

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM JASPER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Opinion No. 2015-000310

George M. Hood,

Petitioner,

v.

Jasper County,

Respondent.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2013-CP-27-00322

George M. Hood,

Appellant,

v.

Jasper County,

Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF JASPER COUNTY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE FEB 19 2015

CASE NO. 2013 CP-27-00322

RECEIVED
SC Court of Appeals

George M. Hood

Jasper County

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Michael C. Greene

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: Judgment for Defendant Jasper County

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

017
Judge Code

1/26/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

RECEIVED
FEB 19 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

)
) IN THE COURT OF COMMON PLEAS
)

George M. Hood,
Plaintiff,

vs.

Jasper County,
Defendant.

C.A. No. 2013-CP-27-00322

ORDER

2015 JAN 30 AM 9:19
MARSHALL BOSCH
CLERK OF COURT
JASPER COUNTY SC

RECEIVED
FEB 19 2015

SC Court of Appeals

This non-jury declaratory judgment action came before the Court for trial on December 1, 2014 in Beaufort, South Carolina by consent and agreement of the parties. Prior to starting the trial, the parties agreed to disposition on stipulated facts, which the parties submitted on December 31, 2014. For the reasons set forth below, the Court finds and concludes that Jasper County Council lawfully abolished Plaintiff's position. Therefore, Plaintiff is not entitled to the declaratory judgment he seeks.

INTRODUCTION

Because the parties have stipulated to the facts, a lengthy recitation of findings of fact is not needed. Plaintiff is the former deputy county administrator for Jasper County. (Facts ¶¶ 9, 20)¹ Jasper County operates under the council-administrator form of government. (Facts ¶3) Council voted in June 2011 to approve a budget that included funding for a deputy county administrator position in its Fiscal Year ("FY") 2011-2012 budget. (Facts ¶4) Both public opinion and Council were divided over whether the position should have been included in the

¹ The parties' Stipulated Facts are referred to as (Facts ¶ ____). While only some of the stipulated facts are recounted in this order, the Court has considered all of the facts stipulated by the parties.

budget, and the budget passed by a 3-to-2 vote. (Facts ¶ 7) Council elections were held in June 2012. (Facts ¶11) As a result of the elections, two new councilmembers were seated who had not voted on the budget to include the deputy county administrator position. (Facts ¶¶ 7, 11) Councilmembers Blackshear and Gregory were replaced by councilmembers Clark and Johnson and were seated in January 2013. (Facts ¶11)

After the new councilmembers were seated in January 2013, Council passed an ordinance amending its FY 2012-2013 budget to remove funding for and eliminate the deputy county administrator position. (Facts ¶12) The ordinance reads in relevant part:

BE IT ORDAINED by the Jasper County Council in council duly assembled and by the authority of the same:

1. The FY 2012-2013 Budget of Jasper County is hereby amended so as to reduce from Department 051 – Administration – all funding for salary and wages, FICA – Employer, SC Retirement, Medical, for the position of Deputy County Administrator not committed for services provided through the effective date hereof; provided however, nothing herein shall be construed so as to prohibit the Finance Director from disbursing sums authorized to be disbursed pursuant to Section 14 of the Jasper County Personnel Policies and Procedures Manual for the position of Deputy County Administrator.

2. It is hereby ordered that the job description of the Deputy County Administrator shall be and it is stricken [sic] from the approved list of job descriptions for Jasper County.

(Ex. 4) The ordinance was approved on January 28, 2013, by a vote of 4 to 1, with Councilmembers Etheridge, Sauls, Clark and Johnson voting for, and Councilmember Drayton voting against. (Facts ¶13) Following Council's vote, the County Administrator notified Plaintiff that his employment was terminated. (Facts ¶ 20)

ANALYSIS AND CONCLUSIONS OF LAW

Plaintiff's Amended Complaint asked the Court to determine whether Jasper County had the authority to abolish the deputy county administrator position. Plaintiff alleges Jasper County Council's actions unlawfully usurped the county administrator's duties and that Council's decision violated the separation of powers doctrine. Defendant County responds that Council acted within the statutory authority vested in it by the General Assembly and in accordance with the South Carolina Constitution. After considering both parties' arguments and the Stipulated Facts, the Court concludes Jasper County had authority to abolish the deputy county administrator position.

The South Carolina Constitution provides: "[t]he General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties ... Alternate forms of government, not to exceed five, shall be established." S.C. Const. Art. VIII, § 7. The Constitution further specifies that "laws concerning local government shall be liberally construed in their favor. Powers ... granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution." S.C. Const. Art. VIII, § 17. In accordance with the constitutional provisions of Article VIII, the General Assembly passed what is known as the "Home Rule Act" in 1976. The General Assembly established five forms of county government, including the council-administrator form, which Jasper County uses. S.C. Code § 4-9-20. The Home Rule Act carries out the Constitution's intent that local governments have plenary power over local affairs by providing that counties "have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State." S.C. Code § 4-9-25.

Under home rule, all county governing bodies regardless of form (except for a board of commissioners) are empowered to carry out certain duties. S.C. Code § 4-9-30. As is relevant here, § 4-9-30 gives county governing bodies the authority "to *establish such ... 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 ... positions*, except as otherwise provided for in this title." S.C. Code 4-9-30(6) (emphasis added). Jasper County, having a council-administrator form of government, is also subject to Article 7 of the Act, dealing specifically with that form. S.C. Code §§ 4-9-610, *et seq.* Important to the matter at bar is S.C. Code § 4-9-630 (8), which delegates to the county administrator the responsibility of "employment and discharge of personnel ... subject to the appropriation of funds by the council for that purpose."

It is the interplay between these two statutes that forms the heart of this dispute. Plaintiff asserts that the action abolishing his position is void for two reasons. First, he claims that the more specific statute pertaining to county-administrator forms of government (*i.e.*, § 4-9-630(8)) controls over the more general statute empowering counties to establish and abolish positions (*i.e.*, § 4-9-30(6)). Second, Plaintiff claims that allowing Council to abolish the deputy county administrator position violates the doctrine of separation of powers that is part of our state's constitution. *See* S.C. Const. Art. I, § 8. Defendant asserts that, when read in harmony, each of these provisions leads to the conclusion that council establishes, funds and abolishes positions, and the county administrator appoints and discharges the employees who fill those positions.

1. **The requirement of separation of powers is not violated by Council's elimination of Plaintiff's position.**

The Court first addresses Plaintiff's argument that Council's actions violate the state constitution's requirement of separation of powers. Plaintiff claims that since abolishing his

position had the effect of terminating his employment, which by law is delegated to the administrator, Council violated the doctrine of separation of powers. This is not the case. The South Carolina Supreme Court held long ago that the doctrine applies to state, not local government. In *Gaud v. Walker*, 214 S.C. 451, 477, 53 S.E.2d 316, 328 (1949), a taxpayer brought a challenge to legislation that allowed the voters of Charleston County to select among two plans for county government, called "Plan A" and "Plan B." Among the challenges was that the proposed plans would combine executive and legislative functions into one governing body. The Supreme Court rejected this argument and held:

It is next contended that Plan A conflicts with Article 1, Section 14 of the Constitution, in that it seeks to combine in the County Council both legislative and executive functions. It has been held that this section of the Constitution refers to the government of the State and to State officers, and not to the government of municipal corporations.

Id.

Further undermining Plaintiff's position is the fact that the constitution specifically authorizes the legislature to provide for the county government in this state. S.C. Const Art. VIII, § 7. The legislature did that by way of the Home Rule Act. S.C. Code § 4-9-10, *et seq.*; *see also*, *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993) ("[B]y enacting the Home Rule Act, . . . , the legislature intended to . . . restore autonomy to local government.").² In fact, in one form of county government, the council form, the General Assembly explicitly combined the legislative and executive duties in the county council. S.C. Code §§ 4-9-20, 4-9-310.

² *Williams* dealt with the analogous provisions of the Home Rule Act that apply to cities and towns.

Because separation of powers is not implicated by local government structure and because the constitution authorized the General Assembly to provide for the design of county governments, there is no constitutional violation. Having determined the constitutional issue, the Court now turns to the statutory issue.

2. County Council had authority to abolish the deputy county administrator position under S.C. Code § 4-9-630(8).

Plaintiff alleges that the county administrator's powers of appointment and discharge were usurped when County Council abolished the deputy county administrator position. Defendant, however, asserts that the county administrator and Council both acted within their authority. The Court agrees.

This is essentially a matter of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Lambries v. Saluda County Council*, 409 S.C. 1, 10, 760 S.E.2d 785, 789 (2014). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.*, at 10-11, 760 S.E.2d at 790. However, if the statute is ambiguous, "the court must construe its terms." *Id.* at 10, 760 S.E.2d at 789. "Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014).

The Court concludes that the provisions of Title 4, Chapter 9 of the S.C. Code are plain and unambiguous in their application. By its own terms, Chapter 9 provides that County Council has authority to "establish . . . positions in the county . . . and to abolish any such . . . positions." S.C. Code § 4-9-30(6). This is what Council did when it passed the ordinance to strip funding for and eliminate the deputy county administrator position. Likewise, Chapter 9 also provides that,

in county-administrator governments like Jasper County's, the administrator is "responsible for employment and discharge of personnel . . . subject to the appropriation of funds by the council for that purpose." S.C. Code § 4-9-630(8). The county administrator carried out his authority when he terminated Plaintiff's employment following Council's vote to eliminate the position. Had the administrator continued to employ Plaintiff, it would have violated § 4-9-630(8)'s requirement that funds be appropriated by council for that purpose since Council had stripped funding for the position.

Plaintiff makes much of the county administrator's statement in response to his request for a grievance that, "The decision to eliminate the position of Deputy County Administrator was made by Jasper County Council and not by me." (Facts ¶ 22) Plaintiff appears to contend this means that the county administrator did not terminate Plaintiff's employment. This goes too far. The administrator's statement is nothing more than a statement of what happened: Council eliminated Plaintiff's position. It does not change the fact that, following the elimination, the county administrator terminated Plaintiff's employment.

Plaintiff also asserts that the reference in § 4-9-30(6) to the "positions" that council may "establish" and "abolish" refers only to those positions directly under council's control. Assuming that the word "positions" created an ambiguity and, thus, a need for statutory construction, Plaintiff's reading would auger conflict in the home rule statutes. There are very few "positions" that are subject to appointment and discharge by council in the county-administrator form of government – the county administrator and clerk to council being the primary two.³ Both positions, however, are created by statute – not by Council – and must be

³ The Council also appoints the register of deeds in Jasper County, S.C. Code § 30-5-12(A). Like the administrator and clerk to council, however, the Council is required to appoint a register of deeds. *Id.* ("The governing bodies of . . . Jasper . . . count[y] shall appoint the register of deeds

filled. S.C. Code § 4-9-110 ("The council *shall* appoint a clerk to record its proceedings . . .") (emphasis added); S.C. Code § 4-9-620 ("The council *shall* employ an administrator . . .") (emphasis added). Because both positions are created by statute and because Council is required by statute to fill them, these cannot be among the "positions" Council is authorized to "establish" or "abolish" under § 4-9-30(6). Because there are no other positions over which Council has appointment and discharge authority, Plaintiff's reading would render the grant of authority to create and abolish positions in § 4-9-30(6) meaningless. Courts will apply an interpretation that gives effect to all parts of a statute rather than one that does not. *Nucor Steel v. S.C. Pub. Serv. Comm'n*, 310 S.C. 539, 545, 426 S.E.2d 319, 323 (1992) ("The well-settled rule in South Carolina is that, where possible, all provisions of a statute must be given full force and effect.").

Plaintiff also contends that the reference to "positions" means only that Council can establish and abolish services, such as water, public utilities or the like. Again, the problem with Plaintiff's reading is that it renders the word "position" meaningless. If the legislature intended Council's authority to create and abolish to be limited to broad categories of services to be provided, it could have said so. *Anderson v. S.C. Elec. Com'n*, 397 S.C. 551, 556, 725 S.E.2d 704, 707 (2012) ("Unless there is something in the statute requiring a different interpretation, the words used in the statute must be given their ordinary meaning."). By contrast, reading the statutes together to provide that Council establishes, funds and abolishes positions and that the county administrator employs and discharges the individuals filling the positions gives meaning to all provisions of the statute. *Id.* ("In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect.").

for its county . . .") Since the position is created by the legislature and Council is required to fill it, it is clear that Council could not abolish that position.

Plaintiff argues as an additional ground that, because the County was not experiencing a budget shortfall, it was improper for the Council to eliminate the deputy county administrator position mid-way through the budget year. Plaintiff further claims that, if there had been a shortfall, a reduction in force should have been undertaken by the administrator. Initially the Court notes that nothing in Chapter 9 or any of the Home Rule Act limits Council's authority to abolish a position to budget shortfalls. Essentially, Plaintiff questions the wisdom of council's decision, calling it an "illusory and ineffective" way to save the county money. (Plf. Pre-Trial Br. p. 4) The Court may not review questions that attack the wisdom of Council's policies. *S.C. Pub. Interest Found. v. Jud. Merit Selection Com'n*, 369 S.C. 139, 143, 632 S.E.2d 277, 278 (2006) ("[T]he courts will not rule upon questions which are exclusively or predominately political in nature rather than judicial.") (citing *Chicago & S. Air Lines v. Waterman S.S. Corp. Civil Aeronautics Bd.*, 333 U.S. 103, 111, 68 S.Ct. 431, 92 (1948)); see also, *Japan Whaling Ass'n v. Am. Cetacean Soc.*, 478 U.S. 221, 230, 106 S.Ct. 2860, 2866 (1986) ("The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of another branch of government."). Accordingly, the Court declines to sit in judgment of the wisdom of Council's decision.

3. Even if Plaintiff were correct, his employment was terminable at-will.

In his Amended Complaint, Plaintiff requested that the Court determine that his discharge was unlawful and, among other things, grant him reinstatement. (Amnd Compl ¶ 30) However, Plaintiff did not plead that he was other than an at-will employee. *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614, 713 S.E.2d 634, 636 (2011) ("In South Carolina, employment at-will is presumed absent the creation of a specific contract of employment."). "An at-will employee may

be terminated at any time for any reason, with or without cause." *Id.* "The doctrine in its pure form allows an employer to discharge an employee without incurring liability for good reason, no reason, or bad reason." *Culler v. Blue Ridge Elec. Co-op., Inc.*, 309 S.C. 243, 245, 422 S.E.2d 91, 92 (1992).

Accordingly, even if the Court believed that Council's ordinance was unlawful and did not require the county administrator to terminate Plaintiff's employment, it does not matter because the administrator did so anyway. Because Plaintiff's employment could be terminated for any or no reason, he is not entitled to reinstatement simply because the administrator was mistaken about the need to terminate his employment. See *Bookman v. Shakespeare Co.*, 314 S.C. 146, 442 S.E.2d 183 (Ct. App. 1994) (rejecting claim that employer's improper investigation led to his termination and explaining "[h]ad the employer conducted the investigation and determined the altercation resulted from the [coworker's] harassment, [the employer] was nevertheless free to fire Bookman for any reason or no reason."). For this additional reason, Plaintiff is not entitled to a declaratory judgment in his favor.

CONCLUSION

As set forth in this Order, the Court finds the elimination of Plaintiff's position lawful and that Plaintiff is not entitled to a declaratory judgment in his favor. It is therefore ORDERED that judgment be entered in favor of Defendant.

AND IT IS SO ORDERED.


J. Ernest Kinard, Jr.
Presiding Judge

Dated: 1/16/15
Camden, South Carolina

10948

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

George M. Hood,

Plaintiff,

vs.

Jasper County,

Defendant.

FILED
2014 DEC 8 AM 8:57
JASPER COUNTY SC
CLERK OF COURT
MARGARET BOSTICK
IN THE COURT OF COMMON PLEAS
JASPER COUNTY SC
Case No. 2013-CP-23-00322

AMENDED COMPLAINT

The Plaintiff, George M. Hood, complaining of the Defendant, Jasper County, alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of the County of Jasper, State of South Carolina.
2. Defendant Jasper County is a political subdivision of the State operating under a County Administrator form of government pursuant to S.C. Code § 4-9-610 *et seq.* in the County of Jasper.
3. All actions pertinent to the allegations in this Amended Complaint took place in Jasper County.
4. Jurisdiction and venue are proper in this Court.

FACTS

5. Plaintiff was employed by Defendant as Deputy County Administrator until January of 2013. His performance was excellent and he was never disciplined for any job performance problems.
6. Plaintiff was well versed in how county government functioned as he had

previously served on Jasper County Council for eight (8) years.

7. Pursuant to S.C. Code § 4-9-630, the County Administrator, as the chief administrative officer, is responsible for the employment and discharge of all personnel as well as administration of the County's personnel policies, including the County's classification plan.

8. Jasper County Council has no authority to terminate any employee other than the County Administrator, yet it terminated Dr. Hood.

9. Jasper County's County Administrator confirmed that he did not make the decision to terminate Dr. Hood's employment in a letter dated February 12, 2013 stating, "The decision to eliminate the position of Deputy County Administrator was made by Jasper County Council and not by me." (emphasis added).

10. Jasper Council intentionally attempted to circumvent state law and to accomplish indirectly what it had no authority to do directly, when it voted to terminate Dr. Hood, and such action is without effect as Jasper Council acted outside its legitimate authority. Specifically, although Defendant's annual budget did not contain specify information regarding the individual salaries or job descriptions of individual employees, Defendant purported to amend its annual budget with the purpose of deleting Plaintiff's job position and salary. Further, Defendant's subsequent annual budgets do not reflect Defendant's alleged amendment of its budget accomplished what the amendment was purportedly trying to accomplish. Rather, the amendment was a wrongful attempt by Council to terminate a County employee which was the responsibility of the County Administrator, not of County Council.

11. The County's job description for a Deputy County Administrator indicates the positions "directs the daily operations of county government."

12. Dr. Hood's offer letter stated that position of Deputy County Administrator was considered "critical personnel."

13. Jasper County's contention that it eliminated the position of Deputy County Administrator and not the person in the office is deceptive and false. The County's website still indicated months after Plaintiff's termination that there are four (4) "deputy county administrator" divisions.

14. The abrupt elimination of this critical job position also violates Jasper County's classification plan which is under the authority of the Administrator, not the Council.

15. Further, Jasper County's wrongful actions half way through its fiscal year are also suspect as there was a large fund balance at the time the position of Deputy County Attorney was allegedly eliminated due to financial concerns.

16. In fact, Ronald Malphrus, is now performing the Deputy County Administrator's job responsibilities, just under a different title. Mr. Malphrus is overseeing the County's Emergency Services, Public Works, Administrative Services, Human Resources, Information and Technology, Planning and Building Services, Parks and Recreation and Detention Center operations- all duties previously performed by Plaintiff.

17. After Jasper County Council acted outside the scope of its authority and violated state law by eliminating a classified personnel position in order to terminate Dr. Hood, it then attempted to codify its illegal activity through an ordinance.

18. The job descriptions for Jasper County are not part of the County's budget ordinance and they are not in the County's personnel ordinance so Council's attempt to delete by ordinance a position that was never part of any ordinance is meaningless. Further, Council's first two (2) readings of this bogus ordinance at 8:30 a.m. in the morning sends a strong message that

Jasper County was trying to avoid public scrutiny of its questionable actions.

FOR A FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT ACTION

19. Plaintiff hereby repeats and realleges each and every allegation contained in the Paragraphs above as fully as if set forth verbatim.

20. This cause of action is brought pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and S.C. Code § 15-53-10 *et seq.*

21. There exists a justiciable controversy regarding the rights of the Plaintiff pursuant to state law. Plaintiff is entitled to have his rights declared and determined, and this determination is ripe for a decision and is not moot.

22. Under the County Administrator form of government as set forth in the South Carolina Code of Laws, the County Council performs the legislative functions for a County and the County Administrator performs the executive functions for a County.

23. The separation of powers clause of the South Carolina Constitution (Art. 1, § 8) does not permit the legislative branch of government (Jasper County Council) to assume or exercise powers given to the executive branch (the County Administrator.)

24. Only the County Administrator has the authority to terminate County employees and to administer the County's personnel policies, including the County's employee classification plan.

25. The County Administrator did not terminate Plaintiff or eliminate the position of deputy administrator.

26. Jasper County's attempt to terminate Plaintiff indirectly by eliminating the position of deputy county administrator, while knowing that another employee would still perform the same job responsibilities of a deputy county administrator, was an illegal attempt to circumvent state law

and violates Art. 1, § 8 of the South Carolina Constitution.

27. Jasper County Council attempted to do indirectly that which it is not allowed by law to do directly.

28. Plaintiff is entitled to, and requests, a declaration from this Court that the Jasper County Council's actions regarding Plaintiff are null and void and without effect.

29. Pursuant to S.C. Code §15-77-300, as Plaintiff is contesting action by a political subdivision of the State against him and is entitled to attorney fees from the Defendant if he prevails.

30. Plaintiff also seeks reinstatement, actual damages, post judgment interest, attorney's fees and costs resulting from Jasper County Council's wrongful actions in violation of the State law and the State Constitution.

WHEREFORE, Plaintiff respectfully requests this Court grant Plaintiff the damages requested herein as well as such other equitable or legal relief the Court deems appropriate.

SIGNATURE BLOCK ON NEXT PAGE

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Attorneys for Plaintiff

Charleston, South Carolina

Date: 12-2-14

FOR A SIXTH DEFENSE AND BY WAY OF ANSWER

VI.

