

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Honorable J.C. Nicholson, Jr., Circuit Court Judge

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Case No. 2015-CP-10-1901

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**RECEIVED**

MAR 21 2017

**S.C. SUPREME COURT**

David Engelman, Betty S. Engelman, and Robert E. Welch, Jr., on behalf of themselves and others similarly situated, and Charleston County, . . . . . Plaintiffs/Respondents,

v.

Town of James Island, South Carolina, . . . . . Defendant/Appellant.

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**RESPONDENT CHARLESTON COUNTY'S MOTION TO DISMISS  
APPELLANT TOWN OF JAMES ISLAND'S NOTICE OF APPEAL**

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Respondent Charleston County moves to dismiss Appellant Town of James Island's Notice of Appeal pursuant to Rule 240, SCACR on the grounds that the appeal does not present the type of case that is directly appealable to this Court pursuant to Rule 203(d)(1)(A)(iii), SCACR.

In support of this motion, Respondent would respectfully show as follows:

1. Appellant filed a Notice of Appeal of the Order of the Honorable J.C. Nicholson, Jr. Circuit Court Judge *sua sponte* granting temporary injunction filed on July 7, 2016, and subsequently modified by Orders on August 18, 2016 and February 8, 2017.
2. The issue before Judge Nicholson does not involve the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or

hospital bonds of the Appellant Town or any other indebtedness authorized by Article X of the South Carolina Constitution.

3. Instead, the issue before Judge Nicholson involves a dispute between Respondents citizens/taxpayers of the Town of James Island and Appellant Town regarding the expenditure of the Town's portion of the local option sales tax funds pursuant to S.C. Code Ann. § 4-10-10 et seq. See July 7, 2016 Order and Appellant's Petition for Writ of Extraordinary Relief, Including A Writ of Certiorari to the Circuit Court and Request for Stay.

4. Pursuant to Rule 224(c), SCACR, Respondent submits the attached Memorandum of Law in Support of its Motion to Dismiss.

Wherefore, Respondent Charleston County moves this Court to issue its order dismissing Appellant's Notice of Appeal and granting Respondent such other and further relief as the Court deems just and proper.

Respectfully submitted,

**CHARLESTON COUNTY**



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**JOSEPH DAWSON, III**, County Attorney  
**BERNARD E. FERRARA, JR.**, Deputy County Attorney  
**JOHANNA S. GARDNER**, Assistant County Attorney  
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**ATTORNEYS FOR RESPONDENT**

Charleston, South Carolina  
March 20, 2017

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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and others similarly situated, and Charleston County, ..... Plaintiffs/Respondents,

v.

Town of James Island, South Carolina, ..... Defendant/Appellant.

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**RESPONDENT CHARLESTON COUNTY'S MEMORANDUM OF LAW  
IN SUPPORT OF ITS MOTION TO DISMISS  
APPELLANT TOWN OF JAMES ISLAND'S NOTICE OF APPEAL**

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Joseph Dawson, III, County Attorney  
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Attorneys for Respondent

Charleston, South Carolina  
March 20, 2017

Respondent has moved this Court for an order dismissing Appellant's Notice of Appeal pursuant to Rules 203 and 240, SCACR. In support of its Motion, Respondent submits this Memorandum of Law in Support of its Motion to Dismiss.

### ARGUMENT

**I. The Court should dismiss Appellant's Notice of Appeal because the issue on appeal does not present the type of case that is directly appealable to this Court pursuant to Rule 203(d)(1)(A)(iii), SCACR.**

Appellant filed a Notice of Appeal of the Order of the Honorable J.C. Nicholson, Jr. Circuit Court Judge *sua sponte* granting temporary injunction filed on July 7, 2016, and subsequently modified by orders on August 18, 2016 and February 8, 2017. Respondent does not contend that Appellant cannot appeal an order granting an injunction or temporary injunction directly to the Supreme Court. However, Respondent contends that while Appellant's Notice of Appeal is based on an appeal of an order granting temporary injunction, the distinction is that this is not the type of case contemplated for direct appeal to the Supreme Court pursuant to Rule 203, SCACR.

The issue of Appellant's Notice of Appeal involves a dispute between Respondents citizens/taxpayers of the Town of James Island and Appellant Town regarding the expenditure of the Town's portion of the local option sales tax funds, particularly the Property Tax Credit Fund, pursuant to S.C. Code Ann. § 4-10-10 et seq., rather than the authorization or issuance of bonded indebtedness as contemplated in Rule 203. Appellant's Notice of Appeal from the circuit court is not the type of case that Rule 203 allows to be filed directly with the Supreme Court.

Rule 203 provides in part:

(d) Filing.

(1) *Appeals from the Circuit Court, Family Court and Probate Court.*

(A) Where to File. The notice of appeal shall be filed with the clerk of the lower court and with the Clerk of the Supreme Court in the following cases:

...

(iii) Any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the State, its agencies, political subdivisions, public service districts, counties, and municipalities, or any other indebtedness now or hereafter authorized by Article X of the Constitution of this State.

...

In all other cases, the notice of appeal shall be filed with the clerk of the lower court and the Clerk of the Court of Appeals.

(Rule 203, SCACR).

