Administration of the Classification Plan

The primary responsibility for day-to-day administration of the classification plan rests with the Human Resources Director within the limits of these policies and procedures. . . The Human Resources Director will periodically review the entire classification plan for recommending appropriate changes in the allocation of positions.

Allocation of Positions

Whenever a newly authorized position is established or duties of an old position change, the Department Head will submit, in writing, a comprehensive description of the duties of such position to the Human Resources Director. The Human Resources Director may authorize the appropriate classification, the establishment of a new classification, or the abolishment of any existing classification(s).

The County's Classification and Compensation Plan, which is part of the County's Personnel Policy Manual, is attached as exhibit 5.

16. The County has a contract with an outside consulting firm to prepare job descriptions.

17. Each year, after an annual operating budget is prepared by the Administrator, County Council debates the budget, suggests changes to the County Administrator and then votes to adopt the budget that is reflected through an ordinance with three (3) readings. Thereafter, millage is set based on the enacted budget, the amount of taxes needed to be collected to fund the budget is determined, and tax bills are mailed out in early fall with taxes due December 31st of the budget year.

18. There was no budget shortfall during FY 2012-2013.

19. In 2009, when there had been a shortfall, the County implemented a Reduction in Force (RIF) in accordance with the RIF policy that is part of its County Policy Manual, attached hereto as exhibit 6.

20. On January 28, 2013, following Council's approval of the ordinance, the County Administrator notified Plaintiff in writing of the termination of his employment. Plaintiff's employment was not terminated for performance reasons. A copy of the letter

is included as exhibit 7 to this Stipulation.

21. On February 7, 2013, Plaintiff submitted a grievance to the County Administrator seeking “to appeal the decision made by the Jasper County Council on January 28, 2013 to delete the position of Deputy County Administrator and the salary from the 2012-2013 budget.” A copy of Plaintiff’s letter is included as exhibit 8 to this Stipulation.

22. On February 12, 2013, the County Administrator denied Plaintiff’s grievance, writing “The decision to eliminate the position of Deputy County Administrator was made by Jasper County Council and not by me. As such, I do not have the authority to grant the relief that you seek, even if I believed it was justified.” A copy of the County Administrator’s letter is included as exhibit 9 to this Stipulation.

ARGUMENTS

Applicable Standard of Review

The appropriate standard of review to apply in an appeal from a declaratory judgment action is based on the underlying action. *Barnacle Broad, Inc v Baker Broad, Inc*, 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct App. 2000). This underlying action was tried without a jury and the parties stipulated to the facts, so the appellate court’s standard of review can only extend to the correction of errors of law.

I. The Circuit Court erred in holding Article 1 Section 8 of the South Carolina Constitution does not apply to counties as the cases the Circuit Court relied on pre-date the Home Rule Act.

Appellant argued Respondent County Council usurped the County Administrator’s administrative duties and violated the separation of powers doctrine when it voted to amend the County’s budget midyear to decrease the previously adopted

budget by an amount equal to Plaintiff's salary, thus, causing his immediate termination from employment. The cases cited in the Circuit Court's Order do not stand for the proposition that the separation of powers doctrine contained in the State's Constitution is still inapplicable to counties as the cited cases were decided before the Home Rule Act, S.C. Code § 4-9-10 *et seq*

In *Gaud v Walker*, the Supreme Court cited two cases in support of its holding that combining legislative and executive functions in a mayor does not violate the separation of powers clause. 214 S.C. 451, 477-78, 53 S.E. 2d 316, 328 (1949). Both cited cases, *City of Spartanburg v. Parris*, 85 S.C. 227, 67 S.E. 246 (1910) and *City of Greenville v. Pridmore*, 86 S.C. 442, 68 S.E. 636 (1910), addressed the question of whether a mayor who had participated in writing a municipal ordinance which prohibited the sale of whiskey could then act in a judicial capacity at "mayors court" against persons accused of violating this ordinance. There is no longer such a thing as a "mayors court."