- A. Each allegation of the Amended Complaint not hereinafter expressly admitted is denied.
- B. Defendant responds to the allegations of the Amended Complaint by paragraph number corresponding to the paragraph number of the Amended Complaint as follows:
 - 1. Admitted upon information and belief.
 - 2. Defendant admits that it is a political subdivision of the State of South Carolina and that it governs according to the Council-Administrator Form of County Government (Form No. 3) set out at S.C. Code § 4-9-610, *et seq.*
 - 3. This is a jurisdictional allegation not requiring a response.
 - 4. This is a jurisdictional allegation not requiring a response.
 - 5. Defendant admits only so much of the allegations of this paragraph as can reasonably be construed to allege that Plaintiff was employed as its Deputy County Administrator for approximately one year.
 - 6. Defendant admits that Plaintiff previously served as an elected member of its County Council. The remaining allegations are denied.
 - 7. This is a conclusion of law not requiring a response. To the extent a response is required, Defendant admits only that the cited statute discusses the powers and duties of the County Administrator and that the statute speaks for itself.

8. Denied.
9. Denied as alleged. Defendant explains that its County Administrator responded to a grievance request by Plaintiff, that the quoted language accurately reflects a portion of that response but lacks the context of the remainder of the response, and that the response speaks for itself.
10. Denied.
11. Denied as alleged. Defendant explains that quoted phrase accurately quotes a portion of the job description but lacks the context of the remainder of the document and that the document speaks for itself.
12. Denied as alleged. Defendant explains that the quoted phrase accurately quotes a portion of the offer letter but lacks the context of the rest of the letter, and that the letter speaks for itself.
13. Denied.
14. Denied.
15. Denied.
16. Denied.
17. Denied.
18. Denied.

As to the First Cause of Action

19. Defendant incorporates its prior responses and allegations as if repeated herein verbatim.
20. This is a characterization of the action requiring no response.
21. Denied.

22. This is a conclusion of law not requiring a response.
23. This is a conclusion of law not requiring a response.
24. This is a conclusion of law not requiring a response.
25. Defendant admits that the County Administrator did not eliminate the position of deputy administrator. The remainder of the allegations of the paragraph is denied.
26. Denied.
27. Denied.
28. Denied.
29. Denied.
30. Denied.

C. Defendant denies Plaintiff's prayer for relief.

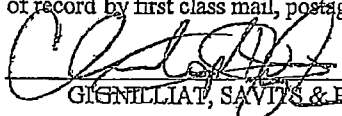
WHEREFORE, having fully responded to Plaintiff's Amended Complaint and set out various defenses, Defendant requests that the Amended Complaint be dismissed, with fees and costs taxed to Plaintiff.

Columbia, South Carolina

December 4, 2014

CERTIFICATE OF SERVICE

I hereby certify that on the date above indicated I caused a copy of this document to be served on counsel of record by first class mail, postage prepaid.


GIGNILLIAT, SAVITZ & BETTIS, L.L.P.


CHRISTOPHER W. JOHNSON (SC Bar 68524)
GIGNILLIAT, SAVITZ & BETTIS, L.L.P.
900 Elmwood Ave., Suite 100
Columbia, S.C. 29201
Tel.: (803) 799-9311
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cjohnson@gsblaw.net

ATTORNEYS FOR DEFENDANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

FEB 19 2015

APPEAL FROM JASPER COUNTY
Court of Common Pleas

SC Court of Appeals

Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2013-CP-27-00322

George M. Hood,

Appellant,

v.

Jasper County,

Respondent.

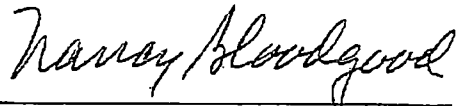
NOTICE OF APPEAL

Nancy Bloodgood, Esq., SC Bar No. 6459
Lucy C. Sanders, Esq., SC Bar No. 78169
FOSTER LAW FIRM, L.L.C.
895 Island Park Drive, Suite 202
Charleston, SC 29492
Telephone: (843) 972-0313
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Email: nbloodgood@fosterfoster.com
lsanders@fosterfoster.com
Attorneys for the Appellant

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

George M. Hood hereby appeals the Order of the Honorable J. Ernest Kinard, Jr., attached hereto as Exhibit A, dated January 16, 2015 and filed with the Jasper County Clerk of Court on January 30, 2015.

Respectfully Submitted,



Nancy Bloodgood, Esq., SC Bar No. 6459

Lucy C. Sanders, Esq., SC Bar No. 78169

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Attorneys for the Appellant

Charleston, South Carolina

Date: 2/12/2015

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Attorneys for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF JASPER COUNTY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE FEB 19 2015

CASE NO. 2013 CP-27-00322

RECEIVED
SC Court of Appeals

George M. Hood

Jasper County

PLAINTIFF(S)

DEPENDANT(S)

Submitted by: Michael C. Greene

Attorney for: ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(c), SCRPC (Vol. Nonsuit); ☐ Rule 43(c), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: Judgment for Defendant Jasper County

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

017
Judge Code

1/26/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

RECEIVED
FEB 19 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS

George M. Hood,

Plaintiff,

vs.

Jasper County,

Defendant.

C.A. No. 2013-CP-27-00322

ORDER

2015 JAN 30 AM 9:19
MARGARET BOSCHICK
CLERK OF COURT
JASPER COUNTY SC

RECEIVED

FEB 19 2015

SC Court of Appeals

This non-jury declaratory judgment action came before the Court for trial on December 1, 2014 in Beaufort, South Carolina by consent and agreement of the parties. Prior to starting the trial, the parties agreed to disposition on stipulated facts, which the parties submitted on December 31, 2014. For the reasons set forth below, the Court finds and concludes that Jasper County Council lawfully abolished Plaintiff's position. Therefore, Plaintiff is not entitled to the declaratory judgment he seeks.

INTRODUCTION

Because the parties have stipulated to the facts, a lengthy recitation of findings of fact is not needed. Plaintiff is the former deputy county administrator for Jasper County. (Facts ¶¶ 9, 20)¹ Jasper County operates under the council-administrator form of government. (Facts ¶3) Council voted in June 2011 to approve a budget that included funding for a deputy county administrator position in its Fiscal Year ("FY") 2011-2012 budget. (Facts ¶4) Both public opinion and Council were divided over whether the position should have been included in the

¹ The parties' Stipulated Facts are referred to as (Facts ¶ ____). While only some of the stipulated facts are recounted in this order, the Court has considered all of the facts stipulated by the parties.

budget, and the budget passed by a 3-to-2 vote. (Facts ¶ 7) Council elections were held in June 2012. (Facts ¶11) As a result of the elections, two new councilmembers were seated who had not voted on the budget to include the deputy county administrator position. (Facts ¶¶ 7, 11) Councilmembers Blackshear and Gregory were replaced by councilmembers Clark and Johnson and were seated in January 2013. (Facts ¶11)

After the new councilmembers were seated in January 2013, Council passed an ordinance amending its FY 2012-2013 budget to remove funding for and eliminate the deputy county administrator position. (Facts ¶12) The ordinance reads in relevant part:

BE IT ORDAINED by the Jasper County Council in council duly assembled and by the authority of the same:

1. The FY 2012-2013 Budget of Jasper County is hereby amended so as to reduce from Department 051 – Administration – all funding for salary and wages, FICA – Employer, SC Retirement, Medical, for the position of Deputy County Administrator not committed for services provided through the effective date hereof; provided however, nothing herein shall be construed so as to prohibit the Finance Director from disbursing sums authorized to be disbursed pursuant to Section 14 of the Jasper County Personnel Policies and Procedures Manual for the position of Deputy County Administrator.

2. It is hereby ordered that the job description of the Deputy County Administrator shall be and it is stricken [sic] from the approved list of job descriptions for Jasper County.

(Ex. 4) The ordinance was approved on January 28, 2013, by a vote of 4 to 1, with Councilmembers Etheridge, Sauls, Clark and Johnson voting for, and Councilmember Drayton voting against. (Facts ¶13) Following Council's vote, the County Administrator notified Plaintiff that his employment was terminated. (Facts ¶ 20)

ANALYSIS AND CONCLUSIONS OF LAW

Plaintiff's Amended Complaint asked the Court to determine whether Jasper County had the authority to abolish the deputy county administrator position. Plaintiff alleges Jasper County Council's actions unlawfully usurped the county administrator's duties and that Council's decision violated the separation of powers doctrine. Defendant County responds that Council acted within the statutory authority vested in it by the General Assembly and in accordance with the South Carolina Constitution. After considering both parties' arguments and the Stipulated Facts, the Court concludes Jasper County had authority to abolish the deputy county administrator position.

The South Carolina Constitution provides: "[t]he General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties ... Alternate forms of government, not to exceed five, shall be established." S.C. Const. Art. VIII, § 7. The Constitution further specifies that "laws concerning local government shall be liberally construed in their favor. Powers ... granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution." S.C. Const. Art. VIII, § 17. In accordance with the constitutional provisions of Article VIII, the General Assembly passed what is known as the "Home Rule Act" in 1976. The General Assembly established five forms of county government, including the council-administrator form, which Jasper County uses. S.C. Code § 4-9-20. The Home Rule Act carries out the Constitution's intent that local governments have plenary power over local affairs by providing that counties "have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State." S.C. Code § 4-9-25.

Under home rule, all county governing bodies regardless of form (except for a board of commissioners) are empowered to carry out certain duties. S.C. Code § 4-9-30. As is relevant here, § 4-9-30 gives county governing bodies the authority "to *establish such ... 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 ... positions*, except as otherwise provided for in this title." S.C. Code 4-9-30(6) (emphasis added). Jasper County, having a council-administrator form of government, is also subject to Article 7 of the Act, dealing specifically with that form. S.C. Code §§ 4-9-610, *et seq.* Important to the matter at bar is S.C. Code § 4-9-630 (8), which delegates to the county administrator the responsibility of "employment and discharge of personnel ... subject to the appropriation of funds by the council for that purpose."

It is the interplay between these two statutes that forms the heart of this dispute. Plaintiff asserts that the action abolishing his position is void for two reasons. First, he claims that the more specific statute pertaining to county-administrator forms of government (*i.e.*, § 4-9-630(8)) controls over the more general statute empowering counties to establish and abolish positions (*i.e.*, § 4-9-30(6)). Second, Plaintiff claims that allowing Council to abolish the deputy county administrator position violates the doctrine of separation of powers that is part of our state's constitution. *See* S.C. Const. Art. I, § 8. Defendant asserts that, when read in harmony, each of these provisions leads to the conclusion that council establishes, funds and abolishes positions, and the county administrator appoints and discharges the employees who fill those positions.

1. The requirement of separation of powers is not violated by Council's elimination of Plaintiff's position.

The Court first addresses Plaintiff's argument that Council's actions violate the state constitution's requirement of separation of powers. Plaintiff claims that since abolishing his

position had the effect of terminating his employment, which by law is delegated to the administrator, Council violated the doctrine of separation of powers. This is not the case. The South Carolina Supreme Court held long ago that the doctrine applies to state, not local government. In *Gaud v. Walker*, 214 S.C. 451, 477, 53 S.E.2d 316, 328 (1949), a taxpayer brought a challenge to legislation that allowed the voters of Charleston County to select among two plans for county government, called "Plan A" and "Plan B." Among the challenges was that the proposed plans would combine executive and legislative functions into one governing body. The Supreme Court rejected this argument and held:

It is next contended that Plan A conflicts with Article 1, Section 14 of the Constitution, in that it seeks to combine in the County Council both legislative and executive functions. It has been held that this section of the Constitution refers to the government of the State and to State officers, and not to the government of municipal corporations.

Id.

Further undermining Plaintiff's position is the fact that the constitution specifically authorizes the legislature to provide for the county government in this state. S.C. Const Art. VIII, § 7. The legislature did that by way of the Home Rule Act, S.C. Code § 4-9-10, *et seq.*; *see also*, *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993) ("[B]y enacting the Home Rule Act, . . . , the legislature intended to . . . restore autonomy to local government.").² In fact, in one form of county government, the council form, the General Assembly explicitly combined the legislative and executive duties in the county council. S.C. Code §§ 4-9-20, 4-9-310.

² *Williams* dealt with the analogous provisions of the Home Rule Act that apply to cities and towns.

Because separation of powers is not implicated by local government structure and because the constitution authorized the General Assembly to provide for the design of county governments, there is no constitutional violation. Having determined the constitutional issue, the Court now turns to the statutory issue.

2. County Council had authority to abolish the deputy county administrator position under S.C. Code § 4-9-630(8).

Plaintiff alleges that the county administrator's powers of appointment and discharge were usurped when County Council abolished the deputy county administrator position. Defendant, however, asserts that the county administrator and Council both acted within their authority. The Court agrees.

This is essentially a matter of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Lambries v. Saluda County Council*, 409 S.C. 1, 10, 760 S.E.2d 785, 789 (2014). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.*, at 10-11, 760 S.E.2d at 790. However, if the statute is ambiguous, "the court must construe its terms." *Id.* at 10, 760 S.E.2d at 789. "Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect," *Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014).

The Court concludes that the provisions of Title 4, Chapter 9 of the S.C. Code are plain and unambiguous in their application. By its own terms, Chapter 9 provides that County Council has authority to "establish . . . positions in the county . . . and to abolish any such . . . positions." S.C. Code § 4-9-30(6). This is what Council did when it passed the ordinance to strip funding for and eliminate the deputy county administrator position. Likewise, Chapter 9 also provides that,

in county-administrator governments like Jasper County's, the administrator is "responsible for employment and discharge of personnel . . . subject to the appropriation of funds by the council for that purpose." S.C. Code § 4-9-630(8). The county administrator carried out his authority when he terminated Plaintiff's employment following Council's vote to eliminate the position. Had the administrator continued to employ Plaintiff, it would have violated § 4-9-630(8)'s requirement that funds be appropriated by council for that purpose since Council had stripped funding for the position.

Plaintiff makes much of the county administrator's statement in response to his request for a grievance that, "The decision to eliminate the position of Deputy County Administrator was made by Jasper County Council and not by me." (Facts ¶ 22) Plaintiff appears to contend this means that the county administrator did not terminate Plaintiff's employment. This goes too far. The administrator's statement is nothing more than a statement of what happened: Council eliminated Plaintiff's position. It does not change the fact that, following the elimination, the county administrator terminated Plaintiff's employment.

Plaintiff also asserts that the reference in § 4-9-30(6) to the "positions" that council may "establish" and "abolish" refers only to those positions directly under council's control. Assuming that the word "positions" created an ambiguity and, thus, a need for statutory construction, Plaintiff's reading would auger conflict in the home rule statutes. There are very few "positions" that are subject to appointment and discharge by council in the county-administrator form of government — the county administrator and clerk to council being the primary two.³ Both positions, however, are created by statute — not by Council — and must be

³ The Council also appoints the register of deeds in Jasper County. S.C. Code § 30-5-12(A). Like the administrator and clerk to council, however, the Council is required to appoint a register of deeds. *Id.* ("The governing bodies of . . . Jasper . . . count[y] shall appoint the register of deeds

filled. S.C. Code § 4-9-110 ("The council *shall* appoint a clerk to record its proceedings . . .") (emphasis added); S.C. Code § 4-9-620 ("The council *shall* employ an administrator . . .") (emphasis added). Because both positions are created by statute and because Council is required by statute to fill them, these cannot be among the "positions" Council is authorized to "establish" or "abolish" under § 4-9-30(6). Because there are no other positions over which Council has appointment and discharge authority, Plaintiff's reading would render the grant of authority to create and abolish positions in § 4-9-30(6) meaningless. Courts will apply an interpretation that gives effect to all parts of a statute rather than one that does not. *Nucor Steel v. S.C. Pub. Serv. Comm'n*, 310 S.C. 539, 545, 426 S.E.2d 319, 323 (1992) ("The well-settled rule in South Carolina is that, where possible, all provisions of a statute must be given full force and effect").

Plaintiff also contends that the reference to "positions" means only that Council can establish and abolish services, such as water, public utilities or the like. Again, the problem with Plaintiff's reading is that it renders the word "position" meaningless. If the legislature intended Council's authority to create and abolish to be limited to broad categories of services to be provided, it could have said so. *Anderson v. S.C. Elec. Com'n*, 397 S.C. 551, 556, 725 S.E.2d 704, 707 (2012) ("Unless there is something in the statute requiring a different interpretation, the words used in the statute must be given their ordinary meaning."). By contrast, reading the statutes together to provide that Council establishes, funds and abolishes positions and that the county administrator employs and discharges the individuals filling the positions gives meaning to all provisions of the statute. *Id.* ("In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect.").

for its county . . .") Since the position is created by the legislature and Council is required to fill it, it is clear that Council could not abolish that position.

Plaintiff argues as an additional ground that, because the County was not experiencing a budget shortfall, it was improper for the Council to eliminate the deputy county administrator position mid-way through the budget year. Plaintiff further claims that, if there had been a shortfall, a reduction in force should have been undertaken by the administrator. Initially the Court notes that nothing in Chapter 9 or any of the Home Rule Act limits Council's authority to abolish a position to budget shortfalls. Essentially, Plaintiff questions the wisdom of council's decision, calling it an "illusory and ineffective" way to save the county money. (Plf. Pre-Trial Br. p. 4) The Court may not review questions that attack the wisdom of Council's policies. *S.C. Pub. Interest Found. v. Jud. Merit Selection Com'n*, 369 S.C. 139, 143, 632 S.E.2d 277, 278 (2006) ("[T]he courts will not rule upon questions which are exclusively or predominately political in nature rather than judicial.") (citing *Chicago & S. Air Lines v. Waterman S.S. Corp. Civil Aeronautics Bd.*, 333 U.S. 103, 111, 68 S.Ct. 431, 92 (1948)); see also, *Japan Whaling Ass'n v. Am. Cetacean Soc.*, 478 U.S. 221, 230, 106 S.Ct. 2860, 2866 (1986) ("The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of another branch of government."). Accordingly, the Court declines to sit in judgment of the wisdom of Council's decision.

3. Even if Plaintiff were correct, his employment was terminable at-will.

In his Amended Complaint, Plaintiff requested that the Court determine that his discharge was unlawful and, among other things, grant him reinstatement. (Amnd Compl ¶ 30) However, Plaintiff did not plead that he was other than an at-will employee. *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614, 713 S.E.2d 634, 636 (2011) ("In South Carolina, employment at-will is presumed absent the creation of a specific contract of employment."). "An at-will employee may

be terminated at any time for any reason, with or without cause." *Id.* "The doctrine in its pure form allows an employer to discharge an employee without incurring liability for good reason, no reason, or bad reason." *Culler v. Blue Ridge Elec. Co-op., Inc.*, 309 S.C. 243, 245, 422 S.E.2d 91, 92 (1992).

Accordingly, even if the Court believed that Council's ordinance was unlawful and did not require the county administrator to terminate Plaintiff's employment, it does not matter because the administrator did so anyway. Because Plaintiff's employment could be terminated for any or no reason, he is not entitled to reinstatement simply because the administrator was mistaken about the need to terminate his employment. *See Bookman v. Shakespeare Co.*, 314 S.C. 146, 442 S.E.2d 183 (Ct. App. 1994) (rejecting claim that employer's improper investigation led to his termination and explaining "[h]ad the employer conducted the investigation and determined the altercation resulted from the [coworker's] harassment, [the employer] was nevertheless free to fire Bookman for any reason or no reason."). For this additional reason, Plaintiff is not entitled to a declaratory judgment in his favor.

CONCLUSION

As set forth in this Order, the Court finds the elimination of Plaintiff's position lawful and that Plaintiff is not entitled to a declaratory judgment in his favor. It is therefore ORDERED that judgment be entered in favor of Defendant.

AND IT IS SO ORDERED.


J. Ernest Kinard, Jr.
Presiding Judge

Dated: 11/16/15
Camden, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2013-CP-27-00322

George M. Hood,

Appellant,

v.

Jasper County,

Respondent.

PROOF OF SERVICE FOR THE NOTICE OF APPEAL

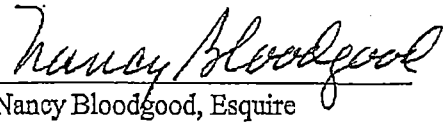
Nancy Bloodgood, Esq., SC Bar No. 6459
Lucy C. Sanders, Esq., SC Bar No. 78169
FOSTER LAW FIRM, L.L.C.
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Charleston, SC 29492
Telephone: (843) 972-0313
Facsimile: (888) 519-0934
Email: nbloodgood@fosterfoster.com
lsanders@fosterfoster.com
Attorneys for the Appellant

I hereby certify that on February 12, 2015 I served a copy of the Notice of Appeal to the following:

Christopher W. Johnson, Esquire
Michael Green, Esquire
Gignilliat Savitz & Bettis LLP
900 Elmwood Avenue, Suite 100
Columbia, SC 29201
Attorneys for the Respondent

The Honorable Margaret Bostick
Jasper County Clerk of Court
PO Box 248
265 Russell Street
Ridgeland, SC 29936

by placing a copy of said documents in the United States mail with sufficient postage thereon.


