

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. Supreme Court

J.C. Nicholson, Jr. Circuit Court Judge

Case No. 2012-CP-10-5204
Appellate Case No. 2012-212759

Peggy Moseley.....Plaintiff,

v.

Charleston County Republican Party (Lin Bennett, as Chairman);
South Carolina Republican Party (Matt Moore as Executive Director & Chad Connolly as
Chairman); Charleston County Board of Elections and Voter Registration (Joseph L. Debney as
Director and Dan Martin as Chairman); South Carolina State Election Commission (Marci
Andino, as Executive Director & Chris Whitmire as Director of Public Information and
Training); Paul Gawrych; and David Engelman.....Defendants,

of whom Peggy Moseley is the.....Appellant.

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Circuit Court err in finding Paul Gawrych was a “public official” and “candidate for the office” in accordance with S.C. Code Ann. § 8-13-1300(28) such that he is exempt under S.C. Code Ann. § 8-13-1356(A) from the filing requirements of S.C. Code Ann. § 8-13-1356(B) where his SEI on file at the time he filed his SIC relating to his service in public office reported information for the calendar year 2010 and was filed by virtue of his previous position on the Mount Pleasant Town Council?

- II. Did the Circuit Court err in finding Paul Gawrych was a “public official” and “candidate for the office” in accordance with S.C. Code Ann. § 8-13-1300(28) such that he is exempt under S.C. Code Ann. § 8-13-1356(A) from the filing requirements of S.C. Code Ann. § 8-13-1356(B) where he did not hold a position of public office as his term on the Mount Pleasant Town Council ended in November 2011?

STATEMENT OF THE CASE

Appellant Peggy Moseley, the incumbent candidate for Charleston County Auditor, has appealed the Order of the Circuit Court ruling one of her opponents in the Charleston County Republican Primary, Paul Gawrych, was a “public official” and “candidate for the office” in accordance with S.C. Code Ann. § 8-13-1300(28) such that he is exempt under S.C. Code Ann. § 8-13-1356(A) from the filing requirements of S.C. Code Ann. § 8-13-1356(B), as interpreted by this Court in Anderson v. South Carolina Election Commission, 397 S.C. 551, 725 S.E.2d 704 (2012), and Florence County Democratic Party v. Florence County Republican Party, 398 S.C. 124, 727 S.E.2d 418 (2012).

Peggy Moseley filed an election protest with the Charleston County Republican Party, which was denied following a hearing on June 21, 2012. (Election Protest Tr., p. 1; p. 60, lines 18-22). Subsequently, on August 8, 2012, Peggy Moseley filed this action for declaratory judgment, writ of mandamus, and injunction requesting *inter alia* to have Paul Gawrych removed as the Republican Candidate for the Office of Charleston County Auditor. (Verified Complaint). A copy of the transcript of the election protest hearing with exhibits was made an exhibit to the Verified Complaint. (Id. at ¶¶21-30; Election Protest Tr.). Mr. Gawrych was personally served on August 13, 2012. (Aff. of Service).

A hearing was held on August 14, 2012, before the Honorable J.C. Nicholson following which Judge Nicholson decided to bifurcate the proceeding and hear only the issue relating to whether Mr. Gawrych was a “public official” such that he would be exempt under S.C. Code Ann. § 8-13-1356(A) from the filing requirements of S.C. Code Ann. § 8-13-1356(B). (Hearing Tr., p. 22, line 5 – p. 23, line 6). A hearing on this issue was held on August 15, 2012. (Id.). It was agreed by all parties and their counsel of record that there would be no prejudice to Mr.

Gawrych who would be allowed to assert all defenses, including any affirmative defenses, and that if necessary, a hearing would be held at which the parties would be allowed to present evidence relating to the allegations of the Complaint and any defenses asserted by Mr. Gawrych. At the hearing, the transcript of the election protest hearing with accompanying exhibits was made a part of the record without objection. (Hearing Tr., p. 34, line 25 – p. 36, line 25; Order, p. 3).

By Order filed August 16, 2012, Judge Nicholson found that Mr. Gawrych was a “public official” and that he was therefore exempt under S.C. Code Ann. § 8-13-1356(A) from the filing requirements of S.C. Code Ann. § 8-13-1356(B). (Order). For this reason, Mr. Gawrych was found to be a qualified Republican Party candidate for the Office of Charleston County Auditor. (Id. at 8). In addition, Judge Nicholson denied Ms. Moseley’s request for injunctive relief. (Id.).

