

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Shirley C. Robinson, Administrative Law Judge

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Appellate Case No. 2016-002108  
Administrative Law Court Case No. 16-ALJ-07-0082-CC

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A.O. Smith Corporation..... Appellant,

v.

South Carolina Department of Health and Environmental  
Control and Town of McBee..... Respondents.

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TOWN OF MCBEE'S RESPONSE IN OPPOSITION TO MOTION TO STRIKE PORTION  
OF RESPONDENT TOWN OF MCBEE'S DESIGNATION OF MATTER

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January 9, 2017

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Throughout this appeal, A.O. Smith has maintained that Alligator Rural Water and Sewer Company (“Alligator”) is the only entity that can be reasonably relied upon to meet A.O. Smith’s “critical needs for adequate, dependable water supply.” Appellant’s Brief at 2. A.O. Smith argues that the South Carolina Department of Health and Environmental Control failed to recognize this fact in issuing the final approvals closing out the construction permits issued to the Town of McBee (the “Town”) in 2012 and 2014. Those permits allowed the Town to make improvements to a well and water treatment facility.

In its brief and affidavits, the Town has shown that A.O. Smith’s permit appeals are wildly out of time, that its allegations that the Town lacks capacity are refuted by A.O. Smith’s own affidavits, and that Alligator is a corrupt and financially reckless organization from which the Town seeks to disentangle itself with complete justification in public policy and in prudence. The Town has been working with DHEC to that end since at least 2010. The need to so disengage has been the defining issue in Town elections for several election cycles. It is the clearly expressed will of the people of McBee that this disentanglement take place.

Given the competing narratives at the heart of this matter, it is important for the Court to understand the established facts. Accordingly, the Town included a footnote in its return brief that spelled out certain recent events. Specifically, in an apparent effort to moot this and related court proceedings, Alligator’s principal, Mr. Glenn Odom, ran for mayor and in the process, “manipulated and abused the political process in McBee in ways specifically intended and designed to illegally dilute the voting strength of [current Mayor] Campolong supporters. The record reflects that Respondent Odom engaged in improper conduct and committed blatant violations of state election laws for the purpose of diluting the votes of his opponent's supporters.” This is a quote from the official, final and unappealed Order of the McBee

Municipal Election Commission, dated September 20, 2016. The Order contains further details specifically tying the attempt to subvert the democratic processes of the Town to Mr. Odom and employees under his direction.<sup>1</sup> The Town designated the Municipal Election Commission's Order memorializing this election fraud for inclusion in the Record on Appeal for the Court's convenience and ease of reference.

In its Motion to Strike, A.O. Smith argues that including this order in the appellate record is improper, but it fails to give a single reason why this Court cannot take judicial notice of the order. In fact, there is none.

"A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Rule 201(b), SCRE. Furthermore, judicial notice may be taken at any point in a proceeding, including at the appellate stage. *Id.* Rule 201(f). At the appellate level, original judicial notice of facts is allowed and proper when such matters "are indisputable." *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984); *see also Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) ("[A]n appellate court can take judicial notice of something that was not before the trial court if it is indisputable.").

The Town's footnote states in full:

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<sup>1</sup> "Uncontroverted evidence was introduced confirming that a paid employee of the business owned by Respondent Odom witnessed and/or returned absentee ballots for Fifty- two (52) people who cast absentee ballots. Respondent Odom testified that he did not direct his employee to engage in such campaign work, and he also testified that he was unaware his employee was doing such campaign work. Respondent Odom further testified that if his employee did engage in campaign work, she did so on her own time and in an unpaid status. However, based on all of the evidence and the totality of the circumstances, the Commission specifically found that the testimony of Respondent Odom was unreliable and not credible." (R. p. \_\_\_; Order of the McBee Municipal Election Commission (Sept. 20, 2016) at 3.)