The municipal courts in South Carolina are now part of the State's unified judicial system. Article VIII, Section 1 of the S.C. Constitution states, "The General Assembly shall provide by general laws for the organization and classification of municipal corporations." Article V, Section 1 of the S.C. Constitution states, "The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law." The General Assembly has given original and exclusive jurisdiction to municipal courts for all offenses committed within the corporate limits which may be subject to penalties and fines pursuant to S.C. Code § 14-25-5. Similarly, whereas there used to be county courts, they no longer exist. Offenses committed within

counties are tried in magistrate courts and the authority of magistrate courts is also established by the Legislature

Although in 1949, the Court held that the separation of powers clause of the Constitution only applied to the State and State officials, in 1910 and 1949 there was no Home Rule Act. In 1976, the Home Rule Act was enacted which states “[a]ll counties of the State, in addition to the powers conferred pursuant to their specific form of government, have authority to enact regulations, resolutions, and ordinances, *not inconsistent with the Constitution and general law of this State.*” S.C. Code § 4-9-25 (emphasis added). Similarly, S.C. Code § 4-9-30(6), which designated the powers under each alternative form of County government, is expressly limited by the following statement, “...each county government *within the authority granted by the Constitution and subject to the general law of this State* shall have the following powers ” (emphasis added). Therefore, with the passage of the Home Rule Act, the Legislature affirmatively acknowledged the provisions of the State Constitution did apply to Counties.

The Legislature repeatedly stated in the Home Rule Act that counties are subject to the State Constitution. *See, e.g., S C Code § 4-9-40*, “Any county may perform any of its functions...subject always to the general law and the Constitution of this State.” There is simply no language in the Home Rule Act limiting the application of the State Constitution to counties. Had the Legislature wanted to exempt counties from Article 1, Section 8 of the State Constitution, it could have done so. Instead the Legislature stated, “The powers of a county must be liberally construed in favor of a county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.” *S C Code § 4-9-25*. Therefore, though municipalities and counties

may have been excluded from Article 1, Section 8 of the State Constitution prior to the Home Rule Act, after the passage of this law it was clear the Legislature intended counties to be subject to the entire Constitution of the State.

II. The Circuit Court erred in holding a county council operating under the Council/Administrator form of government has authority to abolish the deputy county administrator position.

A. The administration of Jasper County's classification plan rests with the Jasper County Administrator and is implemented through the County Administrator's Human Resources Director, not Respondent County Council.

S C. Code § 4-9-630, entitled "Powers and duties of administrator" states in pertinent part, "The powers and duties of the administrator shall include, but not be limited to, the following: ... (7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council." The County's Handbook includes an employee Classification and Compensation Plan which states in part:

Administration of the Classification Plan

The primary responsibility for day-to-day administration of the classification plan rests with the Human Resources Director within the limits of these policies and procedures. . . . The Human Resources Director will periodically review the entire classification plan for recommending appropriate changes in the allocation of positions.

Allocation of Positions

...The Human Resources Director may authorize the appropriate classification, the establishment of a new classification, *or the abolishment of any existing classification(s)* (emphasis added) (Finding of Fact No. 15, Ex. 5.)

State law and the County's Handbook establish unequivocally that the County

Administrator, not County Council, is responsible for establishing and abolishing personnel positions in the County. This is in accordance with state law as in the County Administrator form of government, a county administrator terminates employees who report to him, not the county council. In this case, the issue before the Circuit Court was whether Respondent County's decision to amend its budget to remove the salary for one particular employee midyear was pretext to effectuate the termination of that employee.

Article 1 of Chapter 9 of Title 4 of the South Carolina Code contains the "general provisions" relating to most of the forms of county government. S.C. Code § 4-9-30 states:

Under each of the alternate forms of government listed in § 4-9-20, except the board of commissioners form provided for in Article 11, each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof: ...*(6) to establish such agencies, departments, boards, commissions and positions in the county as may be necessary and proper to provide services of local concern for public purposes, to prescribe the functions thereof and to regulate, modify, merge or abolish any such agencies, departments, boards, commissions and positions, except as otherwise provided for in this title* (emphasis added).