Nancy Bloodgood, Esquire

Charleston, South Carolina

Date: 2/12/2015

10948

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF JASPER
COURT OF COMMON PLEAS
CASE NUMBER 2013-CP-27-00322

GEORGE M. HOOD

PLAINTIFF

VERSUS

ORIGINAL

DECEMBER 1, 2014

TRANSCRIPT OF HEARING

BEAUFORT, SOUTH CAROLINA

JASPER COUNT

DEFENDANT

B E F O R E:

HON. ERNEST J. KINARD, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER



1 BEGINNING 9:40 A.M.

2 BY THE COURT:

3 THE COURT: All right. We met back in chambers a
4 little bit. If you'll discuss further what we
5 contemplate.

6 MS. BLOODGOOD: Yes, your Honor.

7 MR. JOHNSON: Yes, your Honor.

8 THE COURT: And what are we ready to do?

9 MR. JOHNSON: Your Honor, Chris Johnson for the
10 Defense. I believe we're reviewing the agreement that
11 we would go ahead and put on the record that we intend
12 to put together stipulated facts. And that we will
13 then, both sides, prepare proposed orders and submit
14 those to your Honor, with the stipulated facts that we
15 agreed upon within 30 days of today.

16 And the only issue I think that might need some
17 resolution before we get to that is plaintiff's motion
18 to amend her complaint -- or his complaint.

19 THE COURT: Well, he can amend it. It's not going
20 to impact what the decision is one way or another.

21 MR. JOHNSON: Well, and what I was going to do is,
22 I was actually talking with my client before your Honor
23 walked in. And if I could beg the Court's indulgence
24 for about a minute and just to confer with him, maybe we
25 can resolve it.

1 THE COURT: Sure. All right.

2 Anyway, both parties have already submitted briefs,
3 which you know I have read. Of course, I have the file
4 and I read the file. It's strictly a legal issue.

5 MS. BLOODGOOD: Yes, your Honor. I think it is.

6 THE COURT: You have several positions, and you
7 have positions and you each have statutes you're relying
8 on. So, the facts that are in dispute, he was doing a
9 good job and so forth; they just de-funded it.

10 MS. BLOODGOOD: That's right.

11 THE COURT: And he says administrative could have
12 fired him, but they couldn't de-fund it. That's
13 basically --

14 MR. JOHNSON: That's how we understand their
15 position, your Honor.

16 THE COURT: All right.

17 MR. JOHNSON: And on the issue that we -- we will
18 just obviously, I guess, need to file an answer to the
19 amended complaint. But we can -- I mean, we can do that
20 within the amount of time.

21 THE COURT: Yes, you can do that. That's no
22 problem.

23 MR. JOHNSON: All right. Thank you, your Honor.

24 THE COURT: All right. As we discussed, now, you
25 need to send stipulation of facts, proposed orders to

12-1-14 HOOD V. JASPER COUNTY

1 Camden, with a self-addressed, stamped envelopes within
2 30 days.

3 MR. JOHNSON: Yes, your Honor.

4 THE COURT: With the understanding you all are
5 going to get your stipulation of facts together by
6 Friday of this week.

7 MS. BLOODGOOD: Within a week. Yes, your Honor.

8 THE COURT: Okay. Good luck.

9 MS. BLOODGOOD: Thank you very much.

10 MR. JOHNSON: Thank you.

11 THE COURT: All right.

12 MR. JOHNSON: I need to get the file, and -- if
13 that's all right, and give it back to Mr. Jones to take
14 back to the clerk of court. Are you going to need it
15 for or need anything from it for the --

16 THE COURT: No, I've got everything I need.

17 MR. JOHNSON: Okay.

18 The COURT: I've got copies of everything.

19 MR. JOHNSON: All right. Thank you, your Honor.

20 THE COURT: All right.

END PROCEEDING 9:40 A.M.

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

)
) IN THE COURT OF COMMON PLEAS
)

George M. Hood,
Plaintiff,

)
) C.A. No. 2013-CP-27-00322
)

vs.

)
) **JOINT STIPULATION OF FACTS**
)

Jasper County,
Defendant.

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The parties to the above captioned matter stipulate as follows:

1. The material facts of this matter are not in dispute and should be decided by the Court on the law.
2. The parties have agreed to submit proposed orders arguing for application of the law to the facts contained in this Stipulation.

FACTS

3. Jasper County operates under the council-administrator form of government. Jasper County Council is made up of five members elected at-large from the County.
4. Council voted to approve a budget that included funding for a deputy county administrator position in its Fiscal Year ("FY") 2011-2012 budget.
5. The County's fiscal years begin on July 1 and end on June 30 of the following calendar year.
6. Immediately prior to Council approving funding for a deputy county administrator position in the FY 2011-2012 budget, the County did not have a deputy county administrator. Several years prior to 2011, the County had two deputy county

administrators. From approximately 2006 to 2010, the County had four deputy county administrators, each responsible for various departments of the County administration. In approximately 2010, Council changed the titles of the four deputy county administrators to directors. The deputy county administrator position that was funded in the FY 2011-2012 budget was the first such position to have all departments of the County administration report to a single deputy county administrator.

7. Before and after council's vote to fund the deputy county administrator position, there was dissent both on council and among the public over whether the position of Deputy County Administrator was needed. The vote approving the FY 2011-2012 budget was 3 to 2, with Councilmembers Blackshear, Gregory and Drayton for, and Councilmembers Etheridge and Saul against the budget. A copy of the June 20, 2011 council minutes approving the budget are included as exhibit 1.
8. The County posted the deputy county administrator position and sought applicants for the position over the Summer and Fall of 2011.
9. County Administrator Andy Fulghum selected and hired Plaintiff George Hood for the position, notifying him on December 1, 2011 that his employment would begin December 12, 2011. A copy of the letter is included as exhibit 2 to this Stipulation.
10. Council funded the deputy county administrator position in the FY 2012-2013 budget. The FY 2012-2013 budget passed by a vote of 3 to 2, with Councilmembers Blackshear, Gregory and Drayton for, and Councilmembers Etheridge and Saul against it. A copy of the June 28, 2012 council budget workshop and meeting minutes approving the budget are included as exhibit 3.

11. Council elections were held in June 2012. As a result of the elections, two new councilmembers were seated. Councilmembers Blackshear and Gregory were replaced by councilmembers Clark and Johnson. The new councilmembers were seated in January 2013.
12. After the new councilmembers were seated in January 2013, Council passed an ordinance amending its FY 2012-2013 budget to remove funding for and eliminate the deputy county administrator position. The ordinance reads in relevant part:

BE IT ORDAINED by the Jasper County Council in council duly assembled and by the authority of the same:

1. The FY 2012-2013 Budget of Jasper County is hereby amended so as to reduce from Department 051 – Administration – all funding for salary and wages, FICA – Employer, SC Retirement, Medical, for the position of Deputy County Administrator not committed for services provided through the effective date hereof; provided however, nothing herein shall be construed so as to prohibit the Finance Director from disbursing sums authorized to be disbursed pursuant to Section 14 of the Jasper County Personnel Policies and Procedures Manual for the position of Deputy County Administrator.

2. It is hereby ordered that the job description of the Deputy County Administrator shall be and it is stricken [sic] from the approved list of job descriptions for Jasper County.

A copy of the Ordinance is included as exhibit 4 to this Stipulation.

13. The ordinance was approved on January 28, 2013 by a vote of 4 to 1, with Councilmembers Etheridge, Saul, Clark and Johnson voting for, and Councilmember Drayton voting against. Since approving the ordinance, Council has not included funding for the deputy county administrator position in any subsequent fiscal year budget.
14. There was never an ordinance adopting a job description for the deputy county administrator position.

15. The County has an employee Classification and Compensation Plan which states in part:

Administration of the Classification Plan

The primary responsibility for day-to-day administration of the classification plan rests with the Human Resources Director within the limits of these policies and procedures. . . . The Human Resources Director will periodically review the entire classification plan for recommending appropriate changes in the allocation of positions.

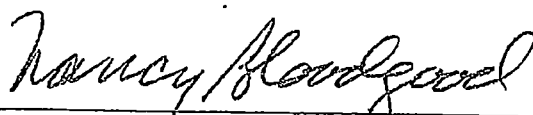
Allocation of Positions

Whenever a newly authorized position is established or duties of an old position change, the Department Head will submit, in writing, a comprehensive description of the duties of such position to the Human Resources Director. The Human Resources Director may authorize the appropriate classification, the establishment of a new classification, or the abolishment of any existing classification(s).

The County's Classification and Compensation Plan, which is part of the County's Personnel Policy Manual, is attached as exhibit 5.

16. The County has a contract with an outside consulting firm to prepare job descriptions.
17. Each year, after an annual operating budget is prepared by the Administrator, County Council debates the budget, suggests changes to the County Administrator and then votes to adopt the budget that is reflected through an ordinance with three (3) readings. Thereafter, millage is set based on the enacted budget, the amount of taxes needed to be collected to fund the budget is determined, and tax bills are mailed out in early fall with taxes due December 31st of the budget year.
18. There was no budget shortfall during FY 2012-2013.

19. In 2009, when there had been a shortfall, the County implemented a Reduction in Force (RIF) in accordance with the RIF policy that is part of its County Policy Manual, attached hereto as exhibit 6.
20. On January 28, 2013, following Council's approval of the ordinance, the County Administrator notified Plaintiff in writing of the termination of his employment. Plaintiff's employment was not terminated for performance reasons. A copy of the letter is included as exhibit 7 to this Stipulation.
21. On February 7, 2013, Plaintiff submitted a grievance to the County Administrator seeking "to appeal the decision made by the Jasper County Council on January 28, 2013 to delete the position of Deputy County Administrator and the salary from the 2012-2013 budget." A copy of Plaintiff's letter is included as exhibit 8 to this Stipulation.
22. On February 12, 2013, the County Administrator denied Plaintiff's grievance, writing "The decision to eliminate the position of Deputy County Administrator was made by Jasper County Council and not by me. As such, I do not have the authority to grant the relief that you seek, even if I believed it was justified." A copy of the County Administrator's letter is included as exhibit 9 to his Stipulation.



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ATTORNEYS FOR PLAINTIFF

Dated: 12-5, 2014

ATTORNEYS FOR DEFENDANT

Dated: Dec. 29, 2014



**JASPER COUNTY COUNCIL
COUNCIL CHAMBERS
358 THIRD AVE., RIDGELAND, SC 29936
JUNE 20, 2011, 7:00 P.M.
MINUTES**

OFFICIALS PRESENT: CHAIRMAN LEROY BLACKSHEAR, VICE CHAIRMAN SAMUEL GREGORY, COUNCILMAN HENRY ETHERIDGE, COUNCILMAN L. MARTIN SAULS IV, COUNCILMAN THEODUS L. DRAYTON

STAFF PRESENT: ADMINISTRATOR ANDREW FULGHUM, DIRECTOR OF EMERGENCY SERVICES WILBUR DALEY, DIRECTOR OF ENGINEERING SERVICES DALE TERRY, ATTORNEY MARVIN JONES, CLERK TO COUNCIL JUDITH FRANK, PLANNING DIRECTOR DAVID JIROUSEK, ASSESSOR SUSAN WAITE, BUILDING DEPT.

IN ACCORDANCE WITH THE FREEDOM OF INFORMATION ACT THE ELECTRONIC AND PRINT MEDIA WERE NOTIFIED.

STAFF ABSENT: DIRECTOR OF ADMINISTRATIVE SERVICES RONNIE MALPHRUS

DURING PERIODS OF DISCUSSION AND/OR PRESENTATIONS MINUTES ARE TYPICALLY CONDENSED AND PARAPHRASED.

CALL TO ORDER: CHAIRMAN BLACKSHEAR CALLED THE MEETING TO ORDER AT 7:00 P.M.

PLEDGE OF ALLEGIANCE- CHAIRMAN BLACKSHEAR LED THE PLEDGE OF ALLEGIANCE.

INVOCATION - COUNCILMAN DRAYTON GAVE THE INVOCATION.

APPROVAL OF THE AGENDA - COUNCILMAN SAULS MOTIONED AND COUNCILMAN GREGORY SECONDED THE MOTION TO AMEND THE AGENDA TO INCLUDE THE 2ND READING OF THE ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF JASPER COUNTY SO AS TO TRANSFER A PROPERTY BEARING JASPER COUNTY TAX MAP NUMBER 038-00-04-024 AND GENERALLY LOCATED ON LEVY ROAD FROM THE RESIDENTIAL ZONE TO THE

RURAL PRESERVATION ZONE ON THE JASPER COUNTY OFFICIAL ZONING MAP; AND TO ADD TO THE EXECUTIVE SESSION DISCUSSION REGARDING EMPLOYMENT, APPOINTMENT, COMPENSATION, PROMOTION, DEMOTION, DISCIPLINE, OR RELEASE OF AN EMPLOYEE, A STUDENT, OR A PERSON REGULATED BY A PUBLIC BODY OR THE APPOINTMENT OF A PERSON TO A PUBLIC BODY; HOWEVER, IF AN ADVERSARY HEARING INVOLVING AN EMPLOYEE OR CLIENT IS HELD, THE EMPLOYEE OR CLIENT HAS THE RIGHT TO DEMAND THAT THE HEARING BE CONDUCTED PUBLICLY NOTHING CONTAINED IN THIS ITEM SHALL PREVENT THE PUBLIC BODY, IN ITS DISCRETION, FROM DELETING THE NAMES OF OTHER EMPLOYEES OR CLIENTS WHOSE RECORDS ARE SUBMITTED FOR USE AT THE HEARING - CLERK OF COURT AND I-T DEPARTMENT; AND TO POSTPONE THE 3RD READING OF THE ORDINANCE TO ENTER INTO A FEE IN LIEU OF TAXES AGREEMENT WITH BE GREEN PACKAGING, LLC AND TO APPROVE THE AGENDA AS AMENDED. THE MOTION CARRIED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

APPROVAL OF THE MINUTES OF THE 06/06/211 COUNCIL MEETING AND 06/08/2011 BUDGET WORKSHOP - COUNCILMAN DRAYTON MOTIONED AND COUNCILMAN SAULS SECONDED THE MOTION TO APPROVE THE MINUTES OF THE 6/6/2011 MEETING AND THE 6/8/2011 BUDGET WORKSHOP. THE MOTION CARRIED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

PROCLAMATIONS AND PRESENTATIONS - THERE WERE NO PRESENTATIONS OR PROCLAMATIONS.

ORDINANCES

ANDREW FULGHUM - 3RD READING OF THE ORDINANCE TO APPROVE THE 2011-2012 JASPER COUNTY BUDGET- MR. FULGHUM PRESENTED THE BUDGET AND SAID THAT IT REFLECTED THE CHANGES REQUESTED BY THE COUNCIL. MR. FULGHUM SAID THE SCHOOL AND COUNTY BUDGET WAS IN THE AMOUNT OF \$40,340,759. MR. FULGHUM SAID THE COUNTY'S OPERATIONS BUDGET IS IN THE AMOUNT OF \$21,486,884. COUNCILMAN SAULS MOTIONED AND COUNCILMAN ETHERIDGE SECONDED THE MOTION TO POSTPONE THE 3RD READING. COUNCILMAN SAULS SAID THAT HE FELT WITH THE CURRENT FINANCIAL SITUATION OF THE COUNTY HE DID NOT THINK THAT THE COUNCIL SHOULD APPROVE SPENDING THE MONEY TO HIRE A DEPUTY ADMINISTRATOR OR A SECURITY GUARD. COUNCILMAN SAULS SAID HE WOULD LIKE TO DELETE THOSE TWO POSITIONS AS IT IS NOT A SMART FINANCIAL MOVE. VICE CHAIRMAN GREGORY SAID HE WANTED TO DISCUSS THE TWO POSITIONS AND ASKED IF IT COULD BE DISCUSSED IN EXECUTIVE SESSION. MR. FULGHUM SAID THAT IT WAS NOT APPROPRIATE TO DISCUSS IN EXECUTIVE SESSION. COUNCILMAN DRAYTON SAID HE FELT IT IS CRITICAL TO HIRE A DEPUTY ADMINISTRATOR, BUT MAYBE NOT THE SECURITY GUARD. COUNCILMAN DRAYTON SAID HE FELT MORE CAN BE DONE AND THE DEPUTY ADMINISTRATOR COULD WORK WITH THE EMPLOYEES AND MONITOR THE

DAY TO DAY OPERATIONS OF THE COUNTY. COUNCILMAN ETHERIDGE SAID THAT MAYBE THE POSITIONS COULD BE CONSIDERED FOR NEXT YEAR SINCE THE CITIZENS WILL BE HAVING AN INCREASE IN TAXES DUE TO DEBT SERVICE AND THEY WILL ALSO BE PAYING \$25 PER VEHICLE. COUNCILMAN ETHERIDGE SAID IF THOSE POSITIONS WERE CUT 1 -1.5 MILLS COULD BE CUT FROM THE BUDGET. COUNCILMAN ETHERIDGE SAID THAT THIS BUDGET IS PUTTING A LOT ON THE TAXPAYERS. COUNCILMAN ETHERIDGE SAID IF THINGS PICK UP THEN THEY CAN CONSIDER ADDING THE POSITIONS MID-YEAR. COUNCILMAN ETHERIDGE SAID THAT NEW POSITIONS DID NOT NEED TO BE ADDED AND THE COUNCIL NEEDED TO GET THE BUDGET DOWN AS FAR AS POSSIBLE. COUNCILMAN ETHERIDGE SAID THE COUNCIL HAS CUT POSITIONS AND SOME EMPLOYEES HAVE DOUBLED UP ON THEIR WORK AND HE DID NOT THINK THEY SHOULD ADD ANY NEW POSITIONS. COUNCILMAN SAULS SAID THAT HE AGREED WITH COUNCILMAN DRAYTON, BUT THE TAXPAYERS DID NOT NEED THE EXTRA BURDEN AND THAT THE CURRENT EMPLOYEES HAVE NOT HAD A RAISE IN 5 YEARS. VICE CHAIRMAN GREGORY SAID THAT THE COUNCIL HAS DISCUSSED THIS AT LENGTH AND HE IS NOT IN FAVOR OF RAISING TAXES AND HE FELT THIS NEEDED TO BE WORKED ON AGAIN AS A GROUP. VICE CHAIRMAN GREGORY AGREED THAT THE SECURITY GUARD COULD BE CUT. MR. FULGHUM SAID THAT THE STAFF WANTED AN ARMED GUARD AND THAT HAS ALREADY BEEN SET IN MOTION AND HE DID NOT KNOW IF HE COULD GO BACK ON THAT. CHAIRMAN BLACKSHEAR SAID HE DID NOT KNOW WHERE THINGS WENT WRONG AS IT WAS THE CONSENSUS OF THE COUNCIL TO HIRE THE SECURITY GUARD AND A DEPUTY ADMINISTRATOR. COUNCILMAN ETHERIDGE SAID HE NEVER WANTED TO HIRE A DEPUTY ADMINISTRATOR. CHAIRMAN BLACKSHEAR CALLED FOR A VOTE ON COUNCILMAN'S SAULS MOTION. THE MOTION FAILED. COUNCILMAN ETHERIDGE AND COUNCILMAN SAULS VOTED IN FAVOR. CHAIRMAN BLACKSHEAR AND COUNCILMAN DRAYTON VOTED AGAINST. VICE CHAIRMAN GREGORY DID NOT VOTE. COUNCILMAN DRAYTON MOTIONED AND COUNCILMAN GREGORY SECONDED THE MOTION TO APPROVE THE BUDGET AS PRESENTED. COUNCILMAN ETHERIDGE SAID THAT MR. FULGHUM SAID THEY CAN'T MAKE CHANGES TO THE BUDGET, BUT THE COUNCIL CAN MAKE CHANGES UNTIL THE LAST OF THE MONTH. MR. FULGHUM SAID THAT ONE PERSON WAS TERMINATED. VICE CHAIRMAN GREGORY ASKED IF THE MOTION WAS TO APPROVE THE AGENDA AS PRESENTED. CHAIRMAN BLACKSHEAR RESPONDED THAT IT WAS. CHAIRMAN BLACKSHEAR, COUNCILMAN DRAYTON AND COUNCILMAN GREGORY VOTED FOR; COUNCILMEN ETHERIDGE AND SAULS VOTED AGAINST.

ANDREW FULGHUM - 3RD READING OF THE ORDINANCE TO ENTER INTO A FEE IN LIEU OF TAXES AGREEMENT WITH BE GREEN PACKAGING, LLC - THIS ITEM WAS POSTPONED TO A FUTURE MEETING.

