

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas**

Appellate Case № 2017-000847

Shred With Us, LLC, Appellant,

vs.

Steffanie Dorn, City of Greenwood Business License Official Respondent

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the lower court err in upholding the decision of the City Council for the City of Greenwood to require Shred-With-Us, LLC to obtain a city business license when South Carolina Code § 58-23-620 precludes a municipality from imposing a city business license fee when the business has a Class E certificate?

Statement of the Facts

Procedural History

Shred-With-Us, LLC paid under protest a city business license fee to the City of Greenwood. On October 11, 2016, the company filed its appeal to the City Council for the City of Greenwood contending that it is not required to obtain a city business license as its trucks were operating with a Class E certificate and therefore exempt from a city license fee under South Carolina Code § 58-23-620.

The City of Greenwood held a hearing on October 17, 2016. By decision of council dated December 6, 2016, the City of Greenwood denied the request of Shred-With-Us, LLC to be exempt from paying a city business license fee. On December 23, 2016, Shred-With-Us, LLC filed a Notice of Appeal to the Court of Common Pleas for the County of Greenwood. After a hearing held on February 22, 2017, and by order filed on March 27, 2017, the Honorable Frank R. Addy, Jr. upheld the decision of the City Council for the City of Greenwood. Shred-With-Us, LLC then filed its Notice of Appeal to this Court on April 4, 2017.

Argument

Question

Did the lower court err in upholding the decision of the City Council for the City of Greenwood to require Shred-With-Us, LLC obtain a city business license when South Carolina Code § 58-23-620 precludes a municipality from imposing a city business license fee when the business has a Class E certificate?

This case presents a relatively easy statutory interpretation question. South Carolina Code § 58-23-620 provides:

No city, town, or county in this State shall impose a license fee or license tax upon a holder of a certificate A or a certificate B, and no city, town, or county shall impose a license fee or license tax on the holder of a certificate E or a certificate F, Certificate of Compliance, or a common or contract motor carrier of property, except the city or town of such carrier's residence or the location of his principal place of business. However, the fee required of a holder of a certificate C is in addition to any license tax or license fee charged by a municipality.

The section says, with no limitations and no exceptions, that the holder of a certificate E is exempt from paying a municipal business license fee. The statute is a blanket exemption. Had the legislature desired to exempt part of the business, it easily could have written the exemption into the law. They elected not to provide for an exception for part of a business.

Shred-With-Us, LLC holds a certificate E for its trucks and pays that fee to the State of South Carolina. Rec. on App. at 51 (Certificate E Exhibit). The business of Shred-With-Us, LLC is document destruction through shredding and recycling the paper. Rec. on App at 9. The waste paper, generally shredded, is delivered to its main location

in Lexington, SC. It maintains no offices or permanent locations in the City of Greenwood. The business consists of dropping off a container at the location of a customer in the City of Greenwood. Upon the request of the customer or upon a scheduled time, Shred-With-Us, LLC would send a truck to Greenwood to retrieve the waste paper. Rec. on App. at 10. The paper would be shredded at times at the request of the customer on site and at times would be shredded while driving down the road. Ultimately the shredded paper would be taken to the main facility in Lexington where it would be re-cycled. As a result of these activities of Shred-With-Us, LLC, the amount of waste paper going into the landfill for Greenwood County is reduced. Rec. on App. at 11.

The City of Greenwood contended that because Shred-With-Us, LLC shred the paper on site, they are conducting a business in the City of Greenwood and must pay a license fee. Rec. on App. at 100, ll 1-15. Shred-With-Us, LLC contends that S. C. Code § 58-23-620 exempts its operations because its trucks used in the business possess a certificate E. The South Carolina Attorney General has issued an Opinion that supports the position of Shred-With-Us, LLC. *See*, 1989 S.C. Op. Atty. Gen. 354 (S.C.A.G.), 1989 S.C. Op. Atty. Gen. №. 89-130, 1989. The Opinion states “Section 58-23-620 prohibits both the ‘license fee’ and the ‘license tax.’ It is only logical to, therefore, conclude that the General Assembly intended to proscribe the county from levying both a ‘license fee’ and a ‘license tax.’ Thus, the Opinion supports the position that a business license fee cannot be imposed upon a holder of a certificate E. This Opinion was re-affirmed in 2008 in an Opinion that said, “Therefore, in the opinion of this office, only

the city or town of the towing company's residence or the location of its principal place of business is authorized to impose a license fee or license tax pursuant to Section 58-23-620.” 2008 WL 317743, at 2 (S.C.A.G. Jan. 10, 2008).

