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.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On October 4, 2016, Hampton County Coroner Ernie Washington filed a Summons and Complaint for Declaratory Judgment and for Injunctive Relief as well as a Motion for Emergency Temporary Restraining Order. Coroner Washington sought a declaration pursuant to the Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, that the action taken by Respondents to strip the Coroner of his County vehicle if he did not allow Respondents to place decals on the vehicle was an improper attempt to usurp the powers of the duly-elected Coroner of Hampton County. The Coroner requested that the circuit 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 Respondents from interfering with the smooth operation of the Coroner's Office by threatening to relieve him of transportation inasmuch as it was the second time since the Coroner's election that the "sticker issue" was raised.

Respondents filed an Answer to the Complaint on October 25, 2016 asserting the County's authority to take the Coroner's vehicle away if he did not place certain decals on the vehicle. The parties resolved the Coroner's Motion for Emergency Temporary Restraining Order by agreeing to maintain the *status quo* such that Respondents would not take away the Coroner's official vehicle until a final ruling on the merits had been made.

A final hearing on the merits was held on January 5, 2017, where the circuit court heard arguments and received affidavits and memoranda of law from the parties before and after the hearing. On February 9, 2017, the circuit court entered an Order on Appellant's Complaint for Declaratory Judgment. The circuit court declared that Hampton County, not the Coroner, could decide how to comply with S.C. Code Ann. § 56-3-1710, but that the Coroner had already

complied with the statute. The lower court then declared that the Coroner shall not use a Hampton County public vehicle for private business and further found that attorney's fees would not be awarded in connection with this matter. The trial court found it unnecessary to grant or deny the Coroner's requested permanent injunction. On February 28, 2017, the Coroner served the Notice of Appeal on Respondents.

STATEMENT OF THE FACTS

Coroner Washington has been the duly-elected Coroner of Hampton County since 2011. (R. p. 46 ¶ 2). In 2013, the Richland County Coroner generously gifted a 2005 blue Ford Explorer to Coroner Washington because he was in need of a vehicle for his office. (R. p. 98 ¶ 6; R. p. 46 ¶ 6). Hampton County agreed to insure the Ford Explorer. (R. p. 47 ¶ 7).

Respondents demanded that various stickers and decals be placed on the gifted Ford Explorer. (R. p. 47 ¶ 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. (R. p. 47 ¶ 9; R. p. 48 ¶ 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 beyond what is required by statute. (R. p. 49; R. p. 47 ¶ 9). 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) (R. pp. 50–52).

In June 2016, the Ford Explorer gifted to Coroner Washington by Richland County broke down. (R. p. 47 ¶ 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. (R. p.

47 ¶ 12). Despite the Attorney General's opinion and the Coroner's known wishes, the County placed two long reflective stickers marked "CORONER" on both side rear windows of the vehicle and two County seals (not Coroner's seals) on both the front and passenger doors. (R. p. 53–55; R. p. 98 ¶ 8). Coroner Washington was never consulted and never approved the placement of stickers on his vehicle. (R. p. 47 ¶ 12). The Coroner removed the stickers that Respondents had placed on the Durango, and placed his own Coroner's Office seal on the rear window of the vehicle. (R. p. 47 ¶ 13; R. p. 98 ¶ 9–10).

At the August 15, 2016, Hampton County Council meeting, Council voted 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.**

(R. p. 64) (emphasis added).

In the following days, the Administrator asked the Coroner when "we" can expect "you" to comply with the Council's "directive," and told him that he needed to place the decals on the Durango within the next 48 hours or the vehicle would be taken from him. (R. pp. 56–57). The Coroner did not comply, and thus, on October 3, 2016, County Council voted to apprehend the vehicle leaving the Coroner with no ability to carry out his official duties. (R. p. 48 ¶ 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 Respondents from removing the Coroner's vehicle should the Coroner refuse to place more

decals on his vehicle. (R. p. 48 ¶ 18). Absent the Coroner's Motion for Emergency Temporary Restraining Order, the Coroner risked having his vehicle taken from him.

STANDARD OF REVIEW

Declaratory judgments in and of themselves are neither legal nor equitable. *See Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781 (1991); *Campbell v. Marion County Hosp. Dist.*, 354 S.C. 274, 580 S.E.2d 163 (Ct. App. 2003); *Wiedemann v. Town of Hilton Head Island*, 344 S.C. 233, 542 S.E.2d 752 (Ct. App. 2001). The standard of review for a declaratory judgment action is therefore determined by the nature of the underlying issue. *Campbell*, 354 S.C. at 279, 580 S.E.2d at 165. In a case raising a novel question of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 411, 526 S.E.2d 716, 718–19 (2000).

