

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

Appellate Case No. 2017-000536

Ernie Washington, in his capacity as Coroner of Hampton County, ...Appellant,

v.

Hampton County, Hampton County Council, and Rose-Dobson-Elliot, as
Hampton County Administrator, ... Respondents.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Ernie Washington, in his capacity as
Coroner of Hampton County,

Plaintiff,

v.

Hampton County, Hampton County
Council, and Rose Dobson-Elliot, as
Hampton County Administrator,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-25-0371

ORDER

This matter came before the Court on Plaintiff Coroner Washington's Motion for Permanent Restraining Order¹ and Action for Declaratory Judgment and Injunctive Relief. Present at the January 5, 2017, hearing were Sandra J. Senn, counsel for Plaintiff, and A. G. Solomons, Jr., counsel for Defendants. The Court heard arguments and received memoranda of law from the parties in this matter.

Coroner Washington seeks a declaration pursuant to the Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, that the action taken by Defendants to take away the Coroner's vehicle if he does not allow the County to place decals on the car is an improper attempt to usurp the powers of the duly-elected Coroner of Hampton County. The Coroner requested that this Court issue an Order upholding the right of the Coroner to keep his vehicle and to choose his own means of complying with S.C. Code Ann. § 56-3-1710. The Coroner further prayed that the Court enjoin Defendants from interfering with the smooth operation of the Coroner's Office by threatening to relieve him of transportation.

¹ The Plaintiff's Motion for Temporary Restraining Order was partially resolved by the parties' consenting to maintain the status quo pending a final hearing on the merits.

FACTUAL HISTORY

Coroner Washington has been the duly-elected Coroner of Hampton County since 2011. (Coroner Aff. ¶ 2). In June of 2016, a Ford Explorer gifted to the Hampton Coroner by Richland County broke down. (Coroner Aff. ¶ 11). The Administrator purchased a 2008 Dodge Durango with approximately 182,000 miles for \$2,950, put it into the county fleet, and she then assigned the vehicle to the Coroner. (Coroner Aff. ¶ 12). Before the County made the Durango available for Coroner Washington, the County Administrator instructed the fleet division to mark it with reflective stickers stating “CORONER” on each side of the vehicle as well as the County seal on both the front driver and passenger doors. Coroner Washington was not consulted and did not approve the placement of stickers on his vehicle. (Coroner Aff. ¶ 12). The Coroner placed his own Coroner’s Office seal on the rear window of the vehicle. (Coroner Aff. ¶ 12). Coroner Washington thereafter removed the “CORONER” decals as well as the County seals from the front driver and passenger doors. Defendants have demanded that Coroner Washington replace the decals he removed or surrender the car within 48 hours. (Pl.’s Mem., Ex. 4 – Email, Aug. 16, 2016; Pl.’s Mem., Ex. 5 – Email, Aug. 23, 2016; Coroner Aff. ¶ 16). This suit followed.

LEGAL STANDARDS

Standard for Declaratory Judgment

The Declaratory Judgments Act provides that “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” S.C. Code Ann. § 15-53-20 (1976). “Any person ... whose rights, status, or other legal relations are affected by a statute [or] municipal ordinance ... may have determined any question of construction or validity arising under the ... statute [or] ordinance ...

and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code Ann. § 15-53-30 (1976); see also Rule 57, SCRPC.

**MERITS OF CORONER’S ENTITLEMENT TO
DECLARATORY RELIEF**

Plaintiff Coroner Washington is the duly-elected Coroner of Hampton County. He is a constitutional officer pursuant to the South Carolina Constitution, S.C. Const. art. V, § 24.

Hampton County operates under the Council-Administrator form of government which is governed by S.C. Code Ann. § 4-9-610, *et seq.* Rose Dobson-Elliott is the Hampton County Administrator. The Administrator of Hampton County is appointed by Hampton County Council and serves as “the administrative head of the county government” and is “responsible for the administration of all the departments of the county government *which the council has the authority to control.*” S.C. Code Ann. § 4-9-620 (emphasis added).

Regarding a county administrator’s authority over elected officials, the Home Rule Act provides, “[w]ith the exception of organizational policies established by the governing body, *the county administrator shall exercise no authority over any elected officials* of the county whose offices were created by the Constitution or by the general law of the State.” S.C. Code Ann. § 4-9-650; *see also McCormick Cnty. Council v. Butler*, 361 S.C. 92, 603 S.E.2d 586 (2004).

The South Carolina Attorney General’s Office has consistently advised that a county governing body and its officials are “generally considered as having only limited authority in dealing with the authority or duties of an elected official.” Ops. S.C. Att’y Gen., No. 888, April 8, 2013; No. 12-770, May 7, 2012; No. 06-114, June 19, 2006. “[A] county council has no authority to interpret the coroner’s responsibilities or to direct him to perform in a particular

manner.” Op. S.C. Att’y Gen., No. 888, April 8, 2013 (relying, in part, on *McCormick Cnty. Council v. Butler*, 361 S.C. 92, 603 S.E.2d 586 (2004)).

Because the vehicle is owned by the public in Hampton County, the Coroner’s vehicle must carry an official emblem or marker in addition to its government plates, but is not required to have all three of these items. *See* S.C. Code Ann. § 56-3-1710. The Coroner argues that his public vehicle for death notification should have governmental license plates as mandated by S.C. Code Ann. § 56-3-1710, as well as his office’s seal on the vehicle. This agreement satisfies the requirements of S.C. Code Ann. § 56-3-1710.

Council has a duty to fund the coroner’s office. *See* S.C. Code Ann. § 4-9-30(5)(a) (requiring that county governments “make appropriations for functions and operations of the county”). The County’s attempt to take the Coroner’s vehicle away could result in an inability of the Coroner to perform the duties of the office, although no showing has been made to this Court that such a situation exists in Hampton County.

CONCLUSION

After reviewing the applicable law and the arguments presented by both sides, the Court hereby **DECLARES** pursuant to pursuant to Rule 57, SCRPC, and the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, that:

(1) Defendants may not force the Coroner to place both stickers and decals on his official vehicle. To comply with S.C. Code Ann. § 56-3-1710, the Coroner must apply either a sticker or a decal in addition to the government plates. As Hampton County purchased and owns this vehicle as a public vehicle, Hampton County may decide which of these two is most appropriate to comply with the state statute. The Coroner agreed to apply a rear window seal and a license

plate during the January 5th hearing. These marks are sufficient for compliance with the state statute;

(2) Defendants must continue to make insurance payments on the Coroner's vehicle so that he can efficiently run his office;

(3) The Coroner shall not use a Hampton County public vehicle for private business; and

(4) Attorney's fees will not be awarded in connection with this matter as each side shall be responsible for their reasonable attorney's fees.

At this time, the Court believes that it is unnecessary to grant or deny the requested permanent injunction. This Order does not preclude later equitable relief if circumstances warrant such action.

AND IT IS SO ORDERED!

The Honorable Perry M. Buckner, III

_____, 2017

_____, South Carolina



Hampton Common Pleas

Case Caption: Ernie Washington VS Hampton County

Case Number: 2016CP2500371

Type: Order/Permanent Injunction

It is so Ordered

s/ Perry M Buckner III 2122

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STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Ernie Washington, in his capacity as
Coroner of Hampton County,

Plaintiff,

v.

Hampton County, Hampton County
Council, and Rose Dobson-Elliott, as
Hampton County Administrator,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A NO.: 2016-CP-25.371

PRIORITY MATTER:
EMERGENCY HEARING REQUESTED

COMPLAINT FOR DECLARATORY
JUDGMENT AND FOR INJUNCTIVE
RELIEF

Non-Jury Trial Demanded

COMES NOW Plaintiff, above named, and complaining of Defendants, seeking an emergency temporary restraining order and permanent injunction pursuant to Rule 65, SCRPC, as well as a Declaratory Judgment pursuant to Rule 57, SCRPC, and the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, and alleges as follows:

PARTIES

1. Plaintiff is a resident of Hampton County, South Carolina, and is the duly-elected Coroner of Hampton County. He is a constitutional officer pursuant to the South Carolina Constitution, S.C. Const. art. V, § 24. The Coroner is ultimately responsible for carrying out the duties required by S.C. Code Ann. § 17-5-510, *et seq.*, which include investigating the cause and manner of certain kinds of deaths, notifying the deceased's next-of-kin, ordering autopsies and toxicology, reporting certain kinds of deaths to appropriate state agencies, and authorizing the removal of dead bodies. These services can only be delegated to the Coroner's sworn deputies. S.C. Code Ann. § 17-5-70 ("When duly qualified, as herein required, the deputy coroner may do and perform any or all of the duties appertaining to the office of the coroner.").

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HAMPTON COUNTY
SOUTH CAROLINA

2. Hampton County is a body politic and governmental entity of the State of South Carolina. Hampton County operates under the Council-Administrator form of government which is governed by S.C. Code Ann. § 4-9-610, *et seq.*
3. Hampton County Council is the governing body of Hampton County.
4. Rose Dobson-Elliott is the Hampton County Administrator. The Administrator of Hampton County is appointed by Hampton County Council and serves as “the administrative head of the county government” and is “responsible for the administration of all the departments of the county government *which the council has the authority to control.*” S.C. Code Ann. § 4-9-620 (emphasis added). Upon information and belief, Rose Dobson-Elliott is a resident of Hampton County. She is being sued in her official capacity only.

STATEMENT OF FACTS

5. For several years, Hampton County officials have clashed over the Coroner’s use of a vehicle and whether it should be a privately owned vehicle with a stipend and insurance coverage, a vehicle assigned to him through his budget, or a vehicle from the County Fleet. The coroner takes no position as to how his vehicle should be funded, he just needs a car to drive.
6. Upon his election in 2011, the County agreed to pay a stipend so that the coroner would drive his own vehicle on official business. One day, in poor driving conditions, the coroner and two county employees wrecked. It was then that the coroner learned that his vehicle had not been added to the fleet (something that would have cost the County nothing). When the County refused to pay the coroner’s deductible, the first method used by council in having a car funded for its elected coroner failed. Note: the coroner was not requested to put county stickers on his personal vehicle (nor had the previous coroner).

7. In 2013, the Coroner was using a vehicle that was gifted to him by a Richland County Coroner who was appalled to learn that his colleague only had one barely-operable car to drive other than a 30 year old transport van to drive (literally circa 1986). The van is marked with county indicia, and the coroner has no objection to such. But the coroner still needed a car to drive.

8. Once the Richland Coroner gave the Hampton Coroner a car to drive, it was insured through the County. Hampton County Council then tried to assert power and control over the coroner's office by demanding that stickers and decals be placed on the vehicle. The coroner objected because he knows first-hand how citizens/family members become hysterical when a vehicle marked "coroner" pulls up on official business. The coroner thus sought an Attorney General's opinion as to whether County Council could force a constitutional officer to place decals on his car.

9. On April 8, 2013, the South Carolina Attorney General issued an opinion that the Hampton County Council does not have the authority to force the coroner to put stickers on his vehicle. 2013 WL 1695523 (S.C.A.G.) (Exhibit 1). The Coroner's vehicle must carry an official emblem, marker or plates, but is not required to have more than one of these items. S.C. Code Ann. § 56-3-1710. Further, it is within the coroner's discretion to determine whether his vehicle will carry an emblem, marker or plates. S.C. Code Ann. § 4-9-650. The Coroner chose for his vehicle to have governmental license plates.

10. In June 2016, the vehicle gifted to the Hampton Coroner by Richland County broke down. Rather than repair the car, the coroner was allowed to rent a car for a period of time. A decision was made not to fix the motor on the gifted car. Instead, without discussing with the coroner, Defendant Dobson-Elliott purchased a 2008 Dodge Durango with approximately

182,000 miles for \$2,950. She then put it in the county fleet and assigned it to the coroner.

Against the AG's opinion, when the coroner picked up his new ride, it had two long stickers marked "Coroner" down both sides of the vehicle. (Exhibit 2). It also had a round sticker (the approximate size of a soccer ball) blocking his back window view. In addition, the County advised him they were ordering county tags as well. But the County was not finished yet.

11. On August 16, 2016, Coroner Washington was advised by Council that he would then be required to put even more stickers on the vehicle or it would be taken away from him. The County wanted two more county decals placed on the driver and passenger car doors. Thus, the coroner was asked to have SIX different stickers in a bunch of different colors all over it. The coroner is NOT the town clown. The coroner fully understands that Hampton County is not a wealthy county so he is not concerned about the age or type of vehicle he is assigned, so long as it is safe. But, the coroner should not be subjected to place any sticker on his car, much less SIX markers of differing colors causing him to look like the town clown.

12. On August 23, 2016, Rose Dobson-Elliott sent an e-mail (Exhibit 3) to Coroner Washington advising that County Council's action to require him to put additional decals on his car was to be implemented within 48 hours or they would take the vehicle from him. She also asked him to let her know when "we" can expect "you" to comply with the Council's directive. She did at least consent to having him place "coroner's office" decals on the car and not just the county indicia.

13. On October 3, 2016, the County Attorney notified the undersigned that at council meeting that night, it was anticipated that Council may demand (again) that the vehicle be returned. Upon information and belief, Council did, in fact, demand that the vehicle be returned at the meeting. Yet, the coroner still needs a car to drive.

14. Thus, for now, Washington is at risk for the County Council to take away his vehicle. Unless this court intervenes, the Coroner will have no vehicle in which to travel to death scenes, as is his duty. Such is a practical impossibility. The court's emergency intervention and injunction is needed.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment pursuant to Rule 57, SCRCP, and the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*; and Temporary Restraining Order pursuant to Rule 65, SCRCP)

15. A county administrator is "responsible for employment and discharge of personnel subject to the provisions of subsection (7) of Section 4-9-30." S.C. Code Ann. § 4-9-630(8).

16. Subsection (7) of Section 4-9-30 empowers county governments:

(7) to develop personnel system policies and procedures for county employees by which **all county employees are regulated except those elected directly by the people**, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. **This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government.**

S.C. Code Ann. § 4-9-30(7) (emphasis added).

17. Regarding a county administrator's authority over elected officials, the Home Rule Act provides, "[w]ith the exception of organizational policies established by the governing body, *the county administrator shall exercise no authority over any elected officials* of the county whose offices were created by the Constitution or by the general law of the State." S.C. Code Ann. § 4-9-650; *see also McCormick Cnty. Council v. Butler*, 361 S.C. 92, 603 S.E.2d 586 (2004) (holding "the county has no authority to control [elected officials]" because "§4-9-650 specifically states

that the county administrator does not have authority over elected officials whose offices are created by the Constitution.”).

18. A county administrator or other governing body lacks the authority to remove deputies of an elected official. *Eargle v. Horry Cnty.*, 344 S.C. 449, 455, 545 S.E.2d 276 (2001) (adopting reasoning of the Court of Appeals); *Eargle v. Horry Cnty.*, 335 S.C. 425, 432, 517 S.E.2d 3 (Ct. App. 1999) (holding that county lacks authority to suspend—much less terminate—an elected official’s employees); *Heath v. Cnty. of Aiken*, 295 S.C. 416, 419–20, 368 S.E.2d 904, 905–06 (1988) (holding that deputies are not “employees” of an elected official and as such a county cannot exercise employment and discharge authority over deputies).

19. The South Carolina Attorney General’s Office has consistently advised that a county governing body and its officials are “generally considered as having only limited authority in dealing with the authority or duties of an elected official.” Ops. S.C. Att’y Gen., No. 888, April 8, 2013; No. 12-770, May 7, 2012; No. 06-114, June 19, 2006.

20. “[A] county council has no authority to interpret the coroner’s responsibilities or to direct him to perform in a particular manner.” Op. S.C. Att’y Gen., No. 888, April 8, 2013 (relying, in part, on *McCormick Cnty. Council v. Butler*, 361 S.C. 92, 603 S.E.2d 586 (2004)).

21. An elected official has the authority to manage the personnel in his office, including hiring and discharging personnel, without oversight from the county governing body. S.C. Code Ann. § 4-9-30(7); *see also* Op. S.C. Att’y Gen., No. 06-114, June 19, 2006 (“[W]e conclude the Aiken County Clerk of Court, as an elected official, has the authority [to] manage the personnel in her office, including hiring and discharging personnel, without oversight to the Aiken County Council.”).

22. Council has a duty to fund the coroner's office. *See* S.C. Code Ann. § 4-9-30(5)(a).

Hampton's refusal to assign the coroner a car to drive falls short of those duties. And, mandating stickers in direct contradiction to the coroner's sound wishes negatively impacts how the coroner runs his office. *See Anders v. Cnty. Council for Richland Cnty.*, 284 S.C. 142, 145, 325 S.E.2d 538, 539-40 (1985) (finding it would be untenable for a county to force an elected official to employ someone the official does not want to employ as such would affect the smooth operation of his office and lead to inevitable animosity).

23. The County's threat to take away the vehicle of the Coroner was intended to and, indeed, has impacted the smooth operation of the Coroner's office. *See* S.C. Code Ann. § 4-9-30(5)(a) (requiring that county governments "make appropriations for functions and operations of the county."); *see also* Email from Administrator Dobson-Elliott to Washington, August 23, 2016, which is a clear indicator that the County Administrator intended to exert power over Coroner Washington by threatening to take away his vehicle.

24. As stated above, the Coroner contests the ability of the Council to exert such control over him and he should not be forced to accept the County's directive to literally cover his vehicle in colorful and reflective stickers and decals.

25. The court's intervention and injunction is needed because if the County takes Washington's vehicle, the Coroner will not ability to travel to deaths in Hampton County.

26. As evidenced herein, the Coroner has established that (1) he will suffer immediate, irreparable harm without an injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law. *See Compton v. S.C. Dep't of Corrs.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). Therefore, a temporary restraining order should be granted.

RELIEF SOUGHT

WHEREFORE, the Coroner prays that the Court inquire into the matters alleged herein and issue an emergency temporary injunction pursuant to Rule 65, SCRCP, enjoining the County from interfering with the smooth operation of the Coroner's Office by taking away his vehicle or forcing him to place or keep the decals on the vehicle. The coroner prays that this court mandate that the parties keep the status quo until such time as a permanent hearing can be held as well.

The Coroner further prays for an Order pursuant to Rule 57, SCRCP, and the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, declaring: (1) that the County may not force the Coroner to place stickers or decals on his official vehicle because such would have the effect of allowing the County to control the coroner's vehicle and would be a violation of the separation of powers as the Coroner answers to the electorate, not the County; (2) that the county must adequately fund the Coroner's office and continuously provide the Coroner with a vehicle in working condition; and (3) that the Court make the required S.C. Code Ann. § 15-77-300 findings and award reasonable attorneys' fees and costs to the Coroner.



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October 4, 2016
Charleston, South Carolina



ALAN WILSON
ATTORNEY GENERAL

April 8, 2013

The Honorable Ernie J. Washington, Sr.
Hampton County Coroner
703 2nd Street West, Room 108
Hampton, SC 29924

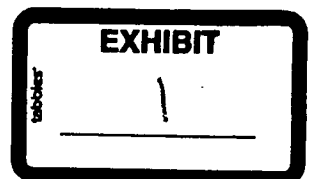
Dear Coroner Washington:

We received your request for an opinion of this Office regarding the use of a vehicle by the Hampton County Coroner's Office. By way of background, you state that a 2005 Ford Explorer was donated to your Office by the Richland County Coroner's Office in connection with the performance of your duties. You further indicate that the Hampton County Council ("Council") recently voted to require you to place a Hampton County seal on the vehicle. You ask whether Council has authority to compel compliance with its mandate.

Upon information and belief, Hampton County operates under a Council-Administrator form of government. Provisions for this form of government are found at S.C. Code Ann. §§4-9-610 to -670. Pursuant to §4-9-620, Council appoints the Administrator who serves as "the administrative head of the county government" and is "responsible for the administration of all the departments of the county government which the council has the authority to control." [Emphasis added]. The position of county coroner is provided for in §17-5-10 *et seq.* The Hampton County Coroner is an elected official. See S.C. Const. art. V, §24; §§17-5-10 & 17-13-20.

Interpreting the various provisions of the Home Rule legislation, this Office has consistently advised that a county governing body and its officials are "generally considered as having only limited authority in dealing with the authority or duties of an elected official. ..." See, e.g., Ops. S.C. Atty. Gen., May 7, 2012 (2012 WL 1774920); June 19, 2006 (2006 WL 18771). In this context, a county council is generally prohibited from altering or regulating the duties or functions of an elected official whose office was created by statute or the State Constitution, except in those areas where expressly authorized:

[f]irst, there is no language in the provisions of the 'home rule' legislation that would provide the Council with the authority to add to the duties of, or alter the functioning of, an elected official other than in areas such as employee grievances [§4-9-30(7)], the establishment of an accounting and reporting system [§4-9-30(8)], and of a centralized purchasing system [§4-9-160] and the submission to it of annual fiscal reports from all county offices, departments, boards, commissions or institutions receiving county funds [§4-9-140]. Section 4-9-30(6) of the Code merely authorizes the Council to create and alter new agencies, to wit:



The Honorable Ernie J. Washington, Sr.

Page 2

April 8, 2013

to establish such agencies, departments, boards, commissions, and positions in the county as may be necessary and proper to provide services of local concern for public purposes, to prescribe the functions thereof, and to regulate, modify, merge or abolish any such agencies, departments, boards, commissions, and positions: ...

That language does not empower the Council to modify or regulate existing county offices created either by statute or by the State Constitution as the case may be, except in the areas hereinabove specified.

Op. S.C. Atty. Gen., Feb. 7, 1978 (1978 WL 34687). We have found these same principles applicable to the county coroner. See, e.g., Ops. S.C. Atty. Gen., October 22, 1996 (1996 WL 679509); August 31, 1992 (1992 WL 575653). Council clearly possesses very limited authority regarding the operation of your Office.

In addition, §4-9-650 provides that:

“[w]ith the exception of organization policies established by the governing body,¹ the county administrator shall exercise no authority over any elected officials of the county whose offices were created either by the Constitution or by the general law of the State.” [Emphasis added].

See also McCormick County Council v. Butler, 361 S.C. 92, 603 S.E.2d 586, 586-87 (2004) [holding “the county has no authority to control the Clerk of Court” because “§4-9-650 specifically states that the county administrator does not have authority over elected officials whose offices are created by the Constitution”]. We thus take this opportunity to reiterate that a county council has no authority to interpret the coroner’s responsibilities or to direct him to perform in a particular manner. This would appear to apply to the situation you have described to us.

We also note that even though the vehicle was donated to your Office, it became a public vehicle of your Office just as though it had originated with public monies. See Ops. S.C. Atty. Gen., January 25, 1995 (1995 WL 67626); July 31, 1991 (1991 WL 633027); see also Op. S.C. Atty. Gen., November 15, 1985 (1985 WL 166100) [in order to be public money, “it does not matter whether the money is derived by *ad valorem* taxes, by gift or otherwise” – citing Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967)].

¹We have interpreted “organizational policies” for purposes of §4-9-650 as including those areas in which a county council is expressly empowered to act, *e.g.*, in developing personnel policies and procedures, in establishing accounting, reporting and purchasing systems, and in formulating budgetary matters. See, e.g., Ops. S.C. Atty. Gen., May 7, 2012; September 7, 1979 (1979 WL 43571); *cf. Ops. S.C. Atty. Gen.*, July 31, 1991 (1991 WL 633027) [expenditures for an item with a recurring expense to a county must be approved by the county prior to purchase]; May 7, 1991 (1991 WL 632962) [same].