On August 20, 2012, Ms. Moseley appealed to this Court pursuant to Rule 203(d)(1)(A)(iv), SCACR, and S.C. Code Ann. § 14-8-200(b). Ms. Moseley also moved for this appeal to be considered on an expedited basis. That motion was granted by Order of this Court on August 21, 2012.

STATEMENT OF THE FACTS

This case arises from the certification of non-incumbent Republican candidates, including Mr. Paul Gawrych, as the Charleston County Republican Party (“CCRP”) nominees for the Office of Charleston County Auditor in the June 12, 2012 Republican primary election. Ms. Moseley is the current Charleston County Auditor, and was the incumbent candidate in the Charleston County Republican Primary. (Verified Complaint, ¶ 2; Moseley SIC; Election Protest Tr., p. 18, line 22 – p. 19, line 2). Mr. Paul Gawrych is seeking election to the Office of Charleston County Auditor. He was a non-incumbent candidate in the Charleston County Republican Primary. (Gawrych SIC; Gawrych SEI dated April 5, 2011; Gawrych SEI dated March 26, 2012). Mr. David Engelman was also a non-incumbent candidate for this office in the Charleston County Republican Primary (Engelman SEI dated March 14, 2012); however, his candidacy is not an issue for purposes of this appeal. (See Hearing Tr., p. 24, line 23 – p. 25, line 12).

The partisan candidate filing period began on March 16, 2012, and ended on March 30, 2012. Ms. Moseley submitted her filing paperwork with the CCRP on March 28, 2012. (Election Protest Tr., p. 17, line 4 – p. 18, line 10).

Mr. Gawrych submitted his filing paperwork to the CCRP, including his Statement of Intention of Candidacy – Partisan (“SIC”), on March 29, 2012. (Election Protest Tr., p. 11, line 13 – p. 13, line 10). At the time Mr. Gawrych filed his paperwork with the CCRP, he had two Statements of Economic Interest (“SEI”) on file with the South Carolina State Ethics Commission. (Election Protest Tr., p. 30, line 15 – p. 31, line 1). The first SEI, filed April 5, 2011, relates to Mr. Gawrych’s position on the Mount Pleasant Town Council. Mr. Gawrych left that office in November of 2011. (Election Protest Tr., p. 29, line 16 – p. 30, line 9; Gawrych SEI

dated April 5, 2011). The second SEI, filed March 26, 2012, relates to his candidacy for the Office of Charleston County Auditor. (Gawrych SEI dated March 26, 2012). The filing paperwork Mr. Gawrych submitted to the CCRP did not include a paper copy of either of Mr. Gawrych's SEIs. Instead, it included a confirmation number for the SEI filed March 26, 2012. (Election Protest Tr., p. 11, line 13 – p. 12, line 5; p. 13, lines 7-18; p. 29, lines 2-15; Order, p. 4). It is undisputed that Mr. Gawrych did not file a paper copy of his SEI at the same time and with the same person with whom he filed his SIC as a Republican candidate for Charleston County Auditor. (Order, p. 4).

After the filing period, on May 2, 2012, the South Carolina Supreme Court issued its decision in Anderson, firmly ruling non-exempt candidates seeking nomination for office in a political party primary must have filed a paper copy of a SEI at the same time and with the same official with whom the individual filed a SIC. Anderson also held this statutory requirement could not be satisfied by filing an SEI electronically with the South Carolina State Ethics Commission. The Court ordered the political parties to remove any non-incumbent candidate who had not precisely complied with the statute. On June 5, 2012, this Court issued its decision in Florence County, finding that S.C. Code Ann. § 8-13-1356 requires that a candidate must simultaneously file a copy of an SEI with an SIC unless the candidate already holds the office and has an SEI on file with the appropriate supervisory office. Following Anderson and Florence County, the CCRP filed a list of only those non-exempt candidates who simultaneously filed an SEI and an SIC as required by § 8-13-1356(B). Mr. Garwych's name was included on both lists submitted by the CCRP. (Election Protest Tr., p. 19, line 16 – p. 22, line 22).

The primary election was held on June 12, 2012. Mr. Garwych was declared the winner. The incumbent candidate Ms. Moseley received the second most votes. On June 18, 2012, Ms.

