THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2016-CP-40-3102
Appellate Case No. 2016-001839

Richland County, South Carolina, ... Appellant/Respondent,

Central Midlands Regional Transit Authority, ... Respondent,

v.

The South Carolina Department of Revenue, and
Rick Reames, III in his Official capacity as its Director .... Respondents/Appellants,

v.

Richland PDT, a joint venture consisting of M.B. Kahn
Construction Co., Inc., ICA Engineering, Inc., and Brownstone
Construction Group, LLC, as a unit and individually, ... Third-Party Defendants.

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ARGUMENTS

The SCDOR and its Director (collectively "the SCDOR") file the following Reply Brief to jointly address the Briefs of Respondents filed by both the County and CMRTA.

I. SCDOR'S ARGUMENTS ARE PRESERVED FOR REVIEW

The County maintains that the SCDOR's challenge to the circuit court's ruling regarding the existence of a specific legal right to receive the Penny Tax Revenues collected in the County is "conclusory" and should be deemed "abandoned." (County Resp. Br. p 21 and n. 9). The Court should reject this argument.

The SCDOR pointed to specific provisions of the Code, discussed earlier in its brief, that the SCDOR contended and previously argued the circuit court ignored and that grant the SCDOR broad administrative authority over tax matters. (SCDOR Brief, p. 18). The two cases the County cites, *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993) and *Glasscock, Inc. v. USF&G*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001), are meaningfully distinct from this case.

In *Fields*, the Court of Appeals deemed abandoned Appellant's "one sentence, conclusory argument without supporting authority." *Fields*, at n. 3, 439 S.E.2d at 285 n. 3. In *Glasscock*, the Court of Appeals deemed abandoned an argument it noted the appellant "addressed solely in a footnote contained within the text of the argument relating to [another issue on appeal]." *Glasscock*, at 81, 557 S.E.2d at 691. In each situation, then, the appellants made minimal substantive legal arguments with citation to *no* authority.

In this case, the SCDOR had discussed previously in the brief the specific legal right it enjoyed pursuant to the Code Sections. (SCDOR App. Br. pp. 7, 14, 15). There was no

reason to reiterate those portions of the brief at that point in the brief.

The appellate courts usually apply the "conclusory argument" rule where the statements in the brief are short and lack any citation to authority. *See, e.g.*, *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013) (finding argument abandoned where appellant cited to statute but did not otherwise discuss the section; argument is effectively abandoned if appellant's brief treats it in a conclusory manner); *Mead v. Beaufort County Assessor*, 419 S.C. 125, 796 S.E.2d 165 (Ct. App. 2016) (short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review). The SCDOR pointed to the relevant statutes (previously discussed) as well as case authority governing the construction of those sections. The Court should reject the County's invitation to deem the argument to be abandoned.

The County also contends the SCDOR did not challenge the circuit court's ruling that "[t]he Transportation Act does not provide an administrative remedy for the County to challenge the recommendations of the SCDOR and the Director." (County Resp. Br. p. 22). This is not correct. The SCDOR specifically challenged this very ruling in its brief. (SCDOR App. Br. pp. 18-19).

The Court should reject the County's contentions that the arguments the SCDOR and the Director make are not preserved for review.

II. THE WORD "OPERATING" DOES NOT APPEAR IN THE TEXT OF THE STATUTE

The County asserts that the argument the SCDOR and the Director make that the word "operating" does not appear in the statute "is not correct." (County Resp. Br. p. 30). The County points to several derivations of the word "operate" as proof that the term "operating" as used in the preamble does, in fact, exist in the text of the statute. This argument is misleading.

The Act's preamble states that counties are "authorized to establish transportation authorities and to finance ... the cost of acquiring, designing, constructing, equipping and *operating* highways, roads, streets, and bridges, and other transportation-related projects...." Thus, the term "operating" in the preamble modifies "transportation-related projects" including "roads, streets, and bridges."

The County points to variations of the word "operate" that appear in the text of the statute as proof that the word "operating" appears in the "effective part" of the statute. (County's Resp. Br. p. 30). The County reads language into these various subsections to justify importing the preamble language into the text of the statute. The Court should not be persuaded by this argument.