The Honorable Ernie J. Washington, Sr.

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April 8, 2013

With this in mind, §56-3-1710 provides:

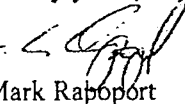
[t]he Department of Motor Vehicles shall design and supply . . . a special license plate, or supplemental plate or attachment, for use on all publicly-owned motor vehicles operated by any department or institution of the State of South Carolina, or any of its political subdivisions. It shall be unlawful for any such publicly-owned vehicle to be operated in the State of South Carolina that does not carry such official emblem, marker, or plates. Provided, however, that this provision shall not apply to the automobile supplied for the Governor's personal use, automobiles supplied to law enforcement officers, when in the opinion of the chief of the South Carolina Law Enforcement Division or the director of the department it is advisable that such automobiles not be so marked, nor to automobiles supplied to other state officials. [Emphasis added].

The obvious intent of the Legislature was to provide a means of identifying publicly-owned vehicles. Accordingly, your vehicle is required to possess at least one of these three methods of identification. See Op. S.C. Atty. Gen., September 7, 1979 (1979 WL 43570) [advising the disjunctive word "or" as used in the statute means that either of the three methods of identification serves the purpose of the statute].

We note that there are exceptions provided for vehicles supplied to the Governor's Office, law enforcement officers when the chief of the South Carolina Law Enforcement Division or the director of the department deems it is advisable that such vehicles not be so marked, and statewide elective state officials. Op. S.C. Atty. Gen., September 3, 1980 (1980 WL 120853); cf. Ops. S.C. Atty. Gen., March 27, 2006 (2006 WL 981691) [advising that while a coroner has certain authority similar to that of a law enforcement officer, a coroner does not possess sufficient law enforcement authority to be considered a "law enforcement officer"]; June 27, 1991 (1991 WL 632997) [same]. These exceptions would therefore not apply to your Office.

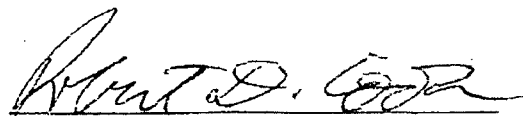
If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General



R 18

Rear View

EXHIBIT

2





Vehicle Decals

Rose D. Elliott

Tue 8/23/2016 8:15 PM

To: Ernie Washington <ewashington@hamptoncountysc.org>;

cc: Shedron Williams <shedronw@hotmail.com>; Roy <rhllngs@yahoo.com>; bcphillips@yahoo.com
<bcphillips@yahoo.com>; Chris Haulsee <haulsee61@yahoo.com>; smithisaac15@yahoo.com
<smithisaac15@yahoo.com>;

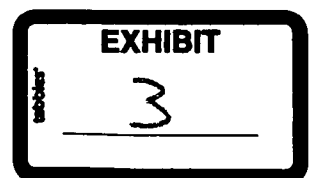
Mr. Washington, per our conversation this am. I am requesting a date by which the decals will be placed on the county vehicle. As I stated when I informed you last week of County Council's action, the motion called for the vehicle to be turned in if not complied with in 48 hours. Please advise as to when we can expect you to comply with Council's directive.

I am responsible to Council and I need to give an update on this matter to Council.

Sincerely,

Rose N Dobson-Elliott

Sent from my iPhone

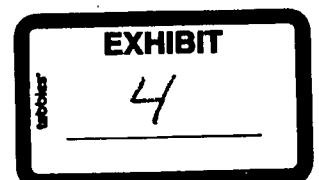


Ernie Washington

From: Dennis Fowler <dfowler@cherokeecountycoroner.com>
Sent: Tuesday, September 13, 2016 10:14 PM
To: 'ewashington@hamptoncountysc.org'
Subject: Decal Information
Attachments: Decal Requirements.xlsx

Coroner Washington it was good to see you today at the meeting as always. I am glad to know things turned out in your favor regarding the decaling of your vehicle. I have attached a spread sheet of the responses I had county by county regarding whether decals were used on coroner vehicles. I hope this helps for reference. As always, please call on me if I may be of help to you. God Bless.

Dennis G. Fowler
Cherokee County Coroner
President-South Carolina Coroner's Association
122 Administrative Drive
Gaffney, South Carolina 29340



Spartanburg County	No
Cherokee County	No
Georgetown County	No
Pickens County	No
Sumter County	No
Anderson County	No
Dorchester County	No
York County	No
Richland County	No
Horry County	No
Greenwood County	No
Greenville County	No
Lancaster County	No
Chester County	No
Charleston County	No
Chesterfield County	No
Calhoun County	No
Greenwood County	No
Chesterfield County	No
Saluda County	No
Florence	No
Jasper County	No
Colleton County	no

<u>County</u>	<u>Marked</u>	<u>Comments</u>
Spartanburg	No	
Cherokee	No	
Georgetown	No	E-mail to Ernie "...vehicle pulling up in someone's yard by mistake at night especially could be devastating..."
Pickens	No	
Sumter	No	
Anderson	No	No other comment
Dorchester	No	
York	No	
Richland	No	
Horry	No	No other comment
Greenwood	No	No other comment
Greenville	No	
Lancaster	No	E-mail to Ernie "...unmarked due to unknowing family member pulling up at scene
Chester	No	
Charleston	No	
Chesterfield	No	
Calhoun	No	
Saluda	No	No other comment
Florence	No	
Jasper	No	
Colleton	No	
Beaufort	No	E-mail to Ernie; No other comment
Darlington	No	E-mail to Ernie; No other comment

Counties reporting thus far

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Ernie Washington, in his capacity as
Coroner of Hampton County,

Plaintiff,

v.

Hampton County, Hampton County
Council, and Rose Dobson-Elliot, as
Hampton County Administrator,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.:

MOTION FOR EMERGENCY
TEMPORARY RESTRAINING ORDER

COMES NOW Plaintiff, Coroner Ernie Washington, and moves for an emergency temporary restraining order and preliminary injunction pursuant to Rule 65, SCRPC, to enjoin the Defendants from removing the Coroner's vehicle from him for the reasons set forth in the Complaint.

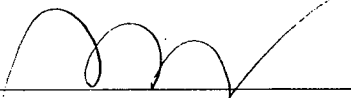
The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it. *Compton v. South Carolina Dept. of Corrs.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). For a preliminary injunction to be granted, the requesting party must establish three elements: (1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law. *Compton*, 392 S.C. at 366, 709 S.E.2d at 642.

This motion is supported by the allegations in the Complaint as well as a forthcoming supporting memorandum of law.

[signature on following page]

FILED
2016 OCT -4 PM 12:17
CLERK OF DISTRICT COURT
HAMPTON COUNTY, S.C.

Respectfully moved,



SANDRA J. SENN
Senn Legal, LLC
P.O. Box 12279
Charleston, SC 29422
(843) 556-4045
(843) 556-4046 (f)
sandy@sennlegal.com

Attorney for Coroner Ernie Washington

October 4, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

ERNIE WASHINGTON, IN HIS
CAPACITY AS CORONER OF
HAMPTON COUNTY,

PLAINTIFF,

vs.

HAMPTON COUNTY, HAMPTON
COUNTY COUNCIL AND ROSE
DOBSON-ELLIOTT, AS
HAMPTON COUNTY ADMINISTRATOR,

DEFENDANT.

) IN THE COURT OF COMMON PLEAS
)

) CASE NUMBER: 2016-CP-25-371
)

ANSWER

FILED
2016 OCT 25 PM 1:30
HILLMAN D. HETTLER
CLERK OF COURT
HAMPTON COUNTY, S.C.

The Defendant, Hampton County, answering the allegations contained in the Complaint, alleges as follows:

1. The Defendant, Hampton County admits the allegations contained in paragraphs 1, 2, 3 and 4 of the Complaint of the Plaintiff.
2. As to the allegations contained in paragraph 5 of the Complaint of the Plaintiff, the Defendant, Hampton County denies the allegations and would allege that Hampton County has provided the Plaintiff at least one vehicle for several years at the request of the Plaintiff, even though the state statutes do not require a county to provide the coroner with a vehicle.
3. As to the allegations contained in paragraph 6 of the Complaint of the Plaintiff, the Defendant, Hampton County denies the allegations and would allege that the previous coroner and current coroner owned the vehicles they were using while conducting the duties of

the office of the coroner of Hampton County. Hampton County therefore did not require the private vehicles to be decaled.

4. As to the allegations contained in paragraph 7 of the Complaint of the Plaintiff, the Defendant, Hampton County admits that Richland County gifted a vehicle to Hampton County, not the Plaintiff, for use by the coroner. The remaining allegations of paragraph 7 are filled with opinion and hyperbole and are therefore denied.

5. As to the allegations contained in paragraph 8 of the Complaint of the Plaintiff, the Defendant, Hampton County denies the allegations and would allege that Hampton County never has attempted to assert power and control over the Coroner's office. Hampton County simply wants the Plaintiff to display on his vehicle's front doors some identification of Hampton County Coroner.

6. As to the allegations contained in paragraph 9 of the Complaint of the Plaintiff, the Defendant, Hampton County admits that the South Carolina Attorney General issued an opinion concerning the Hampton County Coroner and the Hampton County Council but denies Plaintiff's interpretation. Plaintiff has no choice as to governmental license plates, the vehicle is owned by Hampton County.

7. As to the allegations contained in paragraph 10 of the Complaint of the Plaintiff, the Defendant, Hampton County admits that Defendant, Hampton County bought a vehicle for Defendant's use and placed decals indicating the vehicle was that of the Hampton County Coroner. The remaining allegations of paragraph 7 are filled with opinion and hyperbole and are therefore denied.



8. The Defendant, Hampton County denies the allegations contained in paragraph 11 of the Complaint of the Plaintiff.

9. As to the allegations contained in paragraph 12 of the Complaint of the Plaintiff, the Defendant, Hampton County admits that the County Administrator did send an e-mail to the Plaintiff on August 23, 2016 requesting a date by which the decals would be placed on the county vehicle and advising the Plaintiff that County Council's action called for the vehicle to be turned in if not complied with within 48 hours. The remaining allegations of paragraph 12 are filled with opinion and hyperbole and are therefore denied.

10. As to the allegations contained in paragraph 13 of the Complaint of the Plaintiff, the Defendant, Hampton County admits that the County Attorney did contact the Plaintiff's attorney to inform her that it was anticipated that the County Council may take action concerning the vehicle at the Hampton County Council meeting. The remaining allegations of paragraph 13 are filled with opinion and hyperbole and are therefore denied.

11. The Defendant, Hampton County denies the allegations contained in paragraph 14 of the Complaint of the Plaintiff.

12. The Defendant, Hampton County admits the allegations contained in paragraphs 15, 16, and 17 of the Complaint of the Plaintiff.

13. The Defendant, Hampton County admits the allegations contained in paragraph 18, 19, 20 and 21 of the Complaint of the Plaintiff, but questions their relevance to the current action.

14. As to the allegations contained in paragraph 22 of the Complaint of the Plaintiff, the Defendant, Hampton County admits that the Hampton County Council has a duty to fund the



coroner's office. The remaining allegations of paragraph 13 are filled with opinion and hyperbole and are therefore denied.

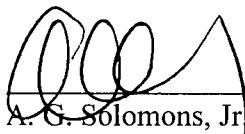
15. The Defendant, Hampton County denies the allegations contained in paragraphs 23, 24, 25, and 26 of the Complaint of the Plaintiff.

WHEREFORE, the Defendant, Hampton County having fully answered the Complaint of the Plaintiff prays that the Complaint of the Plaintiff be dismissed and for fees and costs to the Defendant, Hampton County associated with this action.

RESPECTFULLY SUBMITTED,

Dated: October 24th, 2016

Estill, South Carolina



A. G. Solomons, Jr.
Attorney for Hampton County
P. O. Box 969
Estill, SC 29918
(803) 625-3232

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Ernie Washington, in his capacity as
Coroner of Hampton County,

Plaintiff,

v.

Hampton County, Hampton County
Council, and Rose Dobson-Elliot, as
Hampton County Administrator,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-25-0371

MEMORANDUM IN SUPPORT OF
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF

2017 JAN -5 PM 2:41
CLERK OF COURT
HAMPTON COUNTY, S.C.

COMES NOW Plaintiff, Coroner Ernie Washington, and submits this memorandum in support of his Motion for Temporary Restraining Order¹ and Action for Declaratory Judgment and Injunctive Relief. Coroner Washington seeks a declaration from this Court pursuant to the Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, that the action taken by Defendants to take away the Coroner's vehicle if he does not allow the County to place decals all over the vehicle is improper and an illegal attempt to usurp the powers of the duly-elected Coroner of Hampton County. The Coroner prays that this Court inquire into the matters alleged herein and issue an Order upholding the right of the Coroner to keep his vehicle and to choose his own means of complying with S.C. Code Ann. § 56-3-1710. The Coroner further prays that the Court will enjoin Defendants from interfering with the smooth operation of the Coroner's Office by taking away his vehicle or forcing him to place or keep decals on the vehicle.

¹ The Coroner's Motion for Temporary Restraining Order was partially resolved by the parties' consenting to maintain the status quo pending a final hearing on the merits.

STATEMENT OF FACTS

Coroner Washington has been the duly-elected Coroner of Hampton County since 2011. (Coroner Aff. ¶ 2). During his tenure as Coroner, there has been a debate over how to provide the Coroner's Office with a vehicle. Those options included (1) the Coroner's use of his own private vehicle and collecting a mileage reimbursement for official business, (2) the County's assigning a vehicle to the Coroner through the Coroner's Office budget, or (3) providing the Coroner with a vehicle from the County fleet. (Coroner Aff. ¶ 3). Upon his election in 2011, it was the Coroner's understanding that he was proceeding under the first option above. The Coroner drove his own private vehicle and received a mileage reimbursement for official business. He also was under the impression that should an accident occur while on County business, that the County would cover the damage. (Coroner Aff. ¶ 4).

One day, in late 2012, in poor driving conditions, the Coroner got into a car accident while on official County business. Following the accident, the Coroner discovered that the County would not repair the vehicle or pay the deductible to repair the vehicle. (Coroner Aff. ¶ 5). Following the accident, the Coroner's Office then only had one 1998 transport van. Upon discovering the Hampton Coroner's transportation issues, the Richland County Coroner gifted Coroner Washington a Ford Explorer to use. (Coroner Aff. ¶ 6). Hampton County agreed to insure the Ford Explorer. (Coroner Aff. ¶ 7).

Defendants tried to assert power and control over the Coroner's Office by demanding that various stickers and decals be placed on the Ford Explorer. (Coroner Aff. ¶ 8). The Coroner objected because he knows first-hand how citizens/family members become hysterical when a vehicle marked "coroner" pulls up on official business. (Coroner Aff. ¶ 9, 16). The coroner thus sought an Attorney General's opinion as to whether County Council could force a constitutional

officer to place decals on his car. (Exhibit 1 – Letter Requesting AG Opinion; Coroner Aff. ¶ 10). On April 8, 2013, in response to Coroner Washington’s request, the South Carolina Attorney General issued an opinion that the Hampton County Council does not have the authority to force the coroner to put stickers on his vehicle. Op. S.C. Att’y Gen., No. 888, 2013 WL 1695523 (April 8, 2013) (Exhibit 2 – AG’s Opinion).

In June 2016, the Ford Explorer gifted to the Hampton Coroner by Richland County broke down. (Coroner Aff. ¶ 11). Instead of repairing the vehicle, and without any input from Coroner Washington, the Administrator purchased a 2008 Dodge Durango with approximately 182,000 miles for \$2,950. The Durango was put into the county fleet and assigned to the Coroner. (Coroner Aff. ¶ 12). Knowing full well the Coroner did not want his vehicle to have “Coroner” on it, before the County made the Durango available for Coroner Washington, County Council instructed the fleet to deface it with reflective stickers boldly stating “CORONER” on each side of the vehicle (Exhibit 3 - Photos). The Durango also had the County seal on both the front driver and passenger doors. Coroner Washington was never consulted and never approved the placement of stickers on his vehicle. (Coroner Aff. ¶ 12). The Coroner placed his own Coroner’s Office seal on the rear window of the vehicle. (Coroner Aff. ¶ 12).

On August 15, 2016, Coroner Washington had his attorney appear on his behalf at a County Council meeting to discuss the legal merits of the Coroner’s position regarding whether the County could force him to place decals on his vehicle. After the meeting, the Coroner removed the County Seal decals from the front doors of the Durango. (Coroner Aff. ¶ 13). After the Coroner left the Council meeting, the matter was raised again by Council and a vote was held on a motion regarding the placement of decals in the Coroner’s absence. (Exhibit 7 – Council Minutes). County Council carried the Motion that Council “approve the issuance of the County Fleet Vehicle [Dodge

Durango] for the Hampton County Coroner *pursuant to Hampton County Personnel Policy* as it relates to the vehicle policy; the 2008 Dodge Durango assigned from the Hampton County Fleet Pool assigned to the coroner shall have state coroner decals applied to the driver's front door and the passenger's front door, and they shall state Hampton County as well. Shall the coroner refuse to comply with county council's directive; the coroner is to return the 2008 Dodge Durango to the county fleet pool within 48 hours." (Exhibit 7 – Minutes) (emphasis added).²

The next morning, on August 16, 2016, Administrator Dobson-Elliott came to the Coroner's Office to discuss Council's vote the night before. The Administrator told Coroner Washington that he needed to place the Coroner's Office seal on the front doors of the Durango within the next 48 hours or the vehicle would be taken from him. (Exhibit 4 – Email, Aug. 16, 2016). The Administrator went into specifics on the sizing and placement of the seal. (Coroner Aff. ¶ 14). The County took this position despite the Coroner's attorney's arguments at Council the night before, despite the Coroner's known wishes, and despite the Attorney General's opinion which stated Council did not have the authority to force the decals onto the vehicle.

On August 23, 2016, Rose Dobson-Elliott sent an e-mail to Coroner Washington advising that County Council's action to require him to put additional decals on his car was to be implemented within 48 hours or they would take the vehicle from him. (Exhibit 5 – Email, Aug. 23, 2016). She also asked him to let her know when "we" can expect "you" to comply with the Council's directive. (Coroner Aff. ¶ 15). On October 3, 2016, the Hampton County Attorney notified the undersigned that at the council meeting that night, it was anticipated that Council may

² Though the minutes state they are from the September 19, 2016, council meeting, Plaintiff believes that the minutes are actually from August 15, 2016, as that is when Plaintiff's former counsel, Virgin Johnson, spoke before Council.

demand (again) that the vehicle be returned. Council did, in fact, vote to apprehend the vehicle at the meeting. (Coroner Aff. ¶ 16).

On October 4, 2016, Coroner Washington filed a Complaint for Declaratory Judgment and for Injunctive Relief and a Motion for Emergency Temporary Restraining Order to enjoin Defendants from removing the Coroner's vehicle should the Coroner refuse to place more decals on his vehicle.

On October 19, 2016, after years of complaints regarding the Coroner's Office's 1998 transport van's maintenance and repair issues, the County purchased another transport van for the Coroner's Office to replace it. That same day, however, Administrator Dobson-Elliott entered the Coroner's Office and requested that the keys to the new van be given to her. The County has retained possession of the new van since that time. The Coroner's Office does not have a transport van that can safely travel outside the county at this time. Since October 19, 2016, five transports to MUSC have required the hiring of an independent removal service.

Through counsel for all parties, a temporary agreement has been reached so that the County will not take the Coroner's vehicle from him until this Honorable Court can decide whether the County can force a constitutional officer to place unwanted decals on the vehicle(s) assigned to his or her office. Unless this Court intervenes, the Coroner risks having his vehicle taken from him because he does not want "Coroner" plastered all over his vehicle which can cause panic and trauma when he drives up to citizens' homes. It is wholly unnecessary to require him to so label his vehicle. In fact, at least twenty-three South Carolina coroners do not label their official vehicle as that of the "Coroner" for the same reasons. (Exhibit 6 – Coroner's Assoc. Survey).

Thus, Coroner Washington is at risk for the County Council to take away his vehicle. Unless this court intervenes, the Coroner will have no vehicle in which to travel to death scenes, as is his duty. Such is a practical impossibility. The court's emergency intervention and injunction is needed.

LEGAL STANDARDS

Standard for Declaratory Judgment

The Declaratory Judgments Act provides that “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” S.C. Code Ann. § 15-53-20 (1976). “Any person ... whose rights, status, or other legal relations are affected by a statute [or] municipal ordinance ... may have determined any question of construction or validity arising under the ... statute [or] ordinance ... and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code Ann. § 15-53-30 (1976); see also Rule 57, SCRPC.

To state a cause of action under the Declaratory Judgments Act, a party must demonstrate a justiciable controversy. *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970). “A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.” *Id.*, 255 S.C. at 154, 177 S.E.2d at 553; *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995); *Holden v. Cribb*, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002).

The Declaratory Judgments Act is a proper vehicle in which to bring a controversy before the court when there is an existing controversy or at least the ripening seeds of a controversy. *Waller v. Waller*, 220 S.C. 212, 223, 66 S.E.2d 876, 882 (1951). The basic purpose of the Act is

to provide for declaratory judgments without awaiting a breach of existing rights. The Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship. *Graham*, 319 S.C. at 71, 459 S.E.2d at 845; *Power*, 255 S.C. at 154, 177 S.E.2d at 553; *Waller*, 220 S.C. at 223, 66 S.E.2d at 882; *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 16, 567 S.E.2d 881, 888-89 (Ct. App. 2002).

This case cries out for declaratory relief so that the Coroner may continue to smoothly operate his office for the benefit of the citizens of Hampton County.

Standard for Injunctive Relief

The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it. *Compton v. South Carolina Dept. of Corrs.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). For a preliminary injunction to be granted, the requesting party must establish three elements: (1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law. *Compton*, 392 S.C. at 366, 709 S.E.2d at 642.

As a general rule, a permanent injunction should not be issued on an application for a preliminary injunction. *Transcontinental Gas v. Porter*, 252 S.C. 478, 167 S.E.2d 313 (1969); 43A CJS Injunction § 234 (1976). However, a permanent injunction may be entered where there has been a consolidation of the hearings pursuant to a rule of court or where the parties have consented to consolidation. *Id.*; see also *Roberts v. Union County Board of Trustees*, 284 S.C. 299, 326 S.E.2d 163 (Ct.App.1985).³

³ The parties agreed to forgo the hearing on the preliminary injunction after consenting to abide by the status quo pending the final hearing on the merits to which this memorandum is directed.

**MERITS OF CORONER'S ENTITLEMENT TO
DECLARATORY AND INJUNCTIVE RELIEF**

I. Coroner Washington will suffer immediate, irreparable harm if an injunction is not granted.

The County has advised the Coroner that if he does not comply with their directive to place more decals on his vehicle, then they will take his vehicle from him. (Exhibit 5 – August 23, 2016 Email; Coroner Aff. ¶ 16). If the County take the Coroner's vehicle away, he will have no vehicle to drive and will be unable to fulfill his statutorily mandated duties as Coroner. Absent this court's granting of an injunction to stop the County from taking the Coroner's vehicle away, not only will the Coroner suffer immediate, irreparable harm, but so will the citizens of Hampton County as the Coroner will not be able to serve them.

For the reasons stated in the following section, the County's attempt to remove a constitutional officer's vehicle and disrupt the manner in which he operates his office is unsupported by law and, in this particular situation, entirely unreasonable.