ARGUMENT

I. DID THE TRIAL COURT ERR IN FINDING THAT HAMPTON COUNTY, AND NOT THE CORONER, MAY DECIDE HOW TO COMPLY WITH S.C. CODE ANN. § 56-3-1710?

a. Pursuant to S.C. Code Ann. § 4-9-650 and related case law, Respondents are without authority to force the Coroner to place decals on his vehicle and are without authority to strip the duly-elected Coroner of his official vehicle.

S.C. Code Ann. § 56-3-1710 requires that a public vehicle such as the Coroner's must carry "an official emblem, marker **or** plates." (emphasis added). The trial court declared that Hampton County, not the Coroner, may decide how the Coroner's vehicle is to comply with S.C. Code Ann. § 56-3-1710. Yet, the trial court further found that the Coroner's vehicle complied with the statute because the vehicle has a governmental license plate and a rear window decal.

Appellant 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.

Hampton County operates under the Council-Administrator form of government which is governed by S.C. Code Ann. § 4-9-610, *et seq.* Respondent 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) (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.").

The Court of Appeals in *Eargle v. Horry County* recognized that "a county governing body unhappy with the results of an election could use its power to render the duly-elected official largely ineffective." *Eargle v. Horry Cnty.*, 335 S.C. 425, 431, 517 S.E.2d 3, 6 (Ct. App.

1999), *aff'd* 344 S.C. 449, 455, 545 S.E.2d 276 (2001). S.C. Code Ann. § 4-9-650 reflects the legislature's recognition of the electorate's interest in having their votes given effect. The threat of displeasing the electorate and losing a re-election is a sufficient check on the behavior of an elected official such as the coroner. 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. *See* S.C. Code Ann. § 4-9-620. Thus, S.C. Code Ann. § 4-9-650 serves to protect elected officials who are faced with an overreaching administrator or council, or even the acts of a well-meaning administrator who is unfamiliar with the day-to-day workings of an office which provides county services, has direct contact with county citizens, and is answerable directly to the electorate. Because the Coroner answers to the electorate, it is he who decides how to run his office, not the unelected Administrator.

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, contravenes the language of S.C. Code Ann. § 4-9-650 and encumbers the public's interest in the smooth operation of the coroner's office. The South Carolina Supreme Court recognized such a public interest in *Anders v. Cnty. Council for Richland Cnty.*, 284 S.C. 142, 145, 325 S.E.2d 538, 539–40 (1985), where it found that 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.

Further, 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 above-cited opinion of the Attorney General was issued to Coroner Washington in 2013 regarding a nearly identical issue—whether Respondents could compel the Coroner to place the Hampton County seal on his vehicle.

Three years after the Coroner received the Attorney General's opinion, Respondents again sought to mandate that the Coroner mark his vehicle—this time with **six** markers. (R. pp. 98–99 ¶ 11). The Coroner has a reasonable and justified reason for not having the word "CORONER" boldly plastered all over his vehicle. 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. (R. pp. 58–60; *see also* R. pp. 101–104).

Even if the Coroner had no reason, Respondents are 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 ("the county administrator shall exercise no authority over any elected officials"); Op. S.C. Att'y Gen., No. 888, 2013 WL 1695523 (April 8, 2013). This is especially true where the County-mandated vehicle identifiers compromise the Coroner's smooth operation of his office by undermining his ability to execute a core function of his office—death notifications. Thus, the trial court's declaration that Hampton County may decide how the Coroner's vehicle will comply with S.C. Code Ann. § 56-3-1710, uniquely undermines the Coroner's ability to appropriately provide death notifications. Because Respondents are without authority to control the Coroner in general and especially because the trial court's declaration has the effect of allowing Respondents to disrupt a core function of the Coroner, the decision should be reversed.

This case is larger than the issue of $5.00 stickers on a $3,000.00 vehicle. The bigger picture is that the unbridled power of an overreaching county administrator not directly answerable to the electorate could easily be used to intentionally obstruct an elected official's ability to run his or her office and to prevent them from satisfying the duties imposed upon them by constitutional and statutory authority. Respondents have claimed 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." (R. pp. 72–73). The existence of the County-mandated decals on his vehicle does, in fact, affect the manner in which the Coroner conducts death notifications. 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 manner in which the Coroner conducts death notifications is wholly within his purview as the duly-elected Coroner,

and Respondents shall not interfere with how he operates his office. And frankly, this mild-mannered and humble elected official is tired of being bullied.