Respondent Council contends that this statute grants it the authority to establish and abolish the position of deputy county administrator but there is no evidence in the record that the position of deputy county administrator is a position "necessary and proper to provide services of local concern for public purposes" which language expressly modifies the word "position" found in this particular statute.

The clear language of S.C. Code § 4-9-30 indicates it is not addressing all positions in county government, but only the positions that are "necessary and proper to provide services of local concern for public purposes" There is nothing in the record or stipulated facts indicating the position of deputy county administrator is "necessary and

proper to provide services of local concern for public purposes.”

Following Article 1 which contains the general provisions relating to county government, is Article 7 that specifically addresses the County Administrator form of government. “The powers and duties of the administrator shall include, but not be limited to, the following: to serve as the chief administrative officer of the county government....” S.C. Code § 4-9-630.

Further, S.C. Code § 4-9-620 found in Article 7 states, “The council shall 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.” S.C. Code § 4-9-630, entitled “Powers and duties of administrator” states in pertinent part, “The powers and duties of the administrator shall include, but not be limited to, the following: ... (7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council; (8) to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of § 4-9-30 and subject to the appropriation of funds by the council for that purpose.”¹

Subsection (7) of S.C. Code § 4-9-30 states in pertinent part, “This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government.” Plaintiff was not an employee of an elected official or an official appointed by an authority outside county government. It is undisputed Plaintiff was hired by the County Administrator. (Finding of Fact No. 9, Ex. 2.)

¹ As explained herein, funding for Appellant’s position had already been appropriated by Respondent Council in its 2012-2013 fiscal year budget.

The Legislature's intent should be ascertained primarily from the plain language of the statute. *State v Morgan*, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002). The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Sys v. Leatherman*, 309 S.C. 174, 420 S.E.2d 843 (1992); *Morgan*, 352 S.C. at 366, 574 S.E.2d at 206. The court's primary function in interpreting a statute is to ascertain the intent of the General Assembly. *Smith v S.C Ins Co.*, 350 S.C. 82, 87, 564 S.E.2d 358, 361 (Ct. App. 2002). A statute must receive a practical and reasonable interpretation consistent with the "design" of the legislature. *Georgia-Carolina Bail Bonds, Inc v County of Aiken*, 354 S.C. 18, 23, 579 S.E.2d 334, 336 (Ct. App. 2003). Here, it is clear S.C. Code § 4-9-620 expressly grants to the administrator in a County/Administrator form of government the power to hire and fire county employees (except those working for elected officials) and it is, therefore the county administrator, not county council who has the ultimate authority to the hire and fire County employees

In *Poore v Gerrard*, 271 S.C.1, 244 S.E.2d 510 (1978), the Supreme Court held that when a supervisor (in a county supervisor form of government) was granted authority to discharge personnel, even if Council had created and funded the position of County Attorney, only the supervisor could terminate the attorney per S.C. Code § 4-9-30 (7).

The general rule of statutory construction is that a specific statute prevails over a more general one. *Wooten v. South Carolina Dep't of Transp.*, 333 S.C. 464, 511 S.E.2d 355 (1999); *Atlas Food Sys. & Serv, Inc v. Crane*, 319 S.C. 556, 462 S.E.2d 858 (1995); *State v. Taub*, 336, S.C 310, 317, 519 S.E.2d 797, 801 (Ct. App. 1999). "All rules of

statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 379 537 S.E.2d 543, 545-46 (2000); *Kiriakides v United Artists Communications, Inc*, 312 S.C. 271, 275, 440 S.E.2d 364, 365 (1994) ("However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention."); *see also, City of Camden v Brassell*, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997) Here, it is clear that the County Administrator, not Council, had the authority to employ and discharge county personnel, including the deputy county administrator.