II. The Merits of Coroner Washington's Argument

Plaintiff Coroner Washington is the duly-elected Coroner of Hampton County. He is a constitutional officer pursuant to the South Carolina Constitution, S.C. Const. art. V, § 24. The Coroner is ultimately responsible for carrying out the duties required by S.C. Code Ann. § 17-5-510, *et seq.*, which include investigating the cause and manner of certain kinds of deaths, notifying the deceased's next-of-kin, ordering autopsies and toxicology, reporting certain kinds of deaths to appropriate state agencies, and authorizing the removal of dead bodies. These services can only be delegated to the Coroner's sworn deputies. S.C. Code Ann. § 17-5-70 ("When duly qualified, as herein required, the deputy coroner may do and perform any or all of the duties appertaining to the office of the coroner.").

Hampton County operates under the Council-Administrator form of government which is governed by S.C. Code Ann. § 4-9-610, *et seq.* Rose Dobson-Elliott is the Hampton County Administrator. The Administrator of Hampton County is appointed by Hampton County Council and serves as “the administrative head of the county government” and is “responsible for the administration of all the departments of the county government *which the council has the authority to control.*” S.C. Code Ann. § 4-9-620 (emphasis added).

A county administrator is “responsible for employment and discharge of personnel subject to the provisions of subsection (7) of Section 4-9-30 and subject to the appropriation of funds by the council for that purpose.” S.C. Code Ann. § 4-9-630(8). Subsection (7) of Section 4-9-30 empowers county governments:

(7) to develop personnel system policies and procedures for county employees by which **all county employees are regulated except those elected directly by the people**, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. **This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government.**

S.C. Code Ann. § 4-9-30(7) (emphasis added).

Regarding a county administrator’s authority over elected officials, the Home Rule Act provides, “[w]ith the exception of organizational policies established by the governing body, *the county administrator shall exercise no authority over any elected officials* of the county whose offices were created by the Constitution or by the general law of the State.” S.C. Code Ann. § 4-9-650; *see also McCormick Cnty. Council v. Butler*, 361 S.C. 92, 603 S.E.2d 586 (2004) (holding “the county has no authority to control the Clerk of Court” because “§4-9-650 specifically states

that the county administrator does not have authority over elected officials whose offices are created by the Constitution.”).

A county administrator or other governing body lacks the authority to remove deputies of an elected official. *Eargle v. Horry Cnty.*, 344 S.C. 449, 455, 545 S.E.2d 276 (2001) (adopting reasoning of the Court of Appeals); *Eargle v. Horry Cnty.*, 335 S.C. 425, 432, 517 S.E.2d 3 (Ct. App. 1999) (holding that county lacks authority to suspend—much less terminate—an elected official’s employees); *Heath v. Cnty. of Aiken*, 295 S.C. 416, 419–20, 368 S.E.2d 904, 905–06 (1988) (holding that deputies are not “employees” of an elected official and as such a county cannot exercise employment and discharge authority over deputies).

In *Eargle*, the South Carolina Supreme Court held that the Administrator of Horry County lacked the authority to impose temporary suspensions upon persons employed by an elected official when enforcing county personnel policies. *Eargle*, 344 S.C. at 456, 545 S.E.2d at 280. The Supreme Court reasoned that the plain language of § 4-9-30(7) precluded the Administrator from enforcing the county’s personnel policies against employees of elected officials. *Id.* at 455, 545 S.E.2d at 279. One of the policy reasons relied upon by the Court—in addition to the plain statutory language—was that allowing the County Administrator to have authority over the employees of elected officials would subject such employees to the difficulty of choosing whose directives to follow, the elected official or the Administrator. *Id.*

The South Carolina Attorney General’s Office has consistently advised that a county governing body and its officials are “generally considered as having only limited authority in dealing with the authority or duties of an elected official.” Ops. S.C. Att’y Gen., No. 888, April 8, 2013; No. 12-770, May 7, 2012; No. 06-114, June 19, 2006. “[A] county council has no authority to interpret the coroner’s responsibilities or to direct him to perform in a particular

manner.” Op. S.C. Att’y Gen., No. 888, April 8, 2013 (relying, in part, on *McCormick Cnty. Council v. Butler*, 361 S.C. 92, 603 S.E.2d 586 (2004)).

The Coroner’s vehicle must carry an official emblem, marker or plates, but is not required to have more than one of these items. *See* S.C. Code Ann. § 56-3-1710. Further, the County is without authority to determine whether the Coroner’s vehicle will carry an emblem, marker, or plates, or any combination thereof. *See* S.C. Code Ann. § 4-9-650; Op. S.C. Att’y Gen., No. 888, 2013 WL 1695523 (April 8, 2013). The Coroner chose for his vehicle to have governmental license plates as mandated by S.C. Code Ann. § 56-3-1710, as well as his office’s seal on the rear window. The Coroner does not wish to have “CORONER” boldly placed on the side of his vehicle. (Exhibit 3 – Photo).

Council has a duty to fund the coroner’s office. *See* S.C. Code Ann. § 4-9-30(5)(a) (requiring that county governments “make appropriations for functions and operations of the county”). The County’s attempt to take the Coroner’s vehicle away falls short of those duties. Council’s directive to Coroner Washington that he must put decals and stickers of Council’s choosing on his vehicle, in the face of the Coroner’s direct opposition, adversely affects the Coroner’s ability to perform his statutorily mandated duties. *See Anders v. Cnty. Council for Richland Cnty.*, 284 S.C. 142, 145, 325 S.E.2d 538, 539–40 (1985) (finding it would be untenable for a county to force an elected official to employ someone the official does not want to employ as such would affect the smooth operation of his office and lead to inevitable animosity).

County Council carried a Motion that Council “approve the issuance of the County Fleet Vehicle [Dodge Durango] for the Hampton County Coroner *pursuant to Hampton County Personnel Policy* as it relates to the vehicle policy; the 2008 Dodge Durango assigned from the

Hampton County Fleet Pool assigned to the coroner shall have state coroner decals applied to the driver's front door and the passenger's front door, and they shall state Hampton County as well. Shall the coroner refuse to comply with county council's directive; the coroner is to return the 2008 Dodge Durango to the county fleet pool within 48 hours." (Exhibit 7 – Minutes) (emphasis added).⁴ As stated above, S.C. Code Ann. § 4-9-30(7), *Eargle*, and *Heath*, all state that a County cannot enforce its personnel policies upon elected officials because elected officials are not employees of the County. Hampton County cannot enforce its apparent personnel policy of requiring decals on the Coroner's vehicle whether the vehicle comes from the county fleet or not.

The coroner has a very serious role in Hampton County. He provides death notifications to families of the deceased and investigates deaths. However, the arrival and/or presence of the coroner can be a very distressing and upsetting event for citizens. Therefore, it is in the best interest of the citizens of Hampton County to allow the coroner's vehicle to remain without large bold decals identifying it as the coroner's so that its mere presence or arrival does not cause unnecessary emotional distress to citizens. In fact, at least twenty-three South Carolina coroners have responded to inquiry into whether they place decals on their vehicles identifying them as the coroner, and all twenty-three have responded stating that they do not identify their vehicles as that of the coroner. (Exhibit 6 – Coroner's Assoc. Survey).

Thus, the Coroner has a reasonable and justified reason for not having the word "CORONER" boldly plastered all over his vehicle. Even if he had no reason, based on the law cited above, the County does not have the authority to force him to place these decals on the

⁴ Though the minutes state they are from the September 19, 2016, council meeting, Plaintiff believes that the minutes are actually from August 15, 2016, as that is when Plaintiff's former counsel, Virgin Johnson, spoke before Council.

vehicle. The idea that the County would go so far as to take his vehicle away merely because the Coroner refuses to place two more unnecessary stickers on his vehicle is incomprehensible.

The Coroner contests the ability of the County to exert such control over him and he should not be forced to accept the County's directive to literally cover his vehicle in colorful and reflective stickers and decals. The court's intervention and injunction is needed because if the County takes Washington's vehicle, the Coroner will not be able to travel to deaths in Hampton County.

III. Coroner Washington has no adequate remedy at law.

"An 'adequate' remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). Money damages will not suffice to remedy the issues presented by the actions of the County because the true issue is political overreaching. Public policy concerns are certainly present as are exigent circumstances.

IV. Attorneys' Fees

Pursuant to S.C. Code Ann. § 15-77-300, Coroner Washington is entitled to attorney's fees as Hampton County has "acted without substantial justification in pressing its claim" and such an award would not otherwise be unjust. *Id.* In a similar case involving a sheriff's challenge to his county's overreaching, *Heath v. Cnty. of Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990), the South Carolina Supreme Court concluded that fees were properly awarded to the sheriff where the county council had acted without substantial justification in pressing its claim to take control of E-911 services. In *Heath*, relevant statutes and precedent established such claims to be without merit as

it would have been unfair to force the sheriff to bear the costs of litigating a suit that ultimately benefited all the citizens of the county. *Id.* at 182–84, 394 S.E.2d at 711–12. Importantly, the court explained that “a court need **not** go so far as to brand a claim ‘frivolous’ in order for it to be found to be without substantial justification.” *Id.* at 183, 394 S.E.2d at 712 (emphasis added) (citing *Pierce v. Underwood*, 487 U.S. 552 (1988)).

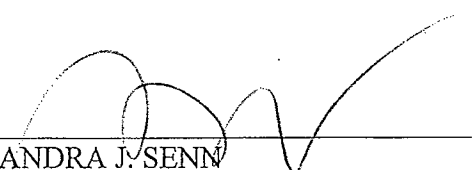
An award of attorney’s fees and costs is particularly justified to deter Hampton County from engaging in similar conduct in the future and should bear the consequences of overstepping its authority. Indeed, the vast majority of coroners in this state could not afford a legal challenge of this magnitude. Thus, coroners would be subject to forfeiture of their authority solely because they could not afford to maintain a legal challenge to their respective county’s overreaching executives. As such, if Hampton County is not held accountable for its willful and inexcusable effort to exert dominance over the duly-elected Coroner by way of paying for its own error in attorneys’ fees, then smaller governmental agencies will be at risk of future unjustified and unwarranted governmental intrusion into their operations and citizens will suffer.

Importantly, Coroner Washington already attempted to resolve this issue by receiving an opinion from the Attorney General which addressed nearly the same issue in 2013. Defendants have been presented with the opinion yet refuse to acknowledge its reasoning. It is Defendants’ pressing their claim without substantial justification and in the face of the Attorney General’s opinion which has necessitated the current civil action.

CONCLUSION

For the foregoing reasons, Coroner Washington requests that this Court issue an Order enjoining the County from interfering with the smooth operation of the Coroner’s Office by taking away his vehicle or forcing him to place or keep the decals on the vehicle. The Coroner

further prays for an Order pursuant to Rule 57, SCRCP, and the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, declaring: (1) that a county may not force the Coroner to place stickers or decals on his official vehicle because such would have the effect of allowing the county to control the coroner's vehicle, would be a violation of the separation of powers as the Coroner answers to the electorate, not the County; (2) that the county must adequately fund the Coroner's office and continuously provide the Coroner with a vehicle in working condition; and (3) that the Court make the required S.C. Code Ann. § 15-77-300 findings and award reasonable attorneys' fees and costs to the Coroner.



SANDRA J. SENN
Senn Legal, LLC
P.O. Box 12279
Charleston, SC 29422
(843) 556-4045
(843) 556-4046 (f)
sandy@sennlegal.com

Attorney for Coroner Ernie Washington

January 5, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Ernie Washington, in his capacity as
Coroner of Hampton County,

Plaintiff,

v.

Hampton County, Hampton County
Council, and Rose Dobson-Elliott, as
Hampton County Administrator,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A NO.:

**AFFIDAVIT OF CORONER ERNIE
WASHINGTON**

Comes now the affiant, Hampton County Coroner Ernie Washington, and after being
duly sworn, does affirm the following:

1. I am a United States citizen of sound mind and body and give this affidavit
truthfully and of my own free will.

2. I am a resident of Hampton County and have been the duly-elected Coroner of
Hampton County since 2011.

3. During my tenure as Coroner, there has been a debate over how to provide the
Coroner's Office with a vehicle. Those options included (1) my using my own private vehicle
and collecting a mileage reimbursement for official business, (2) the County's assigning a
vehicle to me through the Coroner's Office budget, or (3) providing me with a vehicle from the
County fleet.

4. Upon my election in 2011, it was my understanding that I was proceeding under
the first option above. I drove my own private vehicle and received a mileage reimbursement for
official business. I also was under the impression that should an accident occur while on County
business, that the County would cover the damage.

5. One day in late 2012, in poor driving conditions, I wrecked the vehicle.¹
Following the accident, I discovered that the County would not repair nor would the County pay
the deductible to repair the vehicle.

6. Later, my colleague, the Richland County Coroner discovered that the only
vehicle my office had was a 1998 transport van, and so he gave me a vehicle to drive.

¹ At least one other County official wrecked a County vehicle that day due in large part to the weather.

7. The vehicle received from the Richland Coroner was insured through Hampton County.

8. Hampton County demanded that several stickers and decals be placed on the vehicle.

9. I objected to the decals and thus sought an Attorney General's opinion as to whether Hampton County could force me to place the decals on the vehicle which I had received as a gift from Richland County. (Exhibit 1)

10. On April 8, 2013, in response to my inquiry, the South Carolina Attorney General issued an opinion that the Hampton County Council does not have the authority to force me to place decals on my vehicle. (Exhibit 2). Citing S.C. Code Ann. § 56-3-1710, the Opinion stated that a Coroner's vehicle must carry an official emblem, marker or plates, but is not required to have more than one of these items. Citing S.C. Code Ann. § 4-9-650, the Opinion stated that it is within a coroner's discretion to determine whether his vehicle will carry an emblem, marker or plates. I chose for my vehicle to have governmental license plates and my Coroner's Office decal on the rear window.

11. In June 2016, my vehicle received from Richland County broke down. Rather than repair the car, I was given a car from the County fleet for a period of time and a rental for a period of time.

12. Without discussing the matter with me, Hampton County Administrator Rose Dobson-Elliott purchased a 2008 Dodge Durango with approximately 182,000 miles for \$2,950. She then put it in the county fleet and assigned it to me. Despite the Attorney General's opinion and my known wishes, the County placed two long stickers marked "Coroner" down both sides of the vehicle, (Exhibit 3), and the County seal on both the front driver and passenger doors. I also placed my Coroner's Office seal on the rear window.

13. On August 15, 2016, attorney Virgin Johnson spoke on my behalf at the County Council meeting. He argued the legal merits of my position that the County could not force me to place decals on my vehicle. After the close of the meeting, I removed the two County seals from the front doors of the Durango.

14. On August 16, 2016, Administrator Dobson-Elliott came to my office concerning Council's vote the night before to require that I place the Coroner's Office seal, not the County seal, on the Durango within the next 48 hours or the vehicle would be taken from me. (Exhibit 4). The Administrator specified that the seal should be basketball-sized, not baseball-sized, and placed on the front doors. The County took this position knowing I did not want any decals on the vehicle and knowing of the Attorney General's opinion which stated they did not have authority to force them onto the vehicle.

15. On August 23, 2016, I received an email from Rose Dobson-Elliott (Exhibit 5) advising that County Council's action to require me to put additional decals on the Durango was to be implemented within 48 hours or the County would take the vehicle from me. Dobson-

Elliott also asked me to let her know when "we" can expect "you" to comply with the Council's directive.

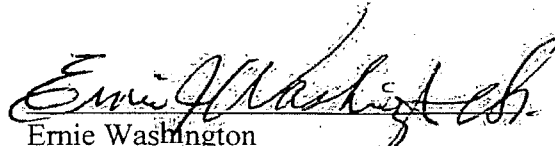
16. On October 3, 2016, the Hampton County Attorney notified my attorney, Sandy Senn, that at the council meeting that night, it was anticipated that Council may demand (again) that the vehicle be returned. Council did, in fact, vote to apprehend the vehicle at the meeting. Yet, I still needed a car to drive on official business.

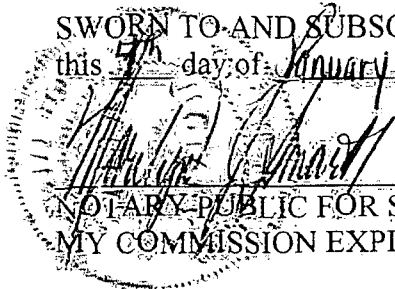
17. After years of complaints regarding the Coroner's Office's 1998 transport van, in October 2016, the County purchased another transport van for the Coroner's Office to replace it. The newly purchased van was delivered to the Coroner's Office on October 19, 2016, however, that same day, Administrator Dobson-Elliott entered the Coroner's Office and requested that the keys to the new van be given to her. The County has retained possession of the new van since that time. The Coroner's Office does not have a transport van that can safely travel outside the county at this time. Since October 19, 2016, five transports to MUSC have required the hiring of an independent removal service.

18. Through the attorneys, a temporary agreement has been reached so that the County will not take my vehicle from me until this Honorable Court can decide whether the County can force a constitutional officer to place unwanted decals on the vehicle(s) assigned to his or her office. Unless this Court intervenes, I risk having my vehicle taken from me because I do not want "Coroner" plastered all over my vehicle which can cause panic and trauma when I drive up to citizens' homes. It is wholly unnecessary to require me to so label my vehicle. In fact, I know of at least twenty-three South Carolina coroners who do not label their official vehicle as that of the "Coroner" for the same reasons I have stated. (Exhibit 6).

19. I verify that the allegations in the Complaint for Declaratory Judgment and for Injunctive Relief filed on my behalf on October 4, 2016, in the Hampton County Court of Common Pleas are true.

FURTHER AFFIANT SAYETH NOT!


Ernie Washington
Hampton County Coroner

SWORN TO AND SUBSCRIBED before me,
this 5th day of January, 2016 ²⁰¹⁷

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 12/18/2016

Hampton County Coroner's Office

ERNIE J. WASHINGTON, SR.
CORONER



DISPATCHER: 803-943-9261
OFFICE: 803-914-2157

March 26, 2013

Honorable Attorney General Alan Wilson
C/o Honorable N. Mark Rapoport
P.O. Box 11549
Columbia, S.C. 29211

Mr. Wilson, I had on Tuesday morning talked with Mr. N. Mark Rapoport of your staff. Per Mr. Rapoport's direction, I am petitioning your office for an "official opinion".

Again, the problems I am having with Hampton County Council are many, however in this case, specifically, the council's mandate (memorandum attached) to place a county seal on the vehicle driven by the Hampton County Coroner. As you can see, council has given me an April 1, 2013 deadline. Coroner Watts and Mr. Mark Keel of SLED know of my situation.

Because of transportation issues in connection with the performance of my duties, the Honorable Gary Watts of Richland County Coroner's Office in conjunction with Richland County Council gave a 2005 Explorer to the Hampton County Coroner's Office. Per the condition of the "donation", the Explorer is to be driven by the Hampton County Coroner, only.

Mr. Wilson, as a 1st term elected coroner, I have implemented several changes in compliance with the state mandates as it applies to the coroner's office. These changes had not done before my administration. As an elected official, it may be that council does not understand where their jurisdiction begins and ends. It appears, as I mentioned to Mr. Rapoport, that council is trying to "run" my office.

I hereby request an "official opinion" from your office on this matter. Moreover, I thank you in advance for resolution. I need to be able to continue with the business of operating the Hampton County Coroner's Office as an elected public official.

Sincerely

Ernie J. Washington, Sr.
Hampton County Coroner

EXHIBIT 1



ALAN WILSON
ATTORNEY GENERAL

April 8, 2013

The Honorable Ernie J. Washington, Sr.
Hampton County Coroner
703 2nd Street West, Room 108
Hampton, SC 29924

Dear Coroner Washington:

We received your request for an opinion of this Office regarding the use of a vehicle by the Hampton County Coroner's Office. By way of background, you state that a 2005 Ford Explorer was donated to your Office by the Richland County Coroner's Office in connection with the performance of your duties. You further indicate that the Hampton County Council ("Council") recently voted to require you to place a Hampton County seal on the vehicle. You ask whether Council has authority to compel compliance with its mandate.

Upon information and belief, Hampton County operates under a Council-Administrator form of government. Provisions for this form of government are found at S.C. Code Ann. §§4-9-610 to -670. Pursuant to §4-9-620, Council appoints the Administrator who serves as "the administrative head of the county government" and is "responsible for the administration of all the departments of the county government which the council has the authority to control." [Emphasis added]. The position of county coroner is provided for in §17-5-10 *et seq.* The Hampton County Coroner is an elected official. See S.C. Const. art. V, §24; §§17-5-10 & 17-13-20.

Interpreting the various provisions of the Home Rule legislation, this Office has consistently advised that a county governing body and its officials are "generally considered as having only limited authority in dealing with the authority or duties of an elected official." See, e.g., Ops. S.C. Atty. Gen., May 7, 2012 (2012 WL 1774920); June 19, 2006 (2006 WL 18771). In this context, a county council is generally prohibited from altering or regulating the duties or functions of an elected official whose office was created by statute or the State Constitution, except in those areas where expressly authorized:

[f]irst, there is no language in the provisions of the 'home rule' legislation that would provide the Council with the authority to add to the duties of, or alter the functioning of, an elected official other than in areas such as employee grievances [§4-9-30(7)], the establishment of an accounting and reporting system [§4-9-30(8)], and of a centralized purchasing system [§4-9-160] and the submission to it of annual fiscal reports from all county offices, departments, boards, commissions or institutions receiving county funds [§4-9-140]. Section 4-9-30(6) of the Code merely authorizes the Council to create and alter new agencies, to wit:

EXHIBIT 2

The Honorable Ernie J. Washington, Sr.
Page 2
April 8, 2013

to establish such agencies, departments, boards, commissions, and positions in the county as may be necessary and proper to provide services of local concern for public purposes, to prescribe the functions thereof, and to regulate, modify, merge or abolish any such agencies, departments, boards, commissions, and positions.

That language does not empower the Council to modify or regulate existing county offices created either by statute or by the State Constitution as the case may be, except in the areas hereinabove specified.

Op. S.C. Atty. Gen., Feb. 7, 1978 (1978 WL 34687). We have found these same principles applicable to the county coroner. See, e.g., Ops. S.C. Atty. Gen., October 22, 1996 (1996 WL 679509); August 31, 1992 (1992 WL 575653). Council clearly possesses very limited authority regarding the operation of your Office.

In addition, §4-9-650 provides that:

“[w]ith the exception of organization policies established by the governing body,¹ the county administrator shall exercise no authority over any elected officials of the county whose offices were created either by the Constitution or by the general law of the State.” [Emphasis added].

See also McCormick County Council v. Butler, 361 S.C. 92, 603 S.E.2d 586, 586-87 (2004) [holding “the county has no authority to control the Clerk of Court” because “§4-9-650 specifically states that the county administrator does not have authority over elected officials whose offices are created by the Constitution”]. We thus take this opportunity to reiterate that a county council has no authority to interpret the coroner’s responsibilities or to direct him to perform in a particular manner. This would appear to apply to the situation you have described to us.

We also note that even though the vehicle was donated to your Office, it became a public vehicle of your Office just as though it had originated with public monies. See Ops. S.C. Atty. Gen., January 25, 1995 (1995 WL 67626); July 31, 1991 (1991 WL 633027); see also Op. S.C. Atty. Gen., November 15, 1985 (1985 WL 166100) [in order to be public money, “it does not matter whether the money is derived by, *ad valorem* taxes, by gift or otherwise” – citing Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967)].