An inspection of the precise language of these subsections is instructive. The Statute first provides:

> To accomplish the purposes of this chapter, counties are empowered to impose one but not both of the following sources of revenue: a sales and use tax as provided in item (A) or to authorize an authority established by the county governing body as provided in Section 4-37-10 to use and impose tolls in accordance with the provisions of item (B):
>
> (A) Subject to the requirements of this section, the governing body of a

> county may impose by ordinance a sales and use tax in an amount not to exceed one percent within its jurisdiction for a single project or for multiple projects and for a specific period of time to collect a limited amount of money.
>
> (1) The governing body of a county may vote to impose the tax authorized by this section, subject to a referendum, by enacting an ordinance. The ordinance must specify:
>
> > (a) the project or projects and a description of the project or projects for which the proceeds of the tax are to be used, which may include projects located within or without, or both within and without, the boundaries of the county imposing the tax and which may include:
> >
> > > (i) highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects;
> > >
> > > (ii) jointly-**operated** projects, of the type specified in sub-subitem (i), of the county and South Carolina Department of Transportation; or
> > >
> > > (iii) projects, of the type specified in sub-subitem (i), **operated** by the county or jointly-**operated** projects of the county and other governmental entities;
>
> * * *

S.C. Code Ann. § 4-37-30 (A) (Supp. 2016) (bold added). The use of the phrase "jointly-operated" is not a reference to "operational" or "administrative" costs for purposes of revenue expenditures. It is a reference to which entity is already operating the project – the County alone or jointly with another governmental entity. This is apparent by the phrase in subpart (1)(a) that requires the governing body to specify "the project or projects and a description of the project or projects for which the proceeds of the tax are to be used,"

including projects "within and without" the county's boundaries. The Court should reject the County's reference to these specific uses of the word "operated" as supporting a finding that it may use the revenues to cover "operational expenses," such as for public relations, mentor programs, and other various expenditures unrelated to capital expenditures.

The Act next provides:

> (B)(1)(a) This item (B) is intended to provide an additional and alternative method, subject to a referendum, for the provision of and financing for highways, roads, streets, and bridges, and other transportation-related projects, either alone or in partnership with other governmental entities to the end that these transportation-related projects may be undertaken in such manner as may best be calculated to expedite relief of hazardous and congested traffic conditions on the highways in the State, including the authorization for turnpike projects undertaken by the Department of Transportation in Article 9 of Chapter 5 of Title 57. The Department of Transportation is prohibited from removing funds previously dedicated to the project or designated county area under its allocation formula based upon the fact that a county has passed a referendum to impose the tax provided in this chapter.
>
> > (b) Subject to the requirements of this item (B), the governing body of a county may by ordinance authorize, subject to a referendum, an authority to use tolls to finance projects authorized by this section.
> >
> > (c) The ordinance enacted by the governing body of the county to authorize an authority to use tolls must specify:
> >
> > > (i) the purpose for which the toll revenues are to be used which may include jointly-**operated** projects between the authority and the South Carolina Department of Transportation;
> > >
> > > (ii) the maximum time, stated in calendar years or calendar quarters, or a combination of them, not to exceed twenty-five years, for which the tolls may be imposed; and
> > >
> > > (iii) the maximum cost of the project or facilities to be funded in whole or in part from toll revenues and the principal amount of bonds to be supported by the tolls.

* * *

> (2) If the voters have approved the imposition of tolls by referendum and if the authority enters into a partnership, consortium, or other contractual arrangement with the Department of Transportation relating to turnpike facilities, the authority may designate, establish, plan, improve, construct, maintain, **operate**, and regulate designated highways, roads, streets, and bridges as "turnpike facilities" as a part of the state highway system or any federal aid system whenever the authority determines the traffic conditions, present or future, justify these facilities. Under such partnership arrangement, the authority may utilize funds available for the maintenance of the state highway system for the maintenance of any turnpike facility financed pursuant to this chapter. If the authority determines it is feasible to make all or part of a construction project a turnpike facility, it may engage in the preliminary estimates and studies incident to the determination of the feasibility or practicability of constructing any toll road as it from time to time considers necessary and the cost of the preliminary estimates and studies may be paid from the general highway fund and must be reimbursed from funds provided under this chapter only if the studies and estimates lead to the construction of a toll road.

* * *

> (6) In addition to the powers listed above, the authority may in connection with such toll facilities:

* * *

> (g) enter into contracts with the Department of Transportation for sharing the cost of building and the revenues derived from the facilities authorized in this chapter and for the **operation** and maintenance of the facilities for transportation infrastructure debts only.

S.C. Code Ann. § 4-37-30 (B) (Supp. 2016) (bold added). Although these provisions contain the words "jointly-operated," "operate," and "operation," all of these provisions are limited to toll roads and associated revenues. They are not related to such things as public relations, mentoring programs or similar administrative expenditures.