DAVID JIROUSEK - PUBLIC HEARING AND 2ND READING OF THE ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF JASPER

COUNTY SO AS TO TRANSFER A PROPERTY BEARING JASPER COUNTY TAX MAP NUMBER 038-00-04-024 AND GENERALLY LOCATED ON LEVY ROAD FROM THE RESIDENTIAL ZONE TO THE RURAL PRESERVATION ZONE ON THE JASPER COUNTY OFFICIAL ZONING MAP. MR. JIROUSEK EXPLAINED THAT THE SUBJECT PROPERTY CONSISTS OF APPROXIMATELY THREE ACRES ON LEVY ROAD. MR. JIROUSEK SAID THE APPLICANT HAS REQUESTED A ZONING MAP AMENDMENT TO CHANGE THE DESIGNATION FROM RESIDENTIAL (R) TO RURAL PRESERVATION (RP) TO OPEN A RESTAURANT. ONE COMMERCIAL STRUCTURE BUILT UNDER THE PREVIOUS ZONING REGULATIONS EXISTS ON THE SUBJECT PROPERTY. MR. JIROUSEK TOLD THE COUNCIL THAT WHILE PROHIBITED IN THE RESIDENTIAL DISTRICT, EATING PLACES AND FAST FOOD RESTAURANTS ARE SURPRISINGLY ALLOWED IN THE REQUESTED RURAL PRESERVATION DISTRICT. CHAIRMAN BLACKSHEAR OPENED THE PUBLIC HEARING. THERE WERE NO COMMENTS. CHAIRMAN BLACKSHEAR CLOSED THE PUBLIC HEARING. VICE CHAIRMAN GREGORY MOTIONED AND COUNCILMAN SAULS SECONDED THE MOTION THAT THIS BE THE PUBLIC HEARING AND 2ND READING OF THE ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF JASPER COUNTY SO AS TO TRANSFER A PROPERTY BEARING JASPER COUNTY TAX MAP NUMBER 038-00-04-024 AND GENERALLY LOCATED ON LEVY ROAD FROM THE RESIDENTIAL ZONE TO THE RURAL PRESERVATION ZONE ON THE JASPER COUNTY OFFICIAL ZONING MAP. THE MOTION CARRIED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

DAVID JIROUSEK - 2ND READING OF THE ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF JASPER COUNTY SO AS TO TRANSFER A PROPERTY BEARING JASPER COUNTY TAX MAP NUMBER 067-00-01-014 AND GENERALLY LOCATED ON CAROLINA ROAD FROM THE RURAL PRESERVATION ZONE TO THE GENERAL COMMERCIAL ZONE ON THE JASPER COUNTY OFFICIAL ZONING MAP. MR. JIROUSEK EXPLAINED THAT THE SUBJECT PROPERTY CONSISTS OF APPROXIMATELY 34 ACRES ON CAROLINA ROAD. THE APPLICANT HAS REQUESTED A ZONING MAP AMENDMENT TO CHANGE THE DESIGNATION FROM RURAL PRESERVATION (RP) TO GENERAL COMMERCIAL (GC). MR. JIROUSEK SAID THE PROPERTY IS VACANT AND WAS BOUGHT AS COMMERCIAL PROPERTY UNDER THE PREVIOUS ZONING REGULATIONS. MR. JIROUSEK TOLD THE COUNCIL THAT THE STAFF AND THE PLANNING COMMISSION RECOMMEND APPROVAL BASED ON THE COMPREHENSIVE PLAN PROVIDES SOME JUSTIFICATION FOR THE MAP AMENDMENT; ADJACENT LAND USE IS HIGH DENSITY RESIDENTIAL, AGRICULTURAL AND INDUSTRIAL. HOWEVER, THE WETLAND; BUFFER TO THE SOUTH OF THE PROPERTY WILL OFFER SIGNIFICANT SCREENING, BUFFERING AND A NATURAL SETBACK FROM THE PROPERTY LINE TO ADDRESS USE COMPATIBILITY ISSUES; ACCESS WILL BE ADDRESSED DURING FUTURE APPLICATION REVIEWS. MR. JIROUSEK SAID HE RECEIVED TWO LETTERS FROM APAC REQUESTING DELAY OF APPROVAL UNTIL THE MIXED USE ZONING IS COMPLETE, BUT THEY SAID THEY WOULD NOT OBJECT IF RESIDENTIAL WAS NOT INCLUDED. MR. JIROUSEK SAID THAT THE APPLICANT, REGGIE GRAY, WAS PRESENT TO

ANSWER ANY QUESTIONS. COUNCILMAN SAULS MOTIONED AND VICE CHAIRMAN GREGORY SECONDED THE MOTION THAT THIS BE THE 2ND READING OF THE ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF JASPER COUNTY SO AS TO TRANSFER A PROPERTY BEARING JASPER COUNTY TAX MAP NUMBER 067-00-01-014 AND GENERALLY LOCATED ON CAROLINA ROAD FROM THE RURAL PRESERVATION ZONE TO THE GENERAL COMMERCIAL ZONE ON THE JASPER COUNTY OFFICIAL ZONING MAP. THE MOTION CARRIED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

RESOLUTIONS

DAVID JIROUSEK - RESOLUTION TO ADOPT AN INTERGOVERNMENTAL AGREEMENT BETWEEN JASPER COUNTY AND THE TOWN OF RIDGELAND REGARDING THE MAINTENANCE RESPONSIBILITY OF KELMONT DRIVE - MR. JIROUSEK EXPLAINED THAT JASPER COUNTY HAS HISTORICALLY BEEN RESPONSIBLE FOR THE MAINTENANCE OF KELMONT DRIVE OFF OF HIGHWAY 336 IN RIDGELAND. MR. JIROUSEK TOLD THE COUNCIL THAT THE OFFICIALS FROM THE TOWN OF RIDGELAND HAVE REQUESTED TO ASSUME ROAD MAINTENANCE RESPONSIBILITY FOR KELMONT DRIVE TO CARRY OUT A STREETScape IMPROVEMENT PROJECT INCLUDING BRICK SIDEWALKS, STREETLIGHTS, AND DRAINAGE UPGRADES FROM EXIT 21 AT SYCAMORE TO KELMONT DRIVE. MR. JIROUSEK SAID THAT THE PROJECT WILL INCREASE THE POTENTIAL OF SECURING COMMERCIAL PROSPECTS FOR DEVELOPMENT AND REDEVELOPMENT PROJECTS FOR THE EXIT 21 DISTRICT. MR. JIROUSEK STATED THAT ALTHOUGH JASPER COUNTY HAS MAINTAINED KELMONT DRIVE, THERE IS NO CERTAIN EVIDENCE OF A COUNTY RIGHT OF WAY EASEMENT ESTABLISHED FOR THE ROAD. MR. JIROUSEK SAID THE TOWN IS SEEKING TRANSPORTATION COMMITTEE FUNDING FOR THE PLANNED IMPROVEMENTS, BUT THE COUNTY MUST FORMALLY TRANSFER MAINTENANCE RESPONSIBILITY FOR THE TOWN TO RECEIVE FUNDS FROM THIS SOURCE. MR. JIROUSEK SAID THAT SINCE THERE IS NO RIGHT OF WAY TO CONVEY, TRANSFER OF MAINTENANCE RESPONSIBILITY CAN BE FORMALIZED THROUGH AN INTERGOVERNMENTAL AGREEMENT AUTHORIZED BY APPROVAL OF A RESOLUTION. MR. JIROUSEK TOLD THE COUNCIL THAT THE STAFF RECOMMENDS APPROVAL OF THIS REQUEST. COUNCILMAN SAULS MOTIONED AND COUNCILMAN ETHERIDGE SECONDED THE MOTION TO APPROVE THE RESOLUTION TO ADOPT AN INTERGOVERNMENTAL AGREEMENT BETWEEN JASPER COUNTY AND THE TOWN OF RIDGELAND REGARDING THE MAINTENANCE RESPONSIBILITY OF KELMONT DRIVE. VICE CHAIRMAN GREGORY ASKED IF THIS WAS THE SAME LAND THAT WAS PREVIOUSLY DISCUSSED AND THE OWNER WAS UNKNOWN. MR. JIROUSEK SAID THAT IT WAS A DIFFERENT PIECE OF LAND CLOSER TO I-95 AND THE ROAD WOULD BE PAVED FROM SYCAMORE. VICE CHAIRMAN GREGORY ASKED IF THEY WERE TAKING OVER MAINTENANCE FOREVER. MR. JIROUSEK SAID THE TOWN WOULD BE RESPONSIBLE FOR THE MAINTENANCE AND LIABILITY OF THE ROAD PERMANENTLY AND THERE WAS NO RIGHT OF WAY INVOLVED. VICE CHAIRMAN GREGORY STATED THAT THE FUNDS TO PAVE THE ROAD WOULD COME FROM THE

TRANSPORTATION COMMITTEE. MR. JIROUSEK SAID THEY RECEIVED \$144,000. VICE CHAIRMAN GREGORY ASKED HOW THE RESIDENTS FELT AND MR. JIROUSEK SAID THE PROPERTY IS PROPERLY ZONED FOR THAT USE AND THE AREA IS NOT UNDER THE COUNTY'S LAND USE RESTRICTIONS. COUNCILMAN DRAYTON ASKED WHY THE COUNTY MAINTAINED THE ROAD. MR. JIROUSEK SAID WASN'T TRANSFERRED WHEN THE PROPERTY WAS ANNEXED. THE MOTION CARRIED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

OLD BUSINESS - THERE WAS NO OLD BUSINESS.

NEW BUSINESS - THERE WAS NO NEW BUSINESS.

COMMITTEE REPORTS - COUNCILMAN SAULS REPORTED THAT THE EMERGENCY SERVICES COMMITTEE MET AND DISCUSSED THE FIRE CONTRACTS AND IT WAS HELPFUL TO HEAR HOW THEY BEGAN. COUNCILMAN SAULS SAID THE COMMITTEE ALSO DISCUSSED THE NEW LAWS FOR SPECIAL TAX DISTRICTS AND ATTORNEY JONES IS RESEARCHING THE INFORMATION.

COUNCILMAN DRAYTON REPORTED THAT THE JUNE ADMINISTRATIVE SERVICES COMMITTEE MEETING WAS CANCELLED AND THE NEXT MEETING WILL BE IN AUGUST.

COUNCILMAN ETHERIDGE REPORTED THAT THE DEVELOPMENT SERVICES MEETING WAS CANCELLED AND THEY WILL MEET IN JULY.

ADMINISTRATOR'S REPORT - MR. FULGHUM REPORTED THAT HE PROVIDED A COPY OF A REPORT FROM DUFFY STONE ADDRESSING THE ACTIVITY AND ACCOMPLISHMENTS OF HIS OFFICE. MR. FULGHUM SAID THAT MR. STONE WILL MAKE A PRESENTATION AT A FUTURE COUNCIL MEETING. MR. FULGHUM ALSO DISCUSSED HOME DETENTION TO CUT THE COSTS OF HOUSING PRISONERS. MR. FULGHUM SAID THE ATTORNEY WAS WORKING ON AN ORDINANCE THAT HE WILL BRING FORWARD AT THE NEXT MEETING. MR. FULGHUM SAID THAT THE COUNTY MAY WANT TO JOIN FORCES WITH BEAUFORT COUNTY FOR A SERVICE PROVIDER. MR. FULGHUM REPORTED THAT THE LOWCOUNTRY ECONOMIC ALLIANCE WILL MEET ON JUNE 21, 2011 AT 10:00 A.M.

DAVID JIROUSEK REPORTED ON SCDOT ROAD IMPROVEMENTS RELATED TO A LEFT HAND TURN LANE BEING ADDED AT SNAKE ROAD. MR. JIROUSEK SAID THAT THE TREES AND PROPERTY WILL NOT BE COMPROMISED.

OPEN FLOOR TO THE PUBLIC (3 MINUTE TIME LIMIT PER INDIVIDUAL) - CHAIRMAN BLACKSHEAR OPENED THE FLOOR TO THE PUBLIC. MS. STRINGFIELD, OWNER OF THE GOLD CLUB, DISCUSSED THE IMPACT OF HAVING TO CLOSE HER BUSINESS AT 2:00 A.M. MS. STRINGFIELD ASKED TO BE PLACED ON THE NEXT COUNCIL MEETING AGENDA TO DISCUSS WAYS EXEMPTIONS COULD BE POSSIBLE. CHAIRMAN BLACKSHEAR AGREED TO PLACE MS. STRINGFIELD ON THE AGENDA OF THE NEXT COUNCIL MEETING.

LOUISE RAWLING ASKED IF THE SALARY FOR THE DEPUTY ADMINISTRATOR POSITION WAS PUBLIC KNOWLEDGE. MS. RAWLING SAID THAT LAST YEAR EMPLOYEES WERE LAID OFF AND SHE WANTED TO KNOW HOW MANY OF THOSE EMPLOYEES COULD BE HIRED THAT SALARY.

DOUG GRAHAM SAID HE CANNOT UNDERSTAND WHY LEVY FIRE DEPARTMENT'S CONTRACT WAS CUT \$55,000 AND THE COUNCIL WAS HIRING TWO NEW EMPLOYEES. MR. GRAHAM SAID THAT THE COUNTY DOES NOT NEED ANOTHER DEPUTY COUNTY ADMINISTRATOR AS THEY ALREADY HAVE THREE. MR. GRAHAM SAID CUTTING LEVY FIRE DEPARTMENT \$55,000 WAS WRONG.

BEING NO FURTHER COMMENTS, CHAIRMAN BLACKSHEAR CLOSED THE FLOOR TO THE PUBLIC.

EXECUTIVE SESSION DISCUSSION OF MATTERS RELATING TO THE PROPOSED LOCATION, EXPANSION, OR THE PROVISION OF SERVICES ENCOURAGING LOCATION OR EXPANSION OF INDUSTRIES OR OTHER BUSINESSES IN THE AREA SERVED BY A PUBLIC BODY - PROJECT DAISY AND DISCUSSION REGARDING EMPLOYMENT, APPOINTMENT, COMPENSATION, PROMOTION, DEMOTION, DISCIPLINE, OR RELEASE OF AN EMPLOYEE, A STUDENT, OR A PERSON REGULATED BY A PUBLIC BODY OR THE APPOINTMENT OF A PERSON TO A PUBLIC BODY; HOWEVER, IF AN ADVERSARY HEARING INVOLVING AN EMPLOYEE OR CLIENT IS HELD, THE EMPLOYEE OR CLIENT HAS THE RIGHT TO DEMAND THAT THE HEARING BE CONDUCTED PUBLICLY NOTHING CONTAINED IN THIS ITEM SHALL PREVENT THE PUBLIC BODY, IN ITS DISCRETION, FROM DELETING THE NAMES OF OTHER EMPLOYEES OR CLIENTS WHOSE RECORDS ARE SUBMITTED FOR USE AT THE HEARING - CLERK OF COURT AND I-T DEPARTMENT - COUNCILMAN SAULS MOTIONED AND COUNCILMAN DRAYTON SECONDED THE MOTION TO GO INTO EXECUTIVE SESSION FOR THE DISCUSSION OF MATTERS RELATING TO THE PROPOSED LOCATION, EXPANSION, OR THE PROVISION OF SERVICES ENCOURAGING LOCATION OR EXPANSION OF INDUSTRIES OR OTHER BUSINESSES IN THE AREA SERVED BY A PUBLIC BODY - PROJECT DAISY AND DISCUSSION REGARDING EMPLOYMENT, APPOINTMENT, COMPENSATION, PROMOTION, DEMOTION, DISCIPLINE, OR RELEASE OF AN EMPLOYEE, A STUDENT, OR A PERSON REGULATED BY A PUBLIC BODY OR THE APPOINTMENT OF A PERSON TO A PUBLIC BODY; HOWEVER, IF AN ADVERSARY HEARING INVOLVING AN EMPLOYEE OR CLIENT IS HELD, THE EMPLOYEE OR CLIENT HAS THE RIGHT TO DEMAND THAT THE HEARING BE CONDUCTED PUBLICLY NOTHING CONTAINED IN THIS ITEM SHALL PREVENT THE PUBLIC BODY, IN ITS DISCRETION, FROM DELETING THE NAMES OF OTHER EMPLOYEES OR CLIENTS WHOSE RECORDS ARE SUBMITTED FOR USE AT THE HEARING. THE MOTION CARRIED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

RETURN TO OPEN SESSION - COUNCILMAN DRAYTON MOTIONED AND COUNCILMAN SAULS SECONDED THE MOTION TO RETURN TO OPEN

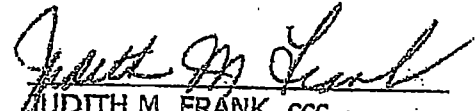
SESSION. THE MOTION CARRIED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

CHAIRMAN BLACKSHEAR REPORTED THAT IN EXECUTIVE SESSION THE COUNCIL DISCUSSED PROJECT DAISY, THE CLERK OF COURT'S OFFICE AND THE I-T DEPARTMENT. CHAIRMAN BLACKSHEAR SAID NO ACTION WAS NECESSARY.

ADJOURN - COUNCILMAN ETHERIDGE MOTIONED AND COUNCILMAN DRAYTON SECONDED THE MOTION TO ADJOURN THE MEETING. THE MOTION CARRIED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

THE MEETING ENDED AT 8:45 P.M.

RESPECTFULLY SUBMITTED BY:


JUDITH M. FRANK, CCC
CLERK TO COUNCIL

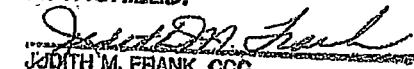
APPROVED BY:


LEROY BLACKSHEAR
CHAIRMAN

CERTIFIED TRUE COPY

DATE: 10/21/14

AUTHORIZED:


JUDITH M. FRANK, CCC
CLERK TO JASPER COUNTY COUNCIL



Andrew P. Fulghum
County Administrator

OFFICE OF THE JASPER COUNTY ADMINISTRATOR

358 Third Avenue - Post Office Box 150
Ridgeland, South Carolina 29936 - 843-717-9690 - Fax: 843-726-7800

December 1, 2011

Dr. George M. Hood
PO Box 1618
Ridgeland, SC 29936

Dear Dr. Hood:

Welcome back to Jasper County! The purpose of this correspondence is to confirm your selection to the position of Deputy County Administrator in the office of the County Administrator. This appointment is effective Monday, December 12, 2011. Your salary will be \$76,928 per annum (approximately \$2,958.76 bi-weekly). Your first paycheck will be issued on Friday, December 30, 2011. You will report directly to me on all matters relating to your job duties.

Your first six months of work will be considered an introductory period to determine your suitability for continued employment with Jasper County. You are eligible for both sick and annual leave benefits. Leave is accrued based on tenure with Jasper County. Sick leave may be taken after 3 months of successful service and annual leave may be used following the completion of your six-month introductory period.

All new employees are required to attend a new hire orientation and benefits briefing. You will have an opportunity to enroll in the benefits program during this orientation. Please be sure to bring your SC Drivers' License, your social security card, and a voided personal check with you to orientation. In addition, you will be asked to provide the name, social security number and birth date(s) (day, month and year) of any persons you wish to list as a beneficiary and contingent beneficiary. You will be notified later regarding the date/time you should report to Human Resources for your orientation.

As a condition of employment, you are required to join the South Carolina Retirement System. Deductions totaling approximately 6.5% of your annual salary will be withheld bi-weekly from your paycheck. Likewise, you are required to enroll in the Direct Deposit Program. Your paycheck will automatically be deposited in your bank account every two weeks.

Dr. George M. Hood
Confirmation of Offer Letter
December 1, 2011 - Page 2

Jasper County is a drug free workplace. Individuals serving in County positions are encouraged to refrain from all activity that may reflect poorly on the County. It is your duty to maintain high standards of conduct, cooperation and courtesy at all times.

You are considered to be "critical personnel" and therefore, in the event that the Emergency Operation Center is mobilized, you will be expected to report for work until the period of emergency has been lifted. Please be advised that during these periods, you may be assigned duties that are not usually required of an employee in your classification.

Again, congratulations on being selected for this position. Please call me at (843) 717-3691 or, Mrs. Gloria P. Lucas, Human Resources Director, should you have any questions. Mrs. Lucas can be reached at (843) 717-3680.

Sincerely,

Mr. Andrew P. Fulghum
County Administrator

CC: Mrs. Gloria P. Lucas, Human Resources Director

CERTIFIED TRUE COPY

DATE: 11/24/2014

AUTHORIZED:



Judith M. Frank
JUDITH M. FRANK, CCG
CLERK TO JASPER COUNTY COUNCIL

JASPER COUNTY COUNCIL

358 THIRD AVE., RIDGELAND SC. 29936

COUNCIL CHAMBERS

JUNE 28, 2012, 3:00 P.M.

BUDGET WORKSHOP/ SPECIAL CALLED MEETING
MINUTES

BUDGET WORKSHOP

IN ACCORDANCE WITH THE FREEDOM OF INFORMATION ACT THE ELECTRONIC AND PRINT MEDIA WERE NOTIFIED.

DURING PERIODS OF DISCUSSION AND/OR PRESENTATIONS MINUTES ARE TYPICALLY CONDENSED AND PARAPHRASED.