Moseley filed a protest pursuant to S.C. Code Ann. § 7-17-520, protesting the results of the election on the basis that Ms. Moseley's opponents in the primary were non-exempt candidates who failed to comply with S.C. Code § 8-13-1356, Anderson, and Florence County. (See Election Protest Tr.; Order, p. 3). Following a hearing on June 21, 2012, Ms. Moseley's protest was denied. (Election Protest Tr., p. 1; p. 60, lines 18-22).

A hearing was held on August 14, 2012, before the Honorable J.C. Nicholson following which Judge Nicholson decided to bifurcate the proceeding and hear only the issue relating to whether Mr. Gawrych was a "public official" such that he is exempt under S.C. Code Ann. § 8-13-1356(A) from the filing requirements of S.C. Code Ann. § 8-13-1356(B). (Hearing Tr., p. 22, line 5 – p. 23, line 6). A hearing on this issue was held prior to 12:00 p.m. on August 15, 2012. (Id.). At the hearing, Ms. Moseley argued Mr. Gawrych was not a "public official" exempt under S.C. Code Ann. § 8-13-1356(A) from the requirements of S.C. Code Ann. § 8-13-1356(B) because (1) Mr. Gawrych was not a candidate holding "the office" with a current SEI on file, with "the office" being the Charleston County Auditor; and (2) Mr. Gawrych had not held a position of public office since November 2011. (See e.g., Hearing Tr., p. 29, line 1 – p. 33, line 10). Mr. Gawrych contended he was a public official with a current SEI on file by reason of his prior service on the Mount Pleasant Town Council and had two SEIs on file with the South Carolina State Ethics Commission. (See e.g., Hearing Tr., p. 38, line 6 – p. 48, line 2). In its August 16, 2012 Order, the Circuit Court found Mr. Gawrych was a public official at the time he filed his SIC because he previously served on Mount Pleasant Town Council and was a candidate for office. (Order, pp. 4-5, 7-8). Therefore, the Court found that Mr. Gawrych was exempt under S.C. Code Ann. § 8-13-1356(A) from the filing requirements of S.C. Code Ann. § 8-13-1356(B) and the qualified candidate for the Republican Party nominee for the Office of

Charleston County Auditor. (Id. at 8). The Circuit Court also denied Ms. Moseley's request for injunctive relief. (Id.).

This appeal follows.

STANDARD OF REVIEW

A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. Felts v. Richland Cnty., 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). “Questions of statutory interpretation are questions of law, which [the appellate court is] free to decide without any deference to the court below.” CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011); see also City of Rock Hill v. Harris, 391 S.C. 149, 152, 705 S.E.2d 53, 54 (2011); Charleston Cnty. Parks and Recreation Comm’n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). In actions at law tried without a jury, the appellate court may overturn the trial court’s factual findings if they are determined to be without evidence that reasonably supports those findings. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

A request for injunctive relief is equitable in nature. Miller v. Borg-Warner Acceptance Corp., 279 S.C. 90, 302 S.E.2d 340 (1983). In an action in equity, tried by a judge alone, the appellate court may not only correct errors of law, but has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. Townes Assocs., Ltd., 266 S.C. at 86, 221 S.E.2d at 775.

ARGUMENT

The issues before this Court are entirely questions of statutory interpretation. “Questions of statutory interpretation are questions of law, which [an appellate court is] free to decide without any deference to the court below.” Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) (quoting CFRE, LLC, 395 S.C. at 74, 716 S.E.2d at 881). It is well-established that “[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Id., 725 S.E.2d at 695. (quoting Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Id., 725 S.E.2d at 695 (quoting Hodges, 341 S.C. at 85, 533 S.E.2d at 581); see also Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense, 380 S.C. 219, 670 S.E.2d 371 (2008) (in construing a statute, this Court will reject an interpretation which leads to an absurd result that could not have been intended by the General Assembly); Gordon v. Phillips Utils., Inc., 362 S.C. 403, 608 S.E.2d 425 (2005) (it is presumed that the General Assembly intended to accomplish something by its choice of words and would not do a futile thing); Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196 (2002) (this Court must presume the General Assembly did not intend a futile act, but rather intended its statutes to accomplish something); Hinton v. S.C. Dep't of Probation, Parole and Pardon Servs., 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004) (the Court should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless). Thus, the courts must follow the plain and unambiguous language in a statute and have “no right to impose another meaning.” Id. at 535-36, 725 S.E.2d at 695 (quoting Hodges, 341 S.C. at 85, 533 S.E.2d at 581). It is only when applying the words literally leads to a result so patently

absurd that the General Assembly could not have intended it that courts look beyond the statute's plain language. *Id.* at 536, 725 S.E.2d at 695-96 (citing Cabiness v. Town of James Island, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011)).