The Court should not be persuaded by the County's misleading argument here. The

word "operating" in the preamble of the Act did not find its way into the text of the statute. The specific provisions demonstrate the Legislature did not intend to provide a means for the County to use Transportation Act Revenues to pay those costs.

III. The Court Should Not Affirm on the Purported "Additional Sustaining Ground" as Urged by the County

The County contends, as an additional sustaining ground, the SCDOR and the Director "do not have a likelihood of success on the merits regarding their contention that the Penny Tax Ordinance is void on its face." (County Resp. Br. pp. 33-34, citing *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000)). The Court should not be persuaded to reject the appeal by the SCDOR and the Director on this basis.

As the County points out, the circuit court did not address these points. (County Resp. Br. p. 33). The purpose of addressing additional reasons to affirm is to "promote[] judicial economy and finality in private and public affairs, which are important public policies." *I'on*, at 421, 526 S.E.2d at 723.

The County contends the SCDOR and the Director cannot prevail at all, given the requirements of the Home Rule Amendments to the Constitution. (County Resp. Br. pp. 34-35). As the SCDOR and the Director pointed out in their Respondent's Brief, the only mention of "Home Rule" in the circuit court's order was the following statement: "I find that the Transportation Act was adopted by the General Assembly in furtherance of Home Rule to give counties the authority to adopt an alternative funding source to pay the cost associated with transportation-related projects." (Amended Order, p. 9). The circuit court did not

address any argument as to whether the court's finding that the SCDOR and the Director had duties grounded in the Code violated the Home Rule Amendments or the Home Rule Act. The County seeks a ruling from *this* Court that the Home Rule Amendments, and the rule of liberal construction favoring local government, preclude the SCDOR and the Director from any responsibility over administration of the Penny Tax Program. The Court should not be persuaded to do so.

For these reasons, the Court should reject the County's invitation to affirm based upon purported additional reasons existing in the record. Instead, the Court should decide this matter on the grounds raised to, and ruled upon by, the circuit court.

IV. THE SCDOR AND THE DIRECTOR ADEQUATELY PRESERVED THEIR CHALLENGE TO THE CIRCUIT COURT'S RULINGS REGARDING THE FAILURE TO APPOINT A RECEIVER

The County asserts that the SCDOR and the Director are making their arguments for the first time on appeal challenging the circuit court court's denial of their motion for the appointment of a receiver. (County's Resp. Br. p. 36, n. 14). The County contends these arguments were not raised in the post-judgment motion the County and the Director made. *Id.* This Court should not accept the County's contention.

The circuit court stated:

> I further find that SCDOR and the Director's request for appointment of a receiver is untimely. Defendants clearly acquiesced in the County's adoption of the Ordinance passage of the Referendum in 2012. SCDOR implemented levying and collecting of the Penny Tax in May, 2013. Defendants do not dispute that SCDOR began collecting and administering the Penny Tax in May 2013 and began remitting the Penny Tax Revenue to the Treasurer in July 2013. I find that having made quarterly remittances to

> the Treasurer pursuant to its statutory duties under the Transportation Act for some three years, SCDOR and the Director are not entitled, under any equitable theory, for the appointment of a receiver.

(Amended Order, pp. 18-19). Therefore, the circuit court specifically ruled upon this issue in its entirety. There was no need to parade the issue back before the court for it to reconsider its ruling, even where the SCDOR and the Director did make a post-judgment motion.

On appeal, the SCDOR and the Director point out that this ruling is tantamount to a finding of waiver or estoppel, and that the law does not support either view. Error preservation rules are designed to ensure the trial court has had an opportunity to address an issue and does, in fact, rule thereon. *See I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.").

The Court should reject the County's contention that the arguments the SCDOR and the Director present as to this issue are not preserved for appeal.

V. RESPONSE TO CMRTA'S BRIEF

CMRTA contends that this Court should permit the preamble to Act No. 52 to control the plain language of the statute to authorize use of the funds "for circumstances other than capital improvements." (CMRTA Br. p. 2). CMRTA also asserts, without citation to any authority, that the Court should overlook any problems here because CMRTA receives 29% of its funding from the Penny Tax Revenue and "the CMRTA operated bus system would be diminished significantly and Richland County residents potentially would lose

transportation services essential to their daily lives." (CMRTA Br. p. 3). CMRTA then speculates further that a ruling in favor of the SCDOR would put its bus system "out of business." (CMRTA Br. p. 3). The Court should not be persuaded by this argument.