CHAIRMAN GREGORY CALLED THE BUDGET WORKSHOP TO ORDER AT 3:05 P.M.
MR. FULGHUM TOLD THE COUNCIL THAT MR. MALPHRUS WAS PREPARED TO GO THROUGH THE BUDGET AND THE SUGGESTED THE CUTS AND THE IMPACT THEY HAD ON THE BUDGET.
MR. MALPHRUS SAID ALL THE APPROVED CHANGES HAVE BEEN MADE EXCEPT FOR ONE SLIGHT DIFFERENCE THE AMOUNT FOR THE RAISES WERE INCREASED TO \$225,000 TO INCLUDE THE INCREASES TO OVERTIME. MR. MALPHRUS SAID ALL THE OTHER CHANGES WERE MADE. MR. MALPHRUS SAID THE TOTAL IS \$21,828,092 WHICH IS AN INCREASE OF \$340,000 OVER LAST YEARS BUDGET, BUT THERE IS STILL A TWO MILL DECREASE. MR. MALPHRUS SAID PART OF THE INCREASE WAS \$240,000 FOR THE SHERIFF'S DEPARTMENT, BUT THE SHERIFF IS TO PROVIDE THE INCOME TO COVER IT. MR. MALPHRUS SAID THE SCHOOL DISTRICT WAS AT THE SAME AS THIS FISCAL YEAR, BUT THEY ASKED FOR A 6.85% INCREASE WHICH IS THE HIGHEST AMOUNT ALLOWED BY LAW. MR. MALPHRUS SAID THE DEBT SERVICE MILLS REMAINED THE SAME. CHAIRMAN GREGORY SAID HE WOULD LIKE THE COUNCIL TO RECONSIDER TAKING \$500,000 FROM THE EMS BUDGET. CHAIRMAN GREGORY SAID HE FELT THE DEPARTMENT CAN WORK IT OUT. COUNCILMAN ETHERIDGE ASKED IF THE INCREASE TO THE SHERIFF'S BUDGET WAS FOR CARS. MR. MALPHRUS SAID \$240,000 WAS FOR CARS AND THERE IS OFFSETTING REVENUE THE SHERIFF IS TO PROVIDE TO COVER IT. VICE CHAIRMAN SAULS SAID THE \$240,000 FOR CARS FOR THE SHERIFF'S DEPARTMENT IS NOT TO BE SPENT UNTIL THE SHERIFF PROVIDES THE OFFSETTING REVENUE. MR. FULGHUM SAID THAT WAS CORRECT AND THE COUNCIL WOULD HAVE TO APPROVE THE EXPENDITURE. CHAIRMAN GREGORY ASKED WHAT THEY WILL DO IF THEY DON'T HAVE SPARES AND MR. FULGHUM SAID THEY WILL HAVE TO USE WHAT THEY HAVE. MR. FULGHUM RECOMMENDED NOT FINANCING THE CARS, BUT TO PURCHASE THEM AS THE MONEY COMES IN. COUNCILMAN DRAYTON ASKED IF THE SHERIFF SAID HE COULD DO THIS AND COUNCILMAN DRAYTON SAID THE SHERIFF WAS TO COME AND TALK TO THE COUNCIL. MR. FULGHUM SAID THAT HE CAN DO THAT. COUNCILMAN DRAYTON SAID THIS WAS THE 3RD TIME THAT WAS SAID AND IT IS STILL NOT BEEN DONE. CHAIRMAN GREGORY ASKED IF THEY COULD WAIT TO PASS THE BUDGET UNTIL THEY MET WITH THE SHERIFF. MR. FULGHUM SAID THE COUNCIL MET WITH THE SHERIFF ONE TIME AND THE ADMINISTRATION GOT TOGETHER WITH THE SHERIFF AND AGREED HOW THIS CAN BE DONE. VICE CHAIRMAN SAULS SAID WHEN THE SHERIFF GENERATES THE MONEY, HE CAN BUY THE CARS. CHAIRMAN GREGORY SAID THE SHERIFF WAS TO MEET WITH THE COUNCIL. COUNCILMAN ETHERIDGE

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SAID HE WANTED NO TAX INCREASE INCLUDING THE COUNTY AND THE SCHOOLS. MR. MALPHRUS SAID THERE WOULD BE A TWO MILL DECREASE, BUT THE SCHOOL'S SIDE WOULD HAVE AN INCREASE. VICE CHAIRMAN SAULS SAID THE MONEY COMES FROM THE SAME PEOPLE. COUNCILMAN ETHERIDGE SAID THE COUNCIL WOULD HAVE TO APPROVE IT. CHAIRMAN GREGORY ASKED IF THE INCREASE FOR THE VOTERS REGISTRATION DIRECTOR INCLUDED. MR. MALPHRUS SAID COUNTY COUNCIL MUST APPROVE IT AND THE AMOUNT IS THERE, BUT IT CAN FLUCTUATE BECAUSE OF THE POLL WORKERS SALARIES HAVE TO BE PAID FROM THE SALARY LINE. VICE CHAIRMAN SAULS ASKED HOW MUCH OF AN INCREASE WAS REQUESTED. MR. MALPHRUS SAID \$8,000 FOR THE DIRECTOR. VICE CHAIRMAN SAULS SAID THAT IS PRETTY HARD TO DO BASED ON THE PRIMARY BEING SO MESSED UP. CHAIRMAN GREGORY SAID THE STATE SENT OUT NEW CARD AND VOTERS REGISTRATION HAD NOTHING TO DO WITH IT. COUNCILMAN ETHERIDGE SAID HE HAD 10 FAMILY MEMBERS THAT WERE TOLD TO VOTE AT A NEW PRECINCT AND NONE OF THEM RECEIVED NEW REGISTRATION CARDS. COUNCILMAN ETHERIDGE SAID HE WOULD LIKE TO GET THE LOCAL ELECTION COMMISSION, THE STATE AND THE COUNCIL TOGETHER TO SEE WHAT HAPPENED. COUNCILMAN DRAYTON SAID THEY SAID IT WAS IN THE BUDGET FOR POSSIBLE SALARY INCREASE. MR. MALPHRUS SAID THAT THEY DON'T KNOW WHAT THE TRUE SALARY LINE WILL BE DUE TO THE POLL WORKERS HAVING TO BE PAID FROM THE SALARY LINE. MR. MALPHRUS SAID THE ONLY SALARIES THEY KNOW FOR SURE ARE THE DIRECTOR AND THE CLERK. CHAIRMAN SAULS ASKED IF SHE WAS ASKING FOR AN INCREASE FOR HERSELF, BUT NOT FOR HER EMPLOYEE. MR. MALPHRUS SAID SHE MADE THE REQUEST ONLY FOR HERSELF. VICE CHAIRMAN SAULS DISCUSSED THE BREAK-IN AT THE BOYS AND GIRLS CLUB AND THE VANDALISM THAT TOOK PLACE. VICE CHAIRMAN SAID HE WOULD LIKE TO SEE THEIR APPROPRIATION INCREASED \$7,500. VICE CHAIRMAN SAULS SAID AFTER INVESTIGATING THE EXPENSES OF THE LEVY FIRE DEPARTMENT HE WOULD LIKE TO SEE THE AMOUNT REINSTATED TO THE \$230,000. VICE CHAIRMAN SAULS ASKED ABOUT THE 2 DETENTION CENTER WORKERS AND MR. MALPHRUS SAID THEY ARE INCLUDED IN THE BUDGET. CHAIRMAN GREGORY SAID MOST COUNTIES HAVE VOLUNTEER FIREMEN AND THEY RAN THEM AWAY. VICE CHAIRMAN SAULS SAID CUTTING \$500,000 FROM EMS WILL CAUSE A LOT OF PROBLEMS. COUNCILMAN DRAYTON SAID LET THE FIRE CHIEF FIGURE OUT HOW TO DO IT. COUNCILMAN DRAYTON AGREED WITH THE CHAIRMAN TO TAKE \$500,000 FROM EMS AND TO LET THE CHIEF DO IT AND IF HE CAN'T DO IT, LET HIM RESIGN AND GET SOMEONE ELSE TO DO IT. COUNCILMAN ETHERIDGE ASKED IF ANY OTHER EMPLOYEE GOT A \$7,000 RAISE IN THE PAST 6 YEARS AND MR. MALPHRUS RESPONDED NOT THAT HE WAS AWARE OF. MR. MALPHRUS SAID THE DIRECTOR IN OUR COUNTY IS DIFFERENT THAN THE DIRECTOR IN BEAUFORT COUNTY. CHAIRMAN GREGORY SAID BEAUFORT COUNTY MAKES MORE AND THE CITIZENS HAVE THE RIGHT TO VOTE. COUNCILMAN ETHERIDGE SAID HE WOULD LIKE EVERYTHING TO STAY LEVEL WITH NO INCREASE. MR. MALPHRUS ASKED ABOUT THE 6.8% INCREASE FOR THE SCHOOLS - CHAIRMAN GREGORY AND COUNCILMEN DRAYTON AND BLACKSHEAR VOTED FOR; VICE CHAIRMAN SAULS AND COUNCILMAN ETHERIDGE VOTED AGAINST. **LEVY FIRE CONTRACT AT \$195,000 - CHAIRMAN GREGORY AND COUNCILMEN DRAYTON AND BLACKSHEAR VOTED FOR; VICE CHAIRMAN SAULS AND COUNCILMAN ETHERIDGE VOTED AGAINST. BOYS AND GIRLS CLUB AND ADDITIONAL \$7,500 - ALL IN FAVOR.** CHAIRMAN GREGORY SUGGESTED A **\$3,000 INCREASE IN SALARY FOR THE DIRECTOR OF VOTERS REGISTRATION - CHAIRMAN GREGORY AND COUNCILMEN DRAYTON AND BLACKSHEAR VOTED FOR; VICE CHAIRMAN SAULS AND COUNCILMAN ETHERIDGE VOTED AGAINST. CUT \$500,000 FROM EMS BUDGET- CHAIRMAN SAULS AND COUNCILMAN DRAYTON FOR; VICE CHAIRMAN SAULS, AND COUNCILMEN BLACKSHEAR AND ETHERIDGE AGAINST.** COUNCILMAN ETHERIDGE MOTIONED TO ELIMINATE THE DEPUTY ADMINISTRATOR POSITION. COUNCILMAN BLACKSHEAR SAID THAT COUNCILMAN ETHERIDGE WAS NOT ON THE PREVAILING SIDE WHEN THIS MOTION WAS PREVIOUSLY MADE SO HE CANNOT BRING IT BACK UP. VICE CHAIRMAN SAULS SAID THAT THE COUNCIL IS DISCUSSING CHANGES SO THAT MR. MALPHRUS CAN MAKE THE NECESSARY ADJUSTMENT. VICE CHAIRMAN SAULS AND COUNCILMAN ETHERIDGE VOTED FOR THE

ELIMINATION OF THE DEPUTY ADMINISTRATORS POSITION; CHAIRMAN GREGORY AND COUNCILMEN DRAYTON AND BLACKSHEAR VOTED AGAINST.

15 MINUTE BREAK
MEETING

OFFICIALS PRESENT: CHAIRMAN SAMUEL GREGORY, VICE CHAIRMAN MARTIN SAULS IV, COUNCILMAN HENRY ETHERIDGE, COUNCILMAN LEROY BLACKSHEAR, COUNCILMAN THEODUS L. DRAYTON

STAFF PRESENT: ADMINISTRATOR ANDREW FULGHUM, DEP. ADM. GEORGE HOOD, CLERK TO COUNCIL JUDITH FRANK, ATTORNEY MARVIN JONES, DIRECTOR OF ADMINISTRATIVE SERVICES RONNIE MALPHRUS, ACTING PLANNING DIRECTOR LISA LAMB

IN ACCORDANCE WITH THE FREEDOM OF INFORMATION ACT THE ELECTRONIC AND PRINT MEDIA WERE NOTIFIED.

DURING PERIODS OF DISCUSSION AND/OR PRESENTATIONS MINUTES ARE TYPICALLY CONDENSED AND PARAPHRASED.

CALL TO ORDER: CHAIRMAN GREGORY CALLED THE BUDGET WORKSHOP/ MEETING TO ORDER AT 4:05 P.M.

PLEDGE OF ALLEGIANCE- CHAIRMAN GREGORY LED THE PLEDGE OF ALLEGIANCE.

INVOCATION - COUNCILMAN DRAYTON GAVE THE INVOCATION.

ORDINANCES

ANDREW FULGHUM – 3RD READING OF THE 2012-2013 JASPER COUNTY BUDGET ORDINANCE- MR. FULGHUM TOLD THE COUNCIL THAT MR. MALPHRUS WOULD REVIEW THE CHANGES AND THEN THE COUNCIL NEEDED TO MAKE A MOTION TO APPROVE THE AMENDMENTS AND HAVE A FINAL READING OF THE ORDINANCE. MR. MALPHRUS EXPLAINED THAT THE TOTAL BUDGET WAS \$37,602,592 AND THAT THERE WAS A TWO MILL DECREASE ON THE COUNTY'S SIDE AND A 6.8 MILL INCREASE ON THE SCHOOL SIDE. COUNCILMAN BLACKSHEAR MOTIONED AND COUNCILMAN DRAYTON SECONDED THE MOTION TO APPROVE THE AMENDED BUDGET TO REFLECT THE CHANGES MADE BY COUNCIL. THE MOTION CARRIED WITH CHAIRMAN GREGORY AND COUNCILMEN DRAYTON AND BLACKSHEAR VOTING FOR; VICE CHAIRMAN SAULS AND COUNCILMAN ETHERIDGE VOTED AGAINST. COUNCILMAN DRAYTON MOTIONED AND COUNCILMAN BLACKSHEAR SECONDED THE MOTION THAT THIS BE THE 3RD READING OF THE 2012-2013 JASPER COUNTY BUDGET ORDINANCE. THE MOTION CARRIED WITH CHAIRMAN GREGORY AND COUNCILMEN DRAYTON AND BLACKSHEAR VOTING FOR; VICE CHAIRMAN SAULS AND COUNCILMAN ETHERIDGE VOTED AGAINST.

LISA LAMB - PUBLIC HEARING AND 3RD READING OF THE ORDINANCE TO CREATE WITHIN THE ZONING ORDINANCE OF JASPER COUNTY AN INTERSTATE PROXIMITY OVERLAY DISTRICT (IPOD) TO THE LIST OF SPECIAL PURPOSE DISTRICTS, TO AMEND SECTION 5:4 OF THE JASPER COUNTY ZONING ORDINANCE SO AS TO ADD A PURPOSE AND INTENT FOR THE INTERSTATE PROXIMITY DISTRICT (IPOD), TO AMEND ARTICLE 8 OF THE JASPER COUNTY ZONING ORDINANCE SO AS TO ADD SECTION 8:6 RELATED TO AN INTERSTATE PROXIMITY OVERLAY DISTRICT (IPOD), TO AMEND TABLE 4 OF ARTICLE 12 OF THE JASPER COUNTY ZONING ORDINANCE SO AS TO PROVIDE BUFFER YARD REQUIREMENTS – MISS LAMB EXPLAINED THAT THE ONLY CHANGE WAS THE ATTACHMENT REQUESTED

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BY MR. HAMILTON AND HIS FAMILY MEMBERS THAT THEIR PROPERTY BE EXCLUDED FROM THE IPOD ZONING CHANGE. CHAIRMAN GREGORY OPENED THE FLOOR TO THE PUBLIC. REV. HAMILTON SAID THAT HE SENT EMAILS TO THE STAFF TO TAKE THE RESIDENTIAL PART OUT AND HE WOULD HAVE LIKED TO HAVE GOTTEN THE ENTIRE PACKAGE PRIOR TO APPROVAL. REV. HAMILTON SAID HE FEELS A NEGATIVE REACTION IF RESIDENTS STAY IN THE OVERLAY DISTRICT. BEING NO FURTHER COMMENTS, CHAIRMAN GREGORY CLOSED THE PUBLIC HEARING.

NEW BUSINESS

ANDREW FULGHUM - DISCUSSION OF FIRE PLAN FUNDING - CHIEF DALEY SAID THAT HE REACHED OUT FOR HELP WITH THE ISO RATING; HOWEVER, THE \$52,000 BUDGETED FOR THE PLAN WILL GO AWAY IF NOT APPROVED IN THE CURRENT BUDGET YEAR. CHIEF DALEY SAID THEY MAY NEED THE MONEY AND IT CAN BE CARRIED OVER IF PLACED IN THE COMMERCIAL DEVELOPMENT FUND. COUNCILMAN ETHERIDGE ASKED IF THE STATE HAS BEEN CONTACTED FOR HELP WITH THE PLAN. MR. FULGHUM SAID FROM THE PRELIMINARY INFORMATION FROM THE ISO HE WOULD LIKE TO KEEP THE FUNDS AVAILABLE. COUNCILMAN ETHERIDGE SAID THAT PRIOR TO SPENDING THE MONEY, A RECOMMENDATION WOULD HAVE TO COME BACK TO COUNCIL FOR APPROVAL. VICE CHAIRMAN SAULS MOTIONED AND COUNCILMAN DRAYTON SECONDED THE MOTION TO TRANSFER THE \$52,000 TO THE COMMERCIAL DEVELOPMENT FUND, BUT THE COUNCIL MUST APPROVE HOW THE MONEY WILL BE SPENT. THE MOTION CARRIED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

ADJOURN - VICE CHAIRMAN SAULS MOTIONED AND COUNCILMAN DRAYTON SECONDED THE MOTION TO ADJOURN. THE MOTION CARRIED WITH ALL MEMBERS PRESENT VOTING IN FAVOR.

THE MEETING ENDED AT 4:25 P.M.

RESPECTFULLY SUBMITTED BY:

APPROVED BY:

JUDITH M. FRANK, ccc
CLERK TO COUNCIL

REV. SAMUEL GREGORY
CHAIRMAN

CERTIFIED TRUE COPY

DATE: 11/24/2014

D000407

AUTHORIZED:

Judith M. Frank
JUDITH M. FRANK, CCC
CLERK TO JASPER COUNTY COUNCIL

**STATE OF SOUTH CAROLINA
COUNTY OF JASPER**

ORDINANCE 2013 - 02

**AN ORDINANCE
OF JASPER COUNTY COUNCIL**

To Amend the FY 2012-13 Budget of Jasper County so as to repeal funding for the position of Deputy County Administrator and to delete from the approved job descriptions for Jasper County the position of Deputy County Administrator both effective upon approval by County Council.

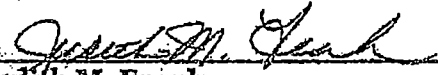
BE IT ORDAINED by the Jasper County Council in council duly assembled and by the authority of the same:

1. The FY 2012-13 Budget of Jasper County is hereby amended so as to reduce from Department 051--Administration - all funding for salary and wages, FICA - Employer, SC Retirement, Medical, for the position of Deputy County Administrator not committed for services provided through the effective date hereof; provided however, nothing herein shall be construed so as to prohibit the Finance Director from disbursing sums authorized to be disbursed pursuant to Section 14 of the Jasper County Personnel Policies and Procedures Manual for the position of Deputy County Administrator.
2. It is hereby ordered that the job description of the Deputy County Administrator shall be and it is stricken from the approved list of job descriptions for Jasper County.
3. This ordinance shall take effect on upon approval by Council.

Jasper County Council

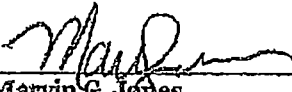
BY: [Signature]
_____, Chairman

ATTEST:


Judith M. Frank
Clerk to Council

First Reading: 01/11/13
Second Reading: 01/16/13
Public Hearing: 1/28/13
Adopted: 1/28/13

Reviewed for form and draftsmanship by the Jasper County Attorney.


Marvin G. Jones

April 17 2013
Date

9. CLASSIFICATION AND COMPENSATION PLAN

9.A POLICY AND PURPOSE

The objective of this plan is to provide a pay range for each class of positions that will enable the County to recruit and retain qualified employees.

The classification and compensation system should be revised and reviewed periodically to properly reflect economic changes as well as personnel needs throughout the County.

9.B CLASSIFICATION PLAN

Administration of the Classification Plan

The primary responsibility for day-to-day administration of the classification plan rests with the Human Resources Director within the limits of these policies and procedures. The Human Resources Director is charged with the maintenance of the classification plan and its administration so that it will reflect the duties performed by each employee and the class to which each position is allocated. The Human Resources Director will periodically review the entire classification plan for recommending appropriate changes in the allocation of positions.

Use of Job Titles

Class (job) titles are to be used in all personnel, financial accounting, budget, and appropriate records. No person will be appointed to or employed in a position in County service under a title not included in the classification plan.

Allocation of Positions

Whenever a newly authorized position is established or duties of an old position change, the Department Head will submit, in writing, a comprehensive description of the duties of such position to the Human Resources Director. The Human Resources Director may authorize the appropriate classification, the establishment of a new classification, or the abolishment of any existing classification(s).

Reclassification of Positions

An established position may be reclassified from one class to a different class as a result of the natural change in the duties and responsibilities; a redistribution of work assignments that significantly alters the duties and assignments of a position; or revisions of class specifications to more accurately reflect levels of work performed.

A job description for the reclassified position must be submitted to the Human Resources Director. Changes in duties and responsibilities must be of a permanent nature. Reclassification is not based upon the performance of the individual but upon the requirements of the job.

Types of reclassification include:

Upgrade: An upward reclassification (upgrade) occurs when an action is requested that provides that a position is moved from one classification to another classification when the latter has a higher pay grade and minimum salary.

Downgrade: A downward reclassification (downgrade) occurs when an action is requested that provides that a position is moved from one classification to another classification when the latter has a lower pay grade and minimum salary.

9.C COMPENSATION (PAY) PLAN

The Compensation (Pay) Plan is designed and established to provide a uniform, objective, and equitable system for compensating employees. The Compensation (Pay) Plan consists of a salary schedule consisting of pay grades with established salary ranges. Each salary schedule's pay grade ranges will consist of:

Minimum Salary: The minimum of the pay range represents the minimum salary that the County pays for an individual whose combination of related prior education, training and experience meets the minimum qualification requirements as specified in the County's approved job description.

Mid-Point Salary: The mid-point of the pay range represents the marketplace competitive salary necessary to retain a fully qualified, experienced, and capable employee whose performance is consistently meeting the County's expectations.

Maximum Salary: The maximum of the pay range represents the maximum salary that the position is valued to the County.

9.D MAINTENANCE OF PAY RANGES AND SALARY SCHEDULE

The County Administrator will make, or cause to have made, such comparative studies as deemed necessary of the factors affecting the level of employee compensation prior to the preparation of the Annual Budget. On the basis of such studies, the County Administrator will recommend to the County Council such changes in salary and salary schedule ranges as deemed necessary to maintain the fairness and adequacy of the overall salary structure.