County administrators already have great influence over elected officials with respect to budgetary matters. *See, e.g.*, *Eargle v. Horry Cnty.*, 335 S.C. 425, 438–39, 517 S.E.2d 3, 10 (Ct. App. 1999), *aff'd* 344 S.C. 449, 455, 545 S.E.2d 276 (2001) (Cureton, J., dissenting) ("there are numerous actions that could be taken by the county that could adversely affect the operation of an elected official's office, the most obvious being reductions in funding and reductions in force"). To couple this budgetary control with the power make decisions that undermine an elected official's ability to perform the duties of his office would compromise the smooth operation of his office and the logic and reasoning of the legislature as reflected in its enactment of S.C. Code Ann. § 4-9-650 will be lost. A far more efficient result is achieved where a coroner, who is more familiar with how to perform the duties he was elected to perform, is permitted to decide how best to conduct death notifications—a duty unique to the coroner's office.

b. Hampton County's vehicle policy does not apply to the Coroner, and even if it does, the Coroner has complied with it.

This action became necessary when Hampton 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.

(R. p. 64) (emphasis added).[1]

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)." (R. p. 83). 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. (R. p. 98 ¶ 8).

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 <u>except</u> 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). Thus, an elected official such as a coroner is not to be regulated by their county's personnel policies. The Hampton County Vehicle Policy at issue is one such personnel policy.

In *Eargle v. Horry County*, the South Carolina Supreme Court held that the Administrator of Horry County lacked the authority to impose temporary suspensions upon persons employed

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[1] 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.

by an elected official when enforcing county personnel policies. *Eargle v. Horry Cnty.*, 344 S.C. 449, 456, 545 S.E.2d. 276, 280 (2001). 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. S.C. Code Ann. § 4-9-30(7) and *Eargle* state that a County cannot enforce its personnel policies upon elected officials or their employees because elected officials are not employees of the County. Thus, 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.

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 policy language 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 has a decal on his vehicle which officially designates the vehicle as the Coroner's. (R. p. 98 ¶ 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. (R. p. 84). There is nothing in the policy that gives Respondents authority to enforce the policy as to the Coroner or his employees. The Coroner has ensured compliance with the policy by placing two identifiers on his vehicle—governmental tags and his Coroner's seal—when he was only required to have one per state law, S.C. Code Ann. § 56-3-1710 (*see* Sec. II, *infra*). Per the plain language of the vehicle policy—and the statutes, case law, and attorney general opinions cited in the preceding subsection—if it did apply to the Coroner, only the Coroner has the

authority to enforce the policy. Thus Respondents' demand that the Coroner's vehicle be returned to them within 48 hours was outside of the authority set forth in their own policy, as well as outside the authority established by the Home Rule Act and *Eargle* as explained in the preceding subsection.

II. DID THE TRIAL COURT ERR IN FINDING S.C. CODE ANN. § 56-3-1710 REQUIRES A STICKER OR DECAL IN ADDITION TO GOVERNMENTAL PLATES?

> The Department of Motor Vehicles shall design and supply, at an appropriate fee, 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.

S.C. Code Ann. § 56-3-1710 (emphasis added).

The "use of the word 'or' in a statute 'is a disjunctive particle that marks an alternative.'" *Michau v. Georgetown Cnty.*, 396 S.C. 589, 595, 723 S.E.2d 805, 808 (2012) (quoting *K & A Acquisition Group, LLC v. Island Pointe, LLC*, 383 S.C. 563, 580, 682 S.E.2d 252, 261 (2009)). The South Carolina Supreme Court has said that words should be given "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (citation omitted). The word "or" used in a statute imports choice between alternatives and as ordinarily used, means one of the alternatives, but not all. *See Brewer v. Brewer*, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963).

According to the plan language of S.C. Code Ann. § 56-3-1710, "[i]t 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." (emphasis added). Thus, the word "or" reveals the legislative intent that one can choose between the three listed alternatives: official emblem, marker, or plates. In the current case, the Coroner chose that his vehicle carry "plates" thus satisfying the statute's requirement that the vehicle carry one of the three alternatives.