The latest episode in the conflict between the Town and Alligator involved an issue when Alligator's principal officer, Mr. Glenn Odom, ran to be elected mayor instead of Mayor Campolong. The ensuing election was overturned due to voter fraud. The McBee Municipal Election Commission found that "[r]espondent Odom manipulated and abused the political process in McBee in ways specifically intended and designed to illegally dilute the voting strength of Campolong supporters. The record reflects that Respondent Odom engaged in improper conduct and committed blatant violations of state election laws for the purpose of diluting the votes of his opponent's supporters." Order of the McBee Municipal Election Commission (Sept. 20, 2016) at 3.) The Court may properly take judicial notice of this Order. Rule 201(b), SCRE (explaining that courts may take judicial notice of facts that are "not subject to reasonable dispute"); *id.* 201(f) ("Judicial notice may be taken at any stage of the proceeding."); *see also State v. Squires*, 311 S.C. 11, 15, 426 S.E.2d 738, 740 (1992) (taking judicial notice "that the infrared spectroscopy process utilized by [an infrared breath-testing device] has gained general acceptance in the scientific community").

Brief of Respondent Town of McBee at 21 n.4. Both of the points raised in this footnote are indisputable: first, that the election was overturned due to voter fraud, and second, that the McBee Municipal Election Commission found that Mr. Odom "blatantly" violated South Carolina's election laws in order to steal the mayoral race.

The Municipal Election Commission's Order verifies both of these points, but Mr. Odom's election fraud arose after the Administrative Law Court had dismissed A.O. Smith's case. As such, the Order could not have been presented to the lower court, but it is consistent with a battery of other information that the Town did submit to the Administrative Law Court regarding A.O. Smith's misplaced reliance on Alligator.

For example, in the Record is the affidavit of John Campolong, Mayor of the Town of McBee. Mayor Campolong's affidavit discusses how Mr. Odom was both the mayor of the Town of McBee and executive director of Alligator at the time the Town signed the agreement to purchase its bulk water from Alligator—a clear case of improper self-dealing. Mayor Campolong's affidavit also details Alligator's grave financial instability, which is also supported

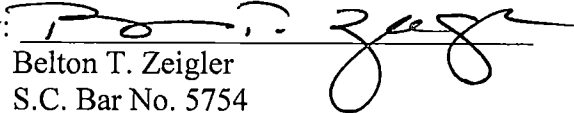
by a report by the accounting firm of Sheheen, Hancock and Godwin, LLP. Finally, Mayor Campolong's affidavit describes how Alligator has refused to provide financial data necessary to support increased rates it has attempted to impose on the Town.

Mr. Odom's fraudulent electoral behavior is consistent with Alligator's past practices. In light of A.O. Smith's heavy reliance on Alligator and Mr. Odom in its appellate arguments, the Court is certainly entitled to know about this misconduct when it evaluates this matter. Because Mr. Odom's fraud is memorialized in a public order of which the Court may take judicial notice, that order is properly included in the Record on Appeal. The Court should deny A.O. Smith's Motion to Strike Portion of Respondent Town of McBee's Designation of Matter accordingly.

*Signature Page Attached*

Respectfully submitted,

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PROOF OF SERVICE

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I, the undersigned Legal Assistant of the law offices of Womble Carlyle Sandridge & Rice, LLP, attorneys for Appellant, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same to the following address(es):

PLEADING: TOWN OF MCBEE'S RESPONSE IN OPPOSITION TO  
MOTION TO STRIKE PORTION OF RESPONDENT TOWN OF  
MCBEE'S DESIGNATION OF MATTER

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Debbie Johnson

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January 9, 2017

The South Carolina Court of Appeals  
The Honorable Jenny Abbott Kitchings  
1220 Senate Street  
Columbia, SC 29201

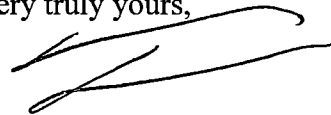
Re: A.O. Smith Corporation v. South Carolina Department of Health and Environmental  
Control and Town of McBee  
Appellate Case No. 2016-002108

Dear Ms. Kitchings:

Enclosed for filing in the case captioned above, please find the Town of McBee's  
Response in Opposition to Motion to Strike Portion of Respondent Town of McBee's  
Designation of Matter. Please file the original and return a clocked copy via our courier.

With kind regards, I remain

Very truly yours,



M. Todd Carroll

MTC/dj  
Enclosures

cc: W. Thomas Lavender  
Joan W. Hartley  
Stephen P. Hightower

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