9.E. STARTING RATES OF PAY

The minimum salary of the established pay grade for a position is considered the normal appointment salary for positions in the County. Appointments below or above the minimum of the established pay grade may be authorized as follows:

Above the Minimum: If an applicant's training, experience and/or other qualifications are directly related to and substantially exceed the minimum requirements of the position, the Human Resources Director may authorize hire at a rate of pay not to exceed ten percent (10%) above the minimum of the salary range. The County Administrator, with the recommendation of the Human Resources Director, may authorize hiring at a rate of pay not to exceed the mid-point of the salary range. Authorizations will be in percent intervals; i.e., 2%, 2-1/2%, 3%, 3-1/2%, 4%, 5%, etc.

Below the Minimum: If an applicant's training and experience does not meet the minimum qualifications, the Human Resources Director may authorize hiring the applicant as a "Trainee" at a rate of pay below the minimum of the pay range until the "Trainee" meets the minimum qualifications established for the position. Trainee appointments should never exceed twelve (12) months in duration. The rate of pay may be 2-1/2%, 5%, etc., below the minimum depending on what the applicant is lacking.

9.F CHANGE IN EMPLOYEE STATUS

Promotion

The salary of an employee who is promoted will be set at a rate within the new pay grade that results in a pay increase in accordance with job responsibility, in accordance with the following and with the approval of the Human Resources Director.

Non-Supervisory Position: Employee's promoted into a non-supervisory position will be eligible for a 5% increase above the established minimum of the new pay grade; or, 5% above the employee's current rate of pay, whichever is greater.

Supervisory Position: Employee's promoted into a supervisory position may be eligible for 10% above the established minimum of the new pay grade; or 10% above the employee's current rate of pay, whichever is greater.

The promoted employee will be placed in an introductory status for a period of up to six (6) months. (See Changes in an Employee's Anniversary Date, section 9.I)

Demotion - Non-Disciplinary/Voluntary

The salary of an employee who is demoted, voluntarily or for non-disciplinary reasons, may be adjusted in accordance with job responsibility and as it relates to the employee's former salary. In no event will the new salary be in excess of the current salary of the demoted employee; or in excess of the maximum of the new pay grade. The demoted employee may be placed in an introductory status for a period of up to six (6) months. No demotion action may be taken without the prior approval of the Human Resources Director.

An employee who accepts a non-disciplinary, voluntary demotion and returns to his prior position within a period of six (6) months will be reinstated at the same pay the employee occupied at the time of the demotion.

Involuntary Demotion:

The salary of the employee who is involuntarily demoted will be adjusted to a lower salary in the new grade as it relates to the employee's former salary, but in no event will the new salary be in excess of the prior salary of the demoted employee or the maximum of the new pay grade. The employee so demoted will be placed in an introductory status for a period of up to six (6) months. Employees who are involuntarily demoted from a supervisory position to a non-supervisory position will receive a reduction in pay to the minimum of the new pay grade or not to exceed 10% if within the new pay grade. (See Changes in an Employee's Anniversary Date, section 9.I)

Lateral Transfer

The salary of the laterally transferred employee will not change unless there is a specific, justifiable reason for a change in salary. Under these circumstances, the Human Resources Director may approve a salary increase or a salary decrease, depending on the circumstances. Laterally transferred employees may be required to serve a six (6) month introductory period. (See Changes in an Employee's Anniversary Date, section 9.I)

Reclassification

The salary of an employee whose position is reclassified and allocated to the same, higher, or lower grade will be determined by the rules for lateral transfer, promotion, or (non-disciplinary) demotion. Reclassified employees are not required to serve an introductory period. (See Changes in an Employee's Anniversary Date, section 9.I)

9.G. WORKING OUT OF CLASSIFICATIONHigher Classification

If an employee is temporarily assigned to work in a position with a higher pay grade designation for thirty (30) calendar days or less, there will be no change in the employee's salary. If the employee works more than thirty (30) calendar days, the employee will receive a pay increase to the minimum rate of the higher classification or 5% above current salary, whichever is greater; payment is retroactive to date assigned. When the temporary assignment is concluded, the employee reverts back to his or her salary prior to the assignment. Temporary assignments are not to exceed six (6) months.

Lower Classification

If an employee is assigned to temporarily work in a position with a lower pay grade, the employee's pay will not be reduced during the assignment. If the temporary assignment exceeds thirty (30) calendar days, the Human Resources Director will notify the County Administrator who will review the needs of that operational unit. Any such assignment must be approved by the Human Resources Director.

9.H SALARY PROGRESSIONMerit Increase System

The Merit System is developed as part of this plan to permit the County latitude in recommending deserving employees monetary rewards for exceptional motivation, adaptability, and productive performance. The merit increase award is not automatic or across-the-board. Merit increases will be considered based on demonstrated performance, potential, the financial policies of the County, and other economic considerations.

Eligibility

All regular full-time employees, after the required introductory period has been successfully completed and when performance "meets expectations at an acceptable level of competence" as recorded in a performance appraisal rating form are eligible.

The employee's Department Head may recommend a merit increase if he or she meets the criteria described above. Such recommendation will be submitted to the Human Resources Director for consideration and approval by the County Administrator. No individual will receive more than one (1) merit increase during any fiscal year.

The employee's approved merit increase will be effective on the employee's anniversary date.

No merit increase may be granted to an employee that would cause the employee to exceed the maximum pay in that pay grade.

The merit increase is based upon, but not limited, to the following factors:

- The current performance evaluation;
- The difference between current and past performance as evidenced by previous performance evaluations, if applicable;
- The employee's potential for improvement; and
- Other advances in the employee's qualifications, as evidenced by certificates of further education, workshops and seminars attended, and other such evidence.

General Pay Adjustment

The County Council may, from time to time, approve a general pay adjustment for all employees to be effective July 1.

Cost of Living Adjustment (COLA)

The County Council may, upon appropriate notification of economic changes, approve a cost of living adjustment to the Compensation (Pay) Plan's salary schedule by adjusting each pay grade's salary range; i.e., the minimum salary, the mid-point salary, and the maximum salary.

9.1 CHANGES IN AN EMPLOYEE'S ANNIVERSARY DATE

An employee's anniversary date will change only if the employee has been:

- Promoted;
- Involuntarily Demoted – Disciplinary; or
- Resigned employment and returns to employment more than ninety (90) days following resignation date.

An employee's anniversary date will not change if the employee has been:

- Involuntarily Demoted – Non-Disciplinary;
- Voluntarily Demoted; or
- Laterally Transferred.

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A promoted employee who is unable to successfully complete his/her introductory period or any extensions thereof, and whose prior position is no longer available, may be separated from employment.

14.F REDUCTION-IN-FORCE - LAYOFF

When it becomes necessary to reduce the workforce in a department because of lack of funds, elimination of position(s), lack of work, or other causes, employees will be laid off based upon the needs of the County. Factors considered in making decisions include, but are not limited to:

- average performance for the last three (3) years of service or for the entire period of less than three (3) years;
- length of service in the employee's current job classification; and
- length of service with the County.

If a regular employee is scheduled to be laid off, he or she may be offered a demotion to a lower class, if qualified, and provided a suitable vacancy exists.

Prior to a reduction in force, the names and class titles of any and all regular employees scheduled for layoff will be submitted to the County Administrator for approval. Layoffs will not be effective until approved by the County Council. Regular employees will be notified in writing, by the County Administrator, at least fourteen (14) calendar days prior to the effective date of layoff or given two (2) weeks severance pay in lieu of notice.

14.G DISCHARGE

Discharge is an involuntary separation of an employee from employment with the County as a result of disciplinary action, unacceptable performance, failure to complete introductory period, misconduct, or failure to comply with the County's policies. Discharged employees are not eligible for payment of any accrued, unused annual leave. No employee may be discharged without the prior approval of the Human Resources Director. Employees who are discharged may be considered for reinstatement if return to duty occurs within the first ninety (90) days of departure. The rehire of a discharged employee must be approved by the County Administrator.

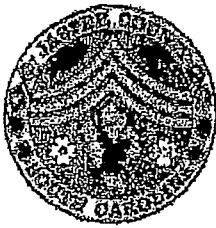
14.H DEATH

Upon the death of an employee of the County, any accrued compensation or benefits due the employee will be paid to that employee's designated beneficiary or otherwise specified individual designated as a result of probate proceedings.

14.I EXIT INTERVIEW

The Human Resources Director, or designee, will schedule exit interviews for separating employees. The exit interview will afford an opportunity to discuss such issues as employee benefits, conversion privileges (COBRA), etc. Suggestions, complaints, and questions can also be voiced.

It is the policy of the County that all employees, regardless of the reason for leaving are to be interviewed. Exit interviews are to be scheduled as soon as possible after the employee has given written notice of termination.



OFFICE OF THE JASPER COUNTY ADMINISTRATOR

358 Third Avenue - Post Office Box 150
 Ridgeland, South Carolina 29936 - 843-717-3690 - Fax: 843-726-7800

Andrew P. Fulghum
 County Administrator

January 28, 2013

Dr. George M. Hood
 PO Box 1618
 Ridgeland, SC 29936

Dear Dr. Hood:

As you know, the resolution to amend the 2012-2013 Jasper County Budget to remove funding for the position of Deputy County Administrator has been adopted by County Council. Your employment with Jasper County officially ended effective Monday, January 28, 2013.

As noted in the Jasper County Policies and Procedures Manual, you will be given 2 weeks severance in lieu of a notice period. The Human Resources (HR) Office will be available to answer questions and refer you to proper agencies, individuals, etc., who can aid you during this transition period. You may sign up for unemployment benefits either online or in person at the local SC Department of Employment and Workforce.

It is customary for the County to pay its employees for any unused earned annual leave however, since you have overused your annual leave by 40 hours, your final paycheck has been adjusted accordingly. It is the County's policy not to pay separating employees for earned unused sick leave.

Be advised that your final pay check and a separate severance check equal to 2 weeks pay will be deposited in your bank account on Friday, February 8, 2013.

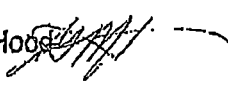
Human Resources will contact you soon to answer any remaining questions. Members of that office stand ready to assist you in any way possible.

Thank you for your service in this position.

Sincerely,

Andrew P. Fulghum
 County Administrator

CC: Ronald Malphrus, Deputy County Administrator, Administrative Services
 Gloria P. Lucas, Human Resources Director

To: Mr. Andrew Fulghum, Jasper County Administrator
From: George M. Hood 
Re: Grievance appeal
Date: February 7, 2013

This is an official notification that I wish to appeal the decision made by the Jasper County Council on January 28, 2013 to delete the position of Deputy County Administrator and the salary from the 2012-2013 budget. I feel that I have been treated unlawfully since I worked in the position for thirteen months well past the probationary period. According to the audit, this action was not urgent since there is a large fund balance at this time.

Thank you for giving this matter your prompt attention.

CC: Mrs. Gloria Lucas, Human Resource Director



D000096

OFFICE OF THE JASPER COUNTY ADMINISTRATOR

358 Third Avenue - Courthouse Square - Post Office Box 1149
Ridgeland, South Carolina 29936 - 843-717-3690 - Fax 726-7800 - TDD 726-7519

Andrew P. Fulghum
County Administrator

afulghum@jaspercountysc.gov

February 12, 2013

RECEIVED
FEB 12 2013
BY Human Resources

Dr. George M. Hood
Post Office Box 1618
Ridgeland, South Carolina 29936

Dear Dr. Hood:

This is in response to your memorandum of February 7, 2013. The decision to eliminate the position of Deputy County Administrator was made by Jasper County Council and not by me. As such, I do not have the authority to grant the relief that you seek, even if I believed it was justified.

If you have any questions, please do not hesitate to give me a call.

Yours very truly,

A handwritten signature in black ink, appearing to read "APF", followed by a long horizontal flourish.

Andrew P. Fulghum, ICMA-CM
County Administrator

APF/hej
cc: Gloria P. Lucas
Director, Human Resources

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2013-CP-27-00322

George M. Hood,

Appellant,

v.

Jasper County,

Respondent.

CERTIFICATION OF COUNSEL AND CERTIFICATION OF COMPLIANCE
WITH ORDER ON REDACTION OF PERSONAL DATA IDENTIFIERS

I, Nancy Bloodgood, Esquire, hereby certify, pursuant to Rule 210(g) of the South Carolina Appellate Court Rules, that this Record on Appeal contains all of the material and documentation proposed to be included by any of the parties and does not contain any other material. In addition, I further certify that this Record on Appeal complies with the South Carolina Supreme Court's Order dated August 13, 2007, addressing the redaction of personal data identifiers and other sensitive information.

Nancy Bloodgood

Nancy Bloodgood, Esq., SC Bar No. 6459

Lucy C. Sanders, Esq., SC Bar No. 78169

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Attorneys for the Appellant

Charleston, South Carolina

Date: 8-26-15

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2013-CP-27-00322

RECEIVED
AUG 28 2015
SC Court of Appeals

George M. Hood,

Appellant,

v.

Jasper County,

Respondent.

PROOF OF SERVICE FOR RECORD ON APPEAL

Nancy Bloodgood, Esq., SC Bar No. 6459
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Attorneys for the Appellant

I hereby certify that on 8-26-15 I served a copy of the Record on Appeal to

the following:

Christopher W. Johnson, Esquire
T. Foster Haselden, Esq.
Gignilliat Savitz & Bettis LLP
900 Elmwood Avenue, Suite 100
Columbia, SC 29201
Attorneys for the Respondent

by placing a copy of said documents in the United States mail with sufficient postage thereon.


Nancy Bloodgood, Esquire

Charleston, South Carolina

Date: 8-26-15

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM JASPER COUNTY
Court of Common Pleas

SEP 23 2015
SC Court of Appeals

Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2013-CP-27-00322

George M. Hood,

Appellant,

v.

Jasper County,

Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Circuit Court err in holding Article 1 Section 8 of the South Carolina Constitution does not apply to counties as the cases the Circuit Court relied on pre-date the Home Rule Act?
- II. Did the Circuit Court err in holding a county council operating under the Council/Administrator form of government can abolish the deputy county administrator position?
- III. Did the Circuit Court err by failing to address the impropriety of Respondent's budget amendment enacted midyear solely for the purpose of abolishing one County job position?
- IV. Did the Circuit Court err in holding that under the County/Administrator form of government a County Council can terminate the employment of an employee who reports to the County Administrator simply because that employee is an at-will employee?

STATEMENT OF THE CASE

Appellant filed an Amended Complaint on December 3, 2014 seeking a declaratory judgment that Respondent County Council violated state law and Article 1, Section 8 of the State Constitution when it terminated Appellant's employment as Deputy County Administrator by defunding his position midyear. (R. pp. 13-18.) Appellant asserted Respondent acted in violation of state law and the constitution when it amended the County's approved budget midyear to remove the amount of money equal to Appellant's salary and abolish his job position, thus resulting in his termination. (*Id.*) A bench trial in this matter was scheduled for December 1, 2014 in Beaufort County. (R. pp. 39-42.) The parties agreed on the record before the bench trial began that the material facts of this matter were not in dispute and the matter should be decided by the Court based on the law. (R. pp. 41-42.) The parties also agreed to stipulated facts and exhibits. (R. pp. 41-42; 43-74.) Judge J. Ernest Kinard, Jr. signed an Order on January 16, 2015

granting Respondent Declaratory Judgment. (R. pp. 1-12.) Judge Kinard's Order was filed with the Jasper County Clerk of Court on January 30, 2015. (R. p. 3.) Appellant filed and served a Notice of Appeal from Judge Kinard's Order on February 19, 2015. (R. pp. 23-24.)

STATEMENT OF FACTS

The parties jointly stipulated to the following facts and exhibits. (R. pp. 43-74.)

1. Jasper County operates under the council-administrator form of government. Jasper County Council is made up of five members elected at-large from the County.

2. Council voted to approve a budget that included funding for a deputy county administrator position in its Fiscal Year ("FY") 2011-2012 budget.

3. The County's fiscal years begin on July 1 and end on June 30 of the following calendar year.

4. Immediately prior to Council approving funding for a deputy county administrator position in the FY 2011-2012 budget, the County did not have a deputy county administrator. Several years prior to 2011, the County had two deputy county administrators. From approximately 2006 to 2010, the County had four deputy county administrators, each responsible for various departments of the County administration. In approximately 2010, Council changed the titles of the four deputy county administrators to directors. The deputy county administrator position that was funded in the FY 2011-2012 budget was the first such position to have all departments of the County administration report to a single deputy county administrator.

7. Before and after council's vote to fund the deputy county administrator

position, there was dissent both on council and among the public over whether the position of Deputy County Administrator was needed. The vote approving the FY 2011-2012 budget was 3 to 2, with Councilmembers Blackshear, Gregory and Drayton for, and Councilmembers Etheridge and Saul against the budget. A copy of the June 20, 2011 council minutes approving the budget is included as exhibit 1.

8. The County posted the deputy county administrator position and sought applicants for the position over the Summer and Fall of 2011.

9. County Administrator Andy Fulghum selected and hired Plaintiff George Hood for the position, notifying him on December 1, 2011 that his employment would begin December 12, 2011. A copy of the letter is included as exhibit 2 to this Stipulation.

10. Council funded the deputy county administrator position in the FY 2012-2013 budget. The FY 2012-2013 budget passed by a vote of 3 to 2, with Councilmembers Blackshear, Gregory and Drayton for, and Councilmembers Etheridge and Saul against it. A copy of the June 28, 2012 council budget workshop and meeting minutes approving the budget are included as exhibit 3.

11. Council elections were held in June 2012. As a result of the elections, two new councilmembers were seated. Councilmembers Blackshear and Gregory were replaced by councilmembers Clark and Johnson. The new councilmembers were seated in January 2013.

12. After the new councilmembers were seated in January 2013, Council passed an ordinance amending its FY 2012-2013 budget to remove funding for and eliminate the deputy county administrator position. The ordinance reads in relevant part:

BE IT ORDAINED by the Jasper County Council in council duly assembled and by the authority of the same:

1. The FY 2012-2013 Budget of Jasper County is hereby amended so as to reduce from Department 051 – Administration – all funding for salary and wages, FICA – Employer, SC Retirement, Medical, for the position of Deputy County Administrator not committed for services provided through the effective date hereof; provided however, nothing herein shall be construed so as to prohibit the Finance Director from disbursing sums authorized to be disbursed pursuant to Section 14 of the Jasper County Personnel Policies and Procedures Manual for the position of Deputy County Administrator.

2. It is hereby ordered that the job description of the Deputy County Administrator shall be and it is stricken [sic] from the approved list of job descriptions for Jasper County.

A copy of the Ordinance is included as exhibit 4 to this Stipulation.

13. The ordinance was approved on January 28, 2013 by a vote of 4 to 1, with Councilmembers Etheridge, Saul, Clark and Johnson voting for, and Councilmember Drayton voting against. Since approving the ordinance, Council has not included funding for the deputy county administrator position in any subsequent fiscal year budget.

14. There was never an ordinance adopting a job description for the deputy county administrator position.

15. The County has an employee Classification and Compensation Plan which states in part:

Administration of the Classification Plan

The primary responsibility for day-to-day administration of the classification plan rests with the Human Resources Director within the limits of these policies and procedures. . . . The Human Resources Director will periodically review the entire classification plan for recommending appropriate changes in the allocation of positions.

Allocation of Positions

Whenever a newly authorized position is established or duties of an old position change, the Department Head will submit, in writing, a comprehensive description of the duties of such position to the Human Resources Director. The Human Resources Director may authorize the appropriate classification, the establishment of a new classification, or the abolishment of any existing classification(s).

The County's Classification and Compensation Plan, which is part of the County's Personnel Policy Manual, is attached as exhibit 5.

16. The County has a contract with an outside consulting firm to prepare job descriptions.

17. Each year, after an annual operating budget is prepared by the Administrator, County Council debates the budget, suggests changes to the County Administrator and then votes to adopt the budget that is reflected through an ordinance with three (3) readings. Thereafter, millage is set based on the enacted budget, the amount of taxes needed to be collected to fund the budget is determined, and tax bills are mailed out in early fall with taxes due December 31st of the budget year.

18. There was no budget shortfall during FY 2012-2013.

19. In 2009, when there had been a shortfall, the County implemented a Reduction in Force (RIF) in accordance with the RIF policy that is part of its County Policy Manual, attached hereto as exhibit 6.

20. On January 28, 2013, following Council's approval of the ordinance, the County Administrator notified Plaintiff in writing of the termination of his employment. Plaintiff's employment was not terminated for performance reasons. A copy of the letter is included as exhibit 7 to this Stipulation.

21. On February 7, 2013, Plaintiff submitted a grievance to the County Administrator seeking “to appeal the decision made by the Jasper County Council on January 28, 2013 to delete the position of Deputy County Administrator and the salary from the 2012-2013 budget.” A copy of Plaintiff’s letter is included as exhibit 8 to this Stipulation.

22. On February 12, 2013, the County Administrator denied Plaintiff’s grievance, writing “The decision to eliminate the position of Deputy County Administrator was made by Jasper County Council and not by me. As such, I do not have the authority to grant the relief that you seek, even if I believed it was justified.” A copy of the County Administrator’s letter is included as exhibit 9 to this Stipulation.

ARGUMENTS

Applicable Standard of Review

The appropriate standard of review to apply in an appeal from a declaratory judgment action is based on the underlying action. *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct. App. 2000). This underlying action was tried without a jury and the parties stipulated to the facts, so the appellate court’s standard of review can only extend to the correction of errors of law.