South Carolina Code Ann. § 8-13-1356, regarding the filing of SEIs by candidates for public office, states in pertinent part:

(A) This section does not apply to a public official who has a current disclosure statement on file with the appropriate supervisory office pursuant to Sections 8-13-1110 or 8-13-1140.

(B) A candidate must file a statement of economic interests for the preceding calendar year at the same time and with the same official with whom the candidate files a declaration of candidacy or petition for nomination.

“Public official” is defined as “an elected or appointed official of the State, a county, a municipality or a political subdivision thereof, including candidates for the office.” S.C. Code Ann. § 8-13-1300(28). This definition does not include former office holders. The plain language of the statute requires a candidate to simultaneously file a copy of an SEI with an SIC unless the candidate already holds *the* office and has an SEI on file with the appropriate supervisory office. See Florence Cnty. Democratic Party v. Florence Cnty. Republican Party, 398 S.C. 124, 128, 727 S.E.2d 418, 420-21 (2012); Anderson v. S.C. Election Comm’n, 397 S.C. 551, 725 S.E.2d 704 (2012). Nonetheless, Paul Gawrych contends, and the Circuit Court found, Mr. Gawrych is exempt from the filing requirements of S.C. Code Ann. § 8-13-1356(B) because he was a public official with a current disclosure statement on file; however, Mr. Gawrych did not hold *the* office, or any public office, at the time he filed his SIC. Accordingly, Mr. Gawrych is not a public official exempt under S.C. Code Ann. § 8-13-1356(A) from the filing requirements of S.C. Code Ann. § 8-13-1356(B).

I. The Circuit Court Erred in Ruling Paul Gawrych Was an Exempt “Public Official” Where His SEI on File at the Time He Filed His SIC Relating to His Service in Public Office Pertained to His Position on Mount Pleasant Town Council

In its Order, the Circuit Court found “Paul Gawrych was a public official at the time he filed his SIC because he previously served on Mount Pleasant Town Council and was a candidate for office.” (Order, p. 7; see also Order, pp. 4-5, 8). In so finding, the Circuit Court misapplied the law as plainly set forth in S.C. Code Ann. § 8-13-1356 and interpreted by this Court in Florence County Democratic Party v. Florence County Republican Party, 398 S.C. 124, 727 S.E.2d 418 (2012), and Anderson v. South Carolina Election Commission, 397 S.C. 551, 725 S.E.2d 704 (2012). Accordingly, the Circuit Court’s ruling that, due to Mr. Gawrych’s prior service on the Mount Pleasant Town Council and his candidacy for office, he was a public official and thus exempt under S.C. Code Ann. § 8-13-1356(B) from the requirements of S.C. Code Ann. § 8-13-1356(A) is an error of law and must be reversed by this Court.

Contrary to the ruling of the Circuit Court, the issue regarding the application of the public official exemption to incumbents seeking reelection to the same office was adequately addressed by this Court in Florence County Democratic Party v. Florence County Republican Party, 398 S.C. 124, 727 S.E.2d 418 (2012). See Smith v. S.C. Election Comm’n, No. 3:12-CV-1543-CHH-CMC-JMC, 2012 WL 2311839, at *11 n.14 (D.S.C. June 18, 2012) (“Florence County appears to indicate that the public official exemption to filing an SEI simultaneously with an SIC applies only to incumbents seeking reelection to the same office.”). In Florence County, the plaintiff political party sought declaratory relief in connection with the alleged improper certification of certain candidates by the defendant political party for the party primary, arguing the candidates were improperly certified because they failed to comply with the requirements of S.C. Code Ann. § 8-13-1356(B). 398 S.C. at 126, 727 S.E.2d at 419. The defendant party argued

the candidates were exempt under S.C. Code Ann. § 8-13-1356(A) from the requirements of S.C. Code Ann. § 8-13-1356(B), contending that because the term “candidate” is included in the definition of “public official,” the candidates who filed their SEIs online prior to filing an SIC with the [defendant party] had SEIs on file and were public officials. Id. at 127, 727 S.E.2d 420. This Court rejected the defendant party’s argument, indicating it would render S.C. Code Ann. § 8-13-1356 meaningless:

To construe the statutes in the manner suggested by the County Republicans would render § 8-13-1356 meaningless. The section sets forth specific provisions for candidates to file an SEI and is separate and distinct from the general statutory provisions for filing an SEI. See Spectre, LLC v. S.C. Dep’t of Health and Env’tl. Control, 386 S.C. 357, 688 S.E.2d 844 (2010) (where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect). Indeed, the provisions of § 8-13-1110 requiring public officials to file an SEI with the appropriate supervisory authority are limited by the phrase “unless otherwise provided.” Section 8-13-1356 provides otherwise. As decided by this Court in Anderson, § 8-13-1356 requires that a candidate must simultaneously file a copy of an SEI with an SIC *unless the candidate already holds the office* and has an SEI on file with the appropriate supervisory office. This Court’s decision in Anderson is clear.

Id. at 128, 727 S.E.2d 420-21 (emphasis added). Accordingly, this Court rejected the interpretation of the statutes urged by the defendant party and held that those candidates who failed to file a paper copy of an SEI along with an SIC were improperly certified as candidates. Id. at 129, 727 S.E.2d 421.

South Carolina Code Ann. § 8-13-1356 must be read in the context of the related statutes. As in Florence County, the interpretation of the statutes urged by Mr. Gawrych and adopted by the Circuit Court fails to give meaning to the language of the statutes and would render S.C. Code Ann. § 8-13-1356 meaningless. The Circuit Court stated that S.C. Code Ann. § 8-13-1356(A) “does not address *the office*,” (Order, p. 8 (emphasis in original)); however, this statement ignores the plain language of S.C. Code Ann. § 8-13-1300(28), which defines “public

official” as including “candidates for *the office*.” Davenport v. City of Rock Hill, 315 S.C. 114, 117, 432 S.E.2d 451, 453 (1993) (“It is never supposed that a single word was inserted in the law of this state without the intention of thereby conveying some meaning.”); see also Bruner v. Smith, 188 S.C. 75, 198 S.E. 184 (1938) (“Of course words may be regarded as surplusage under some circumstances, but generally speaking they should be given effect if possible.”). The interpretation of the statutes urged by Mr. Gawrych and adopted by the Circuit Court would require the replacement of the word “the” from the phrase “the office” with the word “an.” (See Order, p. 7 (“Paul Gawrych was a public official at the time he filed his SIC because he previously served on Mount Pleasant Town Council and was a candidate for office.”)). However, the rules of statutory interpretation do not permit such a substitution. Hartford Acc. & Indem Co. v. Lindsay, 273 S.C. 79, 85, 254 S.E.2d 301, 304 (1979) (“Full effect must be given to each section of a statute, giving words their plain meaning, and, in the absence of ambiguity, words must not be added or taken away.”). Here, even assuming *arguendo* that Mr. Gawrych held an office at the time he filed his SIC, he did not hold *the* Office of the Charleston County Auditor. Therefore, the SEI on file relating to his service in public office did not relate to *the* office as required by the statutes. Accordingly, Mr. Gawrych is not exempt under S.C. Code Ann. § 8-13-1356(A) from the requirements of S.C. Code Ann. § 8-13-1356(B).

In short, the Circuit Court’s ruling that, due to Mr. Gawrych’s prior service on Mount Pleasant Town Council and his candidacy for office, he was a public official exempt under S.C. Code Ann. § 8-13-1356(B) from the requirements of S.C. Code Ann. § 8-13-1356(A) stands in direct contravention of this Court’s decisions in Anderson and Florence County. This Court has clearly stated that, as indicated by the statutes, § 8-13-1356 requires that a candidate must simultaneously file a copy of an SEI with an SIC *unless the candidate already holds the office*

and has an SEI on file with the appropriate supervisory office. To be exempt under S.C. Code Ann. § 8-13-1356(A), Mr. Gawrych must have been an incumbent seeking reelection to the same office. Mr. Gawrych was not an incumbent and did not seek reelection to the same office. Accordingly, the Circuit Court committed an error of law in ruling that Mr. Gawrych is a public official under S.C. Code Ann. § 8-13-300(28).