The trial court order found that 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." (R. p. 4). Thus, the trial court found that government plates were required as well as one of the other two alternatives, thereby requiring two of the three alternatives. The court then declared that the Coroner "must apply either a sticker or a decal in addition to government plates." (R. p. 4). There is no such requirement in S.C. Code Ann. § 56-3-1710, and it was error to require more than one of the three alternatives. Although the Coroner currently has an official Coroner's seal on his rear window, such is not required by S.C. Code Ann. § 56-3-1710 in addition to the government plate already on the vehicle.

The Coroner asks that this Court interpret S.C. Code Ann. § 56-3-1710 to only require that a public vehicle carry an official emblem, or marker, or plates, and not require any more than one of the three alternatives. For the reasons stated in Section I, *supra*, the trial court was also in error for declaring that Hampton County, and not the Coroner, may decide which alternative is chosen for the Coroner's vehicle.

III. DID THE TRIAL COURT ERR IN NOT GRANTING THE REQUESTED PERMANENT INJUNCTION SOUGHT BY THE CORONER?

The parties agreed to maintain the *status quo* pending the trial court's decision on the merits, however, the trial court found it was unnecessary to grant or deny the requested

permanent injunction. (R. p. 5). Though a preliminary injunction was not necessary because the parties agreed to maintain the *status quo*, the Coroner still sought a permanent injunction to enjoin Respondents 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. Inasmuch as this is the second time in three years that the county has insisted on marking up the Coroner's vehicle such that it affects his ability to do his job, the permanent injunction is still necessary to enjoin Respondents from again repeating its overreaching conduct. There is nothing in the trial court Order which prohibits Respondents from once again pressing the sticker issue. Thus, the requested permanent injunction was still ripe for review and should have been ordered so that the parties can obtain a final ruling on the issue and avoid spending any more resources in the court system.

IV. DID THE TRIAL COURT ERR IN BARRING APPELLANT FROM USING THE VEHICLE AT ISSUE FOR PRIVATE BUSINESS WHERE SUCH AN INJUNCTION WAS NEVER SOUGHT BY RESPONDENTS AND NO EVIDENCE EXISTED THAT AN INJUNCTION WAS WARRANTED?

The trial court ordered that "[t]he Coroner shall not use a Hampton County public vehicle for private business." (R. p. 5). Such an injunction was never pled, requested, or briefed by Respondents and therefore, it was error for the trial court to issue the injunction.

In a declaratory judgment action, the court is authorized to grant affirmative relief not requested ***if*** the party has pleaded facts upon which such relief may be granted. *Rushing v. Intex Products, Inc.*, 285 S.C. 595, 599, 330 S.E.2d 555, 557 (1985) (emphasis added); *Bank of Augusta v. Satcher Motor Company*, 249 S.C. 53, 152 S.E.2d 676 (1967).

In *Bank of Augusta v. Satcher Motor Co.*, 249 S.C. 53, 152 S.E.2d 676 (1967), the Court acknowledged that a defendant may file a cross action against another defendant "where the cause of action stated therein arises from, or is germane to, the transaction set forth in plaintiff's

complaint." *Id.* at 60, 152 S.E.2d at 680. "A cross action may not introduce new matters which are outside the original controversy." *Id.* at 60–61, 152 S.E.2d at 680. The Supreme Court held that the cross action alleging fraud was not germane to the subject matter of plaintiff's complaint for declaratory judgment related to priority of liens and thus the cross action was not properly pleadable in the plaintiff's action. Therefore, the Court found that the cross-claim defendant's demurrer to the cross-claim should have been sustained.

In Respondents' "Memorandum of Defendants in Opposition to Plaintiff's Declaratory Judgment and Injunctive Relief Action," Respondents stated "[p]erhaps 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, ..." (R. p. 73). At the January 5, 2017, hearing, counsel for Respondents argued that "part of the reason that we are where we are is there are certain citizens of this county who observed the coroner leading funerals—he has a funeral home, leading funerals in the coroner's vehicle owned by the county." (R. p. 123, line 23–p. 124, line 2).