I. The Circuit Court erred in holding Article 1 Section 8 of the South Carolina Constitution does not apply to counties as the cases the Circuit Court relied on pre-date the Home Rule Act.

Appellant argued Respondent County Council usurped the County Administrator’s administrative duties and violated the separation of powers doctrine when it voted to amend the County’s budget midyear to decrease the previously adopted budget by an amount equal to Plaintiff’s salary, thus, causing his immediate termination

from employment. The cases cited in the Circuit Court's Order do not stand for the proposition that the separation of powers doctrine contained in the State's Constitution is still inapplicable to counties as the cited cases were decided before the Home Rule Act, S.C. Code § 4-9-10 *et seq.*

In *Gaud v. Walker*, the Supreme Court cited two cases in support of its holding that combining legislative and executive functions in a mayor does not violate the separation of powers clause. 214 S.C. 451, 477-78, 53 S.E. 2d 316, 328 (1949). Both cited cases, *City of Spartanburg v. Parris*, 85 S.C. 227, 67 S.E. 246 (1910) and *City of Greenville v. Pridmore*, 86 S. 442, 68 S.E. 636 (1910), addressed the question of whether a mayor who had participated in writing a municipal ordinance which prohibited the sale of whiskey could then act in a judicial capacity at "mayors court" against persons accused of violating this ordinance. There is no longer such a thing as a "mayors court."

The municipal courts in South Carolina are now part of the State's unified judicial system. Article VIII, Section 1 of the S.C. Constitution states, "The General Assembly shall provide by general laws for the organization and classification of municipal corporations." Article V, Section 1 of the S.C. Constitution states, "The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law." The General Assembly has given original and exclusive jurisdiction to municipal courts for all offenses committed within the corporate limits which may be subject to penalties and fines pursuant to S.C. Code § 14-25-5. Similarly, whereas there used to be county courts, they no longer exist. Offenses committed within

counties are tried in magistrate courts and the authority of magistrate courts is also established by the Legislature.

Although in 1949, the Court held that the separation of powers clause of the Constitution only applied to the State and State officials, in 1910 and 1949 there was no Home Rule Act. In 1976, the Home Rule Act was enacted which states “[a]ll counties of the State, in addition to the powers conferred pursuant to their specific form of government, have authority to enact regulations, resolutions, and ordinances, *not inconsistent with the Constitution and general law of this State.*” S.C. Code § 4-9-25 (emphasis added). Similarly, S.C. Code § 4-9-30(6), which designated the powers under each alternative form of County government, is expressly limited by the following statement, “...each county government *within the authority granted by the Constitution and subject to the general law of this State* shall have the following powers...” (emphasis added). Therefore, with the passage of the Home Rule Act, the Legislature affirmatively acknowledged the provisions of the State Constitution did apply to Counties.

The Legislature repeatedly stated in the Home Rule Act that counties are subject to the State Constitution. See, e.g., S.C. Code § 4-9-40, “Any county may perform any of its functions...subject always to the general law and the Constitution of this State.” There is simply no language in the Home Rule Act limiting the application of the State Constitution to counties. Had the Legislature wanted to exempt counties from Article 1, Section 8 of the State Constitution, it could have done so. Instead the Legislature stated, “The powers of a county must be liberally construed in favor of a county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.” S.C. Code § 4-9-25. Therefore, though municipalities and counties

may have been excluded from Article 1, Section 8 of the State Constitution prior to the Home Rule Act, after the passage of this law it was clear the Legislature intended counties to be subject to the entire Constitution of the State.

II. The Circuit Court erred in holding a county council operating under the Council/Administrator form of government has authority to abolish the deputy county administrator position.

A. The administration of Jasper County's classification plan rests with the Jasper County Administrator and is implemented through the County Administrator's Human Resources Director, not Respondent County Council.

S.C. Code § 4-9-630, entitled "Powers and duties of administrator" states in pertinent part, "The powers and duties of the administrator shall include, but not be limited to, the following: ... (7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council." The County's Handbook includes an employee Classification and Compensation Plan which states in part:

Administration of the Classification Plan

The primary responsibility for day-to-day administration of the classification plan rests with the Human Resources Director within the limits of these policies and procedures. . . . The Human Resources Director will periodically review the entire classification plan for recommending appropriate changes in the allocation of positions.

Allocation of Positions

...The Human Resources Director may authorize the appropriate classification, the establishment of a new classification, *or the abolishment of any existing classification(s)*. (emphasis added) (R. pp. 46, 65-70.)

State law and the County's Handbook establish unequivocally that the County

Administrator, not County Council, is responsible for establishing and abolishing personnel positions in the County. This is in accordance with state law as in the County Administrator form of government, a county administrator terminates employees who report to him, not the county council. In this case, the issue before the Circuit Court was whether Respondent County's decision to amend its budget to remove the salary for one particular employee midyear was pretext to effectuate the termination of that employee.

Article 1 of Chapter 9 of Title 4 of the South Carolina Code contains the "general provisions" relating to most of the forms of county government. S.C. Code § 4-9-30 states:

Under each of the alternate forms of government listed in § 4-9-20, except the board of commissioners form provided for in Article 11, each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof: ...(6) 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, *except as otherwise provided for in this title.* (emphasis added).

Respondent Council contends that this statute grants it the authority to establish and abolish the position of deputy county administrator but there is no evidence in the record that the position of deputy county administrator is a position "necessary and proper to provide services of local concern for public purposes" which language expressly modifies the word "position" found in this particular statute.

The clear language of S.C. Code § 4-9-30 indicates it is not addressing all positions in county government, but only the positions that are "necessary and proper to provide services of local concern for public purposes." There is nothing in the record or stipulated facts indicating the position of deputy county administrator is "necessary and

proper to provide services of local concern for public purposes.”

Following Article 1 which contains the general provisions relating to county government, is Article 7 that specifically addresses the County Administrator form of government. “The powers and duties of the administrator shall include, but not be limited to, the following: to serve as the chief administrative officer of the county government....” S.C. Code § 4-9-630.

Further, S.C. Code § 4-9-620 found in Article 7 states, “The council shall employ an administrator who shall be the administrative head of the county government and shall be responsible for the administration of all the departments of the county government which the council has the authority to control.” S.C. Code § 4-9-630, entitled “Powers and duties of administrator” states in pertinent part, “The powers and duties of the administrator shall include, but not be limited to, the following: ... (7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council; (8) to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of § 4-9-30 and subject to the appropriation of funds by the council for that purpose.”¹

Subsection (7) of S.C. Code § 4-9-30 states in pertinent part, “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.” Plaintiff was not an employee of an elected official or an official appointed by an authority outside county government. It is undisputed Plaintiff was hired by the County Administrator. (R. pp. 44, 57-58.)

¹ As explained herein, funding for Appellant’s position had already been appropriated by Respondent Council in its 2012-2013 fiscal year budget.

The Legislature's intent should be ascertained primarily from the plain language of the statute. *State v. Morgan*, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002). The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Sys. v. Leatherman*, 309 S.C. 174, 420 S.E.2d 843 (1992); *Morgan*, 352 S.C. at 366, 574 S.E.2d at 206. The court's primary function in interpreting a statute is to ascertain the intent of the General Assembly. *Smith v. S.C. Ins. Co.*, 350 S.C. 82, 87, 564 S.E.2d 358, 361 (Ct. App. 2002). A statute must receive a practical and reasonable interpretation consistent with the "design" of the legislature. *Georgia-Carolina Bail Bonds, Inc. v. County of Aiken*, 354 S.C. 18, 23, 579 S.E.2d 334, 336 (Ct. App. 2003). Here, it is clear S.C. Code § 4-9-620 expressly grants to the administrator in a County/Administrator form of government the power to hire and fire county employees (except those working for elected officials) and it is, therefore the county administrator, not county council who has the ultimate authority to the hire and fire County employees.

In *Poore v. Gerrard*, 271 S.C.1, 244 S.E.2d 510 (1978), the Supreme Court held that when a supervisor (in a county supervisor form of government) was granted authority to discharge personnel, even if Council had created and funded the position of County Attorney, only the supervisor could terminate the attorney per S.C. Code § 4-9-30 (7).

The general rule of statutory construction is that a specific statute prevails over a more general one. *Wooten v. South Carolina Dep't of Transp.*, 333 S.C. 464, 511 S.E.2d 355 (1999); *Atlas Food Sys. & Serv., Inc. v. Crane*, 319 S.C. 556, 462 S.E.2d 858 (1995); *State v. Taub*, 336, S.C. 310, 317, 519 S.E.2d 797, 801 (Ct. App. 1999). "All rules of

statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 379 537 S.E.2d 543, 545-46 (2000); *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 365 (1994) ("However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention."); *see also, City of Camden v Brassell*, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997). Here, it is clear that the County Administrator, not Council, had the authority to employ and discharge county personnel, including the deputy county administrator.

B. The County Council cannot indirectly terminate personnel who report to the County Administrator.

There is an old maxim that states "what cannot be done directly, cannot also be done indirectly." Respondent Council cannot do indirectly that which it is prohibited from doing directly, that is to terminate a County employee when the Administrator will not terminate him. The County Administrator selected and hired Appellant for the position, notifying him on December 1, 2011 that his employment would begin December 12, 2011. (R. pp. 44, 57-58.) Thereafter, there was dissent on Council about whether the position of deputy county administrator was needed. (R. p 44.) Though the position was funded in the 2012-2013 budget (R. p. 44), when two new councilmembers were seated in January 2013, apparently acknowledging its inability to terminate Appellant directly, Respondent Council chose to terminate Appellant by eliminating his

position from the budget (R. p. 45.). The County Administrator did not make the decision to eliminate Appellant's position; County Council did. (R. pp. 47, 74.) In effect, Council attempted to do indirectly that which it was prohibited from doing directly.

III. The Circuit Court erred by failing to address the impropriety of Respondent's budget amendment enacted midyear solely for the purpose of abolishing one County job position.

A. As there was no initial ordinance establishing the deputy county administrator's job position, there was no ordinance to amend.

Respondent never enacted an ordinance adopting a job description for the deputy county administrator position. (R. p. 45.) Defendant's ordinance purporting to eliminate Plaintiff's position is inconsistent with state law. As explained in *Hospitality Ass'n v. County of Charleston*,

[d]etermining if a local ordinance is valid is essentially a two-step process. The first step is to ascertain whether the county or municipality that enacted the ordinance had the power to do so. If no such power existed, the ordinance is invalid and the inquiry ends. 320 S.C. 219, 224, 464 S.E.2d 113, 116 (1995).

Here, the inquiry ends at the first step as no ordinance was ever enacted adopting the position of deputy county administrator so there can be no ordinance to amend by which that position can be abolished. Defendant County Council's ordinance amendment attempting to defund and eliminate Plaintiff's job position is, thus, null and void and without effect.

B. Respondent's budget was fully funded for fiscal year 2012-2013 and no money was actually saved by Respondent's action of allegedly eliminating Appellant's salary.

S.C. Code § 4-9-140 establishes the fiscal years for counties as July first through June thirtieth of the following year. This statute requires counties to adopt budgets prior to the beginning of the fiscal year and "identify the sources of anticipated revenue

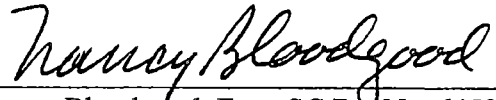
including taxes necessary to meet the financial requirements of the budgets adopted.” (Id.) Councils must then provide for the “levy and collection of taxes necessary to meet all budget requirements.” (Id.) Therefore, once a budget is adopted by ordinance and taxes are levied and collected, that budget is fully funded and the funds collected are obligated. Any action taken midyear to eliminate funding in the budget is simply too late as taxes have already been collected to fund the adopted budget. Therefore, Respondent’s action of amending its budget ordinance midyear to eliminate funding for a single job position was ineffective as the funding for that job position was already obligated.

IV. The Circuit Court erred in holding under the County/Administrator form of government, a County Council can terminate the employment of an employee who reports to the County Administrator simply because that employee is considered an at-will employee.

The County Administrator in a Council/Administrator form of government is the employer of county employees and can terminate any at-will employee, but here, the County Administrator did not terminate Appellant. In response to Appellant’s grievance, the County Administrator replied to Appellant, “The decision to eliminate the position of Deputy County Administrator was made by Jasper County and not by me. As such, I do not have the authority to grant the relief that you seek, even if I believed it was justified.” (emphasis added) (R. pp. 47, 74.) Per S.C. Code § 4-9-630(8), the County Administrator is responsible for the employment and discharge of County personnel. Therefore, as the County Administrator was Appellant’s employer with the authority to discharge Appellant, and as the County Administrator did not terminate Appellant’s employment, the Circuit erred in finding Appellant’s at will employment status permitted Respondent County Council to terminate Appellant.

CONCLUSION

For the forgoing reasons, Appellant respectfully requests this Court declare Respondent Council's termination of Appellant's employment null and void and remand the matter for an award of damages and attorney fees.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

SEP 23 2015

APPEAL FROM JASPER COUNTY
Court of Common Pleas

SC Court of Appeals

Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2013-CP-27-00322

George M. Hood,

Appellant,

v.

Jasper County,

Respondent.

CERTIFICATE OF COUNSEL

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thereon.



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Date: 9-21-15

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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George M. Hood

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Respondent.

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL JUDGE CORRECTLY CONCLUDE THAT APPELLANT WAS NOT ENTITLED TO A DECLARATORY JUDGMENT THAT RESPONDENT JASPER COUNTY'S ABOLISHMENT OF HIS POSITION VIOLATED THE CONSTITUTIONAL REQUIREMENT OF SEPARATION OF POWERS FOUND AT S.C. CONST. ART. I, § 8?
2. DID THE TRIAL JUDGE CORRECTLY CONCLUDE THAT APPELLANT WAS NOT ENTITLED TO A DECLARATORY JUDGMENT THAT JASPER COUNTY'S ABOLISHMENT OF HIS POSITION VIOLATED THE PROVISIONS OF THE HOME RULE ACT FOUND AT S.C. CODE §§ 4-9-30(6) AND 4-9-610(8)?

STATEMENT OF THE CASE

Appellant Dr. George M. Hood is the former chairman of County Council and, most recently, deputy administrator of Jasper County. In its fiscal year 2011-2012 budget, County Council approved funding for a deputy county administrator position. That position was filled by Appellant in December 2011. Following the seating of newly elected council members in January 2013, County Council voted to amend its 2012-2013 budget to remove funding for and to abolish the deputy county administrator position. Following the third reading of the ordinance, Appellant's employment was terminated on January 28, 2013.

Appellant sued the County seeking a declaratory judgment that Council's actions abolishing his position violated the S.C. Constitution's requirement of separation of powers and the Home Rule Act's grant of authority to county councils. At the trial of the matter on December 1, 2014, and prior to taking any testimony, the parties agreed that the facts could be stipulated and the matter submitted to the trial judge for decision. The parties filed their Joint Stipulation of Facts on January 2, 2015, and provided the trial court argument and analysis in the form of proposed orders submitted on December 31, 2014. Judge Kinard issued his Order in

favor of the County, which was filed January 30, 2015 and served on Appellant on February 9, 2015.

STATEMENT OF FACTS

The parties stipulated to the facts of this case, and the Record on Appeal includes a copy of the stipulated facts. The following facts, taken from the parties' stipulation, are relevant to the resolution of this appeal:

Appellant Dr. Hood is the former deputy county administrator for Jasper County. (R. p. 44, ¶ 9, p. 47, ¶ 20) Jasper County operates under the council-administrator form of government. (R. p. 43, ¶ 3) Council voted in June 2011 to approve a budget that included funding for a deputy county administrator position in its Fiscal Year ("FY") 2011-2012 budget. (R. p. 43, ¶ 4) Both public opinion and Council were divided over whether the position should have been included in the budget, and the budget passed by a 3-to-2 vote. (R. p. 44, ¶ 7) Council elections were held in June 2012. (R. p. 45, ¶ 11) As a result of the elections, two new councilmembers were seated who had not voted on the budget that included the deputy county administrator position. (R. p. 44, ¶ 7, p. 45, ¶ 11) Councilmembers Blackshear and Gregory were replaced by councilmembers Clark and Johnson, who were seated in January 2013. (R. p. 45, ¶ 11)

After the new councilmembers were seated in January 2013, Council passed an ordinance amending its FY 2012-2013 budget to remove funding for and eliminate the deputy county administrator position. (R. p. 45, ¶ 12) The ordinance reads in relevant part:

BE IT ORDAINED by the Jasper County Council in council duly assembled and by the authority of the same:

1. The FY 2012-2013 Budget of Jasper County is hereby amended so as to reduce from Department 051 – Administration – all funding for salary and wages, FICA – Employer, SC Retirement, Medical, for the position of Deputy County

Administrator not committed for services provided through the effective date hereof; provided however, nothing herein shall be construed so as to prohibit the Finance Director from disbursing sums authorized to be disbursed pursuant to Section 14 of the Jasper County Personnel Policies and Procedures Manual for the position of Deputy County Administrator.

2. It is hereby ordered that the job description of the Deputy County Administrator shall be and it is stricken [sic] from the approved list of job descriptions for Jasper County.

(R. p. 63) The ordinance was approved on January 28, 2013, by a vote of 4 to 1, with Councilmembers Etheridge, Sauls, Clark and Johnson voting for, and Councilmember Drayton voting against. (R. p. 45, ¶ 13) Following Council's vote, the County Administrator notified Appellant that his employment was terminated. (R. p. 47, ¶ 20)

ARGUMENT

1. Council's elimination of Appellant's position did not violate S.C. Const. Art. I, § 8's requirement of separation of powers.

Jasper County's elimination of Appellant's position did not violate the state Constitution's requirement of separation of powers because that provision does not apply to local government. Article I, § 8 provides:

In the government *of this State*, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

S.C. Const. Art. I, § 8 (emphasis added). Long ago, the South Carolina Supreme Court held that the doctrine applies to state, not local, government. In *Gaud v. Walker*, 214 S.C. 451, 477, 53 S.E.2d 316, 328 (1949), a taxpayer brought a challenge to legislation that allowed the voters of Charleston County to select among two plans for county government, called "Plan A" and "Plan

B.” Among the challenges was that the proposed plans would combine executive and legislative functions into one governing body. The Supreme Court rejected this argument and held:

It is next contended that Plan A conflicts with Article 1, Section 14¹ of the Constitution, in that it seeks to combine in the County Council both legislative and executive functions. It has been held that this section of the Constitution refers to the government of the State and to State officers, and not to the government of municipal corporations.

Id. Accordingly, the exercise of executive authority by County Council does not violate the Constitution’s guarantee of separation of powers.

Further undermining Appellant’s position is the fact that the Constitution specifically authorizes the legislature to provide for county government in this state. S.C. Const Art. VIII, § 7. The legislature did that by way of the Home Rule Act. S.C. Code § 4-9-10, *et seq.*; *see also*, *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993) (“[B]y enacting the Home Rule Act, . . . , the legislature intended to ... restore autonomy to local government.”).² Moreover, in one form of county government, the council form, the General Assembly explicitly combined the legislative and executive duties in the county council. S.C. Code §§ 4-9-20, 4-9-310. Under Appellant’s theory, the several counties that operate under the council form of government would all be doing so unconstitutionally.

Appellant’s argument on appeal that the Supreme Court’s decision in *Gaud* is no longer valid due to passage of the Home Rule Act is without merit. If anything, the Home Rule Act and the provisions of Article VIII of the Constitution that authorized home rule support the high court’s holding in *Gaud*. Article VIII specifically authorized the legislature to design local

¹ The language now found at Article I, § 8 was previously found at Article I, § 14.

² *Williams* dealt with the analogous provisions of the Home Rule Act that apply to cities and towns.

government structures. Further, the General Assembly ratified Article VIII's home rule provisions in 1973 and passed the Home Rule Act, S.C. Code §§ 4-9-10, *et seq.*, in 1975,³ well after the 1949 decision in *Gaud* (which itself relied on cases going back to 1910). *Gaud*, 214 S.C. at 477, 53 S.E.2d at 328 (citing *City of Spartanburg v. Parris*, 85 S.C. 227, 67 S.E. 246 (1910); *City of Greenville v. Pridmore*, 86 S.C. 442, 68 S.E. 636 (1910)). Accordingly, the legislature passed the Home Rule Act fully cognizant of the Supreme Court's *Gaud* decision. If the General Assembly believed the decision had been wrongly decided, it could have expressly overruled the decision when it passed home rule, but it did not. *See e.g.*, S.C. Code § 15-78-10 (overruling *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985)). Therefore, *Gaud* remains valid and is the law of this state until repealed by decision of the Supreme Court or passage of legislation by the General Assembly.

Because separation of powers is not implicated by local government structure and because the Constitution authorized the General Assembly to provide for the design of county governments, there is no constitutional violation.

2. County Council had authority to abolish the deputy county administrator position under S.C. Code §§ 4-9-30(6) and 4-9-630(8).

The Home Rule Act provides that in a council-administrator form of government like Jasper County the council may establish and abolish positions within the county. Because that is precisely what the Jasper County Council did, there was no violation of the Act in the abolition of Appellant's position.

This is essentially a matter of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Lambries v. Saluda County Council*, 409 S.C. 1, 10, 760 S.E.2d 785, 789 (2014). "Where the statute's language is

³ The Home Rule Act took effect July 1, 1976.

plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Id.*, at 10-11, 760 S.E.2d at 790. However, if the statute is ambiguous, “the court must construe its terms.” *Id.* at 10, 760 S.E.2d at 789. “Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.” *Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014).