II. The Circuit Court Erred in Ruling Paul Gawrych Was an Exempt “Public Official” Where He Had Not Served in Public Office Since November 2011

In its Order, addressing Ms. Moseley’s argument that Paul Gawrych was not a public official at the time he filed his SIC as required by S.C. Code Ann. § 8-13-1356(A), the Circuit Court found that “[t]he statute does not delineate a specific time and [Ms. Moseley’s] interpretation would require [the Court] to rewrite the statute,” and thus found Mr. Gawrych’s prior service as a Town Councilman qualified him as a public official. (Order, p. 7). In so finding the Circuit Court misconstrued the law as stated in S.C. Code Ann. §§ 8-13-1300(28) and 8-13-1356, and interpreted by this Court in Florence County Democratic Party v. Florence County Republican Party, 398 S.C. 124, 727 S.E.2d 418 (2012), and Anderson v. South Carolina Election Commission, 397 S.C. 551, 725 S.E.2d 704 (2012). Accordingly, the Circuit Court’s ruling that, due to Mr. Gawrych’s prior service on Mount Pleasant Town Council, he was a public official exempt under S.C. Code Ann. § 8-13-1356(B) from the requirements of S.C. Code Ann. § 8-13-1356(A) is an error of law and must be reversed by this Court.

As discussed in Section I *supra*, this Court has clearly stated that “§ 8–13–1356 requires that a candidate must simultaneously file a copy of an SEI with an SIC *unless the candidate already holds the office* and has an SEI on file with the appropriate supervisory office.” Florence Cnty., 398 S.C. at 128, 727 S.E.2d 421 (emphasis added). Here, Mr. Gawrych did not hold any public office at the time he filed his SIC, much less *the* office of Charleston County Auditor. The

basis for Mr. Gawrych's contention that he was a "public official" is his tenure as a Mount Pleasant Town Councilman; however, at the time Mr. Gawrych filed his SIC, he was not serving on the Mount Pleasant Town Council. (Election Protest Tr., p. 29, line 16 – p. 30, line 9; Gawrych SEI dated April 5, 2011). Rather, his term of service on the Mount Pleasant Town Council had ended in November 2011, approximately four months prior to the date he filed his SIC. (Election Protest Tr., p. 29, line 16 – p. 30, line 9; Gawrych SEI dated April 5, 2011). Therefore, in contravention to § 8–13–1356 as interpreted by this Court in Florence County, not only did Mr. Gawrych not hold *the* office at the time he filed his SIC, he did not hold *any* office at the time he filed his SIC for Charleston County Auditor on March 29, 2012.

Correspondingly, S.C. Code Ann. § 8-13-1300(28) requires that, in order to be a public official, one must be an elected or appointed official of the State, a county, municipality or a political subdivision thereof. Although this statute includes "candidates for the office" in the definition of "public official," as discussed in Section I *supra*, Mr. Gawrych was not a candidate for *the* office. Mr. Gawrych was also not an elected or appointed official at the times he filed his second SEI, dated March 26, 2012, or his SIC on March 29, 2012. (Election Protest Tr., p. 29, line 16 – p. 30, line 9; Gawrych SEI dated April 5, 2011). Instead, his tenure as a Mount Pleasant Town Councilman had ended approximately four months prior. (Election Protest Tr., p. 29, line 16 – p. 30, line 9; Gawrych SEI dated April 5, 2011). Thus, Mr. Gawrych does not meet the definition of "public official" under S.C. Code Ann. § 8-13-1300(28), and as such, cannot qualify as an exempt candidate under S.C. Code Ann. § 8-13-1356(A).

Further, in construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each

one given effect. Anderson, 397 S.C. at 556, 725 S.E.2d at 707. South Carolina Code Ann. § 8-13-1356 states in pertinent part:

(A) This section does not apply to a public official who has a current disclosure statement on file with the appropriate supervisory office pursuant to Sections 8-13-1110 or 8-13-1140.

(B) A candidate must file a statement of economic interests for the preceding calendar year at the same time and with the same official with whom the candidate files a declaration of candidacy or petition for nomination.

Reading Parts A and B of § 8-13-1356 together, it is apparent that the General Assembly intended for a candidate to comply with either § 8-13-1356(A) or (B) at the time he declared his candidacy for a particular office. To read Parts A and B of § 8-13-1356 as anything other than an alternative to the other would be absurd and in contravention to this Court's prior decision in Florence County.