Here, Respondents did not plead any facts upon which an injunction should have been granted. Respondents did not file a counter-claim regarding Appellant's use of his Coroner's Office vehicle for private business. Respondents did not request any such relief regarding the Coroner's use of the vehicle. The two statements quoted above appear to be the only statements in the record regarding the Coroner's use of the vehicle at issue for private business. In *Bank of Augusta*, the defendant at least brought a cross-claim requesting relief. Still, the Court found that because the cross-claim was not germane to the plaintiff's action, it should have been dismissed. Here, Respondents made no counter-claim or motion to enjoin the Coroner, and, even if they did,

the use of the vehicle for private business is not germane to whether Respondents can force the Coroner to place decals on his vehicle which disrupt his ability to fulfill his statutory duties.

Because the injunction was never requested by Respondents, the Coroner never had an opportunity to respond to the claim. When mentioned at the hearing, the Coroner thought it was a non-issue as it was not only not pled, but not true. The lower court's ruling regarding the funeral processions, while perhaps non-dispositive, was harmful in that it appeared to justify Respondents' non-justifiable attempt to control the Coroner's Office by attempting to confiscate his official vehicle.

It was error for the trial court to issue such an injunction that was never requested on an issue that is not germane to the Coroner's action for declaratory judgment and injunctive relief. Therefore, the portion of the trial court's order enjoining the Coroner from using his vehicle for private business should be vacated.

V. DID THE TRIAL COURT ERR IN NOT AWARDING ATTORNEY FEES TO APPELLANT UNDER S.C. CODE ANN. § 15-77-300?

Pursuant to S.C. Code Ann. § 15-77-300, Coroner Washington should have been granted 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.* The Coroner should also be entitled to his appellate attorney's fees for being required to take his challenge to the appellate level while Respondents continue to unreasonably press their claim. The appropriate standard of review for an award of attorney fees under S.C. Code Ann. § 15-77-300 is abuse of discretion. *Heath v. Cnty. of Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990).

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 (S.C. Code Ann. § 4-9-30(7)) 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. 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)).

The language of S.C. Code Ann. § 4-9-650 is clear: "With 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 either by the Constitution or by the general law of the State." (emphasis added). This is the second time in three years that Hampton County has insisted on marking up the Coroner's vehicle such that it affects his ability to do his job. Coroner Washington already attempted to resolve this issue by receiving an opinion from the Attorney General which addressed nearly the same issue in 2013. Respondents have been presented with the opinion yet refuse to acknowledge its reasoning. It is Respondents' pressing their claim without substantial justification and in the face of the Attorney General's opinion which has necessitated the current civil action.

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. (R. pp. 98–99 ¶

11). The County never conceded to allow less identifiers until the undersigned got involved in this dispute. (R. pp. 98–99 ¶ 11).

An award of attorney's fees and costs is particularly justified to deter Hampton County from engaging in similar conduct in the future and Respondents should bear the consequences of overstepping their 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.

CONCLUSION

Wherefore, the Coroner requests relief as follows:

(1) That this Court reverse the circuit court's declaration that Hampton County, not the Coroner, can decide how the Coroner's vehicle will comply with S.C. Code Ann. § 56-3-1710;

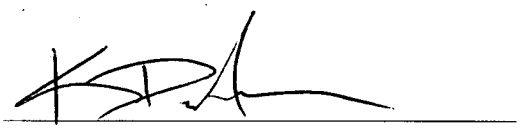
(2) That this Court find as a matter of law Respondents' attempt to exercise authority over the Coroner by taking away his vehicle unless he complies with their directive to place decals on his vehicle is barred by S.C. Code Ann. § 4-9-650; such being the case especially where Respondents' directive has the effect of controlling how the Coroner conducts death notifications—a core function of his office;

(3) That this Court reverse the circuit court order insofar as it determined that S.C. Code Ann. § 56-3-1710 requires "an official emblem or marker in addition to its government plates" and to find as a matter of law that the statute only requires one of the three alternatives listed;

(4) That this Court remand the matter of the Coroner's request for permanent injunction to enjoin Respondents 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;

(5) That this Court vacate the portion of the circuit court order which enjoins the Coroner from using his vehicle for private business; and

(6) That this Court reverse the circuit court's ruling that attorney's fees pursuant to S.C. Code Ann. § 15-77-300 are not warranted, and requests that the Coroner be entitled to attorney's fees accrued at the lower court and appellate court levels.



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September 20, 2017
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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

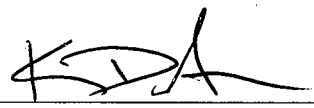
Ernie Washington, in his capacity as Coroner of Hampton County, ...Appellant,

v.

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

CERTIFICATE OF COUNSEL

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



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