The provisions of Title 4, Chapter 9 of the S.C. Code are plain and unambiguous in their application. By its own terms, Chapter 9 provides that County Council has authority to “establish . . . positions in the county . . . and to abolish any such . . . positions.” S.C. Code § 4-9-30(6). This is what Council did when it passed the budget ordinance funding the deputy county administrator position and later passed the ordinance to strip funding for and eliminate the deputy county administrator position. Likewise, Chapter 9 also provides that, in county-administrator governments like Jasper County’s, the administrator is “responsible for employment and discharge of personnel . . . subject to the appropriation of funds by the council for that purpose.” S.C. Code § 4-9-630(8). The county administrator carried out his authority when he terminated Appellant’s employment following Council’s vote to eliminate the position. Had the administrator continued to employ Appellant, it would have violated § 4-9-630(8)’s requirement that funds be appropriated by council for that purpose since Council had stripped funding for the position.

On appeal Appellant makes much of the county administrator’s statement in response to his request for a grievance that, “The decision to eliminate the position of Deputy County Administrator was made by Jasper County Council and not by me.” (R. p. 47, ¶ 22) Appellant appears to contend this means that the county administrator did not terminate Appellant’s

employment. This goes too far. The administrator's statement is nothing more than a statement of what happened: Council eliminated Appellant's position. It does not change the fact that, following the elimination, the county administrator terminated Appellant's employment.

Appellant also asserts that the reference in § 4-9-30(6) to the "positions" that council may "establish" and "abolish" refers only to those positions directly under council's (versus the administrator's) control. Assuming that the word "positions" created an ambiguity and, thus, a need for statutory construction, Appellant's reading would auger conflict in the home rule statutes. There are very few "positions" that are subject to appointment and discharge by council in the county-administrator form of government – the county administrator and clerk to council being the primary two.⁴ Both positions, however, are created by statute – not by Council – and must be filled. S.C. Code § 4-9-110 ("The council *shall* appoint a clerk to record its proceedings . . .") (emphasis added); S.C. Code § 4-9-620 ("The council *shall* employ an administrator . . .") (emphasis added). Because both positions are created by statute and because Council is required by statute to fill them, these cannot be among the "positions" Council is authorized to "establish" or "abolish" under § 4-9-30(6). Because there are no other positions over which Council has appointment and discharge authority, Appellant's reading would render the grant of authority to create and abolish positions in § 4-9-30(6) meaningless. Courts will apply an interpretation that gives effect to all parts of a statute rather than one that does not. *Nucor Steel v. S.C. Pub. Serv. Comm'n*, 310 S.C. 539, 545, 426 S.E.2d 319, 323 (1992) ("The well-settled rule in South Carolina is that, where possible, all provisions of a statute must be given full force and effect.").

⁴ The Council also appoints the register of deeds in Jasper County. S.C. Code § 30-5-12(A). Like the administrator and clerk to council, however, the Council is required to appoint a register of deeds. *Id.* ("The governing bodies of . . . Jasper . . . count[y] shall appoint the register of deeds for its county . . .") Since the position is created by the legislature and Council is required to fill it, it is clear that Council could not abolish that position.

Appellant further makes the untenable argument that the deputy county administrator position was not “necessary and proper to provide services of local concern for public purposes,” and therefore, County Council lacked authority to abolish the position. *See* S.C. Code § 4-9-30(6) (council has authority to “to establish such ... 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 ... positions,...”). If that were the case, then the creation and funding of the position were void *ab initio*, because the statute’s requirement that a position be “necessary and proper” clearly applies in the first instance to the position’s creation. Put another way, Appellant cannot argue that abolition of his position was prohibited because the position was not “necessary and proper” without also conceding that the position was not authorized to be created in the first place. To the extent Appellant’s argument on this score makes any sense at all, it does not advance his cause.

Appellant argues as an additional ground that, because the County was not experiencing a budget shortfall, it was improper for the Council to eliminate the deputy county administrator position mid-way through the budget year. Appellant further claims that, if there had been a shortfall, a reduction in force should have been undertaken by the administrator. As an initial matter, nothing in Chapter 9 or any of the Home Rule Act limits Council’s authority to abolish a position to budget shortfalls. Essentially, Appellant questions the wisdom of council’s decision, calling it an “illusory and ineffective” way to save the county money. (R. p. 11, lines 6-7, p. 35, lines 6-7) It is well established that a Court may not review questions that attack the wisdom of Council’s policies. *S.C. Pub. Interest Found. v. Jud. Merit Selection Com’n*, 369 S.C. 139, 143, 632 S.E.2d 277, 278 (2006) (“[T]he courts will not rule upon questions which are exclusively or predominately political in nature rather than judicial.”) (*citing Chicago & S. Air Lines v.*

Waterman S.S. Corp. Civil Aeronautics Brd., 333 U.S. 103, 111, 68 S.Ct. 431, 92 (1948)); *see also, Japan Whaling Ass'n v. Am. Cetacean Soc.*, 478 U.S. 221, 230, 106 S.Ct. 2860, 2866 (1986) (“The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of another branch of government.”). Accordingly, the Court must decline to sit in judgment of the wisdom of Council’s decision despite Appellant’s wishes to the contrary.

Furthermore, Appellant takes exception to the fact there was no initial County Council ordinance establishing the deputy county administrator position. This point is irrelevant. As set forth above, County Council has the authority to establish and abolish positions. Here, County Council in 2011 voted 3-2 to approve a budget that established and funded the deputy county administrator position. (R. p. 43, ¶ 4, p. 44, ¶ 7) Funding the position clearly established it. In 2012, the membership of County Council changed. (R. p. 45, ¶ 11). Once the new members took their positions in January 2013, the body voted 4-1 to abolish and de-fund the deputy county administrator position. (R. p. 45, ¶ 13) De-funding the position clearly abolished it. At all times relevant to the establishment and abolishment, and corresponding funding and de-funding, of the position, County Council clearly acted within the bounds of its authority as granted by S.C. Code § 4-9-30(6). Magic words or incantations are not required to effectuate the creation of the position. Appellant is simply trying to cloud the waters with this specious argument.

Appellant also takes exception to the fact that Respondent’s budget for fiscal year 2012-2013 had been approved and, thus, argues eliminating the deputy county administrator position did not save money. This point is also irrelevant. As Appellant correctly noted, counties are given the authority to set their own budgets. S.C. Code § 4-9-140. They have plenary power in this area. Appellant is questioning the wisdom of County Council’s budgetary decisions and

asking the Court to sit in judgment. As set forth above, the case law is clear this sort of judicial review is inappropriate.

3. Even if Appellant were correct, his employment was terminable at-will.

In his Amended Complaint, Appellant requested that the Court determine that his discharge was unlawful and, among other things, grant him reinstatement. (R. p. 17, ¶ 30) However, Appellant did not plead that he was other than an at-will employee. *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614, 713 S.E.2d 634, 636 (2011) (“In South Carolina, employment at-will is presumed absent the creation of a specific contract of employment.”). “An at-will employee may be terminated at any time for any reason, with or without cause.” *Id.* “The doctrine in its pure form allows an employer to discharge an employee without incurring liability for good reason, no reason, or bad reason.” *Culler v. Blue Ridge Elec. Co-op., Inc.*, 309 S.C. 243, 245, 422 S.E.2d 91, 92 (1992).

Despite Appellant’s argument to the contrary, the county administrator clearly terminated the Appellant after County Council lawfully abolished and defunded the position and he notified the Appellant of the termination. Again, had the administrator continued to employ Appellant, he would have violated S.C. Code § 4-9-630(8)’s requirement that he employ and discharge personnel subject to appropriated funds. But even if the Court believed that Council’s ordinance was unlawful and did not *require* the county administrator to terminate Appellant’s employment, it does not matter because the administrator did so anyway.

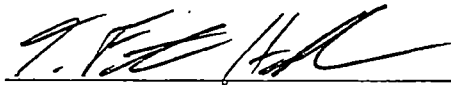
Because Appellant’s employment could be terminated for any or no reason, he is not entitled to reinstatement simply because the administrator was mistaken about the need to terminate his employment. *See Bookman v. Shakespeare Co.*, 314 S.C. 146, 442 S.E.2d 183 (Ct. App. 1994) (rejecting claim that employer’s improper investigation led to his termination and explaining “[h]ad the employer conducted the investigation and determined the altercation

resulted from the [coworker's] harassment, [the employer] was nevertheless free to fire Bookman for any reason or no reason.”). For this additional reason, Appellant is not entitled to a declaratory judgment in his favor.

CONCLUSION

For the reasons set forth above, the judgment of the Circuit Court should be affirmed.

Respectfully submitted,



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Dated: September 15, 2015

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

J. Ernest Kinard, Circuit Court Judge

Case No. 2013-CP-27-00322
Appellate Case No. 2015-000310

George M. Hood,

Appellant,

v.

Jasper County,

Respondent.

**RESPONDENT'S CERTIFICATE OF COMPLIANCE WITH RULE 211(b) OF
THE SOUTH CAROLINA APPELLATE COURT RULES**

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SC Court of Appeals

I, T. Foster Haselden, certify that the Respondent's Final Brief complies with
South Carolina Appellate Court Rule 211(b).



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September 15, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
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J. Ernest Kinard, Circuit Court Judge

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Case No. 2013-CP-27-00322
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George M. Hood,

Appellant,

v.

Jasper County,

Respondent.

PROOF OF SERVICE

I certify that I have this date caused to be served a copy of the foregoing Final Brief of Respondent upon counsel for Appellant by deposit in the United States mail, first-class, postage-paid, addressed as follows:

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September 15, 2015

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(D)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

George M. Hood, Appellant,

v.

Jasper County, Respondent.

Appellate Case No. 2015-000310

Appeal From Jasper County
J. Ernest Kinard, Jr., Circuit Court Judge

Opinion No. 2017-UP-355
Heard May 1, 2017 – Filed September 6, 2017

AFFIRMED

Nancy Bloodgood and Lucy Clark Sanders, both of
Bloodgood & Sanders, LLC, of Mount Pleasant, for
Appellant.

Christopher Wofford Johnson and T. Foster Haselden,
both of Gignilliat Savitz & Bettis, LLP, of Columbia, for
Respondent.

PER CURIAM: In this appeal arising from the termination of George Hood as the Deputy County Administrator of Jasper County, Hood appeals, arguing the trial court erred in: (1) holding article I, section 8 of the South Carolina Constitution does not apply to counties; (2) holding a county council operating under the council-administrator form of government can abolish the deputy county administrator position; (3) not addressing the propriety of Jasper County's budget amendment enacted midyear for the purpose of abolishing the county job position; and (4) holding a county council can terminate the employment of an employee who reports to the county administrator because he is an at-will employee. We affirm.

1. Hood argues the trial court erred in holding article I, section 8 of the South Carolina Constitution does not apply to counties. When interpreting the state constitution, the appellate court applies rules of construction similar to those used to construe statutes. *State v. Long*, 406 S.C. 511, 514, 753 S.E.2d 425, 426 (2014). We agree with the trial court that Jasper County Council's actions did not violate the state constitution's requirement of separation of powers, and we adopt the trial court's order as to this issue.

2. Hood argues the trial court erred in holding a county council operating under the council-administrator form of government can abolish the deputy county administrator position. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Lambries v. Saluda Cty. Council*, 409 S.C. 1, 10, 760 S.E.2d 785, 789 (2014) (quoting *Charleston Cty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993)). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* at 10-11, 760 S.E.2d at 790 (quoting *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010)). We agree with the trial court that Jasper County Council had the authority to abolish the deputy county administrator position, and we adopt the trial court's order as to this issue.

3. Hood argues the trial court erred in not addressing the propriety of Jasper County's budget amendment enacted midyear for the purpose of abolishing the county job position. Hood asserts Jasper County never enacted an ordinance adopting a job description for the deputy county administrator position; thus, Jasper County's ordinance eliminating Hood's position is null and void and without effect. As explained above, a county council has the authority to establish and

abolish positions. The Jasper County Council voted to fund the position in 2011, which established the position. The Jasper County Council also voted to defund the position in 2013, which eliminated the position. Thus, these actions were within Jasper County Council's authority and are not null and void.

Hood also claims section 4-9-140 of the South Carolina Code (1986) establishes the fiscal year for counties as July 1 through June 30 of the following year and the statute requires counties to adopt budgets prior to the fiscal year; therefore, once a budget is adopted by ordinance and taxes are levied and collected, the budget is fully funded and any action taken midyear to eliminate funding is too late. Hood is correct that section 4-9-140 gives Jasper County the authority to set its own budget. That section also provides, "The provisions of this section shall not be construed to prohibit the transfer of funds appropriated in the annual budget for purposes other than as specified in such annual budget when such transfers are approved by the council." S.C. Code Ann. § 4-9-140 (1986). This court cannot question the wisdom of a council's budgetary decisions. *See S.C. Pub. Interest Found. v. Judicial Merit Selection Comm'n*, 369 S.C. 139, 143, 632 S.E.2d 277, 278 (2006) ("[T]he courts will not rule upon questions which are exclusively or predominately political in nature rather than judicial.").

4. Hood argues the trial court erred in finding a county council can terminate the employment of an employee who reports to the county administrator because he is an at-will employee. Hood asserts the county administrator in a council-administrator form of government is the employer of county employees and can terminate any at-will employee; however, in this case, the county administrator did not terminate him. We agree with the trial court that Jasper County Council could terminate Hood's employment, and we adopt the trial court's order as to this issue.

AFFIRMED.

WILLIAMS and KONDUROS, JJ., and LEE, A.J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2013-CP-27-00322

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SEP 20 2017

SC Court of Appeals

George M. Hood,

Appellant,

v.

Jasper County,

Respondent.

PETITION FOR REHEARING PURSUANT TO SCACR RULE 221

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I. ARGUMENT

On September 6, 2017, this Court filed a decision upholding the lower court's order. Appellant respectfully requests a rehearing. The bases for Appellant's petition for a rehearing are: a) the Council/Administrator form of county government provides for the separation of administrative and legislative powers so that a council cannot perform administrative functions and an administrator cannot perform legislative functions; b) Respondent cannot usurp the authority of the Administrator to create and administer county employee personnel classification systems; c) Respondent cannot tell the County Administrator how to spend the funds appropriated for his use; and d) Respondent cannot terminate an employee who was hired by and works for the County Administrator.

A. The Court's adoption of the trial court's order regarding the issue of the separation of powers was in error as the Council/Administrator form of county government provides for the separation of administrative and legislative powers and the cases relied upon for that proposition all predated the Home Rule Act.

In 1976, the Home Rule Act was enacted which states "[a]ll counties of the State, in addition to the powers conferred pursuant to their specific form of government, have authority to enact regulations, resolutions, and ordinances, *not inconsistent with the Constitution and general law of this State.*" S.C. Code § 4-9-25 (emphasis added). Similarly, S.C. Code § 4-9-30(6), which designated the powers under each alternative form of County government, is expressly limited by the following statement, "...each county government *within the authority granted by the Constitution and subject to the general law of this State* shall have the following powers..." (emphasis added). "The powers of a county must be liberally construed in favor of a county and the specific

mention of particular powers may not be construed as limiting in any manner the general powers of counties.” *S.C. Code § 4-9-25*.

The Court erred in upholding the trial court’s ruling that there is no separation of powers in county government as the cases relied upon for that proposition all predated the Home Rule Act. After passage of the Home Rule Act, the Legislature provided for four (4) alternate forms of county government: council, council/supervisor, council/administrator, and council/manager. In the council form of government the responsibility for policy making and administration of county government shall be vested in the county council.” *S.C. Code Ann. § 4-9-310*. In the other three (3) forms of government the supervisor, administrator and manager, respectively, are the chief administrative officers and the council performs the legislative functions. *S.C. Code Ann. § 4-9-420; S.C. Code Ann. § 4-9-630; S.C. Code Ann. § 4-9-830*. The Legislature has created three (3) forms of county government which separate the executive and legislative functions and in the council/administrator form of government that Jasper County has adopted, the Council cannot act as Administrator and the Administrator cannot act as Council.

B. The Court erred in finding Respondent Jasper County Council can usurp the authority of the Administrator to create and administer county employee personnel classification systems.

“The powers and duties of the administrator shall include, but not be limited to, the following: ... (7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council.” *S.C. Code Ann. 4-9-30 (7)* Respondent’s Handbook states that the Human Resources Director, who is hired and fired by the County Administrator, authorizes the appropriate classification, the establishment

of a new classification, *or the abolishment of any existing classification(s)*. (emphasis added) (R. pp. 46, 65-70.) S.C. Code Ann. 4-9-30(6) states in pertinent part:

[E]ach county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof: ... (6) 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, *except as otherwise provided for in this title*. (emphasis added).

The Court erred by interpreting this statute which only addresses “positions that are necessary and proper to provide services of local concern for public purposes” as applying to Appellant’s position of Deputy County Administrator. Such an interpretation ignores what the Legislature has provided for in the council/administrator form of government which places the Administrator in charge of employing and discharging personnel. *S.C. Code Ann. 4-9-30 (8)*.

Further, there is nothing in the record or stipulated facts indicating the position of deputy county administrator is “necessary and proper to provide services of local concern for public purposes.” The Legislature’s intent should be ascertained primarily from the plain language of the statute. *State v. Morgan*, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002). The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Sys. v. Leatherman*, 309 S.C. 174, 420 S.E.2d 843 (1992).

C. The Court erred in holding that when funds have already been appropriated to a county department pursuant to a budget ordinance, County Council can supervise the expenditure of those appropriated funds by amending the budget ordinance to dictate to the County Administrator how he should spend the funds appropriated to him.

The Court erred in ruling that Respondent could amend a budget mid-year to abolish one particular job position. County budgets are enacted by ordinance and form the basis for the assessment and collection of taxes each year. Pursuant to *S.C. Code Ann. § 4-9-140*, a council can supplement and transfer funds but it cannot “unappropriate” funds as Jasper County attempted to do. Pursuant to *S.C. Code Ann. § 4-9-630 (5)*, the Administrator supervises the expenditure of appropriated funds, not Respondent Council. Respondent’s annual budget funds departments, including the Administrative Department, by appropriating a certain amount of money to each department each year. (R. pp. 44-46.) The County Administrator is responsible for the administration of all of the departments Council creates. *S.C. Code Ann. § 4-9-620*. If Council instructs the Administrator to spend less than was appropriated, it is his decision how to do that, not Council’s under the council/administrator form of government. In this case, the Administrator could have reduced spending in his department by terminating anyone he felt necessary or taken different action such as reducing expenditures to achieve the monetary savings Council required; but how to effectuate those savings was his decision as Administrator, not Respondent’s decision, under state law. *S.C. Code Ann. § 4-9-630(8)*. Respondent’s Ordinance 2013-02 (R. p. 63) which purported to reduce funding for the salary and wages of a single job position in the Administrative Department violates state law as it reflects Respondent Council attempt to supervise the expenditure of appropriated funds, which is the duty of the Administrator, not Council and is in clear violation of *S.C. Code Ann. § 4-9-620* and *S.C. Code Ann. § 4-9-630*.

D. The Court erred in holding Jasper County Council can terminate an employee who was hired by and works for the County Administrator.

S.C. Code § 4-9-620 states, “The council shall employ an administrator who shall be the administrative head of the county government and shall be responsible for the administration of all the departments of the county government which the council has the authority to control.” The County Administrator, not Council, has the authority to employ and discharge county personnel, including the deputy county administrator. *S.C. Code § 4-9-630 (8)*. This Court’s holding that Respondent, under the council/administrator form of government, can terminate Appellant’s employment is in error as Council was not Appellant’s employer; the Administrator was Appellant’s employer.

II. CONCLUSION

For the reasons stated herein, Appellant asks the Court to grant his Petition for a Rehearing.



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Date: September 19, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2013-CP-27-00322

George M. Hood,

Appellant,

v.

Jasper County,

Respondent.

PROOF OF SERVICE FOR APPELLANT'S PETITION FOR REHEARING
PURSUANT TO SCACR RULE 221

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SC Court of Appeals

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I hereby certify that on September 19, 2017 I served a copy of the Appellant's
Petition for Rehearing to the following:

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Attorneys for the Respondent

by placing a copy of said documents in the United States mail with sufficient postage
thereon.



Nancy Bloodgood, Esquire

Charleston, South Carolina

Date: September 19, 2017

The South Carolina Court of Appeals

George M. Hood, Appellant,

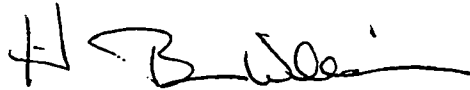
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Jasper County, Respondent.

Appellate Case No. 2015-000310

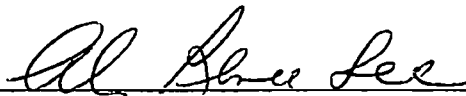
ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.

J.



J.

Columbia, South Carolina

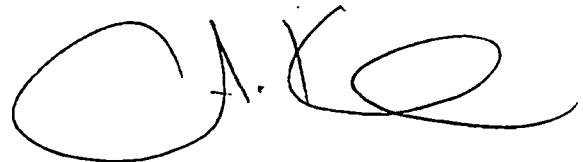
cc:

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I would grant the petition.



FILED

December 14, 2017 33

T. Foster Haselden, Esquire