¹We have interpreted “organizational policies” for purposes of §4-9-650 as including those areas in which a county council is expressly empowered to act, *e.g.*, in developing personnel policies and procedures, in establishing accounting, reporting and purchasing systems, and in formulating budgetary matters. See, e.g., Ops. S.C. Atty. Gen., May 7, 2012; September 7, 1979 (1979 WL 43571); cf. Ops. S.C. Atty. Gen., July 31, 1991 (1991 WL 633027) [expenditures for an item with a recurring expense to a county must be approved by the county prior to purchase]; May 7, 1991 (1991 WL 632962) [same].

The Honorable Ernie J. Washington, Sr.

Page 3

April 8, 2013

With this in mind, §56-3-1710 provides:

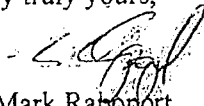
[t]he Department of Motor Vehicles shall design and supply a special license plate, or supplemental plate or attachment, for use on all publicly-owned motor vehicles operated by any department or institution of the State of South Carolina, or any of its political subdivisions. It shall be unlawful for any such publicly-owned vehicle to be operated in the State of South Carolina that does not carry such official emblem, marker, or plates. Provided, however, that this provision shall not apply to the automobile supplied for the Governor's personal use, automobiles supplied to law enforcement officers, when in the opinion of the chief of the South Carolina Law Enforcement Division or the director of the department it is advisable that such automobiles not be so marked, nor to automobiles supplied to other state officials. [Emphasis added].

The obvious intent of the Legislature was to provide a means of identifying publicly-owned vehicles. Accordingly, your vehicle is required to possess at least one of these three methods of identification. See Op. S.C. Atty. Gen., September 7, 1979 (1979 WL 43570) [advising the disjunctive word "or" as used in the statute means that either of the three methods of identification serves the purpose of the statute].

We note that there are exceptions provided for vehicles supplied to the Governor's Office, law enforcement officers when the chief of the South Carolina Law Enforcement Division or the director of the department deems it is advisable that such vehicles not be so marked, and statewide elective state officials. Op. S.C. Atty. Gen., September 3, 1980 (1980 WL 120853); cf. Ops. S.C. Atty. Gen., March 27, 2006 (2006 WL 981691) [advising that while a coroner has certain authority similar to that of a law enforcement officer, a coroner does not possess sufficient law enforcement authority to be considered a "law enforcement officer"]; June 27, 1991 (1991 WL 632997) [same]. These exceptions would therefore not apply to your Office.

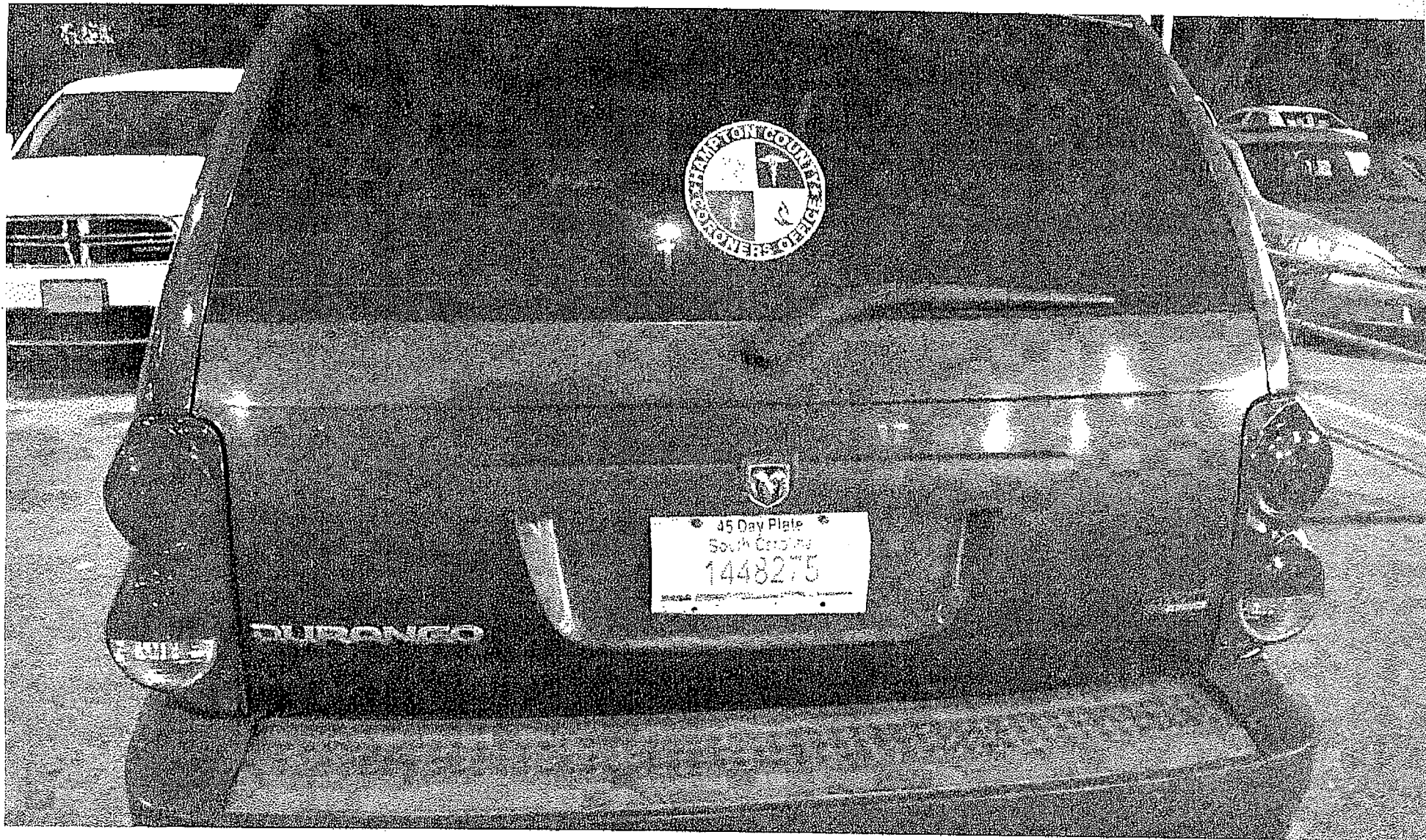
If you have any further questions, please advise.

Very truly yours,


N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Deputy Attorney General

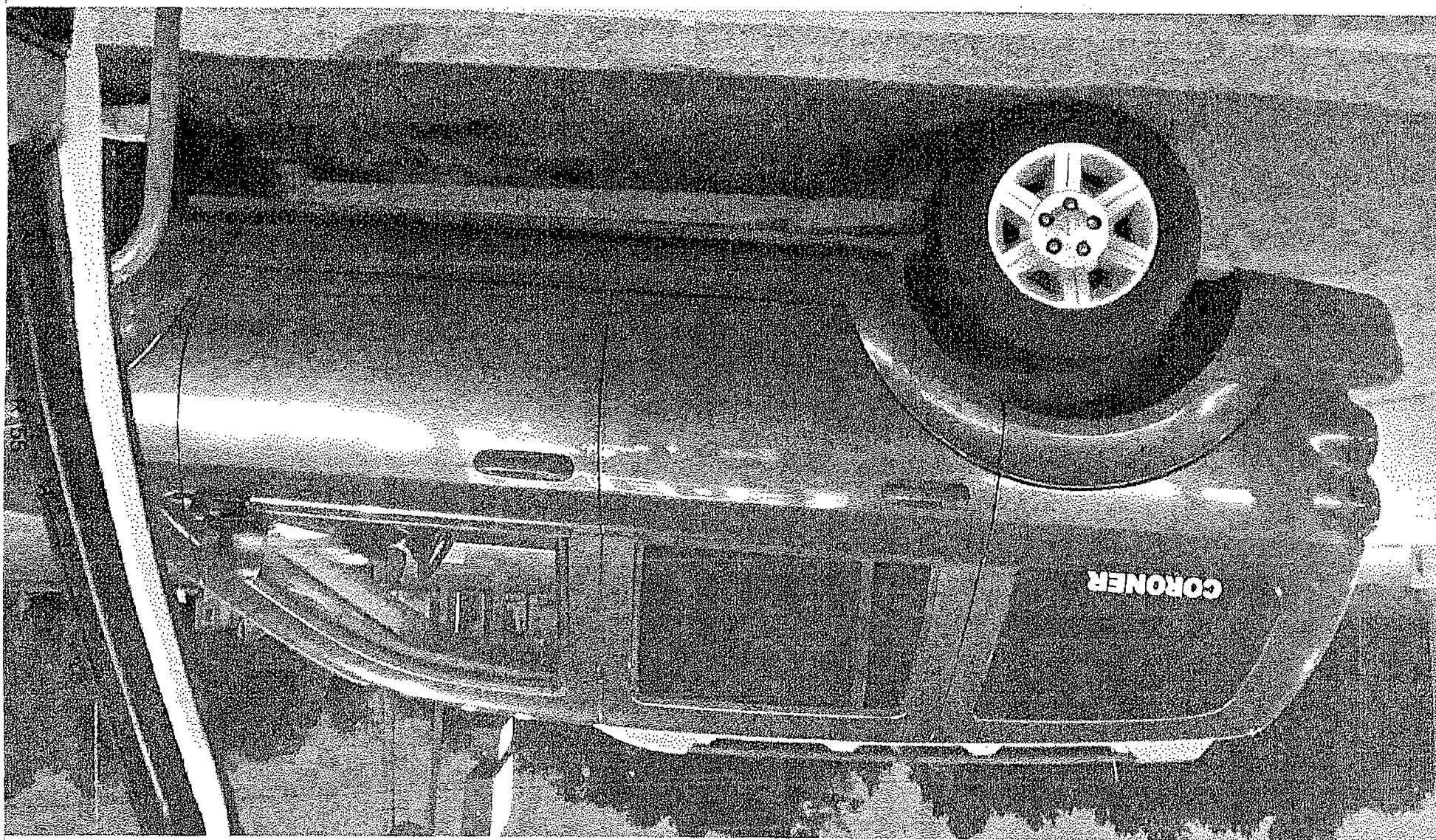


Rear View

R. 53

EXHIBIT 3





Ernie Washington

From: Ernie Washington <ewashington@hamptoncountysc.org>
Sent: Tuesday, August 16, 2016 12:25 PM
To: rdelliott@hamptoncountysc.org
Cc: "Shedron Williams"; ewashington@hamptoncountysc.org
Subject: Placement of Seal on Coroner's Car

Ms. Elliott, on this morning at 10:00 a.m., you came into my office concerning County Council's vote on last night. Per you, I was directed by Hampton County Council to place my "Coroner's" Seal on the car driven by me. Further that this is to be done within 48hrs or "the car will be taken from me". You also asked if I need help in ordering it as well as giving me specification on the size. To all of this I assured you that I could handle it.

As you recall, you approached Chairman Williams before council meeting yesterday evening. The proposal was if the placement of the Coroner's Seal would be a middle ground for putting an end to this conflict. I agreed. We need to move forward.

The Hampton County Coroner's Seal has been ordered. As soon as it is available, I will place it on the vehicle.

Ernie J. Washington, Sr.

Coroner Ernie J. Washington, Sr.
Hampton County Coroner
703 2nd Street West
Hampton, South Carolina 29924
803-914-2157 (Office)
803-943-8500 (Mobile)
ewashington@hamptoncountysc.org

Vehicle Decals

Rose D. Elliott

Tue 8/23/2016 8:15 PM

To: Ernie Washington <ewashington@hamptoncountysc.org>;

Cc: Shedron Williams <shedronw@hotmail.com>; Roy <rhllngs@yahoo.com>; bcphillips@yahoo.com
<bcphillips@yahoo.com>; Chris Haulsee <haulsee61@yahoo.com>; smithisaac15@yahoo.com
<smithisaac15@yahoo.com>;

Mr. Washington, per our conversation this am, I am requesting a date by which the decals will be placed on the county vehicle. As I stated when I informed you last week of County Council's action, the motion called for the vehicle to be turned in if not complied with in 48 hours. Please advise as to when we can expect you to comply with Council's directive.

I am responsible to Council and I need to give an update on this matter to Council.

Sincerely,

Rose N. Dobson-Elliott

Sent from my iPhone

EXHIBIT 5

R. 57

Ernie Washington

From: Dennis Fowler <dfowler@cherokeecountycoroner.com>
Sent: Tuesday, September 13, 2016 10:14 PM
To: 'ewashington@hamptoncountysc.org'
Subject: Decal Information
Attachments: Decal Requirements.xlsx

Coroner Washington it was good to see you today at the meeting as always. I am glad to know things turned out in your favor regarding the decaling of your vehicle. I have attached a spread sheet of the responses I had county by county regarding whether decals were used on coroner vehicles. I hope this helps for reference. As always, please call on me if I may be of help to you. God Bless.

Dennis G. Fowler
Cherokee County Coroner
President-South Carolina Coroner's Association
122 Administrative Drive
Gaffney, South Carolina 29340

EXHIBIT 6

Spartanburg County	No
Cherokee County	No
Georgetown County	No
Pickens County	No
Sumter County	No
Anderson County	No
Dorchester County	No
York County	No
Richland County	No
Horry County	No
Greenwood County	No
Greenville County	No
Lancaster County	No
Chester County	No
Charleston County	No
Chesterfield County	No
Calhoun County	No
Greenwood County	No
Chesterfield County	No
Saluda County	No
Florence	No
Jasper County	No
Colleton County	no

<u>County</u>	<u>Marked</u>	<u>Comments</u>
Spartanburg	No	
Cherokee	No	
Georgetown	No	E-mail to Ernie "...vehicle pulling up in someone's yard by mistake at night especially could be devastating..."
Pickens	No	
Sumter	No	
Anderson	No	No other comment
Dorchester	No	
York	No	
Richland	No	
Horry	No	No other comment
Greenwood	No	No other comment
Greenville	No	
Lancaster	No	E-mail to Ernie "...unmarked due to unknowing family member pulling up at scene
Chester	No	
Charleston	No	
Chesterfield	No	
Calhoun	No	
Saluda	No	No other comment
Florence	No	
Jasper	No	
Colleton	No	
Beaufort	No	E-mail to Ernie; No other comment
Darlington	No	E-mail to Ernie; No other comment

Counties reporting thus far

HAMPTON COUNTY COUNCIL'S MEETING MINUTES
MONDAY; SEPTEMBER 19, 2016; 6:00 P. M.
COUNCIL CHAMBERS, HAMPTON COUNTY ADMINISTRATIVE CENTER
200 JACKSON AVENUE, EAST, HAMPTON, SC

Hampton County Council held its regular meeting on Monday, September 19, 2016, 6:00 p. m., Council Chambers, Hampton County Administrative Center, Hampton, South Carolina. Roy Hollingsworth, Vice Chairman; Charles H. "Buddy" Phillips, Isaac Smith and Shedron D. Williams, Chairman. Council Member(s) absent: Christopher B. Haulsee. Staff present: Rose Dobson-Elliott, Administrator, Aline Newton, Clerk to Council and A. G. Solomons, Jr., County Attorney. Media present: Hampton County Guardian. The meeting was advertised as prescribed by law.

CALL MEETING TO ORDER

CALL TO ORDER:

Chairman Williams called the meeting to order.

INVOCATION AND PLEDGE OF ALLEGIANCE

INVOCATION:

Council Member Smith gave the invocation.

PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance was led by Council.

ADOPTION OF THE AGENDA

**ADOPTION OF THE SEPTEMBER 19, 2016 HAMPTON COUNTY AGENDA AND
CONSENT AGENDA:**

Moved by Council Member Phillips, seconded by Council Member Smith, to accept with the Consent Agenda:

- 3.1 Consent Agenda
 - 3.1.1 August 3, 2016 Hampton County Council Special Meeting Minutes
 - 3.1.2 August 15, 2016 Hampton County Council Meeting Minutes

and the September 19, 2016 Hampton County Council Meeting Agenda. Motion carried unanimously.

PUBLIC HEARING(S)

**THE LOWCOUNTRY REGIONAL HOME CONSORTIUM INVITES CITIZENS TO
COMMENTS ON ITS DRAFT CONSOLIDATED ANNUAL PERFORMANCE
EVALUATION REPORT (CAPER):**

Chairman Williams opened the public hearing to receive public comments from the Lowcountry Regional HOME Consortium invites citizens to comment on its draft Consolidated Annual Performance Evaluation Report (CAPER). Mrs. Barbara Johnson, Lowcountry Council of Governments Representative, explained the CAPER. She asked if there were any comments. There were no comments from the public. Chairman Williams closed the public hearing.

HAMPTON COUNTY COUNCIL'S MEETING MINUTES
MONDAY; SEPTEMBER 19, 2016; 6:00 P. M.
COUNCIL CHAMBERS, HAMPTON COUNTY ADMINISTRATIVE CENTER
200 JACKSON AVENUE, EAST, HAMPTON, SC

PUBLIC COMMENT(S)

REPRESENTATIVE BILL BOWERS CAME BEFORE COUNCIL TO INFORM THE PUBLIC THAT HE HAS BEEN APPOINTED TO THE SPECIAL TAX COMMITTEE:

Representative Bowers came before council and informed everyone that he was appointed to a special tax committee. The members represent rural. He explained that they will be meeting next Tuesday. Representative Bowers stated that they will be talking equity in taxation and that is no short task. Representative Bowers informed the citizens that tax reassessments are regulated by state government. Representative Bowers thanked everyone for their time.

MR. RONALD "BREEZE" WINN CAME BEFORE COUNCIL REGARDING TAXES AND INQUIRY ABOUT HOMESTEAD EXEMPTION:

Mr. Winn came before council regarding taxes and inquiry regarding him not having his Homestead Exemption anymore. Council asked Administrator Dobson-Elliott to look into the matter.

APPROVAL OF MINUTES

The minutes were approved under the Consent Agenda.

PRESENTATION(S)

There were no presentation(s).

MR. SCOTT ALLAN, FINANCIAL CONSULTANT, HAMPTON SCHOOL DISTRICT 2, REGARDING UPDATE FOR HAMPTON SCHOOL DISTRICT 2:

Mr. Scott Allen, Financial Consultant, Hampton District 2, Regarding Update for Hampton School District 2, came before council and gave report. He informed council that all was going well.

CONSTRUCTION MANAGER AT RISK AND CAPITAL SALES TAX PROJECT REPORT:

Administrator Dobson Elliott stated that there was no report tonight; the buildings have been turned over to us. Council Member Haulsee wanted to know when they were going to tear down the old health department. Administrator Dobson-Elliott stated that it would be soon. Chairman Williams reminded council and the Administrator that there were certain mechanisms that they discussed previously at workshops, etc. regarding CPST projects that he wanted to make sure that they were adhering to.

VICE CHAIRMAN HOLLINGSWORTH REGARDING LAW ENFORCEMENT COMMITTEE REPORT:

HAMPTON COUNTY COUNCIL'S MEETING MINUTES
MONDAY; SEPTEMBER 19, 2016; 6:00 P. M.
COUNCIL CHAMBERS, HAMPTON COUNTY ADMINISTRATIVE CENTER
200 JACKSON AVENUE, EAST, HAMPTON, SC

Vice Chairman Hollingsworth stated that the Law Enforcement Committee (Vice Chairman Hollingsworth and Council Member Smith) met on August 12, 2016 at 9:00 a. m. He stated that they met to discuss the reimbursement of the Sheriff's Department to the county. He stated that Administrator Dobson Elliott researched the matter and all parties agree that the amount to be paid back to the county is \$60,000.00 (Sixty thousand dollars). By acclamation, council accepted the report as information.

MR. ERNIE WASHINGTON, HAMPTON COUNTY CORONER:
Mr. Virgin Johnson, Jr. came before council on behalf of the coroner. He stated that he felt that there was some communication problem and there was no disrespect intended but just a disagreement. Mr. Johnson cited several cases in which supported the view of the coroner regarding his vehicle. Mr. Johnson and the Coroner and his family thanked council.

APPOINTMENT(S) – No appointment(s) scheduled.

RESOLUTION(S)/PROCLAMATION(S)

There were no resolution(s).

APPOINTMENT(S)

There were no appointment(s).

ORDINANCE(S)

AN ORDINANCE TO AMEND THAT CERTAIN AGREEMENT FOR THE DEVELOPMENT OF A JOINT COUNTY INDUSTRIAL PARK BETWEEN COLLETON COUNTY AND HAMPTON COUNTY TO ADD J&L WIRE, CLOTH, LLC TRACT:

Moved by Council Member Phillips, seconded by Council Member Smith, to give second reading to An Ordinance to Amend that Certain Agreement for the Development of a Joint County Industrial Park Between Colleton County and Hampton County to Add J&L Wire, Cloth, LLC Tract. Motion carried unanimously.

BID(S)

There were no bid(s).

COUNCIL'S BRIEFING(S)

DISCUSSION POINTS (COUNCIL MEMBERS):

Council Member Smith

Council Member Smith stated he received information from the SCA the other day and there are a lot of businesses coming into our region, and he would like to commend Brantley Strickland,

HAMPTON COUNTY COUNCIL'S MEETING MINUTES
MONDAY; SEPTEMBER 19, 2016; 6:00 P. M.
COUNCIL CHAMBERS, HAMPTON COUNTY ADMINISTRATIVE CENTER
200 JACKSON AVENUE, EAST, HAMPTON, SC

Project Manager for Hampton County, SCA.

Vice Chairman Hollingsworth

Vice Chairman Hollingsworth stated that he will be able to attend the ribbon cutting for the library. He stated that the date of his cousin's wedding has changed.

CHAIRMAN'S UPDATE:

Chairman Williams stated that he hope that all will move forward in county. He stated that he visited the schools; today was the first day for students. He asked that all think about mentoring a student and communicate positively to the youth. Chairman Williams asked why the taxes owed on the businesses had not been published yet. He reminded the Administrator that this was requested by council months ago.

SEAL ON CORONER'S VEHICLE:

Chairman Williams stated that council will discuss the seal on Coroner's vehicle. Motioned by Vice Chairman Hollingsworth, seconded by Council Member Smith, that Hampton County Council approve the issuance of the County Fleet Vehicle for the Hampton County Coroner pursuant to Hampton County Personnel Policy as it relates to the vehicle policy; the 2008 Dodge Durango assigned from the Hampton County Fleet Pool assigned to the coroner shall have state coroner decals applied to the driver's front door and the passenger's front door, and they shall state Hampton County as well. Shall the coroner refuse to comply with county council's directive; the coroner is to return the 2008 Dodge Durango to the county fleet pool within 48 hours. Motion carried with Council Members Hollingsworth, Phillips and Smith voting in favor and Council Member Williams voting against.

REPORT(S) TO COUNCIL

ADMINISTRATOR'S REPORT:

Four Wheelers Tearing Up Roads

Administrator Dobson-Elliott reported that four wheelers are tearing up the roads.

Library Ground Breaking

Administrator Dobson Elliott stated that the Ground Breaking Ceremony for the Hampton County Library is September 10, 2016.

EXECUTIVE SESSION

Moved by Council Member Phillips, seconded by Council Member Smith, to go into executive session to discuss legal matters and personnel matter. Motion carried unanimously.

REPORT OUT OF EXECUTIVE SESSION

Moved by Council Member Phillips, seconded by Council Member Smith, to come out of executive session regarding legal matters and personnel matter. Motion carried unanimously. Chairman Williams reported that legal matters and matters will continue to be researched.