B. The County Council cannot indirectly terminate personnel who report to the County Administrator.

There is an old maxim that states "what cannot be done directly, cannot also be done indirectly" Respondent Council cannot do indirectly that which it is prohibited from doing directly, that is to terminate a County employee when the Administrator will not terminate him. The County Administrator selected and hired Appellant for the position, notifying him on December 1, 2011 that his employment would begin December 12, 2011. (Finding of Fact 9, Ex. 2.) Thereafter, there was dissent on Council about whether the position of deputy county administrator was needed (Finding of Fact No.7.) Though the position was funded in the 2012-2013 budget (Finding of Fact No 10), when two new councilmembers were seated in January 2013, apparently acknowledging its inability to terminate Appellant directly, Respondent Council chose to

terminate Appellant by eliminating his position from the budget (Finding of Facts Nos. 11 and 12). The County Administrator did not make the decision to eliminate Appellant's position; County Council did. (Finding of Fact No. 22, Ex. 9.) In effect, Council attempted to do indirectly that which it was prohibited from doing directly.

III. The Circuit Court erred by failing to address the impropriety of Respondent's budget amendment enacted midyear solely for the purpose of abolishing one County job position.

A. As there was no initial ordinance establishing the deputy county administrator's job position, there was no ordinance to amend.

Respondent never enacted an ordinance adopting a job description for the deputy county administrator position. (Finding of Fact No. 14.) Defendant's ordinance purporting to eliminate Plaintiff's position is inconsistent with state law. As explained in *Hospitality Ass'n v County of Charleston*,

[d]etermining if a local ordinance is valid is essentially a two-step process. The first step is to ascertain whether the county or municipality that enacted the ordinance had the power to do so. If no such power existed, the ordinance is invalid and the inquiry ends. 320 S.C. 219, 224, 464 S.E 2d 113, 116 (1995).

Here, the inquiry ends at the first step as no ordinance was ever enacted adopting the position of deputy county administrator so there can be no ordinance to amend by which that position can be abolished. Defendant County Council's ordinance amendment attempting to defund and eliminate Plaintiff's job position is, thus, null and void and without effect

B. Respondent's budget was fully funded for fiscal year 2012-2013 and no money was actually saved by Respondent's action of allegedly eliminating Appellant's salary.

S.C. Code § 4-9-140 establishes the fiscal years for counties as July first through June thirtieth of the following year. This statute requires counties to adopt budgets prior

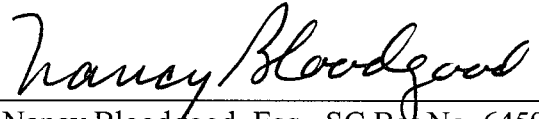
to the beginning of the fiscal year and “identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted.” (*Id.*) Councils must then provide for the “levy and collection of taxes necessary to meet all budget requirements.” (*Id.*) Therefore, once a budget is adopted by ordinance and taxes are levied and collected, that budget is fully funded and the funds collected are obligated. Any action taken midyear to eliminate funding in the budget is simply too late as taxes have already been collected to fund the adopted budget. Therefore, Respondent’s action of amending its budget ordinance midyear to eliminate funding for a single job position was ineffective as the funding for that job position was already obligated.

IV. The Circuit Court erred in holding under the County/Administrator form of government, a County Council can terminate the employment of an employee who reports to the County Administrator simply because that employee is considered an at-will employee.

The County Administrator in a Council/Administrator form of government is the employer of county employees and can terminate any at-will employee, but here, the County Administrator did not terminate Appellant. In response to Appellant’s grievance, the County Administrator replied to Appellant, “The decision to eliminate the position of Deputy County Administrator was made by Jasper County and not by me. As such, I do not have the authority to grant the relief that you seek, even if I believed it was justified.” (emphasis added) (Finding of Fact No. 22, Ex. 9.) Per S.C. Code § 4-9-630(8), the County Administrator is responsible for the employment and discharge of County personnel. Therefore, as the County Administrator was Appellant’s employer with the authority to discharge Appellant, and as the County Administrator did not terminate Appellant’s employment, the Circuit erred in finding Appellant’s at will employment status permitted Respondent County Council to terminate Appellant.

CONCLUSION

For the forgoing reasons, Appellant respectfully requests this Court declare Respondent Council's termination of Appellant's employment null and void and remand the matter for an award of damages and attorney fees.



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