In summary, the Circuit Court's holding that Mr. Gawrych's prior service as a Town Councilman qualified him as a public official exempt under S.C. Code Ann. § 8-13-1356(A) from the requirements of S.C. Code Ann. § 8-13-1356(B) is in contravention to the language of the statutes as well as this Court's decision in Florence County. Although Mr. Gawrych was a public official serving on Mount Pleasant Town Council when he filed his first SEI, dated April 5, 2011, his term on Mount Pleasant Town Council ended in November 2011 and he was therefore not a public official when he filed his second SEI on-line with the State Ethics Commission, dated March 26, 2012, or when he filed his SIC with the CCRP for Charleston County Auditor on March 29, 2012. Accordingly, Mr. Gawrych is not exempt under S.C. Code Ann. § 8-13-1356(A), and the Circuit's holding with respect to Mr. Gawrych's prior service as a Town Councilman constitutes an error of law which must be reversed.


CONCLUSION

Mr. Gawrych was not a “public official” at the time he filed his second SEI, dated March 26, 2012, relating to his candidacy for the office of Auditor of Charleston County. He did not hold *the* office, or any elected or appointed public office. Accordingly, Mr. Gawrych is not exempt under S.C. Code Ann. § 8-13-1356(A) and must comply with the filing requirements of S.C. Code Ann. § 8-13-1356(B). However, it is undisputed that Mr. Gawrych did not file a paper SEI simultaneously with his SIC. Accordingly, Mr. Gawrych was improperly certified as a candidate in the CCRP primary for Charleston County Auditor. As such, Ms. Moseley respectfully requests the Court reverse the decision of the Circuit Court and find that Mr. Gawrych is not a “public official” exempt under S.C. Code Ann. § 8-13-1356(A), that he was required to comply with the filing requirements of S.C. Code Ann. § 8-13-1356(B), and that because he failed to comply with the statutory filing requirements he was ineligible to have been certified as a candidate for the June 12, 2012 Republican Primary for Charleston County Auditor.

Respectfully submitted,

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Columbia, South Carolina
August 29, 2012

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr. Circuit Court Judge

Case No. 2012-CP-10-5204

Peggy Moseley.....Plaintiff,

v.

Charleston County Republican Party (Lin Bennett, as Chairman);
South Carolina Republican Party (Matt Moore as Executive Director & Chad Connolly as
Chairman); Charleston County Board of Elections and Voter Registration (Joseph L. Debney as
Director and Dan Martin as Chairman); South Carolina State Election Commission (Marci
Andino, as Executive Director & Chris Whitmire as Director of Public Information and
Training); Paul Gawrych; and David Engelman.....Defendants,

of whom Peggy Moseley is the.....Appellant.

PROOF OF SERVICE

I hereby certify that I served the Initial Brief of Appellant upon the parties by placing a
copy in the United States mail, postage prepaid, to their counsel of record at the addresses listed
below, on August 29, 2012.

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**PROOF OF SERVICE – INITIAL
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Columbia, South Carolina
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Andino, as Executive Director & Chris Whitmire as Director of Public Information and
Training); Paul Gawrych; and David Engelman.....Defendants,

of whom Peggy Moseley is the.....Appellant.

PROOF OF SERVICE

I hereby certify that I served the Appellant's Designation of Matter to be Included in the
Record on Appeal upon the parties by placing a copy in the United States mail, postage prepaid,
to their counsel of record at the addresses listed below, on August 29, 2012.

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**PROOF OF SERVICE – DESIGNATION
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Columbia, South Carolina
August 29, 2012



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August 29, 2012

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
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AUG 29 2012

S.C. Supreme Court

RE: *Peggy Moseley v. Charleston County Republican Party (Lin Bennett, as Chairman), South Carolina Republican Party (Matt Moore as Executive Director & Chad Connolly as Chairman), Charleston County Board of Elections and Voter Registration (Joseph L. Debney as Director and Dan Martin as Chairman), South Carolina State Election Commission (Marci Andino, as Executive Director & Chris Whitmire as Director of Public Information and Training), Paul Gawrych, and David Engelman*
Case No.: 2012-212759
C&L File No.: 1680-100

Dear Mr. Shearouse:

Please find enclosed for filing the original and one (1) copy of the Initial Brief of Appellant and Appellant's Designation of Matter to be Included in the Record on Appeal, along with the Proof of Service of same for each. Please return the clocked copies to me via my courier.

Thank you for your time and attention. As always, please contact me with any questions or concerns.

Sincerely,

Joel W. Collins, Jr.

JWCjr:lcc
Enclosures

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The Honorable Daniel E. Shearouse
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Page 2

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