HAMPTON COUNTY COUNCIL'S MEETING MINUTES
MONDAY; SEPTEMBER 19, 2016; 6:00 P. M.
COUNCIL CHAMBERS, HAMPTON COUNTY ADMINISTRATIVE CENTER
200 JACKSON AVENUE, EAST, HAMPTON, SC

ADJOURNMENT

Moved by Council Member Phillips, seconded by Council Member Smith, to adjourn. Motion carried unanimously. Chairman Williams adjourned the meeting.

Minutes Respectfully Submitted By:
Aline Newton, Clerk to Council

Hampton County Council Members:
Shedron D. Williams, Chairman
Roy Hollingsworth, Vice Chairman
Christopher B. Haulsee
Charles H. Phillips
Isaac Smith

FILED

2017 JAN 12 AM 9:16

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

ERNIE WASHINGTON, IN HIS
CAPACITY AS CORONER OF
HAMPTON COUNTY,

PLAINTIFF,

vs.

HAMPTON COUNTY, HAMPTON
COUNTY COUNCIL AND ROSE
DOBSON-ELLIOTT, AS
HAMPTON COUNTY ADMINISTRATOR,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CLERK OF COURT

HAMPTON COUNTY, S.C.

CASE NUMBER: 2016-CP-25-371

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COMES NOW the Defendant and submits this memorandum in opposition of the Motion for Temporary Restraining Order¹ and Action for Declaratory Judgment and Injunctive Relief. Coroner Washington seeks a declaration from this Court pursuant to the Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, et seq., that the action taken by the Defendants to take away the Coroner's vehicle if he does not allow the County to place decals on the vehicle is improper and an illegal attempt to usurp the powers of the duly-elected Coroner of Hampton County. The Defendants pray that this Court inquire into the matters alleged herein and issue an Order requiring Coroner to place a decal on the vehicle assigned to him by the County as required by the County and its vehicle identification policy.

¹ The Coroner's Motion for Temporary Restraining Order was partially resolved by the parties' consenting to maintain the status quo pending a final hearing on the merits.

STATEMENT OF FACTS

Coroner Washington has been the duly-elected Coroner of Hampton County since 2011. During his tenure as Coroner, there has been a debate over how to provide the Coroner's office with a vehicle. Those options are delineated in the Affidavits of Hampton County Council Chairman Roy Hollingsworth and Hampton County Administrator Rose Dobson-Elliott attached hereto. The Coroner initially received an Explorer donated to Hampton County by Richland County for the use of the Coroner.

Defendants requested that the Coroner place decals on the Explorer as indicated in the Affidavits of Hampton County Council Chairman Roy Hollingsworth and Hampton County Administrator Rose Dobson-Elliott attached hereto. The Coroner initially agreed with the request to place the decals on the vehicle. The Coroner then changed his mind and sought an Attorney General's opinion as to whether County Council could insist that the decals be placed on his car. The Coroner has submitted the South Carolina Attorney General's Opinion dated April 8, 2013. Op. S.C. Att'y Gen., No. 888, 2013 WL 1695523 (April 8, 2013).

In June 2016, the motor blew up in the Explorer gifted to Hampton County by Richland County for use by the Coroner. The County then decided that it would seek a replacement vehicle for use by the Coroner and purchased a 2008 Dodge Durango. (Dobson-Elliott Aff.) The Dodge Durango was put into the county fleet and assigned to the Coroner. Decals were placed on the County owned vehicle as required by County and its vehicle identification policy and delivered to the Coroner. Coroner Washington then removed the decals and placed his own Coroner's Office seal on the rear window of the vehicle. (Dobson-Elliott Aff. and Coroner Aff.)

On August 15, 2016, Coroner Washington had his attorney appear on his behalf at a County Council meeting to discuss the legal merits of the Coroner's position regarding whether the County could force him to place decals on his vehicle. After the meeting, the Coroner removed the County Seal decals from the front doors of the Dodge Durango. (Coroner Aff.) The matter was raised by Council and a vote was held on a motion regarding the placement of decals on the vehicle assigned to the Coroner. (Coroner's Exhibit 7-Council Minutes and Hollingsworth Aff.) The motion was adopted by Council to "approve the issuance of the County Fleet Vehicle [Dodge Durango] for the Hampton County Coroner pursuant to Hampton County Personnel Policy as it relates to the vehicle policy; the 2008 Dodge Durango assigned from the Hampton County Fleet Pool assigned to the Coroner shall have state coroner decals applied to the driver's front door and the passenger's front door, and they shall state Hampton County as well. Shall the Coroner refuse to comply with County Council's directive; the Coroner is to return the 2008 Dodge Durango to the county fleet pool within 48 hours." (Coroner Exhibit 7 - Minutes and Hollingsworth Aff.)

Shortly thereafter, County Administrator Dobson-Elliott told Coroner Washington that he needed to place the Coroner's office seal on the front doors of the Dodge Durango within the next 48 hours or the vehicle would be taken from him as per the Motion/Resolution made by Council. (Dobson-Elliott Aff.) The County Administrator indicated that the decals should be placed on the front doors of the vehicle in order to properly mark the vehicle as required by the County and its vehicle identification policy (site) (Hollingsworth Aff. and Dobson-Elliott Aff.)

There were thereafter attempts made to contact/communicate with the Coroner to determine the progress of the request by the County.

On October 3, 2016, the Hampton County Attorney notified the Coroner that at the Council meeting that night, it was anticipated that Council may demand (again) that the vehicle be returned. Council did, in fact, vote to place the County owned vehicle previously assigned to the Coroner back into the County Fleet of vehicles because the Coroner had not complied with the terms of the adopted motion/resolution. (Hollingsworth Aff.)

On October 4, 2016, Coroner Washington filed a Complaint for Declaratory Judgment and for Injunctive Relief and a Motion for Emergency Temporary Restraining Order to enjoin Defendants from removing the Coroner's vehicle should the Coroner refuse to place the proper decals on the assigned vehicle.

On October 19, 2016, the County purchased a transport van for the Coroner's office. The Coroner attempted to take possession of the van prior to authorization by the County. However, the County has retained possession of the new van since that time. The Coroner refuses to use County provided alternatives to transport bodies for autopsy at additional expense to the County. (Dobson-Elliott Aff.)

At the hearing, the Attorney for the Coroner, announced to the Court that the Coroner has no problems placing the decals required by the County on the transport van.

Through counsel for all parties, a temporary agreement has been reached so that the status quo will be maintained regarding the vehicle until this Honorable Court decides the issue.

LEGAL STANDARDS

Standard for Declaratory Judgment

The Declaratory Judgments Act provides that "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15-53-20 (1976). "Any person ... whose

rights, status, or other legal relations are affected by a statute [or] municipal ordinance may have determined any question of construction or validity arising under the statute [or] ordinance and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. § 15- 53-30 (1976); see also Rule 57, SCRPC.

To state a cause of action under the Declaratory Judgments Act, a party must demonstrate a justiciable controversy. *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970). "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Id.*, 255 S.C. at 154, 177 S.E.2d at 553; *Graham v. State Farm Mat. Auto, Ins, Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995); *Holden v. Cribb*, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002).

The Declaratory Judgments Act is a proper vehicle in which to bring a controversy before the court when there is an existing controversy or at least the ripening seeds of a controversy. *Waller v. Waller*, 220 S.C. 212, 223, 66 S.E.2d 876, 882 (1951). The basic purpose of the Act is to provide for declaratory judgments without awaiting a breach of existing rights. The Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship. *Graham*, 319 S.C. at 71, 459 S.E.2d at 845; *Power*, 255 S.C. at 154, 177 S.E.2d at 553; *Waller*, 220 S.C. at 223, 66 S.E.2d at 882; *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 16, 567 S.E.2d 881, 888-89 (Ct. App. 2002).

Injunctive Relief

Injunctive Relief need not be considered because the parties have agreed to maintain the

status quo pending the Court's decision on the merits.

Hampton County operates under the Council-Administrator form of government which is governed by S.C. Code Ann. § 4-9-610, *et seq.* Rose Dobson-Elliott is the Hampton County Administrator. The Administrator of Hampton County is appointed by Hampton County Council and serves as "the administrative head of the county government" and is "responsible for the administration of all the departments of the county government *which the council has the authority to control.*" S.C. Code Ann. § 4-9-620 (emphasis added).

A county administrator is "responsible for employment and discharge of personnel subject to the provisions of subsection (7) of Section 4-9-30 and subject to the appropriation of funds by the council for that purpose." S.C. Code Ann. § 4-9-630(8). Subsection (7) of Section 4-9-30 empowers county governments:

(7) to develop personnel system policies and procedures for county employees by which all county employees are regulated except those elected directly by the people, and to be responsible for the employment and discharge of county personnel in those county departments in which the employment authority is vested in the county government. This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government.

S.C. Code Ann. § 4-9-30(7) (emphasis added).

Regarding a county administrator's authority over elected officials, the Home Rule Act provides, "[w]ith the exception of organizational policies established by the governing body, *the county administrator shall exercise no authority over any elected officials* of the county whose offices were created by the Constitution or by the general law of the State." S.C. Code Ann. § 4-9-650. The County is not trying to remove a deputy employed by the Sheriff.

The South Carolina Attorney General's Office has consistently advised that a county governing body and its officials are "generally considered as having only limited authority in dealing with the authority or duties of an elected official." Ops. S.C. Att'y Gen., No. 888, April 8, 2013; No. 12-770, May 7, 2012; No. 06-114, June 19, 2006. "[A] county council has no authority to interpret the coroner's responsibilities or to direct him to perform in a particular manner." Op. S.C. Att'y Gen., No. 888, April 8, 2013 (relying, in part, on *McCormick Cnty. Council v. Butler*, 361 S.C. 92, 603 S.E.2d 586 (2004)). Of course as the Court recognized at the hearing while these opinions may provide guidance in the end they are only opinions.

The Coroner's vehicle must carry an official emblem, marker or plates. See S.C. Code Ann. § 56-3-1710. Again the Court recognized that since the subject vehicle is "publicly" owned it is mandatory that the vehicle displays license plates indicating as much.

Hampton County has more than funded the Coroner's office as required in S.C. Code Ann. § 4-9-30(5)(a) (requiring that county governments "make appropriations for functions and operations of the county".) In fact the County has provided a vehicle, actually two vehicles, to the Coroner to better equip him to accomplish his duties as Coroner, even though there is no statutory requirement that it do so.

The County is simply requesting that the Coroner make the County owned vehicle assigned to his office with appropriate professional emblems which identify the vehicle as publicly owned.

"The coroner has a very serious role in Hampton County." That is stated by the Coroner. Defendants could not agree more. Defendants are not interfering with death notification to

families or telling him how to investigate deaths or who provides death notifications to families of the deceased and investigates deaths or who works as his assistant.

Perhaps the Coroner should consider whether it appears to be improper to lead a funeral procession which Washington Funeral Home is in charge of while operating a County owned vehicle, which is more offensive to the public than a perceived, and disingenuous position by the Coroner that people he has to notify will be upset if they know that this is the coroner approaching. The Coroner does not have a reasonable and justifiable reason for not having the word "Coroner" or other identifying decals placed on the front doors of his county owned vehicle.

The County has not taken his vehicle away because the Coroner refuses to place two decals. In fact the County deferred and extended any action regarding the vehicle for months in an effort to resolve this situation. Only when the Coroner decided, after speaking with his state association, to challenge the County are we in Court today.

As stated by the Defendants at the hearing on January 5, there is very little argument about the applicable law, the argument lies in the interpretation of the law as it applies to these facts. It is the Defendant's position that what was requested by the County regarding the decals being placed on the Coroner's vehicle was/is reasonable and that Coroner's position is unreasonable and frankly, with all due respect, defies common sense.

CONCLUSION

The Coroner should be required to place on the front doors of his vehicle a decal that identifies him as the Coroner of Hampton County. The decal can simply state Hampton County Coroner or it can be of the type which he has placed on the back window, and considering the

condition of the decal on the back window within the reach of the wiper blades, the back window is not an appropriate place. The County had a substantial justification for the action it has taken regarding the placement of identifying emblems on the front doors of the vehicles assigned to Corner. County policy regarding proper identification of County owned vehicles dictated the County's action. Additionally, the County had received multiple reports from citizens that observed the less than properly marked County vehicle was used by the Coroner as personal business which also is a violation of County vehicle use policy. The County has attempted for five (5) or six (6) months to resolve this issue with the Coroner without success. Because the actions taken by the County, in its opinion were justified, the Plaintiff is not entitled to an award of attorney's fees.

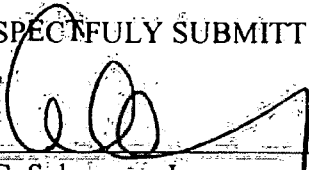
The County looks forward to the resolution of this matter.

RESPECTFULLY SUBMITTED,

Dated:

January 12, 2017

Estill, South Carolina


A. G. Solomon, Jr.
Attorney for Hampton County
P. O. Box 969
Estill, SC 29918
(803) 625-3232

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

ERNIE WASHINGTON, IN HIS
CAPACITY AS CORONER OF
HAMPTON COUNTY,

PLAINTIFF,

vs.

HAMPTON COUNTY, HAMPTON
COUNTY COUNCIL AND ROSE
DOBSON-ELLIOTT, AS
HAMPTON COUNTY ADMINISTRATOR,

DEFENDANT.

) IN THE COURT OF COMMON PLEAS

) CASE NUMBER: 2016-CP-25-371

) AFFIDAVIT OF CHAIRMAN
) HAMPTON COUNTY COUNCIL
) ROY HOLLINGSWORTH

Comes now the affiant, ROY HOLLINGSWORTH, and after being duly sworn, does affirm the following

1. I am a United States citizen of sound mind and body and give this affidavit truthfully and of my own free will.
2. I am a resident of Hampton County and have been the duly-elected Councilman of Hampton County since 2013.
3. At the beginning and during my tenure as a Council Member on Hampton County Council, I was informed and brought up to date by current seated Councilmen concerning Hampton County Coroner Ernie Washington's requests and usage of county vehicles by his office. Council Member Chris Haulsee expressed on different occasions to Council, citizens' complaints he had received alleging improper use of county vehicles assigned to Coroner Ernie Washington. One of the improper uses stated to Council by Council Member Chris Haulsee was citizens observing Coroner Ernie Washington using a county vehicle for personal business use (leading funeral service processions as owner(s) of Washington Funeral Home). This was also observed on one occasion and brought to Council's attention by Vice-Chairman Charles Phillips. Council Member Shedron Williams is first cousin to Coroner Ernie Washington's spouse (Shirley).
4. On March 4, 2013, Mr. Ernie Washington, Coroner, Hampton County, came before Council to ask Council to accept a donated vehicle, a 2005 Ford Explorer, from Richland County on

behalf of the Coroner's Office. He explained to Council that repairs to the window regulator and air compressor which would cost approximately \$600 (six hundred dollars) would have to be made. He reported to Council that the vehicle in which he is driving that was donated by the Hampton County Sheriff's office is still leaking oil and brakes are making a noise. Mr. Washington also requested that the County allow him to get a tag (state and county - SLED) for the vehicle. There was a discussion. A motion was made by Council Member Shedron Williams, and seconded by Council Member Roy Hollingsworth, to accept as a county vehicle and to be used in the Coroner's office with the county mechanic inspecting the vehicle before going any further. Council Member Chris Haulsee stated that the Coroner has not complied with the county's requirement that all county vehicles be marked with the county's seal, etc. Vice-Chairman Charles Phillips asked what would happen if the coroner no longer needed the vehicle and wanted to donate it to the county's vehicle pool; would the county have to get permission from Richland County if the county accepted with stipulations? It was explained that once the vehicle was accepted by Hampton County, it would become the property of Hampton County. There was a short discussion. A motion was made by Council Member Shedron Williams, and seconded by Council Member Roy Hollingsworth, to amend his motion to state that Hampton County would accept the vehicle (2005 Ford Explorer) from Richland County, South Carolina with no conditions and assign the vehicle to the Coroner's Office. Motion was carried with Chairman Hugh Gray, Council Member Roy Hollingsworth, Vice-Chairman Charles Phillips, and Council Member Shedron Williams voting in favor and Council Member Chris Haulsee opposing.

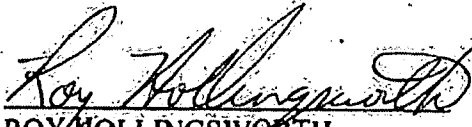
5. On March 18, 2013 during Hampton County Council Meeting, Council unanimously approved requiring Coroner Ernie Washington to clearly mark the two assigned county vehicles to his office. Council required that the Hampton County seal or the words "Hampton County" (visible to the public) be placed on the front passenger and driver doors by April 1, 2013.
6. On April 15, 2013 during Hampton County Council Meeting, County Administrator Sabrina Graham provided Council information supplied by Coroner Ernie Washington from the South Carolina Attorney General's Office. Council requested Hampton County Council Attorney A. G. Solomons, Jr. to research the matter to see if the coroner is in compliance.
7. On July 18, 2016 during Hampton County Council Meeting, Coroner Ernie Washington came before Council to discuss the issues of his vehicle and seals. Coroner Washington informed Council that he had identification of the coroner's office on his vehicle to include a seal on the vehicle. There was much debate about the vehicle. Vice-Chairman Roy Hollingsworth cited the Vehicle Policy as adopted by Hampton County. Chairman Shedron Williams responded that all vehicles did not have the Hampton County seal (blue) on their vehicles (Fire Department, EMS, Sheriff) but had their vehicle marking for the county

department. There was much debate. Council Member Charles Phillips asked the Coroner why is it that he did not want the seals on his vehicle. Coroner Washington stated that he did have the coroner's seal on the vehicle. County Administrator Rose Dobson Elliott asked if he wanted to put his seals on then neither Council nor she had a problem. Coroner Washington thanked Council.

8. On August 3, 2016 during Hampton County Council Meeting, Chairman Shedron Williams stated that Council will discuss the seal on Coroner Ernie Washington vehicle. Vice-Chairman Roy Hollingsworth presented information regarding the coroner's vehicle. Chairman Williams asked if the coroner was contacted. Council discussed the matter.
9. On August 15, 2016 during Hampton County Council Meeting, Chairman Shedron Williams stated that Council will discuss the seal on Coroner Ernie Washington vehicle. A motion was made by Vice-Chairman Roy Hollingsworth, and seconded by Council Member Isaac Smith, that Hampton County Council approve the issuance of the County Fleet Vehicle for the Hampton County Coroner pursuant to Hampton County Personnel Policy as it relates to the vehicle policy; the 2008 Dodge Durango assigned from the Hampton County Fleet Pool assigned to the Coroner shall have the state coroner decals applied to the driver's front door and the passenger's front door, and they shall state Hampton County as well. Shall the Coroner refuse to comply with County Council's directive; the Coroner is to return the 2008 Dodge Durango to the county fleet pool within 48 hours. Motion carried with Vice-Chairman Roy Hollingsworth, Council Member Charles Phillips and Council Member Isaac Smith voting in favor and Chairman Shedron Williams voting against.
10. On September 19, 2016 during Hampton County Council Meeting, Attorney Virgin Johnson, Jr. came before Council on behalf of Coroner Ernie Washington. He stated that he felt that there were some communication problems and there was no disrespect intended but just a disagreement. Attorney Johnson cited several cases in which supported the view of the coroner regarding his vehicle. Attorney Johnson and Coroner Ernie Washington with his family thanked Council.
11. On October 3, 2016 during Hampton County Council Meeting, Council reported out of executive session. Moved by Council Member Charles Phillips, and seconded by Council Member Isaac Smith, to come out of executive session regarding legal matters and personnel matter. Motion carried unanimously. Chairman Shedron Williams reported that legal matters and matters will continue to be researched for clarity and Coroner Ernie Washington's decal on vehicle. Chairman Williams then excused himself from Council Chambers. A motion was made by Vice-Chairman Roy Hollingsworth, and seconded by Council Member Smith, to

implement motion already passed but subject to delay regarding coroner's vehicle. Motion carried unanimously. Chairman Williams came back into Council Chambers to adjourn the meeting.

FURTHER AFFIANT SAYETH NOT.


ROY HOLLINGSWORTH
CHAIRMAN,
HAMPTON COUNTY COUNCIL

SWORN TO BEFORE ME THIS 10th
DAY OF JANUARY, 2017.


Notary Public for South Carolina

My Commission Expires:

4-27-2025

5. In regards to the stickers on the vehicle, I disagree that the stickers were long down the sides and of multiple colors. The word Coroner was in white and placed on the rear side windows of the vehicle. As I have personally observed on other vehicles assigned to the County Coroner in other counties. In my opinion this looks very professional. I, as well, authorized the County Decals on the front doors of this vehicle as instructed by Council and pursuant to the County Vehicle Policy.

6. Immediately upon receiving the vehicle the Coroner had all the decals removed from the vehicle, placing a softball size Hampton County Coroner Decal on the rear glass of the vehicle. Note, the picture showing the wiper blade has worn the decal to the point that it is almost worn off.

7. In an effort to work this issue out, I contacted the current Chairman Williams and asked him to broker a deal with the Coroner. Would he be willing to place the Hampton County Coroner decals on the front doors. The Council agreed to this and so did the Coroner. He stated to me that it would take three weeks to get the decals. This seems somewhat unreasonable to me. In any event he never requested a purchase order from purchasing and never followed through with the agreement.

8. The Vehicle was purchased with funds under my control not from the Coroner's budget. This vehicle was placed in the County Fleet pool and subsequently assigned by Council to the Coroner's Office. In a discussion with the Coroner he stated to me that he had no other vehicle and used the vehicle for his private commercial business. This creates a liability issue to the County. I immediately notified the County Council.

9. I have personally witnessed the Coroner leading funerals for his funeral home on numerous occasions using the County vehicle. In my capacity as County Administrator I have received numerous complaints concerning this activity as well as high speed erratic driving by the Coroner from the public and other County Employees.

10. The assignment of a vehicle to the Coroner is not interference in the operation of his office. I was attempting to provide the Coroner with a vehicle in better overall condition than he had. I am not aware of any statutes that require the County to provide the Coroner with a vehicle.

11. I have received emails from a survey through the South Carolina Association of Counties that provided the following information:

1. Charleston County - Vehicle is marked
2. Spartanburg County - Vehicle is marked
3. Georgetown County - Vehicle is marked
4. Allendale County - Vehicle is marked
5. Lee County - this is a personal vehicle but the Coroner has had it marked
6. Jasper County - this is a personal vehicle and therefore is not marked the statement of not marked is misleading without noting that it is his personal vehicle.

12. The van was to be held at the dealership until all the vehicles the County ordered were in. Then the County was going to pick them up. The Coroner inserted himself with the Dealer and had the van delivered and took delivery of the van.

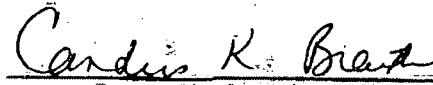
13. I requested the keys and the paperwork from the Coroner. The funds were not coming from the Coroner's budget, the Coroner did not place the order, the Coroner did not issue the purchase order. The Coroner directly violated the County Purchasing Policy. The Coroner does not have any authority on the purchasing of vehicles for the County.

14. The Coroner does not have to call in an independent removal service. In the past and in other counties, the Coroner's Office works with the County and utilizes Emergency Services for transport of bodies for autopsy. This was done without any incident or violation of law or impropriety. It would seem the Coroner's time would be more valuable in the County rather than in transporting the bodies himself. This has been offered to Coroner Washington by the EMS Director Altman.