While not interpreting the particular code section involved in this case, the South Carolina Supreme Court in *Southern Liquor Distributors, Inc. v. Daniel*, 179 S.C. 219, 183 S.E.765 (1936) is supportive of the position of Shred-With-Us, LLC. In *Southern Liquor*, a liquor business delivered liquor to a local business. At that time, the law in South Carolina provided “The licenses and excise taxes herein provided, for the privilege of engaging in the business of manufacturing and selling alcoholic liquors, shall be in lieu of all other taxes and licenses-State, County, and Municipal-except property, state income, and corporation license taxes.” *Id.* at 219, 183 S.E. at 765. The Court found that Southern Liquor was in fact doing business in the communities where it was delivering liquor. Even with that finding, the Court then concluded:

[W]e hold that where the trucks of petitioners are delivering whisky, for which petitioners had orders, then petitioners are doing the business of selling whisky, and when the statute specifically sets forth the tax for which one engaging in the business of selling alcoholic liquors shall be liable, and in plain, understandable, and unambiguous language, declares that such taxes “shall be in lieu of all other taxes and licenses-State, County, and Municipal-except property, State income, and corporation license taxes,” then an ordinance of a town or city requiring a delivery license of such wholesaler of alcoholic liquors is null and void, and, strange as it may seem, has no potency. *Id.* at 219, 183 S.E. at 766

The same principle should apply here. The statute here, as in *Southern Liquor*, is plain, understandable and unambiguous. If a business has a certificate E, then a city may not charge a municipal license fee for businesses using that certificate. It does not

exempt anything.¹

The lower court erroneously held that the business of Shred-With-Us, LLC could be divided into parts. One part was the collecting and shredding of paper and the other part was transportation of paper. Order, Rec. On App. at 117 ll. The Court then agreed with the City of Greenwood that dividing up the business into two parts saves the City from the plain meaning of S. C. Code § 58-63-620. But the Court never explained what part of the statute in question permits the City to divide the business into two separate parts. The lower court also ignored that the business of shredding the paper is incidental to and part of the business of hauling paper. It is not a separate and independent business.

The lower court further discusses at length the break down of the City Licensing Ordinance as to classifications of the different types of businesses. The lower court, however, does not discuss that these classifications are meaningless if the business is exempt because the business is using a certificate E. The state law preempts the city ordinance. As the South Carolina Supreme Court has said, “An Ordinance is preempted under implied field preemption when the state statutory scheme so thoroughly and pervasively covers the subject as to occupy the field or when the subject mandates statewide uniformity.” *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010). Here, the statute, by prohibiting the imposition of a license fee upon the holder of a certificate E, has preempted the field. A city is not entitled to circumvent the

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Obviously if a local business obtained a certificate E for one truck which stayed parked at the business this would not exempt them from a business license tax. Such an action would be a fraudulent use of the certificate E. No such facts exist in his case.

law by simply claiming a different classification.² The state law does not permit a city to make such classifications. The holder of a certificate E, which in fact is using that certificate, is exempt regardless of how a city may classify a business.

The lower court erroneously relied upon *Wood-Mendenhall Co. v. City of Greer*, 88 S.C. 249, 70 S.E. 724 (1911). That case held that a separate business, even if operated by the same company, required a separate business license. The case simply has no application to this case. First, storing the waste paper in a container and shredding it is not a separate business. It is part of the same business. In *Wood-Mendenhall* the court clearly found that the separate business of painting was totally independent of the business of black smithing. Those are not the facts of this case. Secondly, the case did not involve a state law that precluded the application of a license fee to a business.

The lower court also erroneously held that Shred-With-Us, LLC did not preserve for review the issue of separate business. This is not correct. Simply put, there is no basis below to conclude there is a separate business, and therefore, there is no basis to conclude that Shred-With-Us, LLC is not exempt under the applicable code section. That section does not give a city the right to attempt to break down a business when all the parts are clearly interrelated. Shred-With-Us, LLC is in the business of shredding and destroying documents as well as transporting the shredded paper. It held a certificate E to accomplish these business purposes. Its trucks travel to different cities over irregular

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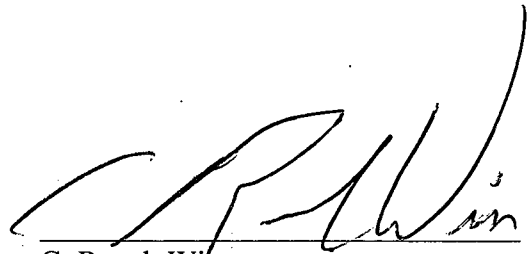
Obviously if a company using a certificate E for its business engages in a completely different business, the certificate E would not prevent a city from imposing a business license fee on that separate business. That is not the case here.

routes to conduct the business of shredding and then hauling off the paper. The state exempts Shred-With-Us, LLC regardless of how the business is classified so long as it is performed with a certificate E. That was done in this case.

CONCLUSION

For the foregoing reasons, this Court should reversed the decision of the lower court and issue an Order declaring Shred-With-Us, LLC exempt from the payment of a city license fee.

November 6, 2017



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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b),

SCACR.

November 6th, 2017



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