Appellant seeks this Court's review of a *sua sponte* temporary injunction issued by Judge Nicholson which prohibits the "spending, crediting, dissipating, or otherwise obligating for expenditures of Local Option Sales Tax (LOST) funds yet to be acquired [by the Town from SCDOR] or currently held [by the Town] until a final resolution of this action." See July 7, 2016 Order and Appellant's Petition for Writ of Extraordinary Relief, Including A Writ of Certiorari to the Circuit Court and Request for Stay, p. 1. However, Appellant does not connect the issue before the circuit court involving the construction of the local option sales tax statute with the authorization or issuance of bonded indebtedness and issuance of bonds of the State, County, or Town pertinent to Rule 203 in either of its Notice of Appeal or Petition.

“The general obligation debt aspect of bonded indebtedness, as illustrated by the emphasized language in Article X, Section 14, may thus be understood as indebtedness lawfully contracted for governmental purposes and ultimately secured by taxes on property within the political entity.” Beaufort v. Griffin, 275 S.C. 603, 605, 274 S.E.2d 301, 303 (1981). “Municipalities may incur two types of bonded indebtedness: (1) general obligation bonds, secured by the full faith, credit and taxing power of the municipality; and (2) indebtedness payable from a particular revenue-producing project or special source authorized by Article X, Section 14(1) of the South Carolina Constitution.” Wolper v. City Council of Charleston, 287 S.C. 209, 215, 336 S.E.2d 871, 875 (1985), citing Beaufort v. Griffin, 275 S.C. 603 274 S.E.2d 301 (1981).

Appellant does not claim an obligation for bonded indebtedness nor has it pledged its full, faith and credit and taxing power for any identified bonded indebtedness.<sup>1</sup> Instead, in its Petition for Writ, Appellant claims “it is important to determine the parties’ rights and obligations as to the Property Tax Credit Fund revenues currently held by the Town for the 2012, 2013 and 2014 tax years (and thereafter if in question), and it is equally important to determine whether Plaintiffs (and others similarly situated) are limited to the administrative remedies and procedures contained in the Act, including its prohibition against class actions.” (Petition, p. 9).

However, Rule 203(d)(1)(A)(iii) contemplates cases involving matters associated with the authorization of bonded indebtedness and issuance of bonds (general obligation,

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<sup>1</sup> There are no facts or any legal basis claimed by Appellant that either the expenditures of the local option sales tax funds currently held by the Town for previous tax years, the prohibition against class actions, or the applicability of the South Carolina Revenue Procedures Act to the issues stated in the Notice of Appeal and Petition are disputed matters related to the authorization or issuance of bonded indebtedness.

revenue, institutional, industrial, or hospital bonds). The Rule further allows cases involving any other indebtedness authorized by Article X of the South Carolina Constitution. Article X, titled "Finance, Taxation, and Bonded Debt", regulates taxation and assessment of real and personal property, classes of property, properties that are exempt from taxation, the establishment of the method of valuation for assessment purposes, limitations on annual expenditures of state government and annual budgets of political subdivisions and school districts, pledging of credit of the State and political subdivisions, and bonded indebtedness of the State, political subdivisions and school districts.

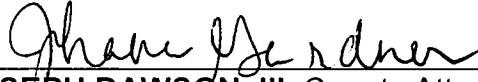
Again, nowhere in its Notice of Appeal or Petition does Appellant establish that the issue of expenditures of the local option sales tax funds or property tax credits available under the local option sales tax statute is controlled by any of the various sections of Article X of the South Carolina Constitution. "Ordinarily, the Court will refuse to address a constitutional issue which is not properly raised below." Wolper v. City Council of Charleston, 287 S.C. 209, 215, 336 S.E.2d 871, 875 (1985) citing Bobo Bros., Inc. v. S.C. Tax Comm'n, 271 S.C. 18, 244 S.E. (2d) 519 (1978). Appellant does not claim a constitutional issue regarding bond indebtedness with the local option sales tax.

### **CONCLUSION**

For the reasons set forth above, Appellant's Notice of Appeal should be dismissed.

Respectfully submitted,

**CHARLESTON COUNTY**



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**JOSEPH DAWSON, III**, County Attorney  
**BERNARD E. FERRARA, JR.**, Deputy County Attorney  
**JOHANNA S. GARDNER**, Assistant County Attorney  
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**ATTORNEYS FOR RESPONDENT**

Charleston, South Carolina  
March 20, 2017

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**PROOF OF SERVICE**

I certify that I served a filed copy of the **Respondent Charleston County's Motion to Dismiss Appellant Town of James Island's Notice of Appeal and Respondent Charleston County's Return to Appellant Town of James Island's Petition for Writ of Extraordinary Relief, Including a Writ of Certiorari to the Circuit Court and Request for Stay** by depositing a copy of the same in the United States Mail, postage prepaid, on March 20, 2017, to all counsel of record addressed as follows:

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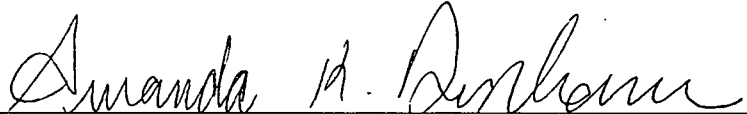
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