First, CMRTA cites *only* to a letter attached to the County's Brief from Milton G. Kimpson, the SCDOR's General Counsel for Litigation. (CMRTA Br. p. 3; Complaint, Exh. I). Mr. Kimpson wrote to Robert Schneider, Ph.D., CMRTA's Executive Director, the following:

> I am in receipt of your May 12, 2016, letter to Director Reames inquiring whether funding from the Richland County Penny Transportation Tax for the COMET bus system will continue, while tax allocations for Richland County have been temporarily halted.
>
> As outlined in the Department's April 27, 2016, letter to County Administrator McDonald, the Department is concerned that Richland County has failed to adopt a uniform standard to govern its expenditure of Penny Tax funds. The Department's audit revealed n number of improper expenditures and without the adoption of such a standard, the use of funds for purposes inconsistent with state law remains unchecked.
>
> It is not the Department's intent, however, to restrict the use of Penny Tax funds for operation of the COMET bus system. As such, in the event the Penny Tax fund allocations are still being halted at the time of the normal July 2016 distribution, the Department will issue to Richland County the 29% of the revenue specified for COMET bus system operations.

(Complaint, Exh. I). Thus, contrary to CMRTA's argument, reversing the grant of mandamus to the County does not threaten to shut down the bus system. Instead, the SCDOR gave specific assurances to CMRTA that it would remit the 29% directed for payment of the COMET bus system. These actions are within the SCDOR's statutory duties to act as the trustee with regard to the funds collected from the taxpayers pursuant to the Act.

CMRTA's brief is remarkable for its lack of any citation to authority supporting its

positions. This is, of course, because there exists no such authority.

For instance, the preamble of Act No. 52 states that counties are "authorized to establish transportation authorities and to finance ... the cost of acquiring, designing, constructing, equipping and *operating* highways, roads, streets, and bridges, and other transportation-related project...." (Emphasis added). CMRTA, like the County, points to the term "operating" in the preamble as the source of the County's use of the funds for various expenditures that are not remotely related to the acquisition of capital structures or payment for "projects." (CMRTA Br. p. 2). The circuit court agreed, stating the terms "'acquiring, designing,...and operating' cannot be ignored." (Order, p. 11).

As pointed out in the SCDOR's principal brief, the preamble is not part of the effective portion of a statute, even though it may supply the guide to the Act's meaning. *Mitchell v. City of Greenville*, 411 S.C. 632, 770 S.E.2d 391 (2015). The word "operating" appears nowhere in the *statute*, indicating that while the term may have shown up in the preamble, the legislature excluded it when creating the final statutory scheme.

As this Court has long held, "[t]he preamble of an act, while often used for the purpose of explaining otherwise unclear legislative intent, does not control where the statutory language has a plain and obvious meaning." *Brown v. Continental Ins. Co.*, 315 S.C. 393, 395, 434 S.E.2d 270, 272 (1993); *State v. Findlay*, 3 S.C.L. (1 Brev.) 107 (1802) (preamble of a statute cannot restrain the enacting part of the statute where the enacting part is clearly larger than the preamble). *See also State v. Jones*, 416 S.C. 283,786 S.E.2d 132 (2016) (Supreme Court noted that although Preamble to statute codifying common law "Castle Doctrine" generally identified the fundamental purpose of the Act, the Legislature

clearly enunciated its intent and reasons for promulgating the Act in a particular section of the Act). What the County and CMRTA advocated below and continue to argue before this Court is that the preamble of the Act should control over the obvious meaning of the Act. Amending the statute to import the language of the Act's preamble, however, is not the role of the courts – rather, it is for the General Assembly to alter the statute in a way that expands the uses of the Penny Tax revenues.

The Court should reject CMRTA's argument that the preamble of the Act controls over the plain language of the Tax Code and of the Act itself to give the County the authority to use the Transportation Tax Revenues for purposes other than those set forth in the statute.

CONCLUSION

For the reasons stated in this Brief and in the SCDOR's principal Brief of Appellant, this Court should reverse the circuit court's order denying the SCDOR's request for injunctive relief and a receiver. The Court should also reverse the circuit court's decision granting the County's request for a writ of mandamus.

Respectfully submitted,

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The undersigned hereby certifies that on the date indicated below she served counsel with a copy of the *Initial Reply Brief of Respondents/Appellants* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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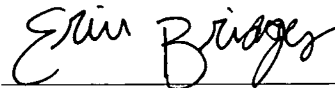

April 4, 2017

Erin Bridges