FURTHER AFFIANT SAYETH NOT.


ROSE DOBSON-ELLIOTT
County Administrator

SWORN TO BEFORE ME THIS 11
DAY OF JANUARY, 2017.



Notary Public for South Carolina

My Commission Expires: July 2, 2017

ENTERPRISE LEASING COMPANY - SOUTHEAST, 608 BELLS HIGHWAY, WALTERBORO, SC 294885737 (843) 549-6514

RENTAL AGREEMENT
58974REF#
45DT8C

SUMMARY OF CHARGES

RENTER

WASHINGTON SR, ERNIE

DATE & TIME OUT

06/20/2016 03:46 PM

DATE & TIME IN

07/18/2016 02:44 PM

BILLING CYCLE

24-HOUR

VEH #1 2016 NISN PATH SV2W

VIN# 5N1AR2MN4GC612685

LIC# LSY916

MILES DRIVEN 304

Charge Description	Date	Quantity	Per	Rate	Total
TIME & DISTANCE	06/20 - 07/18	4	WEEK	\$349.00	\$1,396.00
DW	06/20 - 07/18	28	DAY	\$17.99	\$503.72
PAI	06/20 - 07/18	28	DAY	\$2.00	\$56.00
REFUELING CHARGE	06/20 - 07/18				\$0.00
Subtotal:					\$1,955.72
Taxes & Surcharges					
SALES TAX	06/20 - 07/18			8%	\$156.45
SC RENTAL SURCHARGE	06/20 - 07/18			5%	\$97.79
Total Charges:					\$2,209.96

Total Estimated Amount Due

\$2,209.96

PAYMENT INFORMATION

AMOUNT PAID

\$2,209.96

TYPE

Visa

CREDIT CARD NUMBER

xxxxxxxxxxxx0276 PENDING

* \$150 going back to card bc we
had authorized \$2359.96.

Ernie Washington - Coroner
7-19-16

Confusion
6-21
6-24
5 days

County Personnel Policy (vehicles)

VEHICLE POLICY

Hampton County owned vehicles are to be used only for official County business. Official business is defined as that which is necessary for an employee to perform his or her duties and responsibilities or any additional duties and responsibilities assigned by an employee's immediate supervisor or County Administrator. Employees must be authorized by their department head or elected official to drive a Hampton County owned vehicle.

General Use:

- 1) Hampton County owned vehicles will be driven only by authorized employees of Hampton County. Employees who have been authorized to drive Hampton County owned vehicles are not to use the vehicle for personal purposes.
- 2) Employees of Hampton County must possess and maintain a valid driver's license and must be in compliance with all applicable local, state and federal traffic laws and regulations when operating Hampton County owned vehicles.
- 3) All operators and passengers are required to wear seat belts at all times; operators must drive safely and in a courteous manner at all times.
- 4) Vehicles are to be used for conducting business for Hampton County only. Passengers, except other employees or authorized personnel, are prohibited from traveling in Hampton County vehicles. Authorized personnel include:
 - a. Others engaged in advising on or assisting in matters related to Hampton County services and improvements;
 - b. Immediate family members being transported only while the employee is directly en route to or from work or working;
- 5) All vehicles will only display signs, stickers, and decals or flags authorized by Hampton County and used in the official designation of such vehicle(s).
- 6) Travel in Hampton County vehicles outside of the County must be approved in advance by the department head or elected official.
- 7) Since individuals are assigned specific vehicles, each operator will be held responsible for keeping that vehicle clean and in good repair.

County Personnel Policy (Vehicles)

It is the responsibility of the employee's department head or elected official to ensure that this policy is strictly observed.

TRAVEL TO AND FROM WORK

The use of a vehicle for travel to and from work is a privilege not to be abused. Under no circumstances is an employee to drive Hampton County owned vehicles while under the influence of intoxicants or no other controlled substance nor are intoxicants to be transported in Hampton County owned vehicles. Anyone under the influence of intoxicants or other controlled substances will not be permitted to ride in the vehicle. Stops at bars, taverns, night clubs, etc., or private homes are strictly prohibited. An occasional stop on the way home to complete brief errands is acceptable (i.e., the bank, post office, grocery store, laundry, etc.). Under no circumstances are County vehicles to be used for other personal travel.

VEHICLE ACCIDENTS - TRAFFIC VIOLATIONS

In the event of an accident involving a Hampton County owned vehicle, no matter how minor, the operator and all employee(s) involved, must notify their supervisor or department head or the County Administrator immediately. They will in turn notify the Finance Department immediately. The operator of the vehicle should stay at the scene of an accident until it has been properly investigated by the appropriate law enforcement agency and obtain a copy of the accident report and the names of witnesses, and insurance information of all parties involved, if possible.

Within eight (8) hours following the accident, the Supervisor will ensure that the employee involved in the accident will report to a designated physician or medical facility for drug testing. If test results are positive, the employee may be subject to disciplinary action up to and including termination from employment.

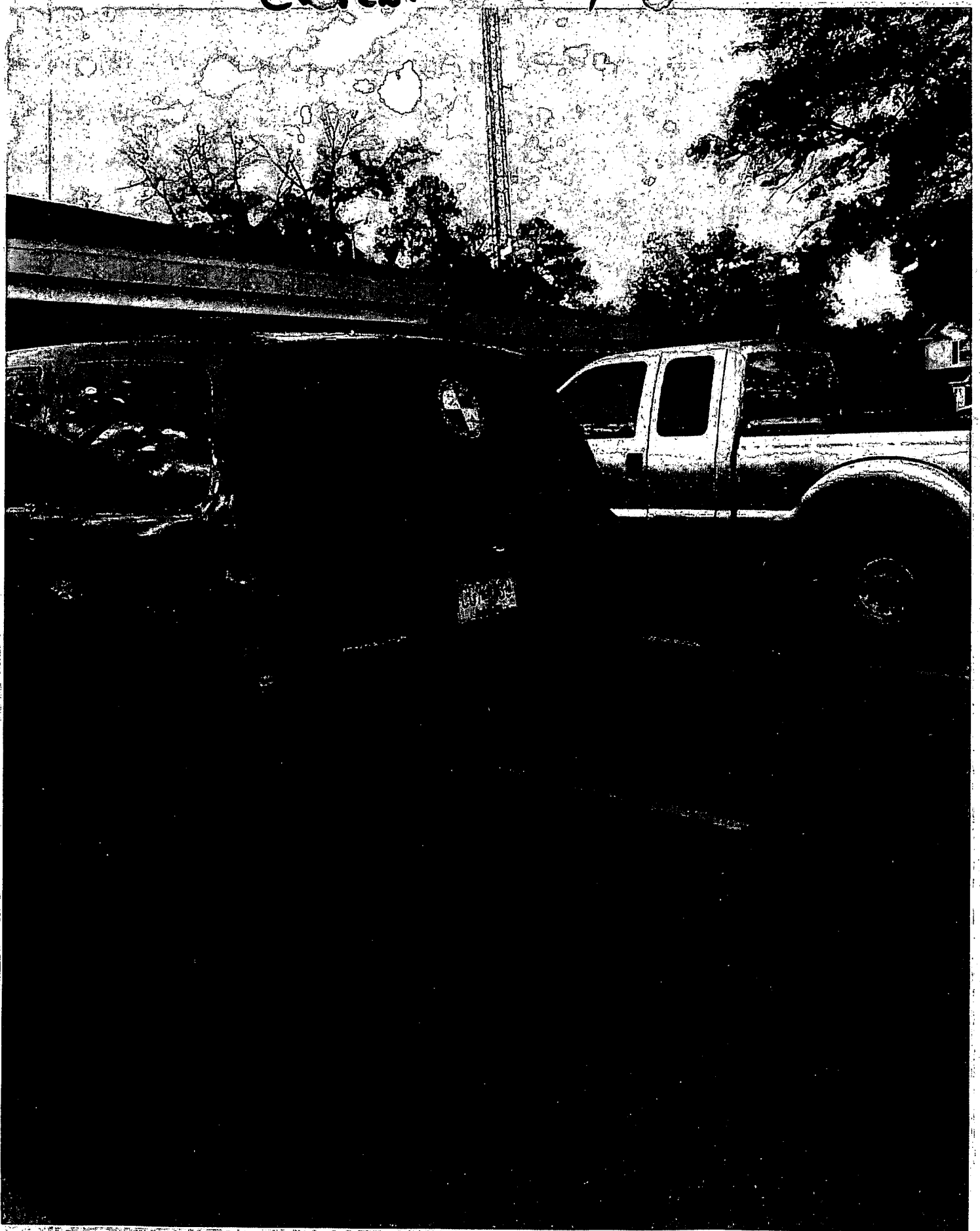
Traffic violations occurring during the operation of a Hampton County vehicle or a privately owned vehicle will not be the responsibility of Hampton County, nor will Hampton County be responsible for traffic accidents occurring during the use of privately owned vehicles on Hampton County business.

When the accident is determined to be the fault of the County employee, the employee will reimburse Hampton County for the deductible.

SAFETY AND ACCIDENT PREVENTION

The goal of Hampton County's Safety and Accident Prevention Program is to reduce accidents and injuries involving Hampton County employees, equipment

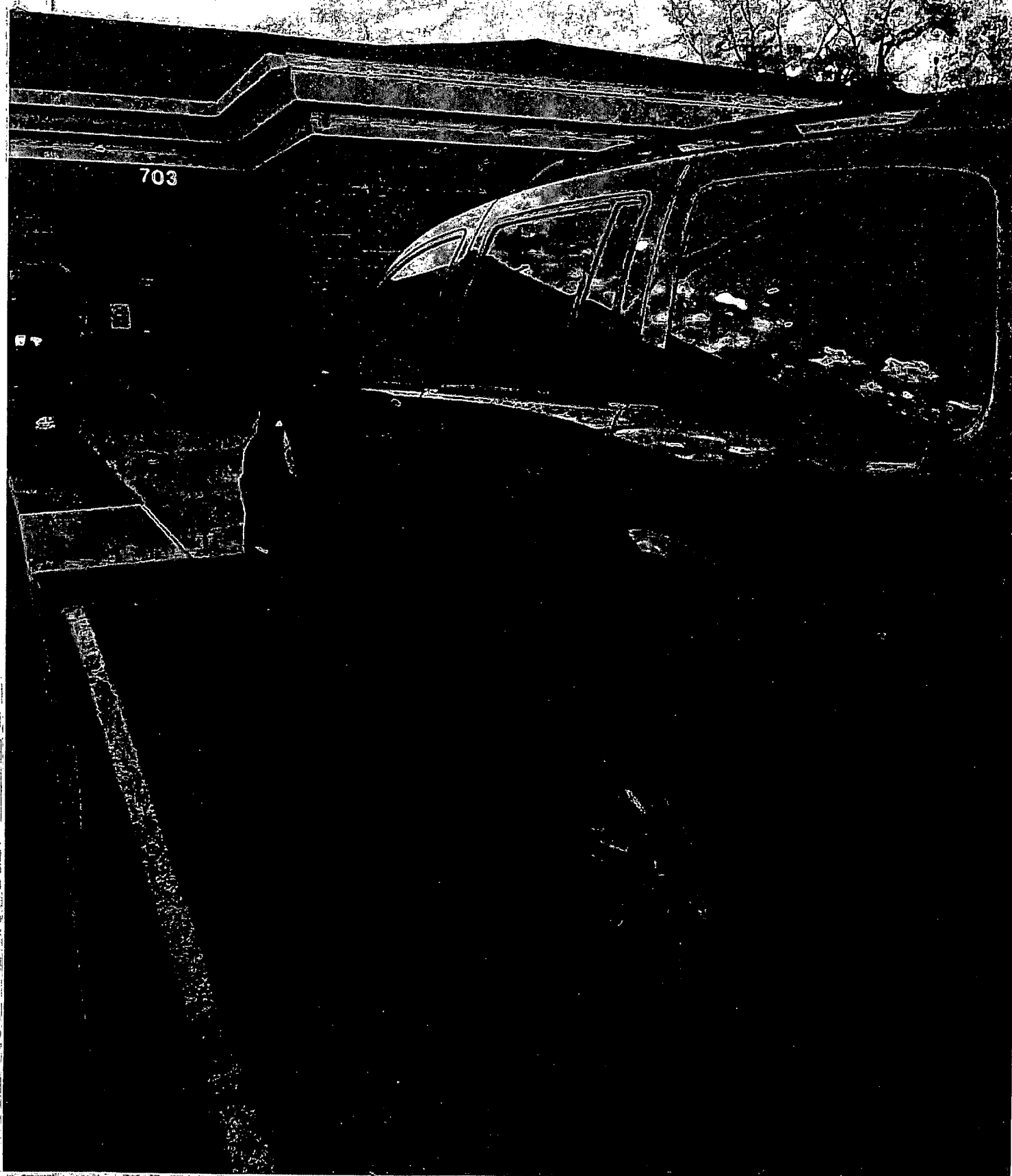
CIText Photos/Gover vehicle



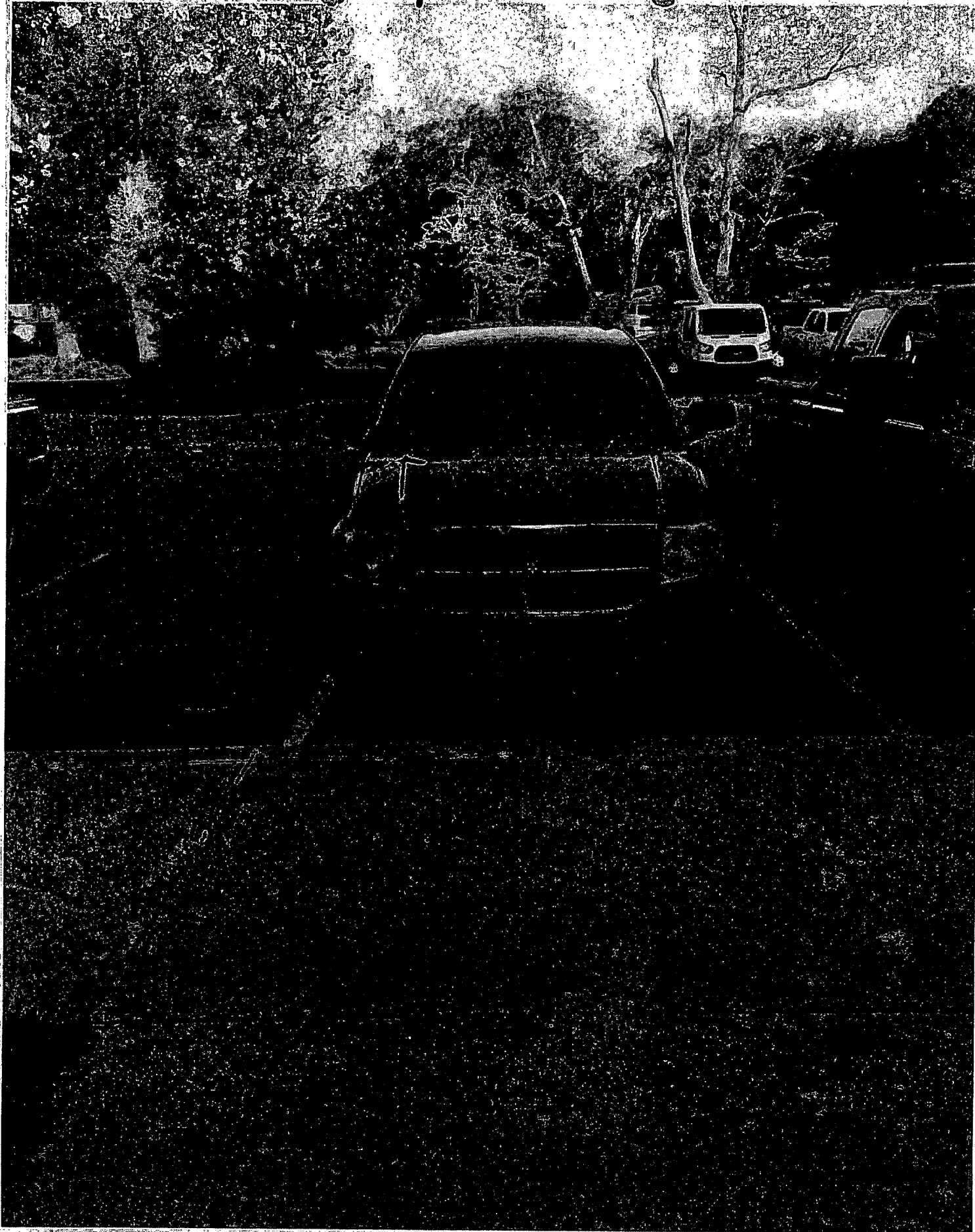
current photos / coronet vehicle



current photos / coroner's vehicle



Current photos / coroner's vehicle



STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Ernie Washington, in his capacity as
Coroner of Hampton County,

Plaintiff,

v.

Hampton County, Hampton County
Council, and Rose Dobson-Elliott, as
Hampton County Administrator,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A NO.: 2016-CP-25-0371

**REPLY TO DEFENDANTS' RESPONSE
TO PLAINTIFF'S MEMORANDUM**

COMES NOW Plaintiff, Coroner Ernie Washington, and submits this Reply to Defendants' Response to Plaintiff's Memorandum in Support of his Motion for Temporary Restraining Order and Action for Declaratory Judgment and Injunctive Relief.

The County's response to the plaintiff's memorandum of law is intriguing. After much reflection, it appears to the undersigned that the county has presented two defenses. Number one, The Cool Hand Luke defense (Walk Tall and carry a "big stick"). And Number two, the Cool Hand Luke defense ("What we've got here is a failure to communicate").

The tone of Administrator Dobson-Elliott's affidavit evidences a Buford Pusser approach. Therein, she reveals her belief that she is the Coroner's boss. Comments such as: "It would seem the Coroner's time would be more valuable in the County rather than in transporting the bodies himself" shows that the Administrator thinks that she knows best as to how the coroner should do his job—a job he was elected to do. (Dobson-Elliott Aff. ¶ 14). She goes on to state that the vehicle was purchased "with funds under *my* control" and apparently thus believes she can decorate the coroner's car however she likes, because she thinks the stickers look "professional." (*Id.* at ¶ 5). These type of abrasive statements are also present in an email

previously submitted where the Administrator demands to know “when *we* can expect *you* to comply with Council’s directive.” (Pl.’s Mem., Ex. 5).

On the other hand, and assuming the Administrator just does not realize that her statements are offensive, perhaps “what we have here is a failure to communicate.” Perhaps this is all just a big mistake because the Administrator’s affidavit also states that she is not aware of any statutes that require that the county provide the Coroner’s Office **with a car** (*Id.* at ¶ 10). Therefore it is possible that she is not aware that Council has a duty to fund the Coroner’s Office. See S.C. Code Ann. § 4-9-30(5)(a) (requiring that county governments “make appropriations for functions and operations of the county”). Among other things, the Coroner’s job is to move bodies. And, even in Cool Hand Luke’s days, moving bodies generally required transportation.

Also evidencing that this could all be a big mistake is the fact that the defendants raised in their response many issues that are wholly irrelevant to the case at hand. For instance, regarding the issue of the transport van—which arose after the filing of the Complaint—the County states that “[t]he Coroner attempted to take possession of the van prior to authorization by the County.” (Defs’ Resp. at 4). And that “[t]he Coroner inserted himself with the Dealer and had the van delivered and took delivery of the van.” (Dobson-Elliott Aff. ¶ 12). These statements are misleading. The seller of the transport van contacted Coroner Washington, advised that the van was ready for delivery, and asked the Coroner if he was ready for delivery. (Washington Reply Aff. ¶ 12). The Coroner stated that he was ready for delivery. The Administrator happened to be present when the van arrived and immediately approached the Coroner and the delivery drivers demanding to know who told them to deliver the van. The Administrator then followed the Coroner to his office and took the keys from him. Though it was purchased for his use, the Coroner has not been able to use the transport van since it was

delivered on October 19, 2016 because Ms. Dobson-Elliott first claimed that that it was not properly equipped but now in affidavit to this court claims that she wanted to have all new county vehicles in hand before distribution.

In addition, the Administrator now argues to this court that the Coroner does not need the new van which was purchased to replace the 20 year old van. Her reasoning is that the Coroner can save the County money and take an ambulance to the morgue. (Dobson-Elliott Aff. ¶ 14). This dovetails into the Cool Hand Luke defense because perhaps she was not present during budget discussions wherein the Coroner advised council that the county ambulance will not fit at the morgue. (Washington Reply Aff. ¶ 13). Further, taking a county ambulance out of town would leave one less ambulance in Hampton to respond to emergencies. (*Id.*). Council acknowledged that they understood the Coroner's reasoning and appropriated scarce county funds for the van. (*Id.*). Despite this, the Administrator still refuses to release the new van for the Coroner's use because she holds "the stick"...which in this instance are the keys.

The County also argues that injunctive relief need not be considered because the parties have agreed to maintain the *status quo* pending the Court's decision on the merits. Though a preliminary injunction is no longer necessary, the Coroner is still seeking a permanent injunction to enjoin Defendants from interfering with the smooth operation of the Coroner's Office by taking away his vehicle or forcing him to place or keep the decals on the vehicle. This court's decision is needed because this is the second time in three years that the county has insisted on making the coroner drive a clown car.

Defendants state in their Response that "[t]he Coroner does not have a reasonable and justifiable reason for not having the word 'Coroner' or other identifying decals placed on the front doors of his county owned vehicle." The Coroner has been very clear what his reasoning is

behind not having these identifying decals on his vehicle. Those reasons were articulated in his affidavit previously filed with the court and are supported by numerous other South Carolina Coroners. (*See, e.g.,* Wooten Aff. (attached) & Clevenger Aff. (to be supplemented)).

In other minutia, the County states that the Coroner was elected Coroner in 2011 and initially received an Explorer donated to Hampton County by Richland County. (Defs' Resp. at 2). This is inaccurate. In 2011, the Coroner requested funding for a vehicle for his office, but his request was denied. (Washington Reply Aff. ¶ 3). The Coroner thus used his personal vehicle for official Coroner operations until it was seriously damaged in an automobile accident in the course and scope of the Coroner's operations. (*Id.* at ¶ 3). Council chose not to repair or replace the vehicle. (*Id.* at ¶ 4). Thus, for approximately two months, the Coroner drove the 1998 transport van which was used to transport dead bodies but this vehicle was deemed unsafe by the county mechanic to take out of town and it left the coroner stranded multiple times, one time with a dead body inside the vehicle. The Coroner was embarrassed when citizens were trying to help him move the disabled van with the body inside. Then, the County gave the Coroner a 2005 gray Explorer with a rear end problem. (*Id.* at ¶ 5). In 2013, due in part to the gray Explorer's rear end problems, the Richland County Coroner generously gifted a 2005 blue Explorer to the Hampton Coroner. (*Id.* at ¶ 6).

Defendants state that Council requested that the Coroner place decals on the blue Explorer from Richland County and that the Coroner initially agreed to do so, but then changed his mind. (Defs' Resp. at 2). Again, this is inaccurate. The Coroner never agreed to placing decals on the gifted vehicle from Richland. (*Id.* at ¶ 7). Council's insistence that he place the decals on the Richland vehicle is what led the Coroner to petition for an advisory opinion from

the Attorney General's Office in 2013. (*Id.* at ¶ 7); *see* Op. S.C. Att'y Gen., No. 888, 2013 WL 1695523 (April 8, 2013).

In June 2016, when the motor blew up in the Richland-gifted Explorer, the County purchased a Dodge Durango, placed it into the county fleet, and assigned it to the Coroner. (Defs' Resp. at 2; Washington Reply Aff. at ¶ 8). The County placed decals on the vehicle allegedly pursuant to its vehicle policy. (*Id.*). The personnel policy at issue states that "[a]ll vehicles will only display signs, stickers, and decals or flags authorized by Hampton County and used in the official designation of such vehicle(s)." Although the Coroner is not a County employee, the County wished to enforce its personnel policy on the Coroner's dark green Durango by placing four decals on the vehicle—the word "CORONER" in bold reflective letters on both side rear windows and the multi-colored County seal on both front doors as well as a governmental tag. (Washington Reply Aff. ¶ 8). Even if the policy did apply to the Coroner's vehicle, it does not require that five identifiers be placed on his vehicle. Rather, the plain meaning of the language quoted above is that *if* signs, stickers, decals, or flags are placed on a county vehicle, then they must be "authorized by Hampton County and used in the official designation of [the] vehicle." The Coroner currently has a decal on his vehicle which officially designates the vehicle as the Coroner's. (Washington Reply Aff. ¶ 9). That should suffice to satisfy the County's vehicle policy even though the policy does not even apply to a constitutional officer such as the Coroner. *See* S.C. Code Ann. §§ 4-9-30(7) & 4-9-650. Also, the vehicle policy states that it is the elected official or department head who is responsible for ensuring that the policy is adhered to, not County Council or the Administrator. The coroner has ensured compliance with the policy by placing two identifiers when he was only required to comply with one per state law, S.C. Code Ann. § 56-3-1710, which trumps county policy.

Further, other county-employed department heads are only required to have two department decals on their front doors and a government license plate, however, the County attempted to mandate that the Coroner, for whatever reason, have six governmental identifiers on his vehicle—two County seals which are blue, gold, and white on the front doors, two high-visibility reflective “CORONER” stickers on the side rear windows, the Coroner’s seal which is brown, gold, and white on the rear window, and a governmental license plate. (Washington Reply Aff. ¶ 11). The County never conceded to allow less identifiers until the undersigned got involved in this dispute. (*Id.*).

The Administrator states in her affidavit that the Coroner “immediately upon receiving the [Durango] the Coroner had all the decals removed from the vehicle, placing a softball size Hampton County Coroner Decal on the rear glass of the vehicle.” (Dobson-Elliott Aff. ¶ 6). This is a misstatement of the facts. The Coroner did not remove the county seals on the front doors until after his attorney Virgin Johnson addressed Council on August 15, 2016, and explained that Council could not legally force the Coroner to keep the decals on the vehicle. (Washington Reply Aff. ¶ 9). The Coroner did not remove the bold letter “CORONER” decals on the rear side windows until September, 2016. (*Id.* at ¶ 10).

In another huge “failure to communicate” the Administrator claims that the Charleston and Spartanburg County Coroners have their vehicles marked. (*Id.* at ¶ 11). She evidently did not communicate with those who know and her affidavit is materially false. The attached affidavits from those Coroners address her assertions. The Spartanburg County Coroner marks his ten vehicles, however, he only has his Coroner’s seal on the rear window exactly like Coroner Washington has done. (Clevenger Aff. (to be supplemented)) The Charleston County Coroner does not mark her vehicles at all. (Wooten Aff.). Both Coroners Clevenger and Wooten

have the same reasoning for not marking the sides of their vehicles—the sensitive and personal nature of death notifications. They do not want families to see that the Coroner has arrived at their home before they get a chance to speak to them personally.

Defendants claim that they “are not interfering with death notification to families or telling him how to investigate deaths or who provides death notifications to families of the deceased and investigates deaths or who works as his assistant.” As the Coroner has previously argued, the existence of the County-mandated decals on his vehicle does, in fact, affect the manner in which the Coroner conducts death notifications. The manner in which the Coroner conducts death notifications is wholly within his purview as the duly-elected Coroner, and the County shall not interfere with how he operates his office. And in reality, legally, this mild-mannered and humble elected official is tired of being bullied. Hampton County needs to learn that under these facts, Coroner Washington carries the “bigger stick.”

In *Eargle v. Horry County*, 335 S.C. 425, 517 S.E.2d 3 (Ct. App. 1999), the Court noted the inevitable potential for conflict between a county governing body and an elected official and ruled in favor of the elected official based on the Home Rule Act. The Court of Appeals explained why the law favors the elected official over a county administrator: “Nonetheless, in most cases, the threat of displeasing the electorate and losing a re-election bid should be a sufficient check on the behavior of an elected official. No similar check on the county administrator’s behavior exists, given that the administrator is not elected but instead is appointed by the county council.” *Id.* at 433, 517 S.E.2d at 7 (citing S.C. Code Ann. § 4-9-620). Because the Coroner answers to the electorate, it is he who decides how to run his office, not the unelected Administrator.

CONCLUSION

For the foregoing reasons and the reasons articulated in the Coroner's Memorandum in Support of Declaratory Judgment and Injunctive Relief, Coroner Washington requests that this Court issue an Order enjoining the County from interfering with the smooth operation of the Coroner's Office by taking away his vehicle or forcing him to place or keep the decals on the vehicle. The Coroner further prays for an Order pursuant to Rule 57, SCRCPP, and the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, declaring: (1) that a county may not force the Coroner to place stickers or decals on his official vehicle because such would have the effect of allowing the county to control the coroner's vehicle, would be a violation of the separation of powers as the Coroner answers to the electorate, not the County; (2) that the county must adequately fund the Coroner's office and continuously provide the Coroner with vehicles in working condition; and (3) that the Court make the required S.C. Code Ann. § 15-77-300 findings and award reasonable attorneys' fees and costs to the Coroner inasmuch he has now had to fight two legal battles due to Cool Hand Luke and/or Buford Pusser defenses.

s/ Sandra J. Senn
 SANDRA J. SENN
Senn Legal, LLC
 P.O. Box 12279
 Charleston, SC 29422
 (843) 556-4045
 (843) 556-4046 (f)
sandy@sennlegal.com

Attorney for Coroner Ernie Washington

January 19, 2017
 Charleston, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
C/A NO.: 2016-CP-25-0371

COUNTY OF HAMPTON

Ernie Washington, in his capacity as Coroner
of Hampton County,

Plaintiff,

REPLY AFFIDAVIT OF CORONER
ERNIE WASHINGTON

v.

Hampton County, Hampton County Council,
and Rose Dobson-Elliott, as Hampton County
Administrator,

Defendants.

Comes now the affiant, Hampton County Coroner Ernie Washington, and after being duly sworn, does affirm the following:

1. I am a United States citizen of sound mind and body and give this affidavit truthfully and of my own free will.

2. I am a resident of Hampton County and have been the duly-elected Coroner of Hampton County since 2011.

3. Upon my election in 2011, I requested funding from County Council for a vehicle for my new office, however, my request was denied. As a result, I drove my own personal vehicle for official Coroner operations until it was involved in an automobile accident in late 2012 while on official business.

4. Following the accident, Council elected not to repair or replace the vehicle. As a result, for approximately two months, I was forced to drive the 1998 transport van which was used to transport dead bodies.

5. The County then provided me with a gray 2005 Ford

Explorer which had rear end problems.

6. In 2013, due in part to the rear end problems with the gray Explorer, the Richland County Coroner gifted to me a blue 2005 Ford Explorer.

7. Hampton County demanded that several stickers and decals be placed on the Richland-gifted Explorer. I objected to the decals and thus sought an Attorney General's opinion as to whether Hampton County could force me to place the decals on the Explorer.

8. In June 2016, my vehicle received from Richland County broke down. Without discussing the matter with me, Hampton County Administrator Rose Dobson-Elliott purchased a 2008 Dodge Durango with approximately 182,000 miles for \$2,950. She then put it in the county fleet and assigned it to me. Despite the Attorney General's opinion and my known wishes, the County placed two long reflective stickers marked "CORONER" on the side rear windows of the vehicle and the County seal on both the front driver and passenger doors.

9. On August 15, 2016, attorney Virgin Johnson spoke on my behalf at the County Council meeting. He argued the legal merits of my position that the County could not force me to place decals on my vehicle. After the close of the meeting, I removed the two County seals from the front doors of the Durango and placed a basketball-sized Coroner's seal on the rear window.

10. Sometime in early September, I removed the two long stickers marked "CORONER" from both side rear windows.

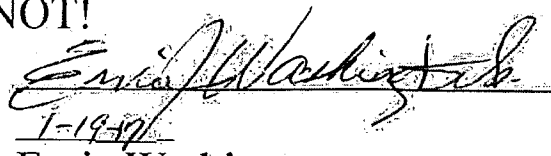
11. Other county-employed department heads are only required to have two department decals on their front doors and a government license plate, however, the County attempted to

mandate that I, an elected constitutional officer, have six governmental identifiers on my vehicle—two County seals which are blue, gold, and white on the front doors; two high-visibility reflective “CORONER” stickers on the side rear windows, the Coroner’s seal which is brown, gold, and white on the rear window, and a governmental license plate. The County never conceded to allow less identifiers until my attorney got involved.

12. Regarding the newly purchased transport van, the seller of the transport van contacted me, advised that the van was ready for delivery, and asked me if I was ready for delivery. I stated that I was ready for delivery. The Administrator happened to be present when the van arrived and immediately approached me and the delivery drivers demanding to know who told them to deliver the van. The Administrator then followed me to my office and demanded the keys from me. Though it was purchased for my Office’s use, I have not been able to use the transport van since it was delivered on October 19, 2016.

13. During budget discussions with Council, Council asked me why I do not use the county ambulance for transport instead of contracted removal services. I advised Council that the county ambulance will not fit into the morgue where the bodies need to be picked up. Further, taking a county ambulance out of town would leave one less ambulance in Hampton to respond to emergencies. Council acknowledged that they understood this reasoning. Despite this, the County still refuses to release the new transport van to me.

FURTHER AFFIANT SAYETH NOT!



Ernie Washington

R. 99 Hampton County Coroner

SWORN TO AND SUBSCRIBED before me
this 19 day of January, 2016 ^{Ans 2017}



Marilyn J. Smart
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 12/18/26

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Ernie Washington, in his capacity as
Coroner of Hampton County,

Plaintiff,

v.

Hampton County, Hampton County
Council, and Rose Dobson-Elliott, as
Hampton County Administrator,

Defendants.

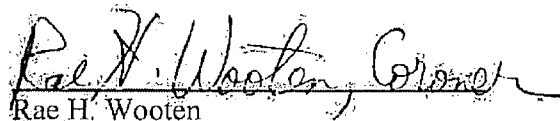
IN THE COURT OF COMMON PLEAS
C/A NO.: 2016-CP-25-0371

**AFFIDAVIT OF CHARLESTON
COUNTY CORONER RAE WOOTEN**

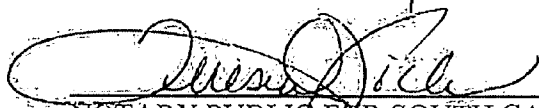
Comes now the affiant, Charleston County Coroner Rae Wooten, and after being duly sworn, does affirm the following:

1. I am a United States citizen of sound mind and body and give this affidavit truthfully and of my own free will.
2. I am the duly-elected Coroner of Charleston County and have been so elected since 2008.
3. It is my understanding that an affidavit filed by the Hampton County Administrator claims that I have allowed my coroner's cars to be marked. Not only is my car unmarked (except for the license tag), I do not allow my deputies' cars to be marked either.
4. Unfortunately, the nature of our job demands that we bring citizens' bad news regularly. Often, we bring bad news to families in the middle of the night. If they were to awake to a door knocking and look to see a marked Coroner's vehicle outside, hysteria would ensue. We avoid this by identifying ourselves, showing our badges and doing our absolute best to inform yet professionally comfort families in need.
5. I believe that this is the best approach and as the duly elected Coroner, I believe it is also my choice as to how I approach grieving families and my choice as to how I mark (or not mark) my vehicle.
6. Any information contained in an affidavit otherwise is incorrect.

FURTHER AFFIANT SAYETH NOT!


Rae H. Wooten
Charleston County Coroner

SWORN TO AND SUBSCRIBED before me
this 19 day of JANUARY, 2017.


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: September 18, 2023

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Ernie Washington, in his capacity as
Coroner of Hampton County,

Plaintiff,

v.

Hampton County, Hampton County
Council, and Rose Dobson-Elliott, as
Hampton County Administrator,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A NO.: 2016-CP-25-0371

AFFIDAVIT OF SPARTANBURG
COUNTY CORONER RUSTY
CLEVINGER

Comes now the affiant, Spartanburg County Coroner Rusty Clevenger, and after being
duly sworn, does affirm the following:

1. I am a United States citizen of sound mind and body and give this affidavit truthfully and of my own free will.
2. I am the duly-elected Coroner of Spartanburg County.
3. It is my understanding that an affidavit filed by the Hampton County Administrator claims that I have allowed my coroner's cars to be marked. This is true, however, my vehicles are only marked with the Spartanburg Coroner's seal on the rear window and governmental license tags. My vehicles are not marked on the side at all for good reason.
4. When providing death notifications, I do not want families to see a vehicle marked "Coroner" in front of their home before I get to speak with them. Death notifications are very sensitive and personal encounters and I want to be able to speak with the families before they know the Coroner has arrived at their home. I believe the manner in which I provide death notifications is within my purview as the duly-elected Coroner of Spartanburg County. I further believe the decision whether to mark my vehicle is within my purview as the duly-elected Coroner of Spartanburg County as the markings are directly related to the manner in which I conduct death notifications.

FURTHER AFFIANT SAYETH NOT!

[signature on following page]


Rusty Clevenger
Spartanburg County Coroner

SWORN TO AND SUBSCRIBED before me
this 20th day of January, 2017.


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 08/22/22

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HAMPTON) CASE NO.: 2016-CP-25-00371

ERNIE WASHINGTON, IN HIS CAPACITY)
AS CORONER OF HAMPTON COUNTY,)

APPELLANT,)

v.)

HAMPTON COUNTY, HAMPTON COUNTY)
COUNCIL, AND ROSE DOBSON-ELLIOT,)
AS HAMPTON COUNTY ADMINISTRATOR,)

RESPONDENTS.)

TRANSCRIPT OF RECORD

JANUARY 5TH, 2017
COMMENCING AT
HAMPTON, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER

APPEARANCES:

MS. SANDRA J. SENN, ESQUIRE
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CHARLESTON, SOUTH CAROLINA 29422
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Rebecca H. Hill
Official Court Reporter

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EXHIBITS
NONE.

1 THE COURT: This is 2016 at 371, Ernie Washington v.
2 Hampton County, Hampton County Council and Rose Dobson
3 Elliott, Hampton County Administrator. Present before me
4 this morning is Mr. Algae Solomons. Mr. Solomons, I
5 understand that you represent all of the defendants; is that
6 correct?

7 MR. SOLOMONS: That is correct, Judge.

8 THE COURT: Also present before me is Ms. Sandy Senn.
9 And Ms. Senn, I understand that you represent the plaintiff?

10 MS. SENN: I do, Yes, sir.

11 THE COURT: Very well. Now, the parties want to put on
12 the record that we met in chambers, and first of all, there
13 is an agreement concerning what had previously been filed on
14 my roster as a temporary restraining order. The parties
15 agree that insofar as the status of this vehicle, that is
16 the subject matter of this controversy, that they agree to
17 maintain the status quo pending the decision of this Court
18 in a non-jury trial; is that correct, from the plaintiff?

19 MS. SENN: Yes, sir.

20 THE COURT: Is that correct, from the defendant?

21 MR. SOLOMONS: Yes, Your Honor.

22 THE COURT: There has been some discussion by both
23 sides -- they've e-mailed my law clerk, Skyler Hutto, about
24 whether or not they intended to present live testimony in
25 this trial or present just affidavits. I directed my law

1 clerk to advise the attorneys for both sides that I would
2 accept live testimony or affidavits.

3 It is my understanding that they may both decide to
4 just present an affidavit or just present live testimony or
5 not present any testimony, and I advised them in chambers
6 prior to commencement of this hearing, that even if an
7 affidavit is presented to the Court for the Court's review,
8 that if the other side seeks to cross examine the affiant, I
9 will allow them to call the witness live so that cross
10 examination can take place. Have I accurately stated what
11 occurred in chambers, insofar as the plaintiff is concerned?

12 MS. SENN: Yes, sir.

13 THE COURT: Have I accurately stated what occurred in
14 chambers, insofar as the defendant is concerned?

15 MR. SOLOMONS: Yes, Your Honor.

16 THE COURT: All right. With that, Ms. Senn, I have
17 read all of the pleadings. I have read everything that was
18 sent to me, which is the Answer, the Summons and Complaint.
19 It also contained some extraneous material containing a
20 xeroxed copy of a photograph of a vehicle and an Opinion of
21 the attorney general's office, all of which I have reviewed.
22 Happy to hear from you, Ms. Senn.

23 MS. SENN: At the risk of having to ask you to do more
24 work, when you're trying to get to another event, I'd like
25 to hand up a memorandum of law that also has an attachment,

1 and I'm just giving this to opposing counsel as well. He
2 has not had time to review it. I scribbled my signature.

3 THE COURT: Understand that I have not reviewed it.
4 Let the record reflect that I'm being handed, and also
5 counsel for the defendant is being handed a document
6 entitled, "Memorandum in Support of Declaratory Judgment and
7 Injunctive Relief," which is consisting of 15 pages and four
8 exhibits, none of which I've had the opportunity to review
9 yet.

10 MS. SENN: Yes, sir. And just so the Court will know,
11 I scribbled my signature just as y'all told me to come a
12 little bit early.

13 THE COURT: And I want to thank both of you.
14 Yesterday, I was asked if I would give them a definitive
15 time as to when we would begin. Every now and then, the
16 start line up is full and we resolved about 2/3 of them, so
17 instead of me telling you we would be hearing 25 motions
18 today, we heard two. So I asked the parties to come a
19 little earlier.

20 MS. SENN: So Your Honor, do you want us to give an
21 opening statement?

22 THE COURT: I told the parties I'd be happy for you to
23 make an opening statement. Happy to hear from you.

24
25

OPENING STATEMENT

BY MS. SENN:

Thank you, Your Honor. By way of background, I am here at the behest of South Carolina Association of County of Elected Officials, SCACE. SCACE only gets involved in cases where they perceive, rightly or wrongly, that there has been an overstep into a constitutional officer's parameters.

They were called by Mr. Washington over what I have considered this to be a case of a \$5 sticker on a \$2,000 car that has become a stopping point for this county where people can't seem to move past it. This issue has been going on for years now.

Our coroner, Coroner Washington, was elected back in 2011, and at the time he had a van, which is still the only van he has right now, which is a 30-year-old van deemed by the county mechanic to be unsafe to take outside the county. So whenever bodies need to be transported, currently he is having to hire an outside body transport.

In addition, the coroner, when elected, took the place of another coroner who was driving his own personal vehicle. The personal vehicle was not apparently insured by the county, and I think at least Coroner Washington was under the impression that even though he was getting reimbursed for mileage and what not, that if anything untoward happened, that the county would be responsible.

1 Of course, he ends up in a wreck in 2012. He learns at
2 that point that he is going to have to pay his own
3 deductible. The county is not going to pay it. So at that
4 point, he opts not to use his personal vehicle. He now
5 wants a county vehicle for the coroner to drive. I believe
6 Mr. Solomons in his Answer to the complaint has admitted
7 that the county does, of course, have to fund the coroner.

8 What the county did, initially, was to, basically, the
9 only thing he had at one point in time was the old van. But
10 the Richland County Coroner, after there was a fight over
11 some stickers on an older car, actually gifted Coroner
12 Washington a vehicle from Richland County.

13 THE COURT: Do you concede that although it was a gift
14 from the Richland County Coroner that the vehicle that was
15 gifted by the Richland County Coroner to the Hampton County
16 Coroner is a county vehicle once gifted?

17 MS. SENN: It's a public vehicle.

18 THE COURT: A public vehicle. Same thing, but because
19 it's a county office in Hampton County, it's also a county
20 vehicle as well as a public vehicle?

21 MS. SENN: Yes, sir. And I think if you look at the
22 Attorney General's Opinion in this matter it even states
23 though that it doesn't matter whether it came from ad lorem
24 taxes ---

25 THE COURT: Or by gift.

1 MS. SENN: Or by gift. And so, therefore, yes, it
2 would be considered a county vehicle, or a public vehicle,
3 no doubt.

4 THE COURT: So that's not an issue for the Court to
5 decide insofar as the plaintiff is concerned?

6 MS. SENN: No, sir. But the distinction, I believe,
7 that the county has made between the 2013 Attorney General's
8 Opinion and when the new car was purchased, and Your Honor
9 said he's already read the document, then you would know the
10 Richland County gift eventually broke down, and the county
11 initially had backed off, and even after getting the
12 Attorney General's Opinion, did not force the coroner to put
13 the stickers on his Richland County gift, because obviously
14 they felt that it was a gift to the coroner's office versus
15 maybe a gift to the county.

16 In 2016 when the car broke down, however, rather than
17 repair the vehicle and without speaking with the coroner
18 whatsoever, the county administrator purchases a car that's
19 somewhere between two and three thousand dollars, and at
20 that point, deems it to be part of the county's fleet.

21 When she does that, she then places the stickers all
22 over the car and then gives it to the coroner, knowing full
23 well that he is not going to appreciate the stickers all
24 over the car that he has already fussed about.

25 The photographs that Your Honor has, the reason I

1 included those is just to really demonstrate when we have a
2 darker colored car, I believe those stickers going down it
3 are yellow, or were yellow, well, multi-colored stickers,
4 basically stickered-up on each side. The coroner has stated
5 by way of affidavit, and I can certainly call him, but he
6 feels as though having those stickers adversely impacts the
7 smooth operation of his office, because when he arrives at a
8 family's home and has to deliver some bad news, it can cause
9 hysteria when they see just the county coroner's seal come
10 up before he can actually try to talk to them. His position
11 is not unique. You will find in the materials there ---

12 THE COURT: You sent me a survey conducted by coroners
13 as to how many coroners by county had emblems that said
14 "coroner" on their vehicle.

15 MS. SENN: Right. And many for the same reason that
16 Coroner Washington has cited, they will allow it on their
17 transport vans, which Coroner Washington has no problem
18 with, but they do not want it on their personal vehicle, and
19 that's a decision that a constitutional officer, I believe,
20 has a right to make and I don't believe county council can
21 override his authority on that.

22 THE COURT: Well, let's go then and take a look at what
23 was interpreted in the Attorney General's Opinion, and I'm
24 going to ask Mr. Solomons the same question. You, of
25 course, are familiar with 56-3-1710, are you not, Ms. Senn?

1 MS. SENN: Yes, Your Honor, I am.

2 THE COURT: And tell me your position as to what that
3 statute requires for a county or public vehicle?

4 MS. SENN: I believe the legislative intent, as set
5 forth by the AG's Opinion, and is specifically stated in
6 that statute is that a publicly owned vehicle must be marked
7 in one of three ways. In this particular case, and it's one
8 of three, because it's an "or" that delineates it. It says
9 it must carry an official emblem, marker or plate. In this
10 case, the coroner has consented to the plates. His car, of
11 course, is already marked with the plates. In addition ----

12 THE COURT: And that brings up an interesting question.
13 You said the coroner consented to it, but it's mandated by
14 State statute. So who decides what type of markings can be
15 placed on a public vehicle? If it's a public vehicle, would
16 that not be county council or would that be an elected
17 officer making that decision?

18 MS. SENN: I believe that it would certainly have to be
19 the elected officer, especially when it impacts his office.
20 If you take a look at the Jim Anders decision in that case,
21 the Court didn't even get to some of the nuances that were
22 similar to what you were raising here, because they said it
23 would adversely affect the public official's running of his
24 office, and he has stated a valid reason as to why it would.

25 And Your Honor, in addition, so that you will

1 understand, the coroner consented to two of the three. He
2 also put a coroner's emblem on the back of his vehicle,
3 which he did not believe was as intrusive when pulling up to
4 someone's home; so, he picked two.

5 THE COURT: Does he have some objection to any of the
6 emblems on a van or is it just on the other vehicle, which
7 would be a personal vehicle, a loaned vehicle, a gifted
8 vehicle or a vehicle provided by Hampton County?

9 MS. SENN: He has no objection whatsoever to the
10 transport van. He does have an objection to the car that he
11 personally has to drive up to the residences and inform
12 folks of the things that have been going on.

13 THE COURT: You're talking about the vehicle that he
14 uses for notification of death?

15 MS. SENN: Yes, sir. And so, for all the other reasons
16 as stated by the Attorney General, you can take a look at
17 what gives them any authority over an elected official and
18 it's simply very little. If you take a look at 4-9-650, it
19 provides that with the exception of organizational policy as
20 established by the governing body, the county administrator
21 shall exercise no authority over any elected official of the
22 county whose offices were created either by the
23 constitutional by the general laws of this state.

24 And as the AG correctly pointed out, he goes through
25 some of the Heath decisions, the Ergle decision, which was

1 my case, and also the McCormick County case. And in that
2 case, it was a Clerk of Court; and the administrator was
3 trying to tell the Clerk of Court how she could run the
4 courtroom with respect to assigning offices, hours of
5 operation, and what not, and specifically stated that the
6 county administrator does not have authority over elected
7 officials whose offices are created by constitution. The
8 overwhelming authority and anything related to this type of
9 stuff usually goes in favor of the elected official. There
10 is really no valid public policy reason for council or the
11 administrator to basically tamp down this constitutional
12 officer's decision not to put six stickers all over his car.

13 THE COURT: I think you would agree -- I was once in
14 the Attorney General's office, so I'm not sure -- I've told
15 this story many times, Ms. Senn. I've authored numerous
16 Opinions as an Assistant Attorney General, and after I
17 entered into private practice, I had a very smart lawyer
18 opponent, who after I finished arguing a motion, cited to
19 the judge an Opinion I had written, which took the complete
20 opposite position of the argument that I had just made to
21 the judge, and the judge was Judge Brown, who you will
22 probably recall; he's passed away now. He asked me to
23 explain to him how I could author an Opinion as an Assistant
24 Attorney General that took one position and then argue a
25 completely 180 degrees contrary to it as a private lawyer.

1 And my answer to him was that I had matured since I had left
2 the Attorney General's Office. So I realize that the
3 opinion of the Attorney General's Office is not binding.
4 However, it is persuasive authority sometimes and it is a
5 starting point. You would agree with me that the intent
6 that the Legislature intended in passing 56-3-1710 was to
7 provide a means of identifying a public vehicle?

8 MS. SENN: Yes, sir. Three different ways.

9 THE COURT: I understand about the three different
10 ways. Although the statute doesn't state exactly, other
11 than the statutes that you've cited, it just says it shall
12 be unlawful for anybody with a publicly owned vehicle to
13 operate in our state. It doesn't carry either an official
14 emblem or it doesn't carry an official plate or an official
15 marker.

16 MS. SENN: Correct.

17 THE COURT: You agree that that's what it says?

18 MS. SENN: I do, yes, sir. So it's one of those three
19 by virtue of the "or".

20 THE COURT: That would be both your and the Attorney
21 General's interpretation. Thank you, Ms. Senn. All right,
22 Mr. Solomons, let me hear from you.

23 MR. SOLOMONS: Thank you, sir. Judge, I don't agree
24 with -- I don't disagree with what Ms. Senn said about the
25 law. You have it in front of you.

1 THE COURT: So you agree that the statute requires for
2 a publicly owned vehicle and you agree that one of the three
3 has to be on a vehicle: either an emblem, a marker or a
4 plate?

5 MR. SOLOMONS: Well, I agree with your observation.
6 There's really no choice about the plate. The county owns
7 the vehicle. So the plate is going to go on a vehicle.

8 THE COURT: Regardless, if we didn't have a statute, if
9 it's a publicly owned vehicle, you have to have a plate that
10 identifies it.

11 MR. SOLOMONS: You've got to have a CG plate on it.
12 Yes, Your Honor.

13 THE COURT: Do you drive -- you're a magistrate in
14 Hampton County. Do you drive a CG vehicle, Mr. Solomons?

15 MR. SOLOMONS: I drive a private vehicle, Judge.

16 THE COURT: I see.

17 MR. SOLOMONS: I hear Ms. Senn talking about the
18 concern the coroner has about driving up into somebody's
19 yard with "Coroner" on the vehicle, but I think that's a bit
20 disingenuous.

21 What the county has asked the coroner to do is simply
22 place -- and at two different times with the history of
23 this, the coroner has said, "That's fine." He will put the
24 Hampton County Coroner emblem ---

25 THE COURT: Tell me exactly what it is that you

1 understand the county is asking him to do other than a
2 license plate? Now, you're assuming the county owns the
3 vehicle. I don't think there is any dispute. Ms. Senn says
4 that she agrees this is a publicly owned vehicle; do you
5 agree?

6 MR. SOLOMONS: Yes, sir.

7 THE COURT: So you agree then that 56-3-1710 applies?

8 MR. SOLOMONS: Yes, sir.

9 THE COURT: All right. What did Hampton County ask Mr.
10 Washington to do in light of that statute?

11 MR. SOLOMONS: They asked the coroner to place the
12 Hampton County Coroner seal on the doors of the vehicle to
13 which he agreed. Subsequent to that, they came off. They
14 were placed on and they came off.

15 THE COURT: Now, this was the vehicle that was gifted
16 by the Richland Coroner?

17 MR. SOLOMONS: I don't know if the emblems ever made it
18 onto the gifted vehicle or not; I'm not sure about that.
19 The request was made for that and it didn't happen.

20 THE COURT: Ms. Senn just argued to me that the Coroner
21 was willing to do two of the three things, and of course you
22 picked up on the fact of why I was asking because if it's a
23 publicly owned vehicle, you don't have any choice on the
24 plate whether it's statute mandated or not, so it's got to
25 be a CG license plate if it's public. What are the two

1 things that you understand that the coroner, Mr. Washington,
2 was willing to do other than a plate?

3 MR. SOLOMONS: One of the two things was place the
4 Hampton County Coroner sticker which is shown on the
5 photograph ---

6 THE COURT: That's what is shown on the photograph she
7 sent me.

8 MR. SOLOMONS: --- on the rear window. They had asked
9 the coroner to place those stickers on the front doors and
10 they understood at one time that that is what he said he
11 would do. He subsequently changed his mind, which he has a
12 right to do; not arguing that.

13 So I would argue that I don't think there was ever any
14 intent for Richland County to give this vehicle to the
15 coroner. I think the intent was to give it to Hampton
16 County for the coroner's use.

17 THE COURT: I don't believe that's an issue for the
18 Court. Ms. Senn concedes it's a public vehicle. You don't
19 need to argue that, Mr. Solomons.

20 MR. SOLOMONS: Right.

21 THE COURT: We both are dealing with a public vehicle
22 regardless, it's for the coroner to use for Hampton County
23 business when it so requires.

24 MR. SOLOMONS: If the coroner agrees to place the seal,
25 the Hampton County Coroner Seal, on the doors as we thought

1 he had originally agreed to, the county walks away from this
2 and we move on to other things. That's -- you asked the
3 other one or two.

4 THE COURT: So you're telling me that it's not your
5 client's position that the words "Coroner", which are
6 depicted in the xerox photograph that was forwarded to me by
7 Ms. Senn that the county is not requiring that the coroner
8 place those words on the vehicle if the seal is on the
9 vehicle.

10 MR. SOLOMONS: The name "Coroner" was the preferred
11 choice of council. There were never six decals on this
12 thing. I don't know where that came from. But they asked
13 that the coroner put the "Coroner" name on the sides of the
14 vehicle. After that, they had a discussion with the coroner
15 about what do you agree to the emblem "Hampton County
16 Coroner" on the doors and he indicated to the administrator
17 that, "Yes, he would" and now we are where we are now,
18 Judge.

19 Just a little bit of back story. I agree with Ms. Senn
20 about the previous coroner, Gordon Rhoden, was coroner for
21 years and he operated his own private car to go to scenes
22 and stuff like that, so there was never any intent to
23 require a private vehicle have it. The van that he had, has
24 emblems on it.

25 The reason -- and I'm glad to hear her say that the

1 coroner doesn't have any problem with the van containing the
2 emblems that the county is requesting, because ---

3 THE COURT: I don't believe that is before me today at
4 all.

5 MR. SOLOMONS: Okay. Good. I want to move on.

6 THE COURT: Now, I want you to tell me your position.
7 I asked Ms. Senn this, she reads 56-3-1710, of course, she
8 wants to point out as the Attorney General Office did in
9 their Opinion, the conjunction "or" is there rather than
10 "and" in which she is correct about. But she reads it to
11 say that the coroner can decide. She argued in the form of
12 what he would consent to.

13 Is it your position, since I don't see any definite
14 language in the statute, is it your position that where
15 there is a public vehicle, a publicly owned vehicle, and
16 even though -- and she's absolutely right to point out to me
17 that the coroner is an independently elected office. Is it
18 your position that the independently elected officer gets to
19 decide which of the methods to comply with 56-3-1710 are
20 utilized or is your position that your client, Hampton
21 County Council, decides that?

22 MR. SOLOMONS: It's my position, Judge, that the county
23 decides what the emblem is going to be because the county
24 owns the vehicle and the county public policy manual
25 indicates that only emblems approved by the county will be

1 placed on the vehicle.

2 THE COURT: Now, Mr. Solomons, you're old enough to
3 remember the date in 1978. I'm sure your county
4 administrator nor Ms. Senn is, but you're old enough to
5 remember the date that Home Rule passed in South Carolina in
6 1978. There is language in the provision of the Home Rule
7 Act that would provide the council with authority to do
8 certain things, particularly under your form of government
9 in Hampton County, but that deals with county employees, and
10 here we are dealing with an independently elected officer.

11 You heard Ms. Senn tell me and she pointed out the
12 statute that council cannot require whether it be the
13 treasurer, the auditor, the coroner, or the sheriff to try
14 to dictate the manner in which they perform the duties of
15 their office. What is your position on that matter in light
16 of our State statute?

17 MR. SOLOMONS: It's the county's position, Judge, is
18 that the county did not view the request to put a notice on
19 the vehicle that it was a county-owned vehicle assigned to
20 the Hampton County Coroner to be in an intrusion upon his
21 powers to operate his office. The argument has been placed
22 that he thinks it would affect people when he drives up in
23 their yard. Judge, part of the reason that we are where we
24 are is there are certain citizens of this county who
25 observed the coroner leading funerals -- he has a funeral

1 home, leading funerals in the coroner's vehicle owned by the
2 county. They bring those objections to county council and
3 say, "Why is he using a county vehicle on personal
4 business?" We started asking questions about that which led
5 to discussions with the coroner, which led, we thought, to a
6 resolution of that, which led to where we are today. So the
7 impetus is not just be a big bad county trying to tell the
8 coroner how to run his office. We had concerned citizens
9 who came to the county council and presented those views.

10 THE COURT: You agree then in telling me that, Mr.
11 Solomons, you agree that our Home Rule legislation and you
12 would advise your client, county council, through the
13 administrator, I'm sure, but ultimately the county council,
14 that a county governing body, whether it be county council
15 or otherwise have very limited authority in dealing with the
16 authority of an elected official? But your argument is you
17 don't think what's required by the statute as far as
18 emblems, markers or plates, in any way impinges on the
19 authority of an independently elected official; is that
20 correct?

21 MR. SOLOMONS: That is correct. That is our position.

22 THE COURT: Anything else you want to tell me?

23 MR. SOLOMONS: No, but I would, Judge, ask you to allow
24 me to -- I just got this memorandum as well.

25 THE COURT: You haven't read it? Neither have I.

1 MR. SOLOMONS: No, sir.

2 THE COURT: Ms. Senn knows that, but I asked her to
3 come early and she is like every lawyer ---

4 MR. SOLOMONS: What I was asking ---

5 THE COURT: Mr. Solomons, how many times in my lifetime
6 have you given me a memorandum in support of your motion a
7 month before your hearing?

8 MR. SOLOMONS: It's been a while.

9 THE COURT: Uh-huh (affirmative).

10 MR.. SOLOMONS: My memory is good, Judge, but it's
11 short.

12 THE COURT: You want the opportunity to do a reply
13 memorandum?

14 MR. SOLOMONS: If or not.

15 THE COURT: I'll certainly give it to you. All right,
16 Ms. Senn, it's now up to you to decide whether by affidavit
17 or live testimony, you represent the plaintiff. You have
18 the burden. It's your case. Please proceed.

19 MS. SENN: Briefly, Your Honor. If you don't mind,
20 I've already handed this up to you. But I just wanted to
21 point out just in response to some of the things that Mr.
22 Algae said. This was not a request by county council. What
23 we have, you can take a look at the 8-23-16 e-mail from the
24 county administrator, she advises that, "Please advise when
25 we can expect you to comply with council's directive," and

1 again goes into the 48-hour period that he has to put these
2 stickers on there or they are going to take the vehicle.

3 THE COURT: That's why I asked you at the outset, and
4 Mr. Solomons, that there was an agreement that the status
5 quo would be maintained. I've read that e-mail from the
6 county administrator and what we apparently have here, Ms.
7 Senn, is a difference of opinion concerning the
8 interpretation of the statute as to whether or not it in
9 someway interferes with the authority of the coroner's
10 office based on opening statements by the attorneys.

11 MS. SENN: Yes, Your Honor. But what this particular
12 e-mail dovetails into is the fact that we believe that not
13 only does the county not have the authority to issue a
14 directive, they also do though have the duty to fund
15 adequately fund the coroner's office, and that would include
16 ---

17 THE COURT: I thought Mr. Solomons admitted that in his
18 answer.

19 MS. SENN: Except ---

20 THE COURT: Did you not?

21 MR. SOLOMONS: I did.

22 THE COURT: I don't think that's at issue.

23 MS. SENN: Except that ---

24 THE COURT: That you got an e-mail that you construe as
25 being inconsistent?

1 MS. SENN: No, no, no. It's also part of the minutes.
2 They specifically indicated that they were going to retrieve
3 the vehicle; take the vehicle back.

4 THE COURT: But that has not been done?

5 MS. SENN: That has not been done.

6 THE COURT: And we're in agreement that the status quo
7 will be maintained. I'm aware of that e-mail. I'm aware of
8 your agreement. Proceed.

9 MS. SENN: Okay. Your Honor, we would go ahead and
10 rely on the affidavit of Coroner Washington.

11 THE COURT: All right. I want to make sure when you say
12 that, is that an exhibit attached to your memorandum?

13 MS. SENN: Yes, sir.

14 THE COURT: Exhibit One?

15 MS. SENN: Yes, sir.

16 THE COURT: Let the record reflect, Becky, that she is
17 referring to the affidavit of Mr. Ernie Washington, and that
18 affidavit is dated January 5th, 2017, which she has handed
19 up to the Court as Exhibit One attached to her memorandum,
20 which I have not had the opportunity to review.

21 MS. SENN: Yes, sir. There would be one additional
22 attachment. I just got it from the county attorney. He was
23 so kind as to bring a copy of the policy that was referenced
24 in the minutes. I don't believe this is the entire policy,
25 so we would like to get the entire vehicle policy, but

1 therein, that's one of the things that they are relying upon
2 saying that the coroner has to follow county policy on
3 vehicles. We would submit that the law says otherwise based
4 on what is in that.

5 THE COURT: Do you want to make that a part of your
6 memorandum?

7 MS. SENN: Yes, sir.

8 THE COURT: Any objection?

9 MR. SOLOMONS: None.

10 MS. SENN: And then what I would also ask is I know
11 that Mr. Solomons needs some time to look at my Brief and
12 reply, and what not, if we could get the entire policy in
13 case we need to supplement anything to you before you render
14 your decision.

15 THE COURT: Mr. Solomons, first, I'll ask you, I've
16 been handed page nine, I know you've provided it to Ms. Senn
17 and it's entitled "Vehicle Policy" and it begins with
18 General Use and has 1 through 6. Is there anymore to it?

19 MR. SOLOMONS: There is one more additional paragraph,
20 Judge, that does. I can provide a copy before we leave.

21 THE COURT: I know you can. Show it to Ms. Senn and
22 let's see if y'all can agree.

23 MR. SOLOMONS: I will submit the entire policy.

24 THE COURT: Okay. And you will also provide a copy to
25 Ms. Senn?

1 MR. SOLOMONS: Absolutely. I will do it before she
2 leaves. Judge, based on what she said ---

3 THE COURT: Before you start, let me make sure. Sandy,
4 is that everything from the plaintiff?

5 MS. SENN: Yes, sir. The attachments are self-
6 explanatory and those were also referred to and the
7 coroner's affidavit, and I guess, based on what we hear from
8 the other side, I may ask to recall him if I hear something
9 that's contrary.

10 THE COURT: Very well. I will give you that right if
11 it becomes necessary if they decide. I'm going to give them
12 a minute. Algae, I understand now from Sandy that she is
13 going to rest at this point with the right to reserve based
14 on what you do as to whether she might want to call a
15 witness in reply, but she is relying on the portion of the
16 vehicle policy she just handed me that you provided to her,
17 as well as her memorandum and attachments and does not
18 intend to present any live testimony at this time. Does the
19 defendant wish to present testimony?

20 MR. SOLOMONS: Your Honor, if I am allowed to respond
21 to the memorandum to provide you ---

22 THE COURT: You're going to be allowed to give me a
23 reply memorandum and I'm going to give you time to do that.

24 MR. SOLOMONS: And also to include in that reply
25 memorandum an affidavit from the chairman, an affidavit from

1 the administrator, both of which ---

2 THE COURT: As exhibits to your memorandum?

3 MR. SOLOMONS: We see no need to present live
4 testimony.

5 THE COURT: All right. In light of that fact, then, I
6 assume there is nothing further from the plaintiff in reply
7 to anything?

8 MR. SOLOMONS: Other than, Judge, we just want to be
9 clear, we are not going to do anything. The status quo will
10 remain.

11 THE COURT: I've already read the e-mail from the
12 county administrator. I'm well aware that she gave him a
13 48-hour deadline to comply and I'm certain that she was
14 directed to do so by county council. However, we are
15 dealing with a situation in which Home Rule does affect what
16 county councils can and can't do with elected officials; I'm
17 aware of that.

18 Here's what I want you both to do. First of all, I
19 don't want either one of you to write me a proposed Order
20 yet, because it isn't fair when I leave the record open for
21 you to write an Order. I haven't read Ms. Senn's memorandum
22 and reviewed her exhibits. I haven't seen Mr. Solomon's
23 memorandum or his exhibits.

24 So first thing, I'm going to require you to act first,
25 Algae. You're going to do a reply memorandum with

1 affidavits. You're going to serve it on Sandy and serve it
2 on me within seven days of today. That's to be sent to me
3 at P.O. Drawer 470, Walterboro, 29488. You're to copy Sandy
4 on the transmittal.

5 Sandy, if you feel you have to send me another reply

6 ---

7 MS. SENN: A short one. Just a short one.

8 THE COURT: Yeah, remember this is not Mother Goose you
9 are talking to. I'm going to give her seven days for a
10 reply to that. So now, that's two weeks. All status quo is
11 maintained the entire time until the Court rules.

12 After that period of time when I've gotten everything I
13 need. Sandy has given me hers today. Algae has provided a
14 response, and then Sandy gets a chance if she so desires to
15 do a reply memorandum.

16 MS. SENN: The burden of proof.

17 THE COURT: Without claiming any immunity, then at that
18 point I'm going to give you each -- you will have everything
19 from each other, because Sandy you will be required,
20 obviously, if you provide me one, provide Algae with a copy.
21 At that point, I'm giving you 10 days thereafter to submit
22 proposed Orders to me once you have everything. You will
23 submit them to me at P.O. Drawer 470, Walterboro.

24 To comply with the time deadline, you can e-mail me
25 your Orders. You need to also e-mail my law clerk, Skyler

1 Hutto. His e-mail address is pbucknerlc@sccourts.org. My e-
2 mail is pbucknerj@sccourts.org.

3 To comply with the time requirements, you can e-mail me
4 your proposed Orders. However, you will have to snail-mail
5 me with sufficient postage affixed thereto, because judges
6 have to pay their own postage. Something I hope you will
7 cure Ms. Senn while you're in the South Carolina Senate.

8 Don't write me, Mr. Solomons, a 25-page Order and send
9 me an envelope with one stamp on it and tell me your
10 paralegal did it.

11 MR. SOLOMONS: If I write you a 25 page Order ---

12 THE COURT: You're responsible for weighing your words
13 and sending me sufficient postage. The first deadline is
14 seven days from today. Mr. Solomons is to serve on you, Ms.
15 Senn, and send to the Court by e-mail. You don't have to
16 United States Mail me your memorandum, you can just e-mail
17 that. Although if you want to file it with the clerk, the
18 original has to be sent to Mylinda. My office is in
19 Walterboro and all of the filings have to be with the
20 Hampton County Clerk of Court.

21 Seven days thereafter, that would be January 19th, if
22 you so desire, Ms. Senn, after reading Mr. Solomon's
23 excellent reply memo, which I'm sure you can't wait to
24 review, you have the opportunity to do a final reply to his
25 reply memorandum within seven days of January 12th, or by

1 January 19th, 2017.

2 Ten days thereafter, both sides will have to submit
3 proposed Orders to this Court at my mailing address or by e-
4 mail. Please do it in Word format so it's easier for me to
5 editorialize what I want to change. This means I should
6 have your proposed Orders no later than January 29th, 2017.
7 I am taking with me today your original memorandum. Do you
8 want it filed with the clerk?

9 MS. SENN: Yes, sir.

10 THE COURT: Now, you also supplemented it with a page
11 from the county ordinance. You want me to file this?

12 MS. SENN: Yes, sir. And I will just hand you another
13 one for your working use.

14 THE COURT: Great. But you don't have the extra copy
15 do you?

16 MS. SENN: No, I was hoping the court reporter might
17 mark that.

18 THE COURT: Mylinda, make me a copy of this and then
19 file this entire thing and give me the copy. I want to
20 thank you both for being well prepared. The reason I didn't
21 ask for final arguments is because I think you covered it in
22 your opening statements succinctly and to the point. I
23 think I'm pretty aware even without any further memorandums,
24 because I really haven't read either side's memorandum. I
25 think I'm very aware of the issues raised from reading the

1 pleadings and seeing this, so you both have done a very good
2 job.
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STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of Common Pleas Non-Jury for Hampton County, South Carolina, on the 5th day of January 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 30, 2017

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter