

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

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

Honorable Frank Addy, Jr., Circuit Court Judge

Appellate Case No. 2017-000847

RECEIVED

JAN 09 2018

SC Court of Appeals

Shred With Us, LLC Appellant,

vs.

Steffanie Dorn, City of Greenwood Business License Official Respondent.

AMENDED RECORD ON APPEAL

**C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar # 006188**

ATTORNEY FOR APPELLANT

**DANNY C. CROWE
Crowe LaFave, LLC
P.O. Box 1149
Columbia, SC 29202
(803) 724-5728**

**JAMES GRAHAM PADGETT, III
Law Firm of Bacot & Padgett, LLC
414 Monument Street, Ste. C
Greenwood, SC 29646
(864) 227-1570**

ATTORNEYS FOR RESPONDENT

INDEX

Form 4 Order filed by Circuit Court on February 23, 2017	1
Order of Judge Frank R. Addy, Jr. filed on March 27, 2017	3
Defendant's Notice of Appeal to the Court of Common Pleas filed January 6, 2017	14
Response of Steffanie Dorn and City of Greenwood to Notice of Appeal filed January 30, 2017	17
Certified Record filed by Dorn and City in Circuit Court	21
City Counsel's Order	23
Minutes of the City Council Meeting of October 1, 2016	33
Hearing before City Council with Exhibits	36
Defendant's Appeal to City Council	85
Notice of Intent to Appeal filed April 4, 2017	96
Transcript of Hearing before Judge Frank R. Addy, Jr. Dated February 17, 2017	97
Certificate of Counsel	114

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.

[Signature]
Circuit Court Judge

2159
Judge Code

Feb. 22, 2017
Date

For Clerk of Court Office Use Only

This judgment was entered on the 23 day of Feb, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 23 day of Feb, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

C. Rauch Wise, Esq.

Danny C. Crowe, Esq.

Tripp Padgett, Esq.

ATTORNEY(S) FOR THE APPELLANT

ATTORNEY(S) FOR RESPONDENT

Chastity Copeland
CLERK OF COURT

Court Reporter: Joy Holston

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-24-9

Shred with Us, LLC

Steffanie Dorn, Greenwood City
Business License Official

Appellant

Respondent

Submitted by: COURT

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.
- ☐ **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

2017 FEB 23 AM 8:59

FILED COMMON PLEAS
8th JUDICIAL CIRCUIT
GREENWOOD, SC

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

This matter came before the Court on February 17, 2017 on Appellant Shred with Us's appeal from the findings of Greenwood City Council in its meeting of October 1, 2016. Having reviewed the record of the meeting, reflected upon the memoranda submitted, and considered the arguments presented, the Court affirms the findings and order of Greenwood City Council.

On its face, Section 58-63-620 would appear to exempt Appellant from Greenwood's business license tax in that Appellant does hold a Class E transportation certificate. However, City Council found that Appellant's business of collecting and destroying documents is separate and distinct from its activity in transporting the shredded documents on the highways of this State. This Court holds that the reasoning employed by City Council was supported by the evidence offered during the hearing of October 1, 2016. Appellant's activity in collecting and shredding the paper is not merely incidental to its business of transporting the shredded product. City Council's finding that Appellant's business of collecting and shredding is separate and distinct from its transportation business, for which the Class E certificate was issued, is clearly supported by the evidence. Accordingly, the findings of the City Council are affirmed.

Counsel for Respondent is requested to prepare a more formal order and submit the same to the Court within thirty (30) days.

It is so ordered.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

Shred with Us, LLC,

Appellant,

vs.

Steffanie Dorn, City of Greenwood Business
License Official,

Respondent.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-24-0009

ORDER

FILED COMMON PLEAS
8th JUDICIAL CIRCUIT
GREENWOOD, SC

2017 MAR 27 PM 12:29

This case is an appeal from the Order of the Greenwood City Council (the City) requiring Appellant Shred with Us, LLC (Shred with Us) to obtain a business license for its business activities within the City that are separate and distinct from the business activity of the transportation of freight. The City's written Order was issued following an evidentiary hearing before the City Council. A transcript of that hearing, as well as the City's Order and the documents considered by the City Council, are included in the Record filed by the City in connection with this appeal.

The Court held a hearing on the appeal on February 17, 2017, with arguments by the attorneys for the City and Shred with Us. Following review of the Record and the memoranda submitted, as well as consideration of the hearing arguments of the attorneys, the Court, on February 22, 2017, issued a Form 4C Order affirming the Order of the City and ending the appeal. The Court now issues this more formal Order. For the reasons set out in the Form 4C Order, and in this Order, the Court affirms the findings and conclusions of the City Council in its Order, and ends this appeal with judgment in favor of the Respondent.



FACTUAL AND PROCEDURAL BACKGROUND

Succinctly stated, Shred with Us does business within the city limits of the City of Greenwood by collecting paper from the offices of regular customers on a schedule, shredding the paper in its truck while at the customer sites, and then transporting the shredded paper in its truck to its home office in West Columbia. The principal of Shred with Us, Eric Ragsdale, testified at the hearing before the Council. (Record, pages 16-25). He described his business as "document destruction." (Record, page 16). He testified that his business provides paper receptacles of varying sizes for his customers (some bins are rented to customers and some are provided without charge), picks up the receptacles from customers on a predetermined schedule, empties the receptacles in his truck, shreds the paper in its truck (for some 98% of customers), and then returns in the truck to the home office where the collected paper is sold for recycling as pulp. (Record, pages 17, 19, 20, 22, 23 and 24). In response to questions from his own attorney, he testified that "primarily, we do destruction" and then get the destroyed paper back to West Columbia by "transportation." (Record, page 18).

According to Mr. Ragsdale's testimony, the business has approximately 11 or 12 customers in the City. (Record, page 21). City Business License Officer David Price testified, at the hearing, that he personally observed the business (and Mr. Ragsdale) empty containers into the business truck and shred at a location in the City in 2016, giving rise to this case. (Record, pages 32-33).

Shred with Us is the holder of a Class E-L Certificate of Compliance for the Operation of Motor Vehicle Carriers issued by the South Carolina Department of Public Safety in 2003. (Record, page 48). On its face, the Certificate provides that Shred with Us "is hereby authorized

②
DM

to transport freight other than household goods and hazardous waste for disposal over irregular routes between points and places in South Carolina." (Record, page 48).

Shred with Us contended to the City (and contends in this appeal) that S.C. Code section 58-23-620 precludes a municipal business license for any business activity of a Certificate holder. That Code section, which is part of a chapter and article dealing with applications and fees for motor vehicle carriers, provides:

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

The City, through its Business License Official, determined that Shred with Us was not required to pay a City business license tax for its freight transportation activity within the City but was required to pay a business license tax for its in-City business activity of collecting paper from its customers and shredding paper. Shred with Us appealed this requirement of the City Business License Official to the City Council pursuant to Section 10-83 of the City Code. (Record, page 71).

In its Order after its evidentiary hearing, the City Council determined, as a finding of fact, that the business operations of Shred with Us within the City consisted of the separate, distinct, and independent business activities of (1) the collecting and shredding of paper and (2) the transportation of paper. In its Order, the City Council then concluded, as a matter of law, that, by reason of S.C. Code section 58-63-620, Shred with Us, as a holder of a freight hauler certificate issued by the State Department of Public Safety (a Certificate E-L), was not subject to

a business license tax for its business activity of freight transportation or hauling but was subject to a business license tax for its other business activity of paper collection and shredding within the City. Shred with Us appealed from the City Council Order to the Circuit Court contending, by four listed grounds, that Section 58-63-620 provides a blanket exemption from business license taxes for all business activities by Shred with Us within the City because the company is the holder of the freight hauler certificate.

STANDARD OF REVIEW

Under Rules 74 and 75 of the SCRCP, the Court, in this case, is acting in its appellate capacity based on the record of proceedings below. In this context, findings of the City Council should not be disturbed on appeal unless they are without evidentiary support or against the clear preponderance of the evidence. Gay v. City of Beaufort, 364 S.C. 252, 254, 612 S.E.2d. 467, 468 (Ct. App. 2005), citing Bob Jones University, Inc. v. City of Greenville, 243 S.C. 351, 363, 133 S.E. 2d 843, 848 (1963). An issue regarding statutory interpretation is a question of law. University of Southern California v. Moran, 365 S.C. 270, 274, 617 S.E. 2d 135, 137 (Ct. App. 2005). An appellate court reviews questions of law de novo. Town of Summerville v. City of North Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

PRINCIPLES OF STATUTORY INTERPRETATION

"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). "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 light of the intended purpose of the statute." Broadhurst v. City of Myrtle Beach Election Commission, 342 S.C. 373, 380, 537 S.E. 2d 543, 546 (2000). "A statute as a whole

must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." Lambries v. Saluda County Council, 409 S.C. at 10, 760 S.E.2d at 790-791. "In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." Id. The real purpose and intent of the lawmakers will prevail over the literal import of the words. Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). The Court should reject statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the legislature. Lexington County Health Service District v. S.C. Department of Revenue, 384 S.C. 647, 653, 682 S.E.2d 508, 510 (Ct. App. 2009).

DISCUSSION

The Record in the appeal establishes that the City's Business License Ordinance (Record, pages 65-73) clearly contemplates situations of multiple business activities or multiple business operations by a single business within the City. Under the Business License Ordinance, all businesses (resident and nonresident) that do business within the City are required to pay an annual business license tax for the privilege of doing business within the City. (Section 10-50, Record, page 66). The business license tax is based on rate classifications. (Section 10-52(a), Record, page 66).

A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated for classifications at one location, the license tax shall be computed on the combined gross income for the classification with the highest rate.

Section 10-52(b), Record, page 66. (Emphasis supplied).

The Ordinance further provides that:

No person shall be exempt from the requirements of this article by reason of the lack of an established place of business within the city, unless

exempted by state or federal law. The license official shall determine the appropriate classification for each business in accordance with the latest issue of the North American Industry Classification System (NAICS) for the United States published by the Office of Management and Budget. Section 10-54(b), Record, page 68. (Emphasis supplied).

At the Council hearing, the City Business License Official Dorn offered into evidence copies of the NAICS entries for the two classifications of transportation of property (NAICS 484) and document shredding services (NAICS 561990). (Record, pages 55-58, an attachment to the City's Memorandum of Points and Authorities). Ms. Dorn testified concerning the City's classification of businesses based on the NAICS system, and the circumstance that some businesses have multiple business activities or multiple business operations that require separate NAICS classifications to determine license tax rates. (Record, pages 25-27). She testified that the NAICS code classification for document shredding services is 561990, that the NAICS code classification for transportation is 484, and that the NAICS system treats the two activities as "completely separate" categories of business. (Record, pages 27-28). Her determination was that the two business activities are separate and not necessarily related, and that while a Certificate E, generally, protects the business from a license tax on the transportation business activity, it does not protect from a license tax on the collection and shredding business activity. (Record, pages 28-29 and 30-31). Apportionment of income for the two business activities would be determined, in the first instance, by the business. (Record, page 29). Other shredding companies that operate in the City do pay business license taxes and had not, to her knowledge, claimed Certificate E exemption. (Record, page 29).

As part of its argument and presentation at the Council hearing on the issue of multiple business operations or multiple business activities, the City cited the case of Wood-Mendenhall Co. v. City of Greer, 88 S.C.249, 70 S.E. 724 (1911). (Record, pages 49-50 and 52-53). An early

business license case, Wood-Mendenhall recognized that, while some business activities undertaken by a business may be incidental (or related or subsidiary) to other of its business activities, some are not. Business activities that are not incidental to the activity for which the license was issued, determined the Court, would be subject to a separate business license. The particular activities involved in Wood-Mendenhall were blacksmithing (for which a business license had been issued) and painting. The Court observed:

It is true that the painting which is merely incidental to the finishing job of blacksmithing might properly be included in and covered by a license to carry on the business of "blacksmithing"; but it appears that plaintiff did painting outside of and not connected with the business of "blacksmithing." That was a business separate from and independent of that of "blacksmithing," and was not covered by the license.
88 S.C. at 249, 70 S.E. 2d at 725.

In its Order, the City Council also cited Wood-Mendenhall (and the quotation set out above) to support its findings of facts concerning the separate and distinct and independent nature of the Shred with Us business activities. (Record, pages 2 and 4).

Shred with Us does not contest that it did business, and does business, within the City. It also does not contest, in its listed Notice of Appeal grounds, that it engages in the multiple business operations or multiple business activities of transportation and collection/shredding that are separate and distinct business activities. Although Shred with Us argued at the Council hearing that all of its business activities involved transportation or were incidental to transportation (Record, pages 33-34 and 39), that argument was not re-stated as a ground in the Notice of Appeal to this Court. Accordingly, Shred with Us has waived any argument of error below based on those findings of Council. However, to the extent any such argument was not waived, the evidence presented to the City Council fully supports the City's finding of fact that

7 

the activity of collecting and shredding paper is separate and distinct from the transportation activity for which the Class E-L Certificate was issued.

Shred with Us contends in this appeal that, as a holder of a Certificate E-L from the State Department of Public Safety (Record, page 48), it is exempt from all City business license taxes for all of its business activities. At the Council hearing, the attorney for Shred with Us relied upon the text of Section 58-23-620 (Record, page 43) and a 1989 Attorney General's Opinion (Record, pages 44-47). The 1989 Opinion essentially restated portions of the text of Section 58-23-620 and did not address a factual situation of multiple business operations or multiple business activities by the Certificate holder. No background facts concerning the business at issue were provided in the Opinion. Because the Opinion did not address a situation of multiple business operations or multiple business activities by a Certificate holder, it provides no interpretative guidance in our situation and is distinguishable on its facts (or lack of facts) from our situation.

The significance of the Council findings and conclusions on multiple business operations/multiple business activities findings is illustrated and underscored by the 1962 Attorney General's Opinion cited and argued by the City. (Record, pages 49-50 and 62). Unlike the 1989 Opinion cited by Shred with Us, the 1962 Opinion involved and dealt squarely with the situation of multiple business operations/multiple business activities and a Certificate E. The question posed to the Attorney General by the Clerk of the City of Marion was "whether a municipality may impose a business license tax on a nonresident holder of a class 'E' certificate of public convenience because of the activity of such holder in moving a building from the municipality." The Assistant Attorney General who signed the Opinion responded in two sentences:

Section 58-1442, 1952 Code, [the predecessor statute to current section 58-23-620] prohibits the imposition of such tax on the nonresident holder of a class 'E' certificate so long as the activity in which he engages is incidental and necessary to the business of transporting property in accordance with the authority granted by the certificate. It is the opinion of this office that such business tax may not be imposed if the activity of the holder of the certificate is restricted to work related directly to transportation of the building on a highway from one point to another. (Emphasis supplied).

On its face, the Certificate E-L issued by the State Department of Public Safety (Record, page 48) is a Certificate of Compliance for the Operation of Motor Vehicle Carriers that authorizes Shred with Us "to transport freight other than household goods and hazardous waste for disposal over irregular routes between points and places in South Carolina." This is similar to the Class E certificate described in State Code section 58-23-260 (Record, page 60) that the Office of Regulatory Staff and the PSC may issue for "the property-carrying vehicles which will not operate upon any particular route or schedule." Section 58-23-620, the statute relied upon by Shred with Us for its claim of blanket exemption from business license tax, is part of the Code chapter that creates Certificate E and the other Certificates for motor carriers of property and passengers. (Record, page 60).

Section 58-23-620 does not specifically authorize or reference any business activity other than that for which the Certificate is issued and Section 58-23-620 does not expressly exempt motor carriers from business licenses for all other activities. Rather, its focus, as well as the focus of its companion statutes, is on regulation and taxation of the activities of carrying, hauling or transporting property or passengers. The 1962 Attorney General Opinion, as did the City Council Order, discerned this essential context and provided a "practical, reasonable, and fair interpretation consonant with the purpose, design, and policy" of the statute that "harmonizes

with [the statute's] subject matter and accords with its general purpose." Lambries, 409 S.C. at 10, 760 S.E.2d at 790-791.

Moreover, if construed without limitation arising from its context and purpose, Section 53-23-620 would provide a carte blanche for a freight hauler to sell retail goods from its truck or to operate a food truck without the necessity for a municipal business license for plainly unrelated business activities. Such a statutory construction and interpretation could not have been intended by the Legislature. As recognized in the McQuillin treatise, The Law of Municipal Corporations: "A business exempt from licensing as to one phase of its activities is not of necessity exempt with respect to another." 9 McQuillin Municipal Corporations section 26:50 (3rd ed.) (2017 update).

The documentary evidence and testimonial evidence before the Council at its hearing fully support the Council's findings and conclusions in its Order by the greater weight of the evidence. Additionally, the Court concludes that the Council's construction and interpretation of State Code section 58-23-620, particularly when considered in the circumstances established by that greater weight of the evidence, is appropriate and reasonable and in accord with the general purpose of the motor vehicle carrier statutes of which Section 53-23-620 is a part. The Court, after undertaking its own review of this question of law, agrees with the City's construction and interpretation of S. C. Code section 58-23-620.

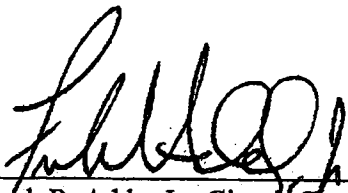
DECISION AND JUDGMENT

Based on review and consideration of the Record and the arguments of counsel, and for the reasons set out in the Form 4C Order and set out above,

IT IS ORDERED that the Order of the Greenwood City Council under appeal in this case is **AFFIRMED**.

IT IS FURTHER ORDERED that this appeal is ended with judgment entered in favor of the Respondent.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Frank R. Addy, Jr.', written over a horizontal line.

Frank R. Addy, Jr., Circuit Court Judge

March 24, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

Steffanie Dorn

Plaintiff(s)

vs.

Shred with Us, LLC,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018-CP-24- 0609

2017

2017 JAN - 6 PM 3:30

FILED COMMON PLEAS
8th JUDICIAL CIRCUIT
GREENWOOD, SCSubmitted By: C. Rauch Wise
Address: 305 Main Street
Greenwood, SC 29646SC Bar #: 06188
Telephone #: 864-229-5010
Fax #: 864-229-2665
Other: _____
E-mail: rauchwise@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI- _____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

Date: Dec 21, 2018

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)

Steffanie Dorn, City of Greenwood)
Business License Official,)
)
Respondent,)
)
Vs.)
)
Shred with Us, LLC,)
)
Appellant.)

IN THE COURT OF COMMON PLEAS

NOTICE OF APPEAL

2016 - CP- 24 - 0009
2017

2017 JAN -6 PM 3:39

FILED COMMON PLEAS
8th JUDICIAL CIRCUIT
GREENWOOD, SC

Shred with Us, LLC hereby gives notice of appeal to the Court of Common Pleas for the County of Greenwood, State of South Carolina for the Order and findings of the City Council for the City of Greenwood received by counsel for Shred with Us, LLC, on December 6, 2016. This appeal is based upon the following:

1. As Shred with Us, LLC does have a Class E certificate, the statute precludes the City of Greenwood from charging a business license tax on the activities of Shred with Us, LLC, within the City of Greenwood.

2. The City Counsel for the City of Greenwood erred in determining that South Carolina Code of Laws §58-23-620 did not preclude in position of a business license tax on the activities of Shred with Us, LLC within the City of Greenwood.

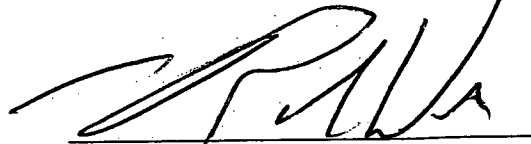
3. The City Counsel for the City of Greenwood erred in determining that South Carolina

Code of Laws §58-23-620 did not preclude in position of a business license tax upon Shred with Us, LLC as they possess a Class E certificate issued by the South Carolina Public Commission.

4. The City Counsel for the City of Greenwood failed to consider that Shred with Us, LLC maintains no offices or permanent location within the City of Greenwood, and therefore, any license fee should be exempt pursuant to South Carolina Code §58-23-620.

Greenwood, South Carolina

December 23, 2016



C. RAUCH WISE
Attorney at Law
305 Main St.
Greenwood, SC 29646
(864) 229-5010

Attorney for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

Steffanie Dorn, City of Greenwood Business
License Official,

Respondent,

vs.

Shred with Us, LLC,

Appellant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-24-0009

**RESPONSE OF STEFFANIE DORN
AND CITY OF GREENWOOD TO
NOTICE OF APPEAL**

Steffanie Dorn, as the City of Greenwood Business License Official ("Dorn"), and the City of Greenwood ("the City") respond to the Notice of Appeal filed by Shred with Us, LLC, as follows:

FOR A FIRST DEFENSE

1. Answering the first unnumbered paragraph of the Notice of Appeal, Dorn, as the City of Greenwood Business License Official, and the City admit that the City Council of the City served a written Order of the City Council on the attorney for Shred with Us, LLC ("Shred with Us"). Dorn and the City assert that the date of service was December 7, 2016.

2. The allegations of numbered paragraph 1 are denied.

3. The allegations of numbered paragraphs 2, 3, and 4 are denied.

4. Dorn and the City deny that Shred with Us has any right or entitlement to any relief requested by its appeal to this Court.

FOR A SECOND DEFENSE

5. Dorn and the City allege and assert that the decision and Order of the City Council was within its sound and lawful discretion, was in accord with the criteria provided by

State law and the business license provisions of the City of Greenwood Code of Ordinances, was not arbitrary, was not clearly erroneous, and was correct as a matter of law.

FOR A THIRD DEFENSE

6. Any judicial review of the decision and Order of the City Council, in accord with Rules 74 and 75, SCRCP, is limited to a review of the original record of the proceedings and evidence before the City Council at the time of its decision, with this Court to determine if the decision and Order of the City Council is correct as a matter of law.

FOR A FOURTH DEFENSE

7. Shred with Us, in this appeal, is limited in its assertions of error by the City Council to those assertions of error enumerated in its Notice of Appeal filed with this Court.

FOR A FIFTH DEFENSE

8. A record of the proceedings and evidence before the City Council will be filed by the City with the Court at a later date, as described in Rule 75, SCRCP.

WHEREFORE, having responded to the Notice of Appeal, Dorn and the City pray that the Court consider the record of proceedings and evidence to be filed by the City, that the Notice of Appeal be dismissed, that any relief requested by Shred with Us in this appeal be denied, that the decision and Order of the City Council be upheld, and that the Court order such other and further relief in favor of Dorn and the City as is proper.



Danny C. Crowe, SC Bar #1480
Crowe LaFave, LLC
P.O. Box 1149
Columbia, SC 29202
803.724.5728 (phone)
danny@crowclafave.com

AND

James Graham Padgett, III (Tripp), SC Bar #69354
The Law Firm of Bacot & Padgett, LLC
414 Monument Street, Suite C
Greenwood, SC 29646
864.227.1570 (phone)
padgett@bacotlawfirm.com

ATTORNEYS FOR STEFFANIE DORN
AND CITY OF GREENWOOD

January 26, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

Steffanie Dorn, City of Greenwood Business
License Official,

Respondent,

vs.

Shred with Us, LLC,

Appellant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-24-0009

CERTIFICATE OF SERVICE

I, Denise M. Brockwell, paralegal for Crowe LaFave, LLC, do hereby certify that I have served the **Response of Steffanie Dorn and City of Greenwood to Notice of Appeal**, in the above-referenced matter, by electronically mailing and by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows:

Via E-Mail to rauchwise@gmail.com

And Regular Mail

C. Rauch Wise, Esquire
Law Office of C. Rauch Wise
305 Main Street
Greenwood, SC 29646


Denise M. Brockwell
Paralegal

January 26, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

Steffanie Dorn, City of Greenwood Business
License Official,

Respondent,

vs.

Shred with Us, LLC,

Appellant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-24-0009

**CERTIFIED COPY OF ORIGINAL
RECORD OF PROCEEDINGS AND
EVIDENCE BEFORE THE CITY
COUNCIL**

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC

2017 FEB -3 PM 12:12

I am the custodian of the records of the City of Greenwood by virtue of my position as the duly appointed City Clerk. I also function as Finance Director and Business License Official for the City. I certify that the attached documents are accurate and correct copies of the records of the proceedings and evidence before the City Council of the City of Greenwood in connection with the hearing of the appeal by Shred with Us, LLC. An Index to the Documents in the Record is also attached for ease of reference.



Steffanie C. Dorn
Clerk, City of Greenwood

February 3rd 2017

INDEX TO DOCUMENTS IN THE RECORD

- (A) City Council's Order; Pages 1 - 10
- (B) Minutes of the City Council Meeting of October 1, 2016
(including the transcript of the Appeal Hearing); Pages 11 - 42
- (C) Hearing Exhibits 1-4 (including City's Memorandum of
Points and Authorities); Pages 43 - 62
- (D) Shred with Us Appeal to City Council; Page 63
- (E) City's Notice of Appeal Hearing; and Page 64
- (F) City of Greenwood Business License Ordinance. Pages 65 - 73

IN THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

CITY OF GREENWOOD

BEFORE THE CITY COUNCIL OF THE CITY OF GREENWOOD

**ORDER
AFFIRMING REQUIREMENT FOR BUSINESS LICENSE**

Steffanie Dorn,)
)
City of Greenwood)
Business License Official,)
)
vs.)
)
Shred with Us, LLC,)
)
Appellant.)
_____)

This matter came before the City Council on October 1, 2016, for a hearing on Appellant's appeal from the City of Greenwood Business License Official's determination requiring Appellant to obtain a business license for business operations not related or incidental to freight transportation carried on in the City of Greenwood. The issue put before us is concisely put as follows:

"Does a Class E certification properly issued to a business that utilizes the transportation of freight in its business operations preclude a municipality from charging any business license tax?"

Rauch Wise, Esq., of the Greenwood County Bar, represented the Appellant. Danny C. Crowe, Esq., of the Richland County Bar, represented the Business License Official, Steffanie Dorn. The parties were present. Through counsel, Appellant offered testimony, and presented exhibits marked 1, 2 and 3. Through counsel, the Business License Official offered her testimony, called a witness and presented an exhibit marked 4. All witnesses were duly sworn or

affirmed to tell the truth, the whole truth and nothing but the truth.

Council afforded each party the opportunity to cross examine and redirect. Council took the opportunity to ask questions of the witnesses. At the conclusion of the presentation of evidence, both parties presented argument to the Council on the law and the facts.

Upon consideration of the testimony, as well as the pertinent provisions of the City Code and South Carolina law, deliberation took place immediately following the presentation of evidence and argument. Council deliberated and discussed the case in an open, public session.

Upon motion duly made and seconded, the seven members of Council then voted unanimously to affirm the decision of the Business License Official that a Class E certification does not preclude the City of Greenwood from requiring a business license for those business operations distinct and separable from the general business of freight transportation and not a subsidiary operation thereof. The City of Greenwood seeks no business license tax for gross revenue attributable to the transportation of freight pursuant to the Class E Certification.

As required by section 10-83 of the Greenwood City Code, the Council issues this Order, as its written decision, based on the following findings of fact and the application of the standards in the business license article of the Greenwood City Code.

APPLICABLE LAW AND STANDARDS

A. As to Affirming the requirement to have a Business License

Greenwood City Code¹:

1. Sec. 1-17. - Liability of corporations, associations, or agents for violations.
 - (a) Any violation of this Code by any officer, agent or other person acting for or employed by any corporation or unincorporated association or organization, while acting

¹ Greenwood City Code, as amended by Ordinance Number 16-001 on February 22, 2016

within the scope of his office or employment, shall in every case also be deemed to be a violation by such corporation, association or organization.

(b) Any officer, agent or other person acting for or employed by any corporation or unincorporated association or organization shall be subject and liable to punishment, as well as such corporation or unincorporated association or organization, for the violation by it of any provision of this Code, where such violation was the act or omission, or the result of the act, omission or order, of any such person.

2. Sec. 10-50. - Required.

Every person engaged or intending to engage in any calling, business, occupation or profession listed in the rate classification index portion of the ordinance from which this section was derived, which is not included in this section but is on file in the office of the municipal clerk, in whole or in part, within the city limits, is required to pay an annual license tax for the privilege of doing business and obtain a business license as provided in this division.

3. Sec. 10-51. - Tax.

(b) Separate license for each place of business required. A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated for classifications at one location, the license tax shall be computed on the combined gross income for the classification requiring the highest rate. A license tax based on gross income shall be computed on the gross income for the preceding calendar or fiscal year, and on a 12-month projected income based on the monthly average for a business in operation for less than one year.

The tax for a new business shall be computed on the estimated probable gross income stated in the license application for the balance of the license year, and at the end of the calendar year, the total license payment based on actual gross receipts shall be due and payable with credit allowed for that amount previously paid. The initial tax for an annexed business shall be prorated for the number of months remaining in the license year. No refund shall be made for a business that is discontinued.

...

4. Wood-Mendenhall Co. v. City of Greer, 88 S.C. 249, 70 S.E. 724, 725

(1911):

"It is true that the painting which is merely incidental to the finishing job of blacksmithing might properly be included in and covered by a license to carry on the business of 'blacksmithing'; but it appears that plaintiff did painting outside of and not connected with the business of 'blacksmithing.' That was a business separate from and independent of that of 'blacksmithing,' and was not covered by the license."

5. Sec. 10-54. - Deductions, exemptions and charitable organizations.

(a) No deductions from gross income shall be made except income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county, taxes collected for a governmental entity, or income which cannot be included for computation of the tax pursuant to state or federal law. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof.

(b) No person shall be exempt from the requirements of this article by reason of the lack of an established place of business within the city, unless exempted by state or federal law. The license official shall determine the appropriate classification for each

business in accordance with the latest issue of the North American Industry Classification System (NAICS) for the United States published by the Office of Management and Budget. No person shall be exempt from this article by reason of the payment of any other tax, unless exempted by state law, and no person shall be relieved of liability for payment of any other tax by reason of the application of this article.

...

B. As to Class E Certification – SC Code Ann. § 58-23-620 (2016)

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

S.C. Code Ann. § 58-23-620 and see exhibit 1

FINDINGS OF FACT

Based upon the evidence presented to us, we make the following findings of fact:

- 1) The Business License Officer for the City of Greenwood, David Price, cited Appellant with a Uniform Ordinance Summons, number 1898, on July 19, 2016, for operating a business in the City of Greenwood without a business license after personal observation of a pick-up in the City of Greenwood and, from the sound and shaking of the truck, performing shredding of the contents of the truck.
- 2) On October 11, 2016 and before the trial on the Ordinance Summons, Appellant promised to pay – and did pay – the 2015 and 2016 business license tax amount under protest. Appellant paid \$90 for each business license year.
- 3) The Appellant timely appealed the determination of the Business License

Official that the Code of Ordinances for the City of Greenwood required Appellant to pay for a business license by letter dated October 11, 2016. Appellant also requested to be heard before City Council in the same notice.

4) Also by letter dated October 11, 2016, the Mayor notified Appellant as to the date and time of the hearing, as well as appeal procedures, in the event of an adverse determination.

5) Prior to the start of testimony and receiving evidence, counsel for Appellant and the Business License Official stipulated to the South Carolina Rules of Civil Procedure for procedure, the South Carolina Rules of Evidence for evidence presentation and agreed that the Appellant bore the burden of proof, by the preponderance of the evidence, that its Class E certificate precluded the imposition of any other business license tax. The parties expressed no objection to the rules of procedure and evidence adopted by Council, and expressed no objection to Appellant bearing the burden of proof.

6) The Appellant's witness described its business operations as involving a truck on an irregular route that operated throughout all counties of South Carolina and within the City of Greenwood. Appellant has 11 to 12 customers within the City of Greenwood. Appellant makes stops at each customer, and picks up paper refuse to recycle from bins Appellant provides. It then shreds the paper on site (in 98% of cases), replaces the bin and moves to the next customer.

7) The Appellant's witness described the main purpose of its business operations as "paper collection and shredding," and stated that it was in the "paper collection business" or that its operation was "primarily document destruction."

8) Some collection bins/pick up receptacles are rented and some are not. Most customers pay a \$35 per pick up fee on an as needed basis.

9) Appellant does possess a valid Class E certificate² for the transportation of freight. See exhibit 3.

10) Appellant's revenue consists of the following, to wit:

- 11 to 12 customers in the City of Greenwood
- State government customers rent pick up bins from \$5.50 to \$6 a month
- Non-State government customers pay a per pick up fee of \$35 on as needed basis
- Approximately \$200 gross per quarter for customers in the City
- The fee does not change based on shred on premises/off premises of customer

11) Section 10-53 of the Code of Ordinances for the City of Greenwood adopts and incorporates a national classification system called the North American Industrial Classification System or NAICS. Transportation carries a code 484. Shredding is in a separate category of "all other support services" and carries a code 561990. See attachments to exhibit 4. Shredding and transportation of freight are distinct categories.

CONCLUSIONS OF LAW

1) The Appellant properly and timely requested an appeal hearing pursuant to Greenwood City Code Section 10-83. In accord with the laws of this State and the Greenwood City Code, more specifically Section 10-83, the Council has both personal and subject matter jurisdiction to hear this matter.

² Actual "Class E certificate" is a Class E-1 certificate. No witness could explain the difference between a Class E or Class E-1, but for purposes of this proceeding the Class E-1 was treated as a Class E.

2) All parties and their counsel were properly notified of Appellant's appeal, as well as date, time and place of the hearing. Furthermore, no party objected to notice. Each party had competent and prepared counsel to represent them.

3) The Business License Official's decision to require the business license for calendar years 2015³-2016, for those activities distinct, separable, outside of and not related to the transportation of freight, was lawful and proper.

4) Appellant conducts business operations in the City of Greenwood that are distinct, separable and not related to the general business of freight transportation, to wit:

- Document/paper collection
- Paper shredding
- Bin/collection receptacle rentals

5) The above described business operations are distinct and separable from the general business of freight transportation. By its own admission, Appellant is in the document destruction business, a shredding activity.

6) The NAICS defines transportation and shredding as distinct activities; therefore, shredding is not a subsidiary activity of freight transportation.

7) We are convinced, by the preponderance of the evidence, that, as conducted by Appellant in the City of Greenwood, shredding is not a subsidiary activity of transportation. The decision of the Business License Official should be, and is, upheld and affirmed. The Class E certificate does not preclude the City of Greenwood from collecting a business license tax upon the gross income derived from those business operations not related to freight transportation because the Appellant is engaged in multiple business operations not incidental to the transportation of freight. The business operations of collecting paper in bins provided for the

³ Calendar year 2015 is included based upon a warning issued in 2015.

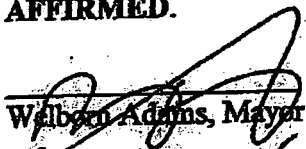
purpose of collection and then shredding the paper either on or off site are separate and distinct business activities from the general business of transportation under Appellant's Class E certificate.

{Remainder of page left intentionally blank. Signatures appear on the following page.}

DECISION

NOW, THEREFORE, for the reasons set out above and by the preponderance of the evidence, IT IS ORDERED that the decision of the Business License Official to require Appellant to obtain a business license for those operations not related to the transportation of freight is

AFFIRMED.

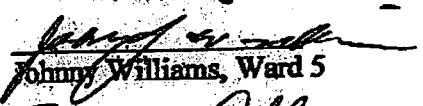

Wilborn Adams, Mayor

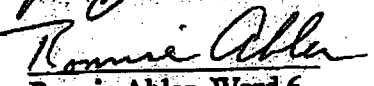

Linda Edwards, Mayor Pro Tem, Ward 2


Nikki Hutto, Ward 1


Betty Boles, Ward 3


Kenn Whitshire, Ward 4
WHITSHIRE


Johnny Williams, Ward 5


Ronnie Ables, Ward 6

AND IT IS SO ORDERED.

GREENWOOD CITY COUNCIL

October 17, 2016 - 5:31 p.m.

MINUTES

PRESENT

Council Members: Mayor D. Welborn Adams, Niki Hutto, Linda Edwards, Betty Boles, Kenn Wiltshire, Johnny Williams, And Ronnie Ables; Assistant City Manager Julia Wilkie, City Clerk Steffanie Dorn, Fire Chief Strange, Police Chief Gerald Brooks, Personnel Specialist Lynn Walker, Public Works Horticulturist Ann Barklow, Sanitation Superintendent Robert Anty, Kelly McWhorter, Regional Tourism & Visitors Bureau Director, and City/County Planning Director Phil Lindler; Adam Benson from The Index Journal.

ABSENT

City Manager Charles Barrineau.

CALL TO ORDER

Mayor D. Welborn Adams called the meeting in Council Chambers to order at 5:31 p.m.

Councilor Linda Edwards gave the invocation.

QUARTERLY NEW
STAFF
INTRODUCTIONS

The following staff were introduced to Council:
Lara Hudson, Uptown Greenwood Development (Manager)
Dwayne Laster, Finance Department
Elliott Layne, Fire Department
(Larry) Chez Gosnell, Fire Department
Sarah Bradley, Public Works Department
Raymond Durant, Sanitation Department
(absent) Reynolds Satterfield, Police Department

STATEMENT AND
QUORUM

Mayor Adams read the following statement, "In accordance with the Freedom of Information Act, Chapter 4, Title 30, Code of Laws of South Carolina, 1976, an agenda has been posted on the front door of City Hall and notification of this meeting has been given to the news media."

City Clerk Steffanie Dorn confirmed that a quorum was present.

APPROVAL OF
CONSENT AGENDA

Mayor Adams asked for a motion to approve the consent agenda.

A motion to approve the consent agenda was made by Betty Boles, seconded by Kenn Wiltshire.

The motion passed unanimously.

RECOGNIZE

Kelly McWhorter,
Greenwood
Regional
Visitors and
Tourism 2016
America In
Bloom.

Under the only Public Appearance, Assistant City Manager Julia Wilkie recognized Kelly McWhorter, Regional Tourism & Visitors Bureau Director, who thanked Council for their approval and endorsement of the City's participation in the America In Bloom program. She informed Council that the City of Greenwood received four out of five blooms for their first year in competition and the Uptown's topiary display project won the Signature Achievement Award for Floral Display. Kelly then recognized Ann Barklow, Public Works Horticulturist, thanked over 600 volunteers that worked on the project, discussed plans for improving the City's chances next year, and took a picture of the award with City Council.

CONSIDER

Ordinance No.
16-019 Amending
Ordinance 15-
040, the City of
Greenwood
General Fund
Budget for 2016.

Under the only Public Hearing, Assistant City Manager Julia Wilkie reviewed the proposed budget amendment to reflect funds given by the State and line items of expenses for body-worn cameras and equipment.

No one spoke for or against the proposed ordinance.

There was no discussion from Council.

(2nd reading)

A motion to accept Ordinance 16-019 was made by Johnny Williams, seconded by Niki Hutto.

The motion passed unanimously.

CONSIDER

Ordinance No.
16-018
Authorizing the
Renaming of
Andrews Avenue
to Andrews
Avenue North and
Andrews Avenue
South.

Under Old Business, Assistant City Manager Julia Wilkie reviewed the GIS Department's request to rename Andrews Avenue to Andrews Avenue North and South.

There was no discussion from Council.

A motion to approve Ordinance 16-018, was made by Betty Boles, seconded by Niki Hutto.

(2nd reading)

The motion passed unanimously.

CONSIDER

Ordinance No.
16-020 Annexing
Property Owned
by Greenwood
School District
50.

Under New Business, Assistant City Manager Julia Wilkie discussed annexing land belonging to School District 50, adjacent to Springfield Elementary School, for a transportation center/bus facility. They're requesting to annex the public road to keep consistency with service delivery, but will continue to maintain it. She noted that School District 50 plans to begin grading that site the week of October 24th and CPW will provide electricity.

There was no discussion from Council.

A motion to annex property owned by Greenwood School District 50 was made by Johnny Williams, seconded by Ronnie Ables.

(1st reading)

The motion passed unanimously.

CONSIDER

Resolution No. 16-007 to Accept Property from Greenwood School District 50.

Assistant City Manager Julia Wilkie discussed accepting property owned by Greenwood School District 50 located at Magnolia Park and a strip of land adjacent to the Grace Street Park. With the acceptance of these properties, the City will be adding some buildings on the Magnolia Park property site to the City's insurance.

There was no discussion from Council.

A motion to accept Resolution No. 16-007 was made by Kenn Wiltshire, seconded by Betty Boles.

The motion passed unanimously.

CONSIDER

Resolution No. 16-008 to Reaffirm the Importance of On The Job Safety for the City of Greenwood.

Assistant City Manager Julia Wilkie discussed the requirement from the City's insurance company that a resolution regarding job safety be approved annually. She then provided a brief comparison of the City's incidents and liability costs of 2016 to 2015. The Safety Committee is working to update risk management policies and focus on staff training related to specific accidents.

There was no discussion from Council.

A motion to accept Resolution No. 16-008 was made by Niki Hutto, seconded by Kenn Wiltshire.

The motion passed unanimously.

CONSIDER

Consider Resolution No. 16-009 to Request the South Carolina Department of Transportation Install an Exclusive Pedestrian Phase Countdown at US 25 Main Street and SC 10 Maxwell Avenue.

Assistant City Manager Julia Wilkie informed Council of requests for a 40-second pedestrian crosswalk at the corner of Main Street and Maxwell Avenue because of several inquiries from the public regarding the crossing being a little dangerous. The SCDOT required Council to endorse an exclusive 40-second pedestrian phase by resolution.

DISCUSSION:

Julia confirmed to Mayor Adams that the crosswalk at the corner of Main Street and Maxwell Avenue, on the McCaslan's side, is the SCDOT's main concern from other crosswalks.

There was no further discussion.

A motion to accept Resolution No. 16-009 was made by Kenn Wiltshire, seconded by Niki Hutto.

The motion passed unanimously.

CONSIDER

Authorizing Mayor and Police Chief to Sign Agreement for Victim's Services with the County of Greenwood.

Assistant City Manager Julia Wilkie recognized City Clerk Steffanie Dorn who updated Council on the staffing issue in the City's Victims Assistance Office. Because Greenwood County's Victims Assistance Office staff backs up the City's on occasion, and vice versa, she asked for Council's positive consideration to move their cases and funding to the County who provides the same service for Ninety Six and Ware Shoals. She informed them that there will be no added costs to the City.

DISCUSSION:

Steffanie Dorn confirmed to Councilor Wiltshire that it will be easier for everyone to have only one Victims Assistance Office in a centralized location.

There was no further discussion.

A motion to authorize the Mayor and Police Chief to sign an agreement for Victims Services with the County of Greenwood was made by Kenn Wiltshire, seconded by Niki Hutto.

The motion passed unanimously.

**CITY MANAGER
COMMENTS**

City Clerk Steffanie Dorn updated Council on the Police Department body-worn camera software status. Most funds from the State were spent on software that's scheduled to be installed the first week of November. There are 10 body cameras and 10 in-car cameras that were ordered and will be synced for a seamless picture. An additional 6 in-car and body cameras, with their equipment, will be installed by the end of October and operational by the end of the year.

Assistant City Manager Julia Wilkie reminded Council of the Safety Dinner, 6 o'clock tomorrow evening, at the Greenwood County Farmers Market. Oktoberfest is Thursday, October 20 on Oregon Avenue, and the final public forum on the proposed Capital Sales Tax will be 11 a.m., October 22nd, at Fire Station 1.

**CITY COUNCIL
COMMENTS**

Councilor Betty Boles polled Council Members for their attendance to the GLEAMNS 50th Anniversary program on Thursday, October 20, starting at 5:30 p.m.

The meeting recessed at 6 p.m., and reconvened at 6:30 p.m.

**HEARING FOR
BUSINESS LICENSE
APPEAL OF SHRED
WITH US, LLC.**

Mayor Adams said, "Let's call this, um, here in order. Mr. Crowe and Mr. Wise; Mr. Wise, Mr. Crowe, will stipulate the South Carolina rules of procedure and evidence?"

RAUCH WISE

"Will do."

MAYOR ADAMS

"Right."

RAUCH WISE

"As, um, as Tripp said, as nearly as we can in a situation such as this."

MAYOR ADAMS

"Yes."

RAUCH WISE

"Well, at least we'll abide by it in spirit."

MAYOR ADAMS

"There we go. That's all we ask. Um, and, let's see, Mr. Wise, you, you'll be bearing the burden of the preponderance of the evidence as proof. And, um, I don't know how you want to- if you want to start it with an opening statement, or do you want to present your case?"

RAUCH WISE

"Well, I wanna, I really want to start with an opening statement. That's when I'll start presenting some items to them, um, the body. Um, first of all, let me just pass these- these around; we have one for everybody."

Uh, that is a copy of his, uh, certificate we will testify on momentarily. Then, I want to pass around a copy of the statute involved that we claim exempt, um, from the business license, uh, fee. And then I want to pass around the Attorney General's opinion, and hopefully there will be one left over on the far end for me. The Attorney General's opinion interpreting that statute, um, in a request from Richland County where Richland County asked about taxing a business that had a certificate such as this and the Attorney General, um, op(inion) said essentially that, um, you can't do it. And that states our position.

The South Carolina statute involved has no exception, except one, and that one exception is that his home county of his operation does, is, permitted to tax him. That's the only exception. It doesn't say, 'if you do some other residuary work with your Class E Certificate, um, you- you can tax that'. It essentially says you that, (you have one left over?) um, at any rate, that's basically our position of his taxes exemption. The Attorney General's Office says it's exempt. Um, I understand Ms. Dorn's position is. There are some services involved, um, you know, how you value that, or tax that, um, wouldn't go anyway. Um, I will have, um, Mr. Ragsdale testify basically about his business. So, when you get a report, I'll give the body this background on this statute for when he testifies, so you can listen to his testimony on the statute, right? So, we hope you respond(inaudible)"

MAYOR ADAMS

"Yes, sir."

DANNY CROWE

"Do you want me to use this microphone? I feel, I feel like a lounge singer with this microphone in my hand."

Under Mr. Wise's theory, under the Shred With Us theory, they can operate a food truck out of the back of their, um, transportation vehicle and not have to pay a City business license because they had this Certificate E. Um, under Mr. Wise's theory, under the Shred With Us theory, they can sell clothes out the back of their truck and not have to have a separate business license. I don't think that was ever the intent of the General Assembly when they authorized these kinds of Certificate E's.

The City acknowledges that Shred With Us does not owe the City a business license tax for the portion of its business that is a transportation activity, that's covered under the certificate. But the rest of the business activity, the collection and shredding of paper on site in the City, is a separate, independent business activity for which Shred With Us should pay the City a business license. That's our case, pure and simple, and that's what we hope to show.

This business has two principle business activities, or business operations. One is the collection and shredding of paper onsite at his jobs in Greenwood. The other is transporting that shredded paper back to West Columbia, its home office. The, um, Greenwood agrees that they don't owe a business license tax on the portion of their income from their customers that's related to transportation, and they get to apportion it, but we do say that they owe business license tax on their portion of their income that's related to the collection and shredding of the paper. So, that's what we're really talking about here; how far can this certificate logically go?

We think, and we think got support from the Attorney General's opinion that I attached to the memorandum that says, 'unless the activities are directly related.', they're not all the activities are not excused by the Certificate E. That was (a) 1962 opinion of the Attorney General. The Attorney General's opinion, that Mr. Wise handed up to you, doesn't deal with this issue of multiple business operations. It just has a transportation company that took the position its activities were protected by Certificate E. There are no facts in there from Richland County that say it was doing any other type of activity.

So, that's a different situation that we have here. Um, so I, I don't want to repeat myself, but that is our case, simply stated. Thank you."

RAUCH WISE "I'd like to call Mr. Ragsdale to speak. Thank you. Please give us your full name."

ERIC RAGSDALE "um, Erick Ragsdale."

RAUCH WISE "And where do you live?"

ERIC RAGSDALE "Um, West Columbia, South Carolina."

RAUCH WISE "And, um, what business are you in?"

ERIC RAGSDALE "Um, we're in document destruction."

RAUCH WISE "Alright. And what business is it again?"

ERIC RAGSDALE "Document destruction."

RAUCH WISE "You'll have to move that mic a little closer to you."

ERIC RAGSDALE "Document destruction industry."

RAUCH WISE "Let's do it a little closer."

ERIC RAGSDALE "Let's do this. (moving the microphone stand closer to him) How about that? There you go."

RAUCH WISE "Yeah, document destruction industry, right? How did you get in that business?"

ERIC RAGSDALE "Um, we seen a need for economics, um, for the service. As far as what it would provide for the communities that we serve, as well as having a footprint of being to provide over our national competition for different municipalities and states, so that, um, it wouldn't be a, a service, it would be high for those, those, those businesses."

RAUCH WISE "So basically, what do you add and what, how many communities do you operate in?"

ERIC RAGSDALE "We service every county and city in South Carolina."

RAUCH WISE "Thank you. Um, your home office is where?"

ERIC RAGSDALE "West Columbia."

RAUCH WISE "And pay, yourself, a license fee in West Columbia?"

ERIC RAGSDALE "Yes, sir."

RAUCH WISE "And it's based upon what?"

ERIC RAGSDALE "Gross."

RAUCH WISE "Gross income statewide?"

ERIC RAGSDALE "Yes, sir."

ERIC RAGSDALE	"Um, impact is probably about 50, 60,000 pounds, probably, in a quarter. So, we probably, we probably save in the landfill, we probably save, probably, a million tons."
RAUCH WISE	"And that's statewide?"
ERIC RAGSDALE	"Statewide."
RAUCH WISE	"Okay. So, and that would be true for all the communities you're in?"
ERIC RAGSDALE	"Yes, sir."
RAUCH WISE	"And how long you been in the business?"
ERIC RAGSDALE	"Um, since 1999; about 17 years."
RAUCH WISE	"And we shown the Class E Certificate that you have?"
ERIC RAGSDALE	"Yes, sir."
RAUCH WISE	"And you got that for what reason?"
ERIC RAGSDALE	"Well, when we started, it was very disadvantageous because everywhere we going, everybody was hitting us for a business license. So we contact the Attorney General's office, explained our circumstances, and they recommended."
DANNY CROW	"Your Honor, I object because the Attorney General..."
RAUCH WISE	"That would be hearsay."
ERIC RAGSDALE	"Okay."
RAUCH WISE	"You ultimately decided to go get a Class E Certificate?"
ERIC RAGSDALE	"Correct. Yes, sir."
RAUCH WISE	"Alright. And, um, are you paying a license fee anywhere else?"
ERIC RAGSDALE	"Um, for the Department of Transportation. Correct."
RAUCH WISE	"Yeah, um, are you paying a business license fee outside of West Columbia?"
ERIC RAGSDALE	"No, sir."
RAUCH WISE	"Alright. This is the first place that has come up as an issue?"
ERIC RAGSDALE	"No, sir."
RAUCH WISE	"Um, this is the first place we've gone this far with this?"
ERIC RAGSDALE	"Yes, sir."
RAUCH WISE	"Okay. Um, so, what do you, what do you primarily do in your business?"
ERIC RAGSDALE	"Primarily?"
RAUCH WISE	"Yes."
ERIC RAGSDALE	"Um, primarily, we do destruction."
RAUCH WISE	"Alright. And, um, how do you, um, how do you get it back to you, to, um, where you are in West Columbia?"
ERIC RAGSDALE	"Um, transportation."
RAUCH WISE	"And, what kind of trucks do you use?"

RAUCH WISE "Okay. Then tell us, if you would, um, how, basically, your business works."

ERIC RAGSDALE "Well, basically, what we do is, we provide a receptacle which we upfront the cost, which is about \$120. Um, we set that receptacle and the client or the customer..."

RAUCH WISE "And issue what size?"

ERIC RAGSDALE "It can be anywhere from a 45 to a 98 gallon."

RAUCH WISE "Okay."

ERIC RAGSDALE "Um, we put that in there and we put that customer on a schedule..."

RAUCH WISE "Well, let me backup. I don't know if anybody can relate that quick. How big is a 45 gallon?"

ERIC RAGSDALE "A 45 gallon would be 3 foot by 12 foot by 19 inches."

RAUCH WISE "Right."

ERIC RAGSDALE "And so a 98, so the broad spectrum, the biggest would be a Herbie Curbie that you see on the side of the road, which is about a 300-pound receptacle."

RAUCH WISE "Okay. And how does, how does that, how does your business works?"

ERIC RAGSDALE "Well, as far as, we put the customer on a schedule, which is irregular based on their needs. Um, we go in, we provide their receptacle for free, um, which costs us upfront about \$120. Um, and at that point, when they're scheduled to go in and we collect it, bring it down to the truck, we can shred it, or we can move off. But we shred it and then we take it back to the facility, um, recycling center, and we sell for the proceeds."

RAUCH WISE "You can, the capability of shredding in the truck?"

ERIC RAGSDALE "Yes, sir."

RAUCH WISE "And some customers prefer shredding and some customers, they don't care?"

ERIC RAGSDALE "Yes, sir."

RAUCH WISE "Alright. Um, any particular group that prefers your shredding on their premises?"

ERIC RAGSDALE "Um, well, mainly it would be people like the Secret Service, the FBI, people who have a tendency to want things done in a more classified manner. Um, we have the capability to do a reduction where they can be completely abbreviated, um, based off these..."

RAUCH WISE "And, in what do you do with the, with what you have once it's shredded, or transported, back to um..."

ERIC RAGSDALE "...it is recycled."

RAUCH WISE "Recycled?"

ERIC RAGSDALE "Yes, sir."

RAUCH WISE "So, do you, have any impact in, um, the local landfill?"

ERIC RAGSDALE "We do."

RAUCH WISE "And what is that impact?"

ERIC RAGSDALE "Um, CDL, non-CDL, 30 feet, 30 GBWs and, um, 26 GBW."

RAUCH WISE "Um, (they will probably be disappointed with this question) but how much business you actually have in Greenwood this present time?"

ERIC RAGSDALE "Um, probably, um, I would say we might net \$200 a quarter."

RAUCH WISE "Thanks. So how many customers does that involve?"

ERIC RAGSDALE "Um, probably 11 or 12 irregularly; mainly State customers."

RAUCH WISE "And what's the fee that you have on your business?"

ERIC RAGSDALE "\$35."

RAUCH WISE "Of what?"

ERIC RAGSDALE "It's per service when we actually service that facility."

RAUCH WISE "So, it's \$35 every time you come pick it up?"

ERIC RAGSDALE "Yes, sir."

RAUCH WISE "Is that correct?"

ERIC RAGSDALE "That's correct."

RAUCH WISE "Thank you. Um, and, you haul all those back to Columbia?"

ERIC RAGSDALE "Yes, sir."

RAUCH WISE "Thank you. Some shredded and some not?"

ERIC RAGSDALE "Mmm, yes, sir."

RAUCH WISE "That would be correct?"

ERIC RAGSDALE "Correct."

RAUCH WISE "Is there any realistic way of apportioning any of this into different divisions like collection, or shredding, and transportation?"

ERIC RAGSDALE "Generally, because, not..."

RAUCH WISE "Generally?"

ERIC RAGSDALE "Well..."

RAUCH WISE "Tell me what you mean by that."

ERIC RAGSDALE "So, if, if, if our fee is \$35 (I'll use the State; we have a State contract), we charge a rental for that bin, which should be for a small, medium, or large. It can be anywhere from \$5.50 to \$6."

RAUCH WISE "You charge the State a rental?"

ERIC RAGSDALE "Yes, sir. Rental flat fee."

RAUCH WISE "Alright."

ERIC RAGSDALE "We upfront the cost for that bin which is \$120. It takes us 12 months to recoup what we put upfront. There's \$25 that comes out from our transportation fee. So, all said and done, we're relying on the back end of the recycling material which comes, starts from whether, say the daily route starts in Saluda."

RAUCH WISE "um, hmmm..."

ERIC RAGSDALE	"We finished the route up in Clinton. Whatever's collected, whether it's a ton, if we can sell that paper for a ton, and it brings in that market at that particular month that we drop it, would be \$80. So, that \$80 is really where we banking on our commodity of, of, of profit."
RAUCH WISE	"You hope to collect this paper for resale?"
ERIC RAGSDALE	"Correct."
RAUCH WISE	"Thank you. Um, and you get only paper products?"
ERIC RAGSDALE	"Pretty much."
RAUCH WISE	"Thank you. You don't do any shoes out of the back of your truck?"
ERIC RAGSDALE	"No, sir."
RAUCH WISE	"So, you you don't have any meals or anything like that?"
ERIC RAGSDALE	"No, sir."
RAUCH WISE	"Okay. Um, you don't dump any of it in Greenwood?"
ERIC RAGSDALE	"No, sir."
RAUCH WISE	"Um, you don't use the landfill at all here?"
ERIC RAGSDALE	"No, sir."
RAUCH WISE	"Thank you. Or any of the green boxes anywhere?"
ERIC RAGSDALE	"No, sir."
RAUCH WISE	"You, you want to carry it back to Columbia where you are?"
ERIC RAGSDALE	"Yes, sir."
RAUCH WISE	"Okay. Is that, which you would resale that?"
ERIC RAGSDALE	"Yes, sir."
RAUCH WISE	"Okay. You said earlier that the boxes are free. What do you mean by that? (inaudible)"
ERIC RAGSDALE	"Where there's, like, there's two different customers. Mainly, 90% of the customers are going to get that box for free. Okay?"
RAUCH WISE	"Is the bigger volume (inaudible)?"
ERIC RAGSDALE	"Well, no, it's not necessarily that. It's just how you negotiate the contract."
RAUCH WISE	"Okay."
ERIC RAGSDALE	"For the State, for example, the it was agreed upon, rather than charging them for the shredding, they just charged for the rental of the receptacle which."
RAUCH WISE	"So the boxes in Greenwood are what? In the City of Greenwood, are there any charges for those?"
ERIC RAGSDALE	"No. No customer gets charged."
RAUCH WISE	"Not at all?"
ERIC RAGSDALE	"Except in the State."
RAUCH WISE	"They're all free?"
ERIC RAGSDALE	"Free zone."

RAUCH WISE	"Category?"
ERIC RAGSDALE	"Yes, sir."
RAUCH WISE	"So there's no, no..."
ERIC RAGSDALE	"Well, I would say that there is probably a customer, State customers that would fall right inside the City limits, maybe one or two, that would be, have a rental fee. Yes, sir."
RAUCH WISE	"Alright. I'd like you to answer any questions Mr. Crowe may have."
DANNY CROWE	"Mr. Ragsdale, Imma- Imma sit down, if that's alright, so that I'm not standing right over him."
MAYOR ADAMS	"Yes, sir."
DANNY CROWE	"Um, (I have) a couple of questions about, um, your activity in the City of Greenwood, based on what you just said. So, I understand it you said you have 11 or 12 customers inside the City limits of Greenwood?"
ERIC RAGSDALE	"Approximately."
DANNY CROWE	"Alright. And who are these customers, typically?"
ERIC RAGSDALE	"Um, it would be business to business customers."
DANNY CROWE	"Alright. And you have some government, State government, customers I think you said?"
ERIC RAGSDALE	"Yes, sir."
DANNY CROWE	"And for the State Government customers, and perhaps others, if I understood you, you charge a rental bin fee?"
ERIC RAGSDALE	"For the State."
DANNY CROWE	"The State. So somewhere in the City you are charging the State government offices here a rental bin fee, right?"
ERIC RAGSDALE	"Um, hum."
RAUCH WISE	"You, you, you have to speak up and say..."
ERIC RAGSDALE	"I'm sorry, yes, sir..."
RAUCH WISE	"...and not nod your head..."
ERIC RAGSDALE	"Yes, sir."
RAUCH WISE	"Okay. No problem."
DANNY CROWE	"Alright. And the other customers in the City of Greenwood, um, whether or not, you charge them a rental bin fee, you are charging them \$35 every time you come for a pickup. Is that right?"
ERIC RAGSDALE	"It varies. The price varies. Yes, sir."
DANNY CROWE	"Alright. And how many times would you pick up, let's say, during a month, or during a year?"
ERIC RAGSDALE	"Um, varies. Um, customers need to be anywhere from a week to up- to up 12 weeks. There's some customers (that) can be at 6 months; one time."
RAUCH WISE	"Alright. So, some customers that are 12 week customers, you can pick up 4, maybe 5, times a year? Is that what you're saying?"
ERIC RAGSDALE	"Four. Yes, sir."

DANNY CROWE "Four. And you said you netted probably \$200 a quarter?"

ERIC RAGSDALE "No, sir. He asked me what was probably the most we made out of Greenville."

DANNY CROWE "Greenwood?"

ERIC RAGSDALE "Yeah, Greenwood."

DANNY CROWE "For a particular customer?"

ERIC RAGSDALE "No, for- as a whole."

DANNY CROWE "Alright. So, as a you're saying you netted \$200 a quarter?"

ERIC RAGSDALE "No. I'm not saying I netted. He asked me how much volume we probably do out of Greenville. And, probably out of that, would be about \$200 and that's a speculation based of the \$35 calculation I have in my head."

DANNY CROWE "Alright. So, six, or seven, times you come and charge \$35?"

ERIC RAGSDALE "I charge- we charge \$35 for the customer, which is in a conglomerate of many customers within a region from West Columbia, up to, um, Clinton, because we have irregular routes. And we may come to Greenwood every two weeks, but we might only pick up one customer out the City of Greenwood, maybe two in the County of Greenwood."

DANNY CROWE "If your net is \$200, what's your gross?"

ERIC RAGSDALE "Well, I'm, I'm not saying it's net. I didn't say my net. I said the conglomerate of business would be about \$200 and that's a calculation off now, if you start taking away the expenses, you're going to get net, which is far less because."

DANNY CROWE "I thought you said net, that's why I said net."

ERIC RAGSDALE "No, sir. No, sir."

DANNY CROWE "Alright. What's the gross then?"

ERIC RAGSDALE "Um, about \$200 of the customers on a quarterly basis."

DANNY CROWE "Now, as I understand, you have these bins, so you- for the- for your Greenwood customers, these are 11 or 12. You supply a bin, you may or may not charge a fee, depending on whether they're at the State or not, and you periodically collect paper from those bins, is that right?"

ERIC RAGSDALE "Mmm, yes, sir."

DANNY CROWE "So, to collect the paper, you drive your truck into Greenwood to that business, go in the business, roll out the bin, roll it to your truck, put it on this little elevator, and it goes up and gets shredded, or not?"

ERIC RAGSDALE "Or not, yes, sir."

DANNY CROWE "Alright. If it's not shredded, what form is it in?"

ERIC RAGSDALE "It is a whole."

DANNY CROWE "But you collect it from all your customers in Greenwood?"

ERIC RAGSDALE "Correct."

DANNY CROWE "Right? And you may or may not shred it?"

ERIC RAGSDALE "Correct."

DANNY CROWE "But do you admit that you do business in the City of Greenwood?"

ERIC RAGSDALE "Oh, yes, sir."

DANNY CROWE "You're just saying, as I understand it through Mr. Wise, that this Certificate E protects you from having to pay a business license, right?"

ERIC RAGSDALE "I don't know about protection; I believe it precludes."

DANNY CROWE "Thank you. That's all I have."

RAUCH WISE "I don't have any reservations, if Council have some other questions also."

COUNSELOR WILTSHIRE "What percentage is shredded, against unshredded?"

ERIC RAGSDALE "Percentage wise? As a whole? As in Greenwood?"

COUNSELOR WILTSHIRE "Generally."

ERIC RAGSDALE "Generally? Um, for us as a company, or for in, in, industry?"

COUNSELOR WILTSHIRE "You, specifically?"

ERIC RAGSDALE "Um, probably, it would be 98% that we do shred. And the reasons for it is logistics of the cost to collect is far more, um, cumbersome and costly for I see my competitors who they'll walk in and grab the stuff and put it back of a box truck and swap (the) bin around. It takes that operator 15 to 30 minutes per stop, where it would cost us probably 6 minutes, average, for the time we pull up, time we go in the business, time we come out, time we pull off."

COUNSELOR WILTSHIRE "Well it's basically a roll cart, like our big blue recycling."

ERIC RAGSDALE "Yes, sir."

COUNSELOR WILTSHIRE "...roll cart, isn't it?"

ERIC RAGSDALE "Yes, sir."

COUNSELOR WILTSHIRE "Is that the biggest item?"

ERIC RAGSDALE "Yes, sir."

COUNSELOR WILTSHIRE "Is that the biggest?"

ERIC RAGSDALE "Yes, sir. So, if (you) roll into that customer, and it's \$35, and you're waiting on the back end for the recycling, and they got this much paper in there, but they're on a schedule that they predetermine, then the profits start minimizing because we do rely heavily on recycling it."

COUNSELOR WILTSHIRE "And the recycling people pay you, if it's mixed colors, gray, beige, or white? Or do you get more money if you..."

ERIC RAGSDALE "No. It's..."

COUNSELOR WILTSHIRE	"...sort them?"
ERIC RAGSDALE	"It's pretty much assorted office paper which is volatile. In other words, it's- it can based on the market and how much contamination would be in it because we don't sort."
COUNSELOR WILTSHIRE	"Right."
COUNSELOR HUTTO	"Do you charge more to shred from your truck than just to pick up?"
ERIC RAGSDALE	"No, sir. No, ma'am."
COUNSELOR HUTTO	"So, it's the same flat fee, no matter whether..."
ERIC RAGSDALE	"Yes, ma'am."
COUNSELOR HUTTO	"...it's shredded..."
ERIC RAGSDALE	"Yes, ma'am."
COUNSELOR HUTTO	...or unshredded?"
ERIC RAGSDALE	"Yes, ma'am."
COUNSELOR WILTSHIRE	"And the end user of the recycling make more paper out of it, alright? Just turn- turns it into pulp?"
ERIC RAGSDALE	"Correct."
COUNSELOR BOLES	"Did I understand you to say you- you do not take anything to the landfill?"
ERIC RAGSDALE	"No, ma'am."
COUNSELOR BOLES	"But you said, you save the landfill \$X00, or something like that..."
ERIC RAGSDALE	"Landfill..."
COUNSELOR BOLES	"...what you stated about the landfill?"
ERIC RAGSDALE	"We saved, um, so many tons every year in recycling because everything that we do gets recycled back, even though we're making a commodity, or a financial gain, off of it..."
COUNSELOR BOLES	"umm, hum..."
ERIC RAGSDALE	"...it is put back into a tissue product."
MAYOR ADAMS	"Alright. Any more questions?"
RAUCH WISE	"Particularly, from that standpoint, um, (inaudible) so you found it easier to, to shred at the place, or on the go, as opposed to hauling the paper product back to Columbia, and loading off and shredding it again?"
ERIC RAGSDALE	"Yes, sir."
RAUCH WISE	"Alright, and did you say that you roughly half the time of your competitors?"
ERIC RAGSDALE	"Yes, sir."
RAUCH WISE	"And that's basically more efficient for you?"
ERIC RAGSDALE	"Yes, sir."
RAUCH WISE	"As much as it is convenient for your customers, it's also very convenient for you?"
ERIC RAGSDALE	"Yes, sir."

RAUCH WISE "Okay. Thank you."
 MAYOR ADAMS "Alright. Are there any more witnesses?"
 RAUCH WISE "That's all the witnesses we have."
 MAYOR ADAMS (Speaking to Mr. Ragsdale) "You can be excused, unless Mr. Crowe has another question?"
 DANNY CROWE "I do not."
 MAYOR ADAMS "Okay. You can come down."
 DANNY CROWE "Umm, Mr. Mayor, the City would call Steffanie Dorn as our first witness. Do you mind if I sit down?"
 MAYOR ADAMS "Not at all."
 DANNY CROWE "(inaudible) I'm gonna ask you some questions, Ms. Dorn, for the record because we're trying to..."
 MAYOR ADAMS "Mr. Crowe, let me, let me just...we didn't swear that witness- that in, would you?"
 RAUCH WISE "All that testimony was true and correct, Mr. Ragsdale?"
 ERIC RAGSDALE "Yes, sir."
 MAYOR ADAMS "Do you want to swear her in?"
 DANNY CROWE "You want me to swear her?"
 MAYOR ADAMS "Yeah."
 DANNY CROWE "Ms. Dorn, do you swear that the testimony you shall give shall be the truth, the whole truth, and nothing but the truth, so help you God?"
 STEFFANIE DORN "I do."
 DANNY CROWE "Ms. Dorn, I'ma ask you some questions; some for the record. I think Council knows the answers to some of these questions but, just for the record, in case this case goes any higher, umm, into the court system. What is your full name?"
 STEFFANIE DORN "Steffanie Campbell Dorn."
 DANNY CROWE "And what is your position with the City of Greenwood?"
 STEFFANIE "Finance Director."
 DANNY CROWE "Do you also function as the license official for the City, as that term is used in the business license section of the City code?"
 STEFFANIE DORN "Yes, I do."
 DANNY CROWE "Are you responsible for administration of the business license and business license tax?"
 STEFFANIE DORN "Yes, I am."
 DANNY CROWE "Um, are you familiar with a business called Shred With Us?"
 STEFFANIE DORN "Yes, sir."
 DANNY CROWE "Let me ask you, what are, in the business licensing world, what are multiple business operations, or multiple business activities?"
 STEFFANIE DORN "They are, um, multiple types of business that are conducted, um, at one location."

For example, um, we have a business in town is it okay if I use a specific business name?"

DANNY CROWE "Sure."

STEFFANIE DORN "Citizens Trust. They, um, sell insurance, they sell real estate, and they conduct property management operations. So, all of those are multiple business operations that are being conducted in one place, and they have different classifications for audit purposes."

DANNY CROWE "Alright. How does the business license of provisions of the City Code address these multiple business operations, or multiple business activities?"

STEFFANIE DORN "Our ordinance requires that a separate license is requ(ired)- is, must be obtained for each place of business and for each classification for business conducted at one place. And so, they're requ(ired)- each business (a business like Citizens Trust), is either required to obtain three separate business license, um, at each separate rate, or they can choose to obtain one license and pay at the highest rate."

DANNY CROWE "Is that section 10-51b of the City Code?"

STEFFANIE DORN "Yes, sir, it is."

DANNY CROWE "What is, um, NAICS Code? What is NAICS? N-A-I-C-S?"

STEFFANIE DORN "It is the North American Industrial Classification System and we use it to determine what rate we put a business in. Um, it's a system used across, obviously, North America to classify all industries and it's, um, standardly used by the IRS on tax return forms."

DANNY CROWE "Does the, um, City of Greenwood Business License Ordinance use the NAICS system?"

STEFFANIE DORN "Yes, sir, we do."

DANNY CROWE "Is that in, um, Section 10-53 of the...?"

STEFFANIE DORN "Yes, sir, it is."

DANNY CROWE "...the City Code? Alright. Um, can you tell the Council really how NAICS works? What, what, what are the classifications? How that works?"

STEFFANIE DORN "Businesses are classified, um, in similarly situated businesses. Um, for example, contractors are all in one particular NAICS Code and then they're broken down. They, they have a general code, um, that's a two-digit code, and then they go up as much as six different digits to further classify the businesses based on what type of construction. They, um, they do- and um, this is, um, like I said, a standard system used across- to classify all industries to be able to report information, um, on those industries."

DANNY CROWE "And then on our City Code... how'd, how does that code use the classifications?"

STEFFANIE DORN "So the classifications system is then converted to determine what rate a business must, um, obtain their business license at. And, um, those rates are based on IRS classification, um, statistical information based on profit margin. So, the theory is that the more, the higher a business' profit margin, the higher their business license rate classification are."

And we have seven standard rates and one, um, an eighth rate that catches some of our odd businesses, or businesses that have rates that are set by State Code."

DANNY CROWE "Um, the case of a business that's in the document shredding service, what would be the classification under the NAICS Code? Do you know?"

STEFFANIE DORN "Under our, um, classification system, which is the NAICS, we would classify that particular business as a, um- excuse me while I get my reference in front of me. Um, it is- it is under classification of 'All other support services'. Um, specifically, they have a, um, listing of document shredding services. And this is code, um, rate class- uh oh, I'm sorry- NAICS Code 561990."

DANNY CROWE "And is this, um, what you're reading from, is that reproduced in, in the memorandum that we prepared for the Council?"

STEFFANIE DORN "Yes, sir, it is."

DANNY CROWE "Is that under, um, attachment number 2?"

STEFFANIE DORN "Attachment 2."

DANNY CROWE "And it's on the page with, um, that has 561990, 'All Other Support Services'?"

STEFFANIE DORN "That's correct."

DANNY CROWE "And is document shredding services, um, specifically listed there?"

STEFFANIE DORN "It is specifically listed as the..."

DANNY CROWE "Where is it on the page? Would you...?"

STEFFANIE DORN "It's the..."

DANNY CROWE "Would you indicate to Council?"

STEFFANIE DORN "It's the next to the last, um, item on that page."

DANNY CROWE "Does transportation have a classification under the NAICS system?"

STEFFANIE DORN "Yes, sir, it does. It was also provided in the memorandum, that the previous page, and it is sector, um, 48, 49 'Transportation and Warehousing'. And, um, specifically, that number has 484 Truck Transportation on it."

DANNY CROWE "So, is it fair to say that the- under the NAICS system, of the United States government, treats document shredding and transportation as completely separate businesses?"

STEFFANIE DORN "Yes, sir, I would think so."

DANNY CROWE "If, um- or as a document shredding service, what is the rate classification for Shred With Us?"

STEFFANIE DORN "They fall..."

DANNY CROWE "Under the City Code?"

STEFFANIE DORN "They fall into a Rate Class 3."

DANNY CROWE "Alright. And what are the charges for a Rate Class 3?"

STEFFANIE DORN	"For a Rate Class 3, um, being a business that comes in from the outside, um, the City's ordinance requires a double rate for businesses that don't have a base operation in the City. And so the base fee is, or minimum fee, is \$90 for the first \$2,000 of gross receipts and \$1.25 for each \$1,000 after that."
DANNY CROWE	"Um, can you summarize your understanding of how the NAICS describes the business activities of transport of property and document collection and shredding?"
STEFFANIE DORN	"I believe that the NAICS, umm, clearly designates it as two separate categories and two different areas of the book. Um, there are two different- um, two different sectors; um, transportation as a separate sector from the business of shredding documents."
DANNY CROWE	"And, um, what is your understanding of the business activities of Shred With Us based on your listening to Mr. Ragsdale's testimony here today?"
STEFFANIE DORN	"It's my understanding that, um, within the City of Greenwood, he is bringing bins to a variety of businesses, about 11 or 12, and in some of those cases, he is, um, leasing those bins for, I would presume, a monthly fee; I'm not sure if he exactly said. And then, um, at whatever demand the customer needs, he comes in- goes in and retrieves the bins, dumps them in his truck, shreds the, the documents on site, in most cases, and then, I would assume, res-returns the bin back to the business so that they can, um, continue to use it until they need it emptied."
DANNY CROWE	"Um, in your view, under the business license, um, sections of the City Code, are the business activities of paper collection and shredding and transportation of paper, um, necessarily related businesses?"
STEFFANIE DORN	"I don't think so. Um, I think, obviously, you'd have to do something with the paper once you shred it, but the majority of what he's doing within the City is actually collecting and shredding the documents; that is the main purpose of his business."
DANNY CROWE	"What's your understanding of the Certificate E that was issued by the State?"
STEFFANIE DORN	"My understanding of the Certificate E is that it was issued to ensure that vehicles, um, that are transporting across the State- that are transporting freight, um, within the State of South Carolina, are doing so in a safe manner, and have appropriate insurance on their vehicles."
DANNY CROWE	"Um, what is the position of the City, or you as the City Business Licensing Official, on how this Certificate E relates to any liability of Shred With Us for business license tax?"
STEFFANIE DORN	"I believe that the, um, certificate only protects any costs related to transportation and it does not protect the separate business activity of shredding."
DANNY CROWE	"Cost or income?"
STEFFANIE DORN	"The, um, the income for, um, the gross income related to those services they're providing."
DANNY CROWE	"So, in your view, that the, um, activities of shredding would be subject to the business license tax?"
STEFFANIE DORN	"Yes, sir."
DANNY CROWE	"And are not protected by the Certificate E?"

STEFFANIE DORN "No, they're not."

DANNY CROWE "How would the business determine how much of a flat fee from a customer is attributable to the transportation and how much is attributable to the collection and the shredding, under the Business License Ordinance?"

STEFFANIE DORN "We oftentimes have to ask businesses to apportion their income based on, um, their business information related to what they know about their business and what parts are, um, based on the shred piece of it, and the transportation. Most businesses have cost centers involved, um, in their- in their financial information. And so, we really depend on a business to be able to provide us with some type of basis for a portion of it."

DANNY CROWE "You heard Mr. Ragsdale testify that he did not have to pay a business license to any other municipalities in the State?"

STEFFANIE DORN "Yes, sir, I did."

DANNY CROWE "Um, are there other shredding companies that pay a business license to the City of Greenwood?"

STEFFANIE DORN "Yes, sir, there are several."

DANNY CROWE "Can you name some of those?"

STEFFANIE DORN "I know that Iron Mountain does and I believe one is named, Shred It. Um, I know there's another shred name, maybe, Shred Safe. I would have to, to access my records to give you exact names, but at least those three I know of."

DANNY CROWE "And on what income do they, um, pay a business license tax? What is, what is their activity on which they pay a business tax?"

STEFFANIE DORN "Um, their activity would be based on their shredding services. I have, have not, um, had any of those businesses provide me with a Certificate E, so I would assume that what they're reporting on is their entire gross receipts that they're generating when they come in the City of Greenwood."

DANNY CROWE "Thank you, Ms. Dorn. Please answer any questions Mr. Wise has, or with Council."

RAUCH WISE "So, if Mr. Ragsdale picks up the paper and carried it back to Columbia, he would be kept under the, um, transportation?"

STEFFANIE DORN "Well, he has some bins he said- stated he was leasing, so I think that would certainly, umm, qualify- still qualify him as needed to buy a business license."

RAUCH WISE "What if he didn't lease any bins?"

STEFFANIE DORN "He still coming in and collecting shredded documents."

RAUCH WISE "But, what if..."

STEFFANIE DORN "...documents to shred..."

RAUCH WISE "...what if, what if he just picks up trash, paper, and carried it to Columbia?"

STEFFANIE DORN "We would still..."

RAUCH WISE "With his Certificate E?"

STEFFANIE DORN	"We will still charge him because he's coming in and doing some type of business activity."
RAUCH WISE	"Um, so you contend that it can only be applied if somebody is going from, um, Clinton to, um, to Abbeville and happens to drive through Greenwood with a, with a, Certificate E, you couldn't impose any tax on them?"
STEFFANIE DORN	"No, sir, I couldn't."
RAUCH WISE	"And that's about the only place it would apply?"
STEFFANIE DORN	"Um, that- off the top of my head that I can think of."
RAUCH WISE	"So, what you're saying is, if anybody stops and does anything in Greenwood, um, they would have to pay some sort of business tax even though the statute exempts Certificate E carriers from a business license?"
STEFFANIE DORN	"If they're conducting business that is separate from transportation, yes, sir."
RAUCH WISE	"You are familiar with the code section we're talking about?"
STEFFANIE DORN	"I think I am; yes, sir. I have, I have a copy of it."
RAUCH WISE	"Okay. Now, 5823620, alright. And you would agree that says 'State charged business license fee if you got a Certificate E?'"
DANNY CROWE	"I, I object. It's the same sheet. That's argumentative."
RAUCH WISE	"(inaudible) argumentative."
DANNY CROWE	"And the ultimate issue."
RAUCH WISE	"What are the- can you read, read the statute?"
STEFFANIE DORN	"That the entire statute, Mr. Wise?"
RAUCH WISE	"That'll be fine. It's not long."
STEFFANIE DORN	"Okay. 'No city, town, or county in this State shall impose a license fee, or license tax, upon a holder of a Certificate A, or a Certificate E, and no city, town, or county shall impose a license fee, or license tax, on a holder of a Certificate E, or a Certificate F, Certificate of Compliance, or a common or contract motor carrier of property except the city or town of such carrier's residence or the location of his principle place of business. However, the fee required of the holder of a Certificate C is an addition to any license tax, or license fee, charge by a municipality.'"
RAUCH WISE	"Does there have any exceptions in there other than the home base for his company?"
STEFFANIE DORN	"No, sir."
RAUCH WISE	"Um, and you have no reason to dispute, um, Mr. Ragsdale's testimony that he has learned that its more convenient to, to shred the product after it is put into his truck?"
STEFFANIE DORN	"I certainly can't dispute his business."
RAUCH WISE	"And therefore if its more convenient for him then certainly, um, a benefit for him to be able to shred at the location?"

STEFFANIE DORN "I presume so, but that's not really relevant."

RAUCH WISE "Well, it, ahem, so you would agree then, so- for that never mind, you already answered that question. Um, as these companies you named, they never presented to you a certificate that would prevent them from a second- um, a City sales tax, a City business license?"

STEFFANIE DORN "No, sir."

RAUCH WISE "They, they have not?"

STEFFANIE DORN "No, sir."

RAUCH WISE "Okay. So, you, you don't know if they have it, or don't have it?"

STEFFANIE DORN "No, sir, I do not."

RAUCH WISE "Okay. Thank you. Thank you."

MAYOR ADAMS "Any redirect, Mr. Crowe?"

DANNY CROWE "Um, yes, sir. Ms. Dorn, um, in light of that section that Mr. Wise had you read, which is in our memo, um, as well, um, how do you explain the City's position about seeking a business license tax against Shred With Us?"

STEFFANIE DORN "Well, I would explain it in, in two circumstances. I think it's, um, a little unclear because the Office of Regulatory Service issues a Certificate E. He has a Certificate E-L, which is issued by the Department of Motor Vehicles, so it quest- it brings to mind the question of me- of whether his Certificate E-L is actually what the law is referring to. Additionally, there is an Attorney General's opinion from 1962, which we previously referred to and which is also in the memorandum, and I will point out and read the last sentence: 'It is the opinion of this office that such business tax may not be imposed if the activity of the holder of the Certificate is restricted to work related directly to transportation, in this situation, a building on a highway from one point to another.'"

DANNY CROWE "So, how, how would you interpret that if, if there is no direct relationship between the collection and shredding, and the transportation?"

STEFFANIE DORN "I interpret that, that the protection of the, the, umm, Class E Certificate does not hold, based on that Attorney General's opinion."

DANNY CROWE "Thank you, Ms. Dorn. Please answer any questions from Council."

RAUCH WISE "Let me- if I could get one question to redirect, if I may. Um, so it's economically more efficient for him to shred, that certainly would go along with the best- to do it, wouldn't it?"

STEFFANIE DORN "But that's not relevant to what he's doing in the City. It's not my concern if, if it's economically feasible or not."

RAUCH WISE "But, whether he shreds or not, it's really not irrelevant?"

STEFFANIE DORN "No, I didn't say that. What I'm saying- about if, if it's economically feasible or not, it's not my business because it's his business. But the fact that he is doing work in the City is what invokes the need for a business license."

RAUCH WISE	"If it's economically feasible to him to shred, or economically feasible for him to shred, you would agree that, that would make it more incidental to his transportation business than it would be otherwise?"
STEFFANIE DORN	"I don't think he would be, um, be doing the shredding business if that's not where he was making money. He, he did say in his testimony that he depends on the sale of the recycled product to be profitable, which he would not have if he didn't come into the City and get the recy- the documents and then shred them on site."
RAUCH WISE	"Do you see where the Attorney General's opinion, um, issued on, um, November 14 th of 1989, involving, the um, Richland County, um, request for classification of whether or not they can issue a- um, require a business license for someone with a Class E, Class E Certificate?"
STEFFANIE DORN	"I have it in front of me; yes, sir."
RAUCH WISE	"And have you read it before today?"
STEFFANIE DORN	"No, sir. I haven't."
RAUCH WISE	"If she hasn't read it, I won't attempt to ask you about it. Council has a copy. Thank you."
STEFFANIE DORN	"Yes, sir."
DANNY CROWE	"No other questions."
MAYOR ADAMS	"Thank you, Ms. Dorn. You may be excused. Do you have any other witnesses, Mr. Crowe?"
DANNY CROWE	"Yes, sir; um, very briefly, Mr. David Price. Mr. Price, do you solemnly swear the testimony you shall give shall be the truth, the whole truth, and nothing but the truth, so help you God?"
CAPTAIN PRICE	"I do."
DANNY CROWE	"Um, again, for the record, and I know that Council knows you, but for the record, what is your name sir?"
CAPTAIN PRICE	"I'm David Price."
DANNY CROWE	"And before you were one of those fortunate persons who could retire, um, from employment, what is your position with the City of Greenwood?"
CAPTAIN PRICE	"I was the Business License Officer."
DANNY CROWE	"And what did that involve? What were your duties?"
CAPTAIN PRICE	"I, patrolled the City and, um, check, um, any, um, business, or anyone working and, um, felt like if they needed a business license, then I would talk to them and, um, issue them a warning, um, after I talked to them. If they did not have a license and, um, advise them they did need one."
DANNY CROWE	"In the course of your activities, as a Business License Officer of the City, did you ever have the occasion, um, in this calendar year, 2016, to observe the business activities of Shred With Us within the City?"
CAPTAIN PRICE	"Yes, I did."
DANNY CROWE	"Could you explain to the Council what you saw in connection with the activities of Shred With Us in the City?"

CAPTAIN PRICE "Okay. On that particular day, I was on South Main Street and I observe the truck 'Shred With Us', um, headed south on South Main Street. We have several businesses in the City, um, I think three maybe four of them have some type of 'shred' in them. Um, I called into the office and, um, talked to my Supervisor, Ms. Dorn, to see if, check and see if, you- Shred With Us had a business license. And, um, while talking with her on the phone, she stated that, um."

DANNY CROWE "Well without getting into what she told."

CAPTAIN PRICE "Okay."

DANNY CROWE "...but did you determine from that conversation whether or not Shred With Us had a license at that time?"

CAPTAIN PRICE "At that time, um, I determined it did not have a business license."

DANNY CROWE "And what did you do after you determine that?"

CAPTAIN PRICE "I followed the vehicle, um, they turned right on Epting Avenue, and um, went to, um Liner Street, which is down near the Genetic Center; um, I call it 'The Lab' where he stopped. It's a building separate from the Genetic Center and I think they do the lab work there. Um, he pulled up at sort of a side entrance there and I just backed in a parking space to see what he- what kind of business he was gonna do. And, um, Mr. Ragsdale was the driver of the vehicle. And he went into the building and stayed a little bit. Then he came out. I don't know with- if it was one or two containers, but he had something similar to one of our City, umm, canisters that we use as residences. And, you- he walked up to his truck, and, um, I think it has a hoist on the side, that um, hoist it up, or dumped it into the truck. So, I got out of my vehicle and I approached Mr. Ragsdale. I identified myself, that I worked the City, and I advised him that, according to what I could determine, he did not have a City business license."

DANNY CROWE "And did you observe any other activities, um, from Shred With Us at that time?"

CAPTAIN PRICE "Um, not at that time. We was involved in talking at the container there and the truck was making a lot of noise, um, after he dumped it in there and I assume, at that time the way the truck sped up and noise it was making and shaking, that it was shredding at that time."

DANNY CROWE "Alright. Mr. Price, thank you very much. Please answer any questions Mr. Wise has, or the Council may have."

RAUCH WISE "I don't have any questions for Mr. Price."

MAYOR ADAMS "Mr. Price, you're excused."

DANNY CROWE "Mr. Mayor, those are all the City's witnesses."

MAYOR ADAMS "Okay. Is there anyone we can limit the closing remarks to three minutes please. It would be great."

RAUCH WISE "Mr. Ragsdale's business is a convenience to many people because it does shred, no questions about it. So, he's primarily in the business of transporting paper products from Point A to Point B, anyway he picks it up, back to Columbia. Picking up is purely incidental to his business- to transporting the paper waste; it's purely incidental."

I mean, you got to pick it up somewhere; so picking up is purely incidental to his primary business of getting the paper waste back to Lexington where he can resell it.

He went and applied for Class E Certificate, which he got, um a Class E Certificate says, 'you're exempt'. I handed you the body of evidence of the Attorney General opinion. Um, and if you read it, it say- it doesn't- it says the statute is being interpreted as written. It's exempt, except for one roof; that's where his home office is and he has to pay there.

And you talk about shoes being sold, or a meal being sold, that's not what we have here. We have here a man who is transporting paper waste. Who picks it up- as you transport paper waste, you got to pick it up. The shredding is simply incidental to that; anything that saves him money. If it's also a convenience to his customer, it's a double win for the both them. But he finds it more efficient to shred it there and move on because, when it gets to West Columbia, it's shredded and he can deal with it then; don't have to off load it, reload it, and then deal with it again. So clearly, I think what he does is incidental.

The statute does not have any exceptions. It doesn't say, 'A Class E, except if you pick something up.'. It doesn't say, 'A Class E, except if you shred it.'. It doesn't say, 'A Class E, except if engage in another activity.'. It has one exception, and one exception only, and that is, the home county your business is and that's what it is. If it needs to be changed, that's a question for the legislature to do, not this body. It's a question for the legislature. The legislature can change it. This, this body can only enact laws that are conformed with the State Law. You can't change the State Law. You can't enact something that's contrary to it. And when you have a State Law that says, 'A holder of a Class E Certificate is exempt.', then it means it's exempt. Period.

Umm, and I'm think what he's doing is purely incidental to his primary business, which is transporting paper waste from Point A to Point B and, um, in Columbia, um in West Columbia. And that's why I think it purely comes up in the statutes. (It) is not doing anything except, in most cases, donating a box and putting in, um, and that the whole incidental picking it up. He doesn't have an office here. He doesn't maintain an office here. If he did that, clearly, he would owe some business license tax. He would love nothing better than to have an office because he has so much business, but, unfortunately, at this time, he doesn't. But, um, the, the statute."

DANNY CROWE

"Mr. Mayor and Members of Council, in his testimony, Mr. Ragsdale said that he went to the Attorney General to try to find a way to get out of paying business license taxes. The Certificate E, for all he and Mr. Wise would like it to do, does not get him there. A Certificate E, issued by the Public Service Commission, the Office of Regulatory Staff, and the State, that's in my memorandum, all that does is, um, it allows a property carrying vehicle, um, to operate, um, but not on any particular route or schedule. It doesn't authorize that business, or that company, to do any other kind of activity. It doesn't authorize it to collect and shred paper. It doesn't authorize it to sell hamburgers out the back. It doesn't authorize it to sell clothes out of the back.

Now, I used those as extreme examples to illustrate that the General Assembly could not reasonably have intended to allow this as a blanket exemption for any activity of any company that happen to come in and get a Class E. It would- that would just be absurd. It would be illogical. It would be unreasonable. So, what we're doing is taking it back a notch closer to reality and saying that the intent of the legislature, um, which should be determined based on plain meaning, based on logical meaning, based on reasonable meaning of a statute, um, would not protect two separate, not necessarily directly related, business activities like shredding and transportation.

So, that's, that's our argument. Um, and we're not looking to improve a tax on the transportation. As Ms. Dorn testified, many businesses across the spectrum apportion their income, um, based on the activities and pay license tax on that basis. That's what we're asking Mr. Ragsdale and Shred With Us to do because that's what the way we think the General Assembly intended the Certificate E statute to be interpreted. And we believe that we're supported in that by the Attorney General's opinion that I attached to the memorandum. Thank you."

RAUCH WISE

"Can I get a one minute reply?"

MAYOR ADAMS

"One minute (inaudible)."

RAUCH WISE

"Let's do some quick math. If there's one municipality in every county in this State, that would cost Mr. Ragsdale an extra \$4,100 a year to do business in the State of South Carolina. Secondly, the exemption for Class E Certificates, certainly, has to mean more than you driving your truck through a municipality because, if all you're doing is driving your truck through a municipality, there is no way any person could ever contend you're doing business in that city. (In) no way they could; so, it has to mean more than the right to transport your product along an irregular route. And that's why we say picking up is incidental to transporting, and shredding is a convenience to him as well as his customers. And that's not doing business in such a manner that you don't- or enable to invoke the exemption under the statute."

MAYOR ADAMS

"Do you want to reply?"

DANNY CROWE

"Thirty seconds, Mr. Mayor. If I were hiring Shred With Us to come pick up, um, some old wood from in front of my house, um, to pick up some rocks from in front of my house, and they did that, and they were gone, that would be entirely different than Shred With Us having a regular schedule of customers for whom they regularly collect, provide bins, and pick up, and shred their documents. Those are completely different situations. We think here it's clear that, um, bus- um, Shred With Us should pay a business license for that collection and shredding aspect of his business. Thank you."

MAYOR ADAMS

"Would ya'll consent to questions, if Council ask questions?"

RAUCH WISE

"Sure."

MAYOR ADAMS

"Under oath- questions?"

COUNSELOR HUTTO

"I want some clarific- I'm, I'm thinking this, um, Certificate E is made basically for trucking companies that would deliver goods to different and various areas and does not be charged, except in municipalities where they hold their primary trucking facility stock."

Is that correct in my assum- am I correct in that assumption, or not?"

DANNY CROWE "In our view, yes. Yes. It's hauling."

COUNSELOR HUTTO "It's hauling?"

DANNY CROWE "They're, they're a for-hire hauler of property."

COUNSELOR HUTTO "So, this hauler of property, whatever it should be, is different than providing a specific service. I understand hauling: dropping off, picking up, dropping off, picking up, so basically, a freight company is what this should be in reference to; this Certificate E. And what is the difference in- difference between a Certificate E and an E-1?"

COUNSELOR WILTSHIRE "L."

COUNSELOR HUTTO "L, excuse me."

DANNY CROWE "The, the- Um, there is a different code section that describes a Certificate E, it's called a Certificate E, Certificate of Compliance, from the Department of Motor Vehicles of, um which, um, um, was substituted. This, this certificate is from, like, 2003."

RAUCH WISE (inaudible)

DANNY CROWE "Um, subsequently, (the) Department of, um, Public Safety- um, Motor Vehicles was substitute for the Department of Public Safety but it has the same, um, reference point that you mentioned. It is for for-hire motor vehicle carriers of property, except those that carry household goods or hazardous materials."

COUNSELOR HUTTO "Household goods, meaning like, moving companies?"

DANNY CROWE "Yes, ma'am."

COUNSELOR HUTTO "Okay."

DANNY CROWE "And a Certificate E- and from the, um, Office of Regulatory Staff of the Public Service Commission is in the memorandum and that's what I described it. They're issued for property carrying vehicles which will not operate upon any particular route or schedule."

COUNSELOR HUTTO "Okay. I..."

DANNY CROWE "It would be like a contractor hauler."

COUNSELOR HUTTO "...I just, I just wanted to make clear in my mind."

RAUCH WISE "Well my..."

COUNSELOR HUTTO "...of what I thought it would..."

RAUCH WISE "...my interpretation is a little different. I think you're..."

COUNSELOR HUTTO "Yeah. I got, I got your, I got your..."

RAUCH WISE "...I think you're, I think you're halfway right."

COUNSELOR HUTTO "I know.. I got your..."

RAUCH WISE "A Certificate E is..."

COUNSELOR HUTTO "...I got it. I got it. I just wanted some clarification, but I got your interpretation."

RAUCH WISE "I was speaking of that a little."

COUNSELOR HUTTO "I do. I, I, I got it."

MAYOR ADAMS "Let me ask, ask you a question."

RAUCH WISE "Um, hum."

MAYOR ADAMS "I did a closing, not long ago, for a dry-cleaning business and, what he does now is he's- He's in Greenwood but he takes all, he- He, everyday, sends all his dry cleaning up to Anderson. He got- he's got several of them. So, all the dry cleaning is actually done in Anderson. So, would it be your position if the- he had a Certificate E, he picked up the dry cleaning, did it in Anderson, brought it back to Greenwood?"

RAUCH WISE "If all he did was go to people houses and picked it up; but, if he has a place of business here where people dropped it off, then that changes the rules sig- significantly because then you have a, a location with an address and a phone number, and all that. And that, of course, would clearly be a business license type situation; no questions about that."

MAYOR ADAMS "Even though- even if he was able to have the Certificate E?"

RAUCH WISE "Even if he had the Certificate E then, because if he, he, you know- because he- once you maintain a, a, a brick and mortar building, you're gonna pay a business license tax. Even though- I guess it would take another act of legislature to exempt that somehow because um, I don't think that would- you're taxing that business at that location."

DANNY CROWE "Well, not to quarrel with Mr. Wise, but just to argue that point, um, um, Shred With Us, has a place of business really everywhere they have one of those bins. They, they have a presence. They have a physical presence where they collect, um, for a rental fee or not, for paper to be shredded. So, I, I, I think the analogy about, um, not having a brick a mortar, it falls a little thin when they actually have bins with the words 'Shred With Us' on them that the offices use- businesses use."

COUNSELOR BOLES "Those bins, you call boxes, that's what they consider the box?"

COUNSELOR WILTSHIRE "It's a roll cart."

DANNY CROWE "They're like Harbie Curbies."

COUNSELOR BOLES "Okay. So, they're putting box- the rental boxes, or rental carts, or bins- on, on individual businesses' property?"

DANNY CROWE "My understanding, it's like a Harbie Curbie that you would have."

COUNSELOR BOLES "Um, hum..."

DANNY CROWE "...or a recycling bin, but it has Shred With Us on it..."

COUNSELOR BOLES "Um, hum"

DANNY CROWE "...they put their paper in that they want, um, shredded. Um, and these people pick it up on a regular schedule, shred it, (and) drive it back to West Columbia; shred 98% of it, according to Mr. Ragsdale's testimony."

RAUCH WISE	"And, and for what it's worth, as I did a little research in what, um, (a)License E is, it's a license to run on an irregular route, as opposed to a regular route, mind you, and get another license for a regular route. But that's what."
COUNSELOR WILTSHIRE	"But he has scheduled pickups that he's aware of the year ahead. He knows who's he picking up, (and) when he's picking up."
RAUCH WISE	"Right."
COUNSELOR WILTSHIRE	"Each of his clients have a schedule."
RAUCH WISE	"Yeah, but it still may not be a regular route. Like, if he leave on Mondays here, and Tuesdays here- he may, at times, may go from Saluda to somewhere without stopping through Greenwood, so that's why he doesn't have a regular route."
COUNSELOR WILTSHIRE	"Ms. Dorn?"
STEFFANIE DORN	"Yes?"
COUNSELOR WILTSHIRE	"Would, do you happen to know if Powell's Trash Service has a Certificate E.?"
STEFFANIE DORN	"I'm not aware. They- they've never provided us with on or."
COUNSELOR WILTSHIRE	"...or Buzhardt's?"
STEFFANIE DORN	"No sir. I mean they, they may very well have one, um, the statute says..."
COUNSELOR WILTSHIRE	"Powell's operates outside the County."
STEFFANIE DORN	"...um, their statutes says 'carrier of property', so I would, I would guess he consider property, um, then..."
COUNSELOR WILTSHIRE	"What, it's a similar thing?"
STEFFANIE DORN	"...they perhaps do that, (with) those certificates."
COUNSELOR WILTSHIRE	"It's a waste product being picked up, and a waste product that has been picked up, except he's adding value to it by shredding."
COUNSELOR HUTTO	"But, but the trash people that pick up- it would be their own trash but they will pick- when they do pick up and drop off their bins in the City limits, do you not, don't they have a business license fee?"
COUNSELOR WILTSHIRE	"Yeah, they all have a business license."
COUNSELOR HUTTO	"They all have a business license fee?"
STEFFANIE DORN	"Yes, sir. Yes, ma'am. They do."
COUNSELOR WILTSHIRE	"And they're based outside the City. They're all..."
COUNSELOR HUTTO	"They're all based outside the City. They still pay a fee."
STEFFANIE DORN	"That's correct."

COUNSELOR WILTSHIRE "And all they're doing is picking up trash, that's why I wanted to know about the E thing, because my thinking was that Mr., um, the gentleman is, is adding value by shredding the product so he can then sell it as a profit."

STEFFANIE DORN "Well, the, the Powell's and, if I could expand-Powell's and Buzhardt's, for example; the only containers they can have in the City (other than commercial, because we provide commercial), they have roll offs and they have recycle containers, which is very similar to Mr. Ragsdale's business. They have the containers that people put cardboard in. They come in, pick it up, and, I would presume, that they also then sell it."

MAYOR ADAMS "Any further questions?"

COUNSELOR EDWARDS "But even with those services, don't people pay Powell's, and that's customer pay?"

STEFFANIE DORN "Yes, ma'am, those customers pay."

COUNSELOR EDWARDS "The same as with his business. He has customers?"

STEFFANIE DORN "Yes, ma'am."

COUNSELOR EDWARDS "And they pay him?"

STEFFANIE DORN "Yes, ma'am."

COUNSELOR EDWARDS "But, just- he's taking off shredded stuff. Like Mr. Wiltshire said, he makes a profit off of, you know. So, I still- I guess my question has been, what's a Class E-L? We just keep talking Class E, but this certificate says Class E-L, and I'm quite sure they wouldn't put a L behind the E if it didn't mean something?"

RAUCH WISE "(Do) you know the answer?"

ERIC RAGSDALE "Well, I, I- As a businessman, I wouldn't put away the things that, um- The interpretation that I think is here today is not- I'm not trying to evade taxes. I'm trying to evade double taxation. I pay gross receipts in where I, in the County that I reside, but when I went to the Regulatory agency to get a Class E-L my business said 'Shred With Us'. The transportation that I use, I don't just have a truck that I go around, but that- what I do is incidental from day one that I started in retaining that Certificate, and did it. Um, I just wanna say that, you know, basically, the E-L has been, um, interpreted by the legislature that can be taxed only to the County that I reside.

I just think that's the question here. I know the other businesses have trash haulers- have, where they put yard trash in and get charged the customer a fee, a rental fee, a pickup fee, and all these fees. So, when it comes down to it, I might pull out a customer and might, might, make \$3. And my contention is that, you know, for me to pay a business license tax for every city and county, would be a totally disadvantaged and I just wouldn't be able to do business (inaudible). And I just think the interpretation of the statute needs to be left up to- if you don't do it here today, as a court, because it is vague. And when a statutory, um, um, legislation is plain, or ambiguous, then it has to be interpreted as the meaning which is, as it is written."

DANNY CROWE "Counselor Edwards, to respond to your question, um, I do not know what a Class E-L is. I could not find a reference to that."

Um, but, the City is giving him a benefit of a doubt on that point and is treating it as a Certificate E. That's the subject of that statute and we're saying we're not looking for a tax on that income from that transportation. So we're giving him the benefit of a doubt on the E-L, but are looking for the tax on the income from the collection and shredding. Thank you."

COUNSELOR BOLES "I just have one last question. I think I remember you stating that there were other shredding companies coming into Greenwood?"

STEFFANIE DORN "Yes, ma'am."

COUNSELOR BOLES "Are they paying a license?"

COUNSELOR WILTSHIRE "Yes."

STEFFANIE DORN "Yes, ma'am."

COUNSELOR BOLES "Okay."

MAYOR ADAMS "Okay. Alright."

COUNSELOR WILTSHIRE "Mr. Ragsdale, um, following up on those points, what did you pay under protest?"

ERIC RAGSDALE "Sir?"

COUNSELOR WILTSHIRE "What was the business license you paid, paid under protest, as I'm told?"

RAUCH WISE "How much did you pay before you sent them a check (inaudible)?"

ERIC RAGSDALE "\$90."

RAUCH WISE "Actually, he owes \$100, no he owes another \$90. We had an understanding that he had to pay for two years. So, he owes another \$90."

COUNSELOR BOLES "But these other companies could also have a Certificate E. We don't know that."

STEFFANIE DORN "Well, no ma'am, we, we don't know that. Um, I haven't encountered a different type of business that presented a Certificate E and when I talked to them about the, the different business, mobile business operations, then they agreed to get a business license."

RAUCH WISE "I- I'm going to object to that as being a kind of, you know, hear-say, and everything else."

COUNSELOR BOLES "Oh, I thought it was facts. I'm sorry."

MAYOR ADAMS "Are there any other questions? Alright we'll, we'll close out and deliberate, I guess, now. Thank y'all."

RAUCH WISE "Let me ask you something in the interest- like, one of us got to go back to West Columbia. Y'all want us to wait around, or do you want to send a letter in the mail?"

MAYOR ADAMS "Wait around. We'll make a decision."

RAUCH WISE "Okay. Thank you."

DANNY CROWE "Um, not to knocking off anything, but my understanding is that you need to deliberate in public. There's no executive session (inaudible)..."

MAYOR ADAMS "Okay. Yeah. Yeah, we were- we're..."

DANNY CROWE

"Not that we want to intrude, but that's (inaudible)."

MAYOR ADAMS

"Right. You guys won't be going anywhere."

City Attorney, Tripp Padgett, asked if opposing counsel wanted to include marked exhibits.

COUNSELOR
WILTSHIRE

"Alright, Council. Thoughts? Motions?"
"I, I, I."

MAYOR ADAMS

"Does anyone want make a motion?"

KENN WILTSHIRE

"Yeah, I think that- I mean my thoughts, were from the beginning; it's a bit like Powell and Buzhardts. He's picking up waste and putting- In this case which, as Steffanie say, he would get charged like they get charged for picking up waste for getting- the issue on roll carts, as to whether it's leased, or free. Most of his customers in Greenwood seems to be (inaudible) of the State, if he got State customers in Greenwood. Um, there's also the fact then that he comes along and-

To me, he's a bit like the Uptown Market. You got a farmer who's making a product, growing it, and selling it. But then if somebody takes that product and changes it, like cans it or bottles it, then we call them a producer and we charge them more. And here, he's gotten his waste, and he's changing it right there in our streets by shredding it. So, that, to me, says he's doing a service. He should get charged for it."

COUNSELOR AHLES

"He's providing a service. He getting paid for it. He should have a business license."

MAYOR ADAMS

"Alright. (inaudible) Y'all want to make a motion?"

COUNSELOR
WILLIAMS

"I make a motion to uphold. (inaudible)"

MAYOR ADAMS

"So your motion is to, umm, have a- to uphold the decision to have a business license?"

COUNSELOR
WILLIAMS

"That's right."

MAYOR ADAMS

"Your motion is that he had- is required to have a business license?"

COUNSELOR
WILLIAMS

"He needs a business license because Powell's, for every recycling bin he's got inside of the City, he pays for it, and they're doing a service for the City, too."

MAYOR ADAMS

"So..."

COUNSELOR
WILLIAMS

"They're keeping paste board paper out of the landfill."

MAYOR ADAMS

"There's a motion that Shred With Us is required to have a business license for shredding activities in the City of Greenwood. So, we have a second?"

COUNSELOR
WILTSHIRE

"So moved."

MAYOR ADAMS

"Second by Mr. Wiltshire, motion by Mr. Williams. All in favor, signify by a show of hands. The motion carries."

The motion passed unanimously.

RAUCH WISE "We owe, we owe another \$90, too, in (inaudible) fees."

MAYOR ADAMS "Thank you."

RAUCH WISE "Alright."

MAYOR ADAMS "We need it."

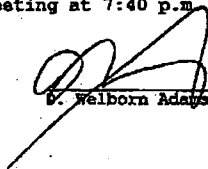
RAUCH WISE "Alright."

MAYOR ADAMS "Alright. Do we have a motion to adjourn?"

A motion to adjourn the meeting was made by Linda Edwards, seconded by Betty Boles.

The motion passed unanimously.

ADJOURNMENT Mayor Adams adjourned the meeting at 7:40 p.m.


B. Welborn Adams, Mayor

ATTEST:


City Clerk and Treasurer



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Code of Laws of South Carolina 1976 Annotated
Title 58. Public Utilities, Services and Carriers (Refs & Annos)
Chapter 23. Motor Vehicle Carriers
Article 5. Annual Applications and License Fees

Code 1976 § 58-23-620

§ 58-23-620. Situations in which local fees may or may not be imposed.
Currentness

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

Credits

HISTORY: 1962 Code § 58-1442; 1952 Code § 58-1442; 1942 Code § 8512; 1932 Code § 8512; 1925 (34) 252; 1930 (36) 1068; 1938 (40) 1915; 1995 Act No. 145, Part II, § 51D, eff June 29, 1995.

COPYRIGHT (C) 2016 BY THE STATE OF SOUTH CAROLINA

Code 1976 § 58-23-620, SC ST § 58-23-620

Current through the 2016 session, subject to technical revisions by the Code Commissioner as



1989 S.C. Op. Atty. Gen. 354 (S.C.A.G.), 1989 S.C. Op. Atty. Gen. No. 89-130, 1989 WL 406219

Office of the Attorney General

State of South Carolina
Opinion No. 89-130

November 14, 1989

*1 SUBJECT: Taxation and Revenue—Levy of a County Business License Tax on the Holders of a Class E or F Certificate Issued Pursuant to Article V, Chapter 23 of Title 58.

Section 58-23-620 of the South Carolina Code of Laws precludes the imposition by a county of its business license tax upon the holders of Class E or F Certificates issued such businesses by the Public Service Commission under authority of Section 58-23-510, et seq.

TO: Ms. Mary Alice Hobbs
Staff Attorney
Richland County Attorney's Office

QUESTION:

May Richland County impose a business license tax upon the holders of a Class E or F Certificate that is issued such business by the Public Service Commission under the provisions of Section 58-23-510?

APPLICABLE LAW:

Sections 4-9-30(12) 58-23-510 and 58-23-620, Code of Laws of South Carolina, 1976, and Article VIII, Sections 7 and 9 and Article X, Section 6 of the South Carolina Constitution.

DISCUSSION:

Article X, Section 6 of our Constitution grants authority to the General Assembly to:
“... vest the powers of assessing and collecting taxes in all of the political subdivisions of the State
...”

Article VIII, Sections 7 and 9, directs the General Assembly to provide for the powers, etc., of counties and municipalities.

The General Assembly has provided in Section 4-9-30(12) that a county may:
“... levy uniform license taxes upon persons and businesses engaged in or intending to engage in a business, occupation or profession, in whole or in part, within the county but outside the corporate limits of a municipality ...”

A Class E Certificate is for property carrying vehicles which will not operate upon any particular route or schedule. (See Section 58-23-260.) A Class F Certificate is for the business of contract hauling of freight or property that is not to be on a regular schedule or route or to solicit or receive patronage along the route. (See Section 58-21-270.)

Section 4-9-30 sets forth the powers of a county and subsection 12 authorizes the imposition of the county business tax unless proscribed by Section 58-23-620 which provides in part that:
“... no city, town or county shall impose a license fee or license tax on the holder of a certificate E or a certificate F except the city or town of such carrier's residence or the location of his principal place of business ...”

The powers of the county as conferred by Section 4-9-30, however, are limited by general law. Section 58-23-620 is a general law having been first enacted by Act 170, Acts of 1925. It has statewide application and is not local in its application. (For cases see 17 S.C.D., Statutes, Key 68, Laws of General or Public Nature.)

We thus look to that section to determine if the county business license tax is proscribed.

The provisions of Section 58-23-620 were first adopted in 1925 by Act 170. The heading of the Act

is that the same is for "... the Regulation, Supervision, and Control ..." of persons engaged in transporting persons or property for compensation. The heading further provides that the Act is "... Prescribing and Imposing License Fees and Providing for the Disposition of the Revenue Raised by the Same."

*2 The license fee is imposed in part for the raising of revenue and in part to fund the costs of enforcing the statute. Section 11 of the Act supports this conclusion. It provides that the money collected is to be deposited into the State Treasury. After deducting the costs of administering the Act, the remaining revenue is to be disbursed to the State, counties and towns by an established formula. A part of the revenue is therefore expended not for regulatory but for a State, county or municipal purpose.

A distinction can be made between the terms "license tax" and "license fee."

"A license tax 'is a tax in the ordinary acceptance of that term' ..." Hay v. Leonard, 212 S.C. 81, 46 S.E.2d 653. (See also 51 Am.Jur.2d, Licenses and Permits, Section 1, p. 7.)

A license fee is generally a regulatory measure intended to cover the costs of administering the regulatory scheme. (See 24 Words and Phrases, License Fee.)

Here the General Assembly has provided for both the regulation of those businesses and for tax revenues to be paid therefrom.

Section 58-23-620 prohibits both the "license fee" and the "license tax." It is only logical to therefore conclude that the General Assembly intended to proscribe the county from levying both a "license fee" and a "license tax."

CONCLUSION:

Section 58-23-620 of the South Carolina Code of Laws precludes the imposition by a county of its business license tax upon the holders of Class E or F Certificates issued such businesses by the Public Service Commission under authority of Section 58-23-510, et seq.

Joe L. Allen, Jr.

Chief Deputy Attorney General

Footnotes

- 1 Note the reference to Chapter 21. It is published in Chapter 23 and is probably a printer's error.
- 2 This conclusion is fortified by other settled rules of construction. First is that the powers conferred a county are limited to those granted by express language or that may be necessarily implied therefrom. (For cases see 7 S.C.D., Counties, Keys 20-24.) Secondly, a tax imposition statute is to be strictly construed against the tax. (For cases see 17 S.C.D., Statutes, Key 245, Revenue Laws.) Finally, the words of a statute are to be given their ordinary and popular meaning unless there is something in the statute that requires a different interpretation. (For cases see 17 S.C.D., Statutes, Key 187, et seq.)

1989 S.C. Op. Atty. Gen. 354 (S.C.A.G.), 1989 S.C. Op. Atty. Gen. No. 89-130, 1989 WL
406219

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works

STATE OF SOUTH CAROLINA



DEPARTMENT OF PUBLIC SAFETY

CERTIFICATE OF COMPLIANCE
FOR THE OPERATION OF MOTOR VEHICLE CARRIERS

CLASS E1

CERTIFICATE NO. 2603

SAFE CONFIDENTIAL DATA MANAGEMENT DBA

SHRED WITH US

4550 AUGUSTA ROAD, SUITE 200

LEXINGTON, SOUTH CAROLINA 29073

(Mailing: 240 Monahan Ln, West Columbia, SC 29170)

IS HEREBY AUTHORIZED TO TRANSPORT FREIGHT OTHER
THAN HOUSEHOLD GOODS AND HAZARDOUS WASTE FOR
DISPOSAL OVER IRREGULAR ROUTES BETWEEN POINTS AND
PLACES IN SOUTH CAROLINA

DATED AT COLUMBIA, SOUTH CAROLINA, THIS 2nd DAY OF
JANUARY, 2003

A handwritten signature in dark ink, appearing to read "David T. Kelly", written over a horizontal line.

ADMINISTRATOR

**IN THE STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD
CITY OF GREENWOOD
BEFORE THE CITY COUNCIL OF THE CITY OF GREENWOOD**

Shred with Us, LLC,

Licensee/Appellant,

vs.

City of Greenwood

**MEMORANDUM OF POINTS
AND AUTHORITIES**

In addition to the evidence and argument at the hearing, the City submits the following points and authorities for the Council:

1. Section 1-17 ("Liability of corporations, associations, or agents for violation") of the City Code provides:

- (a) Any violation of this Code by any officer, agent or other person acting for or employed by any corporation or unincorporated association or organization, while acting within the scope of his office or employment, shall in every case also be deemed to be a violation by such corporation, association or organization.
- (b) Any officer, agent or other person acting for or employed by any corporation or unincorporated association or organization shall be subject and liable to punishment, as well as such corporation or unincorporated association or organization, for the violation by it of any provision of this Code, where such violation was the act or omission, or the result of the act, omission or order, of any such person.

2. Section 10-50 of the City Code requires that every person engaged or intending to engage in any "calling, business, occupation or profession" listed in the rate classification index portion of the ordinance obtain a business license.

3. Section 10-51(b) of the City Code provides that a separate license "shall be required for each place of business and for each classification or business conducted at one place."

4. In Wood-Mendenhall Co. v. City of Greer, 88 S.C. 249, 70 S.E. 724 (1911), the State Supreme Court recognized the principle that one "business" may carry out multiple business operations, some of which may not be incidental to each other, and, therefore, may require multiple business licenses. A copy of Wood-Mendenhall is attached as Attachment 1.

5. The North American Industry Classification System recognizes transportation of property (NAICS 484) and document shredding services (NAICS 561990) as separate business activities. Pertinent copies from the NAICS manual are attached as Attachment 2.

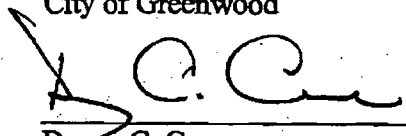
6. S.C. Code sections 58-23-210, 58-23-260 and 58-23-620 indicate the nature and limitations of the State-issued hauling certificate issued to Shred With Us. Copies of these State Code sections are attached as Attachment 3.

7. A 1962 South Carolina Attorney General Opinion analyzed the issue of multiple business operations as applied to these State-issued certificates. The Attorney General concluded that, in order to be exempt from a business license tax, the activity of the certificate holder must be work that is "related directly" and "incidental and necessary to the business of transporting property." A copy of the 1962 AG Opinion is attached as Attachment 4.

Respectfully submitted,

City of Greenwood

By:



Danny C. Crowe
Crowe LaFave, LLC
P.O. Box 1149
Columbia, SC 29202
(803) 724-5728
danny@crowelafave.com

October 14, 2016

ATTACHMENT 1

88 S.C. 249
Supreme Court of South Carolina.

WOOD-MENDENHALL CO.

v.

CITY OF GREER.

March 27, 1911.

Appeal from Common Pleas Circuit Court of Greenville County; John S. Wilson, Judge.

Action by the Wood-Mendenhall Company against the City of Greer. From a judgment for plaintiff, defendant appeals. Affirmed.

West Headnotes (4)

[1] Municipal Corporations

⇨ Construction and Operation

A city is not bound by the construction placed upon an ordinance by the city clerk and mayor.

Cases that cite this headnote

[2] Licenses

⇨ Classification According to Amount of Business or Capital

The powers of a municipal corporation must be exercised in strict conformity to the grant, and an ordinance imposing a license on a business is void if it does not graduate the license under Civ. Code 1902, § 1983, requiring the license to be graduated according to the gross income of the person, etc., required to pay it or upon the amount of the capital stock invested in the business.

1 Cases that cite this headnote

[3] Licenses

⇨ Remedies for Wrongful Assessment or Collection

The proper course for one claiming the invalidity of a license tax imposed upon a business is to pay the tax under protest, and sue the city to recover the amount paid.

2 Cases that cite this headnote

[4] Licenses

⇨ Construction and Effect of Licenses

Where an ordinance required an annual license for conducting certain businesses, including "blacksmith shop," "merchants," "paint shop or contractor," the issuance of a license to carry on the business of "merchandise and blacksmith" did not authorize the licensee to do painting not connected with the business of blacksmithing.

Cases that cite this headnote

Attorneys and Law Firms

*724 McCullough & Blythe, for appellant. Haynsworth & Haynsworth, for respondent.

Opinion

HYDRICK, J.

Plaintiff was conducting in the city of Greer a general merchandise business, and, in connection therewith, a general repair shop, in which blacksmithing, woodwork, and painting were done. The repair shop was generally known as "Mendenhall's Blacksmith Shop." Plaintiff also did painting in said shop which was not incidental to the blacksmithing; that is, jobs of painting on which no blacksmithing was done. An ordinance of the city required the payment *725 of an annual license on certain business; among others, the following: "Blacksmith shop," "merchants," "paint shop or contractor." On February 1, 1909, plaintiff was given a license to carry on for one year the business of "merchandise and blacksmith." This license was understood by plaintiff to cover all its business, and the mayor and city clerk then in office so construed the ordinance. Some time in July, 1909, demand was made upon plaintiff that it pay a license for the business of a "paint shop." The demand was refused, and plaintiff was tried, convicted, and fined \$100 in the

city court for carrying on the business without a license. Under threat of continual prosecution for carrying on the business without a license, plaintiff paid the license "under protest," and brought this action to recover the amount paid. Plaintiff alleges that the license obtained in February covered and was intended to cover all its business, including that of painting, and that the exaction of the additional license was illegal; that the ordinance under which it was exacted is illegal, because it violates the statute authorizing such licenses, in that it fails to graduate them in the manner prescribed by the statute. The circuit court held that the license paid in February was intended to cover and did cover all of plaintiff's business, and that the city could not exact an additional license before the expiration of the year for which the first was given, and gave judgment for plaintiff.

The court erred in the grounds upon which it rested its decision. It is true that the painting which is merely incidental to the finishing job of blacksmithing might properly be included in and covered by a license to carry on the business of "blacksmithing"; but it appears that plaintiff did painting outside of and not connected with the business of "blacksmithing." That was a business separate from and independent of that of "blacksmithing," and was not covered by the license. The city was not bound by the construction of the ordinance by the city clerk and mayor. The finding that the license did cover the entire business of plaintiff is without any evidence to support it.

But the other ground upon which plaintiff seeks to recover is well taken. The ordinance violates the statute under which the license is authorized, in that it is not graduated in the manner therein prescribed. The statute provides: "That said license shall be graduated according to the gross income of the persons, firms or corporations required to pay such license, or upon the amount of capital invested in said business." Civ. Code 1902, § 1983. The powers conferred upon municipal corporations are strictly construed, and must be exercised in precise conformity with the grant. *White v. Rock Hill*, 34 S. C. 242, 13 S. E. 416; *Luther v. Wheeler*, 73 S. C. 89, 52 S. E. 874, 4 L. R. A. (N. S.) 746.

For failure to graduate the license in the manner prescribed by the statute, the ordinance is illegal and void. The plaintiff pursued the course prescribed by the statutes in such cases. He paid the tax under protest, and sued to recover the amount paid. *Telegraph Co. v. Winnisboro*, 71 S. C. 231, 50 S. E. 870.

The judgment, being right, is affirmed.

JONES, C. J., GARY, A. J., and WOODS, J., concur.

All Citations

88 S. C. 249, 70 S. E. 724

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

ATTACHMENT 2

U.S. Department of Commerce (<http://www.commerce.gov>) | Blogs (http://www.census.gov/about/contact-us/social_media.html) | Index A-Z (<http://www.census.gov/about/index.html>) | Glossary (<http://www.census.gov>)

Topics
Population, Economy

Geography
Maps, Products

Library
Infographies, Publications

Data
Tools, Datasets

Surveys/Programs
Respond, Survey Data

Newsroom
News, Blogs

About Us
Our Research

Search

North American Industry Classification System

You are here: [Census.gov](http://www.census.gov) / [Business & Industry](http://www.census.gov/economy/naics/) / [NAICS](http://www.census.gov/economy/naics/)

Introduction to NAICS

The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

NAICS was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system (http://www.osha.gov/pls/fims/eltc_manual.html). It was developed jointly by the U.S. Economic Classification Policy Committee (ECPC) (http://www.ecpc.gov/development_partners/devpartners.html), Statistics Canada (<http://www.statcan.gc.ca/concepts/>), and Mexico's Instituto Nacional de Estadística y Geografía (http://www.inegi.org.mx/prod_serv/contenidos/espanol/biblioteca/Default.asp?accion=18&opc=702825023814&es=es&c=14880), to allow for a high level of comparability in business statistics among the North American countries.

The official U.S. Government Web site provides the latest information on plans for NAICS revisions, as well as access to various NAICS reference files and tools.

The official 2012 U.S. NAICS Manual includes definitions for each industry, background information, tables showing changes between 2007 and 2012, and a comprehensive index. The official 2012 U.S. NAICS Manual is available in print and on CD-ROM from the National Technical Information Service (NTIS) at (800) 3-6847 or (703) 605-6000, or through the NTIS (<http://www.ntis.gov/products/naics.aspx>) Web site. Previous versions of the NAICS Manual are available.

Additional information on the background and development of NAICS is available in the History (<http://www.census.gov/economy/naics/history/history.html>) section of this Web site.

<http://www.census.gov/en.html>

Search

Topics
Population, EconomyGeography
Maps, ProductsLibrary
Infographics, PublicationsData
Tools, DevelopersSurveys/Programs
Response, Survey DataNewsroom
News, BlogsAbout Us
Our Research

North American Industry Classification System

You are here: [Census.gov](http://www.census.gov) (/) > [Business & Industry](http://www.census.gov/economy/naics/index.html) (/economy/naics/index.html) > [NAICS](http://www.census.gov/economy/naics/index.html) (/economy/naics/index.html) > NAICS Search/Tools

2012 NAICS Definition

T = Canadian, Mexican, and United States industries are comparable.

Sector 48-49 – Transportation and Warehousing^T

484 Truck Transportation^T

Industries in the Truck Transportation subsector provide over-the-road transportation of cargo using motor vehicles, such as trucks and tractor trailers. The subsector is subdivided into general freight trucking and specialized freight trucking. This distinction reflects differences in equipment used, type of load carried, scheduling, terminal, and other networking services. General freight transportation establishments handle a wide variety of general commodities, generally palletized, and transported in a container or van trailer. Specialized freight transportation is the transportation of cargo that, because of size, weight, shape, or other inherent characteristics require specialized equipment for transportation.

Each of these industry groups is further subdivided based on distance traveled. Local trucking establishments primarily carry goods within a single metropolitan area and its adjacent nonurban areas. Long distance trucking establishments carry goods between metropolitan areas.

The Specialized Freight Trucking industry group includes a separate industry for Used Household and Office Goods Moving. The household and office goods movers are separated because of the substantial network of establishments that has developed to deal with local and long-distance moving and the associated storage. In this area, the same establishment provides both local and long-distance services, while other specialized freight establishments generally limit their services to either local or long-distance hauling.



(<http://www.census.gov/en.html>)

Topics
Population, Economy

Geography
Maps, Products

Library
Infographics, Publications

Data
Tools, Developers

Surveys/Programs
Respond, Survey Data

Newsroom
Items, Blogs

About Us
Our Research

Search

North American Industry Classification System

You are here: [Census.gov](http://www.census.gov) (/) > [Business & Industry](http://www.census.gov/economy) (/economy/index.html) > [NAICS](http://www.census.gov/economy/naics) (/economy/naics/index.html) > NAICS Search/Tools

2012 NAICS Definition

T = Canadian, Mexican, and United States industries are comparable.

561990 All Other Support Services

This industry comprises establishments primarily engaged in providing day-to-day business and other organizational support services (except office administrative services, facilities support services, employment services, business support services, travel arrangement and reservation services, security and investigation services, services to buildings and other structures, packaging and labeling services, and convention and trade show organizing services).

Illustrative Examples:

Bartering services
Flagging (i.e., traffic control) services
Bottle exchanges
Float decorating services
Cloth cutting, bolting, or winding for the trade
Inventory taking services
Contract meter reading services
Lumber grading services
Diving services on a contract or fee basis

Cross-References. Establishments primarily engaged in—

- Providing office administrative services—are classified in Industry 561110 (cpl-bin/sssd/naics/naicsrch?code=561110&search=2012), Office Administrative Services;
- Providing facilities support services—are classified in Industry 561210 (cpl-bin/sssd/naics/naicsrch?code=561210&search=2012), Facilities Support Services;
- Providing employment services—are classified in Industry Group 5613 (cpl-bin/sssd/naics/naicsrch?code=5613&search=2012), Employment Services;
- Providing business support services—are classified in Industry Group 5614 (cpl-bin/sssd/naics/naicsrch?code=5614&search=2012), Business Support Services;
- Providing travel arrangement and reservation services—are classified in Industry Group 5615 (cpl-bin/sssd/naics/naicsrch?code=5615&search=2012), Travel Arrangement and Reservation Services;
- Providing security and investigation services—are classified in Industry Group 5616 (cpl-bin/sssd/naics/naicsrch?code=5616&search=2012), Investigation and Security Services;
- Providing services to buildings and other structures—are classified in Industry Group 5617 (cpl-bin/sssd/naics/naicsrch?code=5617&search=2012), Services to Buildings and Dwellings;
- Providing packaging and labeling services—are classified in Industry 561910 (cpl-bin/sssd/naics/naicsrch?code=561910&search=2012), Packaging and Labeling Services; and
- Organizing, promoting, and/or managing conferences, conventions, and trade shows (whether or not they manage and provide the staff to operate the facilities in which these events take place)—are classified in Industry 561920 (cpl-bin/sssd/naics/naicsrch?code=561920&search=2012), Convention and Trade Show Organizers.

2002 NAICS	2007 NAICS	2012 NAICS	Corresponding Index Entries
561990	561990	561990	Auctioneers, independent
561990	561990	561990	Bartering services
561990	561990	561990	Bottle exchanges
561990	561990	561990	Cloth cutting, bolting, or winding for the trade
561990	561990	561990	Coin pick-up services, parking meter
561990	561990	561990	Coupon processing services
561990	561990	561990	Coupon redemption services (i.e., clearinghouse)
561990	561990	561990	Diving services on a contract or fee basis
561990	561990	561990	Document shredding services
561990	561990	561990	Electrical meter reading services, contract

561990	561990	561990	Fire fighting services as a commercial activity
561990	561990	561990	Flagging (i.e., traffic control) services
561990	561990	561990	Float decorating services
561990	561990	561990	Gas meter reading services, contract
561990	561990	561990	Inventory computing services
561990	561990	561990	Inventory taking services
561990	561990	561990	License issuing services (except government), motor vehicle
561990	561990	561990	Locating underground utility lines prior to digging
561990	561990	561990	Lumber grading services
561990	561990	561990	Meter reading services, contract
561990	561990	561990	Motor vehicle license issuing services, private franchise
561990	561990	561990	Printing brokers
561990	561990	561990	Private volunteer fire fighting
561990	561990	561990	Tape slitting (e.g., cutting plastic or leather into widths) for the trade
561990	561990	561990	Textile cutting services
561990	561990	561990	Trading stamp promotion and sale to stores
561990	561990	561990	Trading stamp redemption services

ATTACHMENT 3

SECTION 58-23-210. Classes of certificates; application and hearing.

The Office of Regulatory Staff, upon order of the commission, may issue six classes of certificates as are mentioned in Section 58-23-40 after application therefor has been made in writing by the owner of the vehicles upon blanks provided by the commission and after such hearing as the commission may consider proper. The commission must hear any objections by any person or corporation who may be affected by the issuance of a certificate by the Office of Regulatory Staff. The six classes of certificates shall be respectively designated certificate A, certificate B, certificate C, certificate D, certificate E, and certificate F.

HISTORY: 1962 Code Section 58-1411; 1952 Code Section 58-1411; 1942 Code Section 8509; 1932 Code Section 8509; 1925 (34) 252; 1930 (36) 1068; 1933 (38) 429; 2006 Act No. 318, Section 145, eff May 24, 2006.

SECTION 58-23-260. Class E certificates.

The Office of Regulatory Staff, upon order of the commission, may issue a certificate E for the property-carrying vehicles which will not operate upon any particular route or schedule.

HISTORY: 1962 Code Section 58-1416; 1952 Code Section 58-1416; 1942 Code Section 8510; 1932 Code Section 8510; 1925 (34) 252; 1930 (36) 1068; 2006 Act No. 318, Section 145, eff May 24, 2006.

SECTION 58-23-620. Situations in which local fees may or may not be imposed.

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

HISTORY: 1962 Code Section 58-1442; 1952 Code Section 58-1442; 1942 Code Section 8512; 1932 Code Section 8512; 1925 (34) 252; 1930 (36) 1068; 1938 (40) 1915; 1995 Act No. 145, Part II, Section 51D, eff June 29, 1995.
ct No. 318, Section 145, eff May 24, 2006.

ATTACHMENT 4

1962 WL 11964 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 7, 1962

*1 Re: Municipalities—Business License

Mrs. Grace A. Stephenson
City Clerk-Treasurer
Marion, South Carolina

Dear Mrs. Stephenson:

You have inquired whether a municipality may impose a business license tax on a nonresident holder of a class 'E' certificate of public convenience because of the activity of such holder in moving a building from the municipality.

Section 58-1442, 1952 Code, prohibits the imposition of such tax on the nonresident holder of a class 'E' certificate so long as the activity in which he engages is incidental and necessary to the business of transporting property in accordance with the authority granted by his certificate.

It is the opinion of this office that such business tax may not be imposed if the activity of the holder of the certificate is restricted to work related directly to transportation of the building on a highway from one point to another.

Yours very truly,

J. C. Coleman, Jr.
Assistant Attorney General

1962 WL 11964 (S.C.A.G.)

End of Document

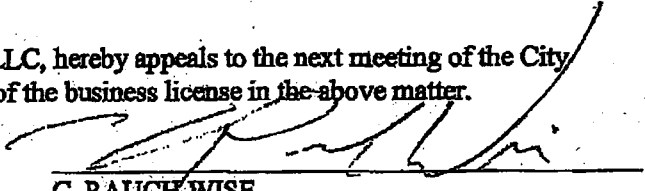
© 2016 Thomson Reuters. No claim to original U.S. Government Works.

STATE OF SOUTH CAROLINA)
) IN THE MUNICIPAL COURT
CITY OF GREENWOOD)

City of Greenwood,)
)
Plaintiff,)
)
vs) APPEAL
)
Shred with Us, LLC,)
)
Defendant.)

The Defendant, Shred with Us, LLC, hereby appeals to the next meeting of the City
Counsel meeting to contest the validity of the business license in the above matter.

Oct 11, 2016


C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Defendant



The City of
GREENWOOD
South Carolina

P.O. Box 40
Greenwood, South Carolina 29648-0040
www.cityofgreenwoodsc.com

October 11, 2016

C. Rauch Wise
Attorney at Law
305 Main St
Greenwood, SC 29646

Re: Shred with Us, LLC

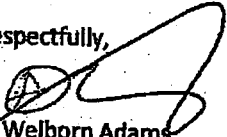
Dear Mr. Wise:

The City Council of the City of Greenwood is in receipt of your appeal request dated October 11, 2016 on behalf of Shred with Us, LLC. City Council has set the date for this hearing as October 17, immediately after the conclusion of the regular city council meeting and not to begin before 6:30 p.m. The hearing will be held in Room 207, City Council Chambers in the Municipal Building, 520 Monument St, Greenwood SC.

After the hearing, the city will provide a copy of the order detailing city council's decision. If city council's decision is not favorable and your client chooses to appeal, Rule 74 of the SC Judicial would apply. Notice of an appeal to the circuit court must be served on all parties within thirty (30) days after receipt of written notice of the order appealed from.

If you have any questions, you may contact our attorney, Danny Crowe of Crowe LaFave, LLC at 803-724-5728.

Respectfully,


D. Welborn Adams
Mayor

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

ORDINANCE NO. 16-001

AN ORDINANCE AMENDING CHAPTER 10, ARTICLE II, BUSINESS LICENSES, DIVISIONS 1 THROUGH 4.

DIVISION 1. - GENERALLY

Sec. 10-27. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Artisan/crafter. Produce original, unique, high quality, safe, garden/farm/environmentally related items which brings some added value to the market. All products must be actual work of the artisan/crafter.

Business means a calling, occupation, profession, or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly.

Charitable Organization means an organization that is determined by the Internal Revenue Service to be exempt from Federal income taxes under 26 U.S.C. section 501 (c) (3), (4), (6), (7), (8), (10) or (19).

Charitable purpose means benevolent, philanthropic, patriotic, or eleemosynary purpose which does not result in personal gain to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization..

Classification means that division of businesses by major groups subject to the same license rate as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationships of services, or other basis deemed appropriate by city council.

Farmer/producer. Farmers produce locally grown vegetables, fruit, nuts, grains, herbs, flowers or nursery crops from seed or plants. Beekeepers, egg farmers, poultry and livestock producers are considered farmers.

Gross income means the gross receipts or gross revenue of a business, received or accrued, for one calendar year collected or to be collected from business done within the city, excepting therefrom income from business earned outside of the city on which a license tax is paid to some other municipality or a county and fully reported to the city. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified.

Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, state department of revenue, state insurance commission, or other government agency.

Gross income for insurance companies means gross premiums collected.

License official means a person designated to administer this article.

Licensee means the business, the person applying for the license on behalf of the business, an agent or legal representative of the business, a person who receives any part of the net profit of the business, or a person who owns or exercises control of the business.

Person means any individual, firm, partnership, LLP, LLC, cooperative nonprofit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principals.

Processor means vendors that use locally grown produce or other local agricultural products to make their products (such as jellies, jams, salsas, ciders, smoked meats, honey, handmade candies, etc.). This vendor does not operate a commercial business.

Sec. 10-28. - Violations; penalty.

Any person violating any provision of this article shall be deemed guilty of an offense and shall be subject to a fine of up to \$500.00 or imprisonment for not more than 30 days, or both, upon conviction. Each day of violation shall be considered a separate offense. Punishment for the violation shall not relieve the offender of liability for delinquent taxes, penalties and costs provided for in this chapter. There will also be an additional \$25.00 or 25 percent penalty, whichever is greater, to those who are found to be in business operation without a city business license. **Sec. 10-29. - Purpose and duration.**

The business license levied by this article is for the purpose of providing such regulation as may be required for the business subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. Each license shall be issued for one year, unless otherwise authorized, and shall expire on December 31. The provisions of this article and the rates in this article shall remain in effect from year to year as amended by the city council.

Secs. 10-30—10-49. - Reserved.

DIVISION 2. - LICENSE

Sec. 10-50. - Required.

Every person engaged or intending to engage in any calling, business, occupation or profession in whole or in part, within the city limits, is required to pay an annual license tax for the privilege of doing business and obtain a business license as provided in this division.

Sec. 10-51 - Purpose and Duration

The business license levied by this ordinance is for the purpose of providing such regulation as may be required for the business subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. Each license shall be issued for one calendar year ending December 31. The provisions of this ordinance and the rates herein shall remain in effect from year to year as amended by the Council.

Sec. 10-52. - Tax.

- (a) . The required license tax shall be paid for each business subject hereto according to the applicable rate classification on or before April 30 each year, except for those businesses in rate class B for which a different due date is specified.
- (b) A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated for classifications at one location, the license tax shall be computed on the combined gross income for the classification requiring the highest rate. A license tax based on gross income shall be computed on the gross income for the preceding calendar or fiscal year, and on a 12-month projected income based on the monthly average for a business in operation for less than one year. The tax for a new business shall be computed on the estimated probable gross income stated in the license application for the balance of the license year, and at the end of the calendar year, the total license payment based on actual gross receipts shall be due and payable with credit allowed for that amount previously paid. The initial tax for an annexed business shall be prorated for the number of months remaining in the license year. No refund shall be made for a business that is discontinued.

(c) Group event license for shows. For purposes of this section, the term "show (exhibition)" means a group participation event in which exhibitors display in individual booths, stalls or any other specific division of an exhibition area, for the purpose of presenting to an audience, certain goods, wares, merchandise or services offered for sale, rent or promotional purposes for the general good will of the exhibitors. Shows generally are of two types: trade shows and public shows.

(1) Trade shows. For purposes of this subsection, the term "trade show" means an exhibition or show:

- a. To which the public generally is not invited;
- b. Where those participating as exhibitors or observers generally have a common business or other interest;
- c. Where the registration of exhibitors and observers is structured and admission is restricted; and
- d. Where on-floor sales are not the primary purpose.

Neither the producer or sponsor of, nor an exhibitor or participant in, a trade show is required to acquire any city business license.

(2) Public shows. For purposes of this subsection, the term "public show" means any type of consumer-oriented show (exhibition) to which the public is invited and admitted, with or without charge, and at which exhibitors present goods, wares, merchandise or services for sale, rent or promotional purposes.

- a. The producer, promoter or sponsor of a public show shall obtain a city business license prior to the opening of the show. The license shall be for a period not to exceed seven consecutive days. The tax for the license shall be fixed from time to time by the city council and is set forth in the tax schedule on file in the municipal clerk's office.
- b. To obtain a license for a public show, the producer, promoter or sponsor shall make an application to the business license office at least ten days prior to the scheduled event, naming the producer, promoter or sponsor, specifying the dates and location of the event, specifying the purpose of the event, and listing the exhibitors or participants, and shall pay the required tax. Not later than five days after the close of the show, the producer, promoter or sponsor shall adjust the payment based on estimates to cover a license based on the actual revenue received or number of exhibitors, whichever requires the greater payment.
- c. The exhibitors in any such public show shall not be required to obtain a city business license if the producer, promoter or sponsor has obtained a license for the show. In case the producer, promoter or sponsor does not acquire a business license for the show before the opening of the show, each exhibitor in the show shall acquire a peddler's city business license.

(d) A vendor participating in the Uptown Farmer's Market shall not be required to pay any vending fees if the business has an in-city business license. Vendors without an in-city business license shall be required to pay vending fees which will be in lieu of a business license tax. The vending fee must be paid in full or city business license renewed prior to participation in the Uptown Farmer's Market. Vending fees are set forth in appendix A.

Sec. 10-53. - Registration required.

- (a) The owner, agent or legal representative of every business subject to this article, whether listed in the classification index or not, shall register the business and make an application for a business license on or before the due date of each year, provided a new business shall be required to have a business license prior to operation within the city. A license for a bar (NAICS 722410) must be issued in the name of the individual who has been issued a State alcohol, beer or wine permit or license and will have actual control and management of the business.
- (b) The application shall be on a form, provided by the license official, which shall contain the Social Security Number and/or the federal employer's identification number, the business name as reported on the state income tax return, and all information about the applicant and the business deemed appropriate to carry out the purpose of this article by the license official. Applicants within the city limits shall be required to submit copies of portions of state and federal income tax returns reflecting gross income figures.
- (c) The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported, or estimated for a new business, without any unauthorized deductions, and that all assessments and personal property taxes on business property due and payable to the city have been paid.
- (d)

Sec. 10-54. - Deductions, exemptions and charitable organizations.

- (a) No deductions from gross income shall be made except income from business done wholly outside of the city on which a license tax is paid to some other municipality or a county, taxes collected for a governmental entity, or income which cannot be included for computation of the tax pursuant to state or federal law. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof.
- (b) No person shall be exempt from the requirements of this article by reason of the lack of an established place of business within the city, unless exempted by state or federal law. The license official shall determine the appropriate classification for each business in accordance with the latest issue of the North American Industry Classification System (NAICS) for the United States published by the Office of Management and Budget. No person shall be exempt from this article by reason of the payment of any other tax, unless exempted by state law, and no person shall be relieved of liability for payment of any other tax by reason of the application of this article.
- (c) Charitable organizations which have exemptions from state and federal income taxes shall be exempt from a business license tax only in cases where the sponsors, organizers, directors, trustees, or persons who exercise ultimate control of the organization receive no part of the proceeds of operation, and all proceeds are devoted to charitable purposes as defined by this article. Payment of the necessary costs of operation and wages to nonmanagement employees will not disqualify a charitable organization from exemption.

Sec. 10-55. - False application unlawful.

It shall be unlawful for any person subject to the provisions of this article to make a false application for a business license, or to give or file, or direct the giving or filing of, any false information with respect to the license or tax required by this article.

- (a) All persons shall display the license issued to them on the original form provided by the license official in a conspicuous place in the business establishment at the address shown on the license. A transient or nonresident shall carry the license upon his person or in a vehicle used in the business readily available for inspection by any authorized agent of the city.

- (b) A change of address must be reported to the license official within ten days after removal of the business to a new location and the license will be valid at the new address upon written notification by the license official and compliance with zoning and building codes. Failure to obtain the approval of the license official for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license. A business license shall not be transferable and a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on old business income.

DIVISION 3. - ADMINISTRATION

Sec. 10-76. - Duties of license official.

The license official shall administer the provisions of this article, collect license taxes, issue licenses, make or initiate investigations and audits to ensure compliance, initiate denial or revocation procedures, report violations to the city attorney, assist in the prosecution of violators, produce forms, make reasonable regulations relating to the administration of this article, and perform such other duties as may be duly assigned.

Sec. 10-77. - Inspection and audits.

- (a) For the purpose of enforcing the provisions of this article, the license official or other authorized agent of the city is empowered to enter upon the premises of any person subject to this article to make inspections, examine and audit books and records. It shall be unlawful for any such person to fail or refuse to make available the necessary books and records. In the event an audit or inspection reveals that the licensee has filed false information, the costs of the audit shall be added to the correct license tax and late penalties in addition to other penalties provided in this Code. Each day of failure to pay the proper amount of license tax shall constitute a separate offense.
- (b) The license official shall make systematic inspections and random audits of all businesses within the city to ensure compliance with this article. Financial information obtained by inspections and audits shall not be deemed public records, and the license official shall not release the amount of license taxes paid or the reported gross income of any person by name without written permission of the licensee, except as authorized by this article, State or Federal law, or proper judicial order. Statistics compiled by classifications are public records.

Sec. 10-78. - Assessments; payment under protest; appeal.

- (a) If a person fails to obtain a business license or to furnish the information required by this article or the license official, the license official shall examine such records of the business or any other available records as may be appropriate, and conduct such investigations and statistical surveys as the license official may deem appropriate to assess a license tax and penalties as provided in this Code.
- (b) A notice of assessment shall be served by certified mail or personal service. An application for adjustment of the assessment may be made to the license official within five days after the notice is mailed or the assessment will become final. The license official shall establish by regulation the procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment.
- (c) A final assessment may be appealed to the city council only by payment in full of the assessment under protest within five days, and the filing of written notice of appeal within ten days after payment, pursuant to the provisions of this article relating to appeals to the city council.

Sec. 10-79. - Delinquent license taxes; partial payment.

- (a) For nonpayment of all or any part of the correct license tax, the license official shall levy and collect a late penalty of five percent of the unpaid tax for each month or portion thereof after the due date until paid. Penalties shall not be waived. If any license tax remains unpaid for 60 days after its due date, the license official shall report it to the city attorney for appropriate legal action.
- (b) Partial payment may be accepted by the license official to toll the imposition of penalties on the portion paid; provided, however, no business license shall be issued or renewed until the full amount of the tax due, with penalties, has been paid.

Sec. 10-80. - Notices.

The license official may, but shall not be required to, mail written notices that license taxes are due. If notices are not mailed, there shall be published a notice of the due date in a newspaper of general circulation within the city three times prior to the due date in each year. Failure to receive notice shall not constitute a defense to prosecution for failure to pay the tax due or grounds for waiver of penalties.

Sec. 10-81. - Denial.

- (a) The license official shall deny a license to an applicant when he determines:
 - (1) The application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact; or
 - (2) The activity for which a license is sought is unlawful or constitutes a public nuisance, per se or per accidens; or
 - (3) The applicant, licensee or prior licensee or the person in control of the business has been convicted of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude, or an unlawful sale of merchandise or prohibited goods; or
 - (4) The applicant, licensee or prior licensee or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the city or in another jurisdiction; or
 - (5) The applicant, licensee or prior licensee or the person in control of the business is delinquent in the payment to the city of any tax or fee; or
 - (6) The license for the business or for a similar business of the licensee in the city or another jurisdiction has been denied, suspended or revoked in the previous license year; or
 - (7) A certificate of occupancy has not been secured on businesses located within the city.
- (b) A decision of the license official shall be subject to appeal to the city council as provided herein. Denial shall be written with reasons stated.

Sec. 10-82. - Suspension or revocation.

When the license official determines:

- (1) A license has been mistakenly or improperly issued or issued contrary to law; or
- (2) A licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this article; or
- (3) A licensee has obtained a license through a fraud, misrepresentation, false or misleading statement, or evasion or suppression of a material fact in the license application; or

- (4) A licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude, or an unlawful sale of merchandise or prohibited goods; or
- (5) A licensee has engaged in an unlawful activity or nuisance related to the business; or
- (6) A Licensee is delinquent in the payment to the city of any tax or fee, the license official shall give written notice to the licensee or the person in control of the business within the city, by personal service or certified mail, that the license is suspended pending a hearing before city council for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special city council meeting within 30 days from the date of service of the notice, unless continued by agreement. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this article.

Sec. 10-83. - Appeals to city council.

- (a) Any person aggrieved by a decision, final assessment, revocation, suspension, or a denial of a business license by the license official may appeal the decision to the city council by written request stating the reasons therefore, filed with the license official within ten days after service by certified mail or personal service of the notice of the decision, final assessment, proposed revocation, suspension, or denial.
- (b) An appeal or a hearing on revocation shall be held by the city council within 30 days after receipt of a request for appeal or service of the notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice, unless continued by agreement. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence and to cross examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by the city council shall govern the hearing. The city council shall by majority vote of members present render a written decision based on findings of fact and application of the standards herein which shall be served upon all parties or their representatives and shall be the final decision of the city.

Sec. 10-84. - Consent or franchise agreements—Permission to use streets required.

It shall be unlawful for any person to construct, install, maintain or operate in, on, above or under any street or public place under the control of the city any line, pipe, cable, pole, structure or facility for utilities, communications, cablevision or other purposes without a consent agreement or franchise agreement issued by the city council by ordinance which prescribes the term, fees and conditions for use.

Sec. 10-85. - Same—Fee required; term; additional to regular license fees.

The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the Ordinance approving the agreement and shall be consistent with limits set by state law. Existing franchise agreements shall continue in effect until expiration dates in the agreements. Franchise and consent fees shall not be in lieu of or credited against business license fees unless specifically provided by the franchise or consent agreement.

Sec. 10-86. - Confidentiality.

Except in accordance with a proper judicial order or as otherwise provided by law, it shall be unlawful for any official or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this article. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of their duties, whether or not those duties relate to enforcement of this article.

Sec. 10-87. - Severability.

A determination that any portion of this ordinance is invalid or unenforceable shall not affect the remaining portions.

Secs. 10-88—10-105. - Reserved.

DIVISION 4. - RETAIL TELECOMMUNICATIONS SERVICES

Sec. 10-106. - License tax levied.

- (a) Notwithstanding any other provisions of the business license article, the business license tax for retail telecommunications services, as defined in S.C. Code 1976, § 58-9-2200, shall be at the maximum rate authorized by S.C. Code 1976, § 58-9-2220, as it now provides or as provided by its amendment. The business license tax year shall begin on January 1 of each year. Declining rates shall not apply.
- (b) In conformity with S.C. Code 1976, § 58-9-2220, the business license tax for retail telecommunications services shall apply to the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality. For a business in operation for less than one year, the amount of business license tax shall be computed on a 12-month projected income.

Sec. 10-107. - Due date for payment; delinquent penalty.

- (a) The business license tax for retail telecommunications services shall be due on January 1 of each year and payable by January 31 of that year, without penalty.
- (b) The delinquent penalty shall be five percent of the tax due for each month, or portion thereof, after the due date until paid.

Sec. 10-108. - Exemptions.

Exemptions in this article for income from business in interstate commerce are hereby repealed. Properly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

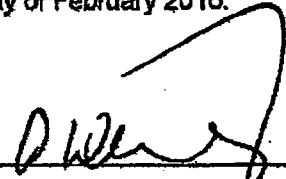
Sec. 10-109. - Franchise and other contractual agreements.

- (a) Nothing in this division shall be interpreted to interfere with the continuing obligations of any franchise agreement or contractual agreement in the event that the franchise or contractual agreement should expire after December 31, 2003.
- (b) Fees imposed by any franchise or contractual agreement with a telecommunications provider which expires prior to December 31, 2003, shall continue in effect until December 31, 2003.
- (c) All fees collected under such a franchise or contractual agreement expiring after December 31, 2003, shall be in lieu of fees or taxes which might otherwise be authorized by this division.

Sec. 10-110. - Collection of taxes.

As authorized by S.C. Code 1976, § 5-7-300, the agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from telecommunications companies pursuant to S.C. Code 1976, § 58-9-2200 shall continue in effect.

This ordinance duly adopted on second reading this 22nd day of February 2016.


D. Welborn Adams, Mayor

ATTEST:


City Clerk and Treasurer

First Reading: January 25, 2016

Second Reading: February 22, 2016

THE STATE OF SOUTH CAROLINA
IN THE COMMON PLEAS

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2017-CP-24-0009

Shred with Us, LLC Appellant,

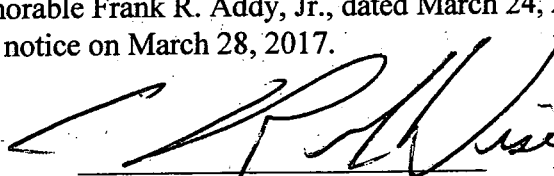
vs.

Steffanie Dorn, City of Greenwood Business License Official, ... Respondent.

NOTICE OF INTENT TO APPEAL

Appellate appeals the Order of the Honorable Frank R. Addy, Jr., dated March 24, 2017.
and filed March 27, 2017. Appellate received notice on March 28, 2017.

April 4th, 2017



C. Rauch Wise
Attorney at Law
305 Main Street
Greenwood, SC 29646
S.C. Bar No 06188
(864) 229-5010

Attorney for Appellant

OTHER COUNSEL OF RECORD:

James Graham Padgett, III
414 Monument St., Ste C
Greenwood SC 29646

Danny Calvert Crowe
PO Box 1149
Columbia SC 29202

State of South Carolina)
) Court of General Sessions
County of Greenwood)

2017-CP-24-0009

Shred with Us., LLC)
) vs.) Transcript of Record
)
)
Stephanie Dorn, City of)
Greenwood Business License)
Official)
 Defendant)

February 17, 2017
Greenwood, South Carolina

B E F O R E:

Honorable Frank Addy, Jr., Judge

A P P E A R A N C E S:

Rauch Wise, Esq.
Attorney for the Plaintiff

Danny C. Crowe, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

1 THE COURT: Are y'all ready on Dorn versus Shred?

2 MR. WISE: Yes, sir. I want to hand up to the Court
3 a transcript of the hearing.

4 MR. CROWE: Your Honor, your file should reflect
5 actual record, certified copy of the record below that was
6 filed and served on February 3rd.

7 THE COURT: Yes.

8 MR. WISE: Do you have the transcript of that
9 certified record?

10 THE COURT: I have got it.

11 MR. CROWE: It is in there.

12 THE COURT: It is here. Do you need your's back.

13 MR. CROWE: Your Honor, I am Danny Crowe, I would
14 like to hand up a memorandum on behalf of the respondent.

15 THE COURT: Was this what was sent to me this
16 morning. No, that is a different case, okay, never mind.

17 MR. CROWE: With Mr. Padgett I represent Dorn as the
18 Business License Official and City of Greenwood.

19 THE COURT: I have got the memorandum that you, that
20 was emailed to me this morning. I think that is what you
21 just handed up to me a few moments ago.

22 MR. CROWE: I didn't realize that.

23 THE COURT: No, quite all right. Mr. Wise, I think
24 you are the moving party on this?

25 MR. WISE: That's correct.

1 THE COURT: Go ahead.

2 MR. WISE: Your Honor, I think this case basically
3 boils down to an interpretation of South Carolina Code
4 Annotated, 58-23-620, which simply says that no City, Town
5 or County in this State shall impose a license fee or
6 license tax upon a holder, and what is relevant here is a
7 Class E Certificate. The facts are undisputed that my
8 client has a Class E Certificate to transport stuff
9 throughout South Carolina on an irregular route. The
10 statute is pretty clear on its face, I think. They
11 contend that simply because he puts a storage box in a
12 place of business for them to put their paper in and picks
13 it up that that portion could be taxed. There is an
14 Attorney General opinion they refer to and the Attorney
15 General opinion backs me up and it interestingly says in
16 there that you can't tax things that are incidental and
17 necessary to the operation of the Class E Certificate.
18 And at first I thought if something is incidental it isn't
19 going to be necessary. But actually if you look at the
20 facts of this case I think it applies personally because
21 handling a drop box for them to put paper in to be
22 shredded is certainly incidental to his business of
23 transporting and recycling paper which is what he does.
24 It seems to me that their complaints should be with the
25 Legislature as the Legislature can amend this if they

1 wanted to and say a portion of it is taxable or whatever.
2 But as the statute itself reads, it is a blanket exemption
3 for someone with a Class E Certificate, it doesn't have
4 any except or whatever. And it is stipulated in the facts
5 in this case and the City accepted the fact that he did,
6 in fact, have a Class E Certificate. They mentioned in
7 the transcript, if you read it, that other businesses do
8 something very similar and they are paying City taxes.
9 Well the problem is, we don't know if any of those
10 businesses have a Class E Certificate. And so if they
11 don't have a Class E Certificate they are not identical
12 under the same situation. And if they have a Class E
13 Certificate and don't realize they are exempt then it is
14 their problem, not a basis for ruling against my client.
15 But in this case the primary business he has is picking up
16 waste paper, shredding it and recycling it down in
17 Lexington. Of course, he pays business taxes in Lexington
18 on his gross income also. But I think under that statute
19 it is, and the Attorney General opinion, it is to me real
20 clear, that if you have a Class E Certificate you are
21 exempt. And if the City wants to change that law they
22 have the perfect prerogative to go to the Legislature and
23 ask to change it, ask to have some exemptions added or
24 something like that. But until they do the law is clear
25 on its face.

1 THE COURT: All right, yes sir.

2 MR. CROWE: Your Honor, of course the City disagrees
3 with Mr. Wise's interpretation of this statute and its
4 applicability here. If I can just back up a second and
5 stick our toes very briefly into the facts. Shred with Us
6 is a business, you may be familiar with this type of
7 business. They drop off boxes or receptacles at their
8 office customers. Some of which they rent, some of those
9 receptacles they rent, some they provide for free. Then
10 periodically they come around in their truck, roll the
11 receptacles out to the truck, dump the paper into the
12 truck and shred the paper in ninety-eight percent of the
13 cases, then when it concludes its route in Greenwood the
14 truck heads back to West Columbia. The City, Business
15 License Official acknowledge below and the Council agreed
16 that the activity of transportation for which the
17 Certificate EL is issued is not subject to the business
18 license tax because of that statute, 58-63-620. However,
19 both the License Official and the City Council gave that
20 statute a practical reasonable construction that we say is
21 in accord with the case law of this State, Wood versus
22 Mendenhall that is cited in a City Council order and in
23 our memorandum and in accord with a 1962 Attorney
24 General's opinion which differentiates the applicability
25 of that statute to different business activities of the

1 business. Here the two principle business activities,
2 Shred with Us, were the collection in shredding and the
3 transportation. The City made no effort to collect the
4 tax on transportation activity. But recognizing as our
5 cases do that one business can have multiple business
6 activities, the City did believe that it could impose a
7 business license tax on the activity of shredding, that
8 was supported at the hearing before Council by the
9 testimony of the Business License Official, Stephanie
10 Dorn, that was supported by the copies of the North
11 American Industry Classification System which the City
12 relies to classified business. They show that shredding
13 and transportation are two entirely separate and distinct
14 activities. It is supported, as I mentioned, by 1911 case
15 called Wood/Mendenhall.

16 THE COURT: You can't really shred it if you don't
17 transport it, you can't shred it on site though.

18 MR. CROWE: Well, they do shred on site.

19 THE COURT: I mean, but they have to take it, so they
20 shred it in Greenwood?

21 MR. CROWE: Yes sir, they shred it in their truck in
22 Greenwood, it is a grinding motor, ninety-eight percent of
23 the paper that is collected by Shred with Us in Greenwood
24 is shredded on site, on the site of their customers, then
25 transported back to West Columbia. The 1911 case of Wood

1 versus Mendenhall that I cite and discussed recognizes
2 this multiple business operations, principle and says that
3 if the, multiple business activities are not necessary
4 subsidiary of each other then each is required to have a
5 business license status. The 1962 Attorney General's
6 opinion which is on page 62 of the record, it was
7 submitted at the hearing before Council, is contrary to
8 Mr. Wise's contention, very clearly in our favor. This
9 was one of the first Attorney General's opinions to
10 construe what later became section 58-63-620. It is the
11 only Attorney General's opinion that deals with this issue
12 of multiple business operations. It is a very brief
13 Attorney General's opinion as you see and it makes that
14 distinction between activities that are incidental and
15 necessary to the transporting of property under the
16 Certificate. And concludes that only the activity that is
17 directly related to the transportation should have the
18 benefit of the exemption. And that kind of analysis is
19 exactly what the City Council did in this case in
20 determining that the transportation activities were not
21 subject to business license but the collection and
22 shredding activities within the City were subject to a
23 business license tax. That is our case and I have tried
24 to spell that out in the memorandum. The facts can get a
25 little tricky but the general principles we think are

1 fully supported by the evidence received by the Council
2 and by the reasonable practical construction of this
3 58-63-620. That statute does not authorize a business
4 that receives a certificate to engage in any other
5 business. Nor does it expressly say that the exemption
6 applies to all other business activities of that business
7 that holds the certificate. The example that I used in
8 arguing to the City Council and I think it is very true,
9 is that the General Assembly could not have intended that
10 a business issued a Certificate E could then operate
11 without a business license. A food truck, out the back of
12 its truck, could not sell clothing out of the back of its
13 truck. Clearly these are unrelated activities to the
14 transportation. The factual finding that the City Council
15 made from which Shred with Us does not appeal in its
16 notice of appeal, there is no listed error in connection
17 with that factual finding, was that these are separate and
18 distinct and independent business activities. Because of
19 that we think we are on sound legal footing with the Wood
20 versus Mendenhall case and with the 1962 Attorney
21 General's case. The Attorney General's opinion, the
22 Attorney General's opinion cited by Mr. Wise does not
23 involve a situation of multiple business operations. So
24 it really provides no interpretive guidance for the City
25 Council or for this Court and we submit that the

1 controlling principles are as described in the 1962
2 Attorney General's opinion. Thank you, Your Honor. And
3 that the order of the Council should be affirmed.

4 THE COURT: May I ask a question and then I will let
5 you point out.

6 MR. CROWE: Yes, sir.

7 THE COURT: As a practical matter how does this play
8 out, is it the intention of Greenwood City. I assume that
9 this business has multiple customers in Greenwood. It
10 seems to elude to that and what y'all have submitted to
11 me. Are you suggesting that they will need to have a
12 separate business license for each receptacle in the City
13 or just one blanket for, if he has got one receptacle or
14 100, it doesn't matter, he has just got to file--

15 MR. CROWE: It is the activities, so he doesn't have
16 a location within Greenwood but non-resident businesses
17 are subject to the business license tax. So it is all of
18 his non-exempt activity within the City of Greenwood. The
19 testimony at trial was that, as apportioned by the
20 business owner he paid about a \$90.00 dollar yearly
21 business license tax.

22 THE COURT: That was going to be my next question, is
23 how much the tax was going to be because it is generally a
24 percentage of what your revenue is or at least I'm
25 assuming they still do it like that.

1 MR. CROWE: Right, it is .01 percent or so with a
2 base amount. Here the base amount is about \$90.00 dollars
3 a year. It is up to the business owner, in this
4 situation, as in most to apportion his income between the
5 shredding activity and the transportation activity.
6 Unless the City has some problem with how that is
7 apportioned then that apportionment is usually accepted.
8 The same situation would be true as an attorney from my
9 practice in Greenwood, I would be liable for a business
10 license tax for my activity here within the City, not for
11 the rest of my income.

12 THE COURT: Got you.

13 MR. CROWE: That is the situation we are dealing with
14 here. Thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. WISE: Here is the 1989 Attorney General's
17 opinion that, what I want to point out is this. Your
18 Honor, if a business has a Class E Certificate and it
19 starts selling food out of the truck, let's address that
20 issue when it comes here or if they start selling clothes
21 out of the truck, let's address that issue when it comes
22 here. But that is not the facts of this case and they are
23 not even close. The business of recycling paper products,
24 paper that is thrown away, some people say we want you to,
25 you know, shred it while we look at it because we think it

1 is that important. Some people say we don't care. So the
2 shredding is strictly incidental to the act of picking up
3 the used paper and recycling it down in Lexington. It is,
4 as the old Attorney General's opinion said, it is both
5 incidental and in some cases necessary. It is incidental
6 because not everybody wants it, cares if it is shredded
7 there on the site, some people do. The machine literally
8 could shred as it goes down the road, if that actually
9 became a requirement. But I think when you look at it,
10 that in this case the shredding is strictly, really is
11 incidental to the primary purpose of what they do which is
12 to pick up paper pursuant to their Class E Certificate and
13 transport that paper back to Columbia, back to Lexington
14 on an irregular route at irregular times. And under those
15 circumstances Class E exempts them. As I say, if the City
16 wants to take a different position I think they should
17 address the problem with the Legislature because the law
18 is pretty clear on its face.

19 MR. CROWE: Your Honor, just to quickly respond if I
20 could. The evidence before the City Council was from the
21 Business License Official, the NAICS Code was that these
22 activities are separate and distinct. The Certificate
23 that is given to Shred with Us is shown on page 48 of the
24 record. It is what is called a Class EL Certificate of
25 Compliance for the operation of motor vehicle carriers,

1 authorizes Shred with Us to transport freight other than
2 household goods and has its weight over irregular routes
3 between points and places in South Carolina. It doesn't
4 authorize any other activity. It is essentially a freight
5 hauler's certificate. What makes this case different,
6 what exempts from 58-63-620 is that there is an additional
7 activity here of the shredding. You don't have to
8 transport shredded paper, that is not a necessary part of
9 the shredding. These are separate and distinct
10 activities. Under this Certificate, Shred with Us can
11 haul rocks, lumber, whatever. But it doesn't authorize it
12 to engage in other activities within the City. Your
13 Honor, and I would point out, this is, as Your Honor
14 knows, this is the Circuit Court sitting in its appellate
15 capacity. I point out the standard of review on page two
16 and on page three, a principle of judicial, of statutory
17 construction that comes into play here. But the standard
18 of review as Your Honor knows, in the situation of an
19 appeal like this from an inferior tribunal is a
20 differential standard. And the factual findings of the
21 City Council are to be supported unless they are without
22 evidentiary support or against the clear preponderance of
23 the evidence. It is not a summary judgment, obviously, it
24 is a situation where the factual findings of the Council
25 should be entitled to deference as if they were a jury

1 verdict. Here Shred with Us did not appeal from the
2 factual finding of the City Council, that these were
3 multiple business operations that the shredding and the
4 transportation were separate. Because of that it can only
5 argue that the statute provides a blanket exemption. The
6 City says the statute only applies exemptions under a
7 practical and reasonable interpretation of the statute,
8 that is the requirement of the land resources. Saluda
9 County Council case that is cited on page three. And we
10 think that is what the City Council has done completely in
11 accord with the early 1962 Attorney General's opinion. We
12 did have to delve into all of those technicalities of this
13 case.

14 THE COURT: I never thought shredded paper could be
15 so interesting. Go ahead.

16 MR. WISE: I think the position of the City that the
17 Class E only gives you the right to transport is really
18 a--

19 THE COURT: I have kind of got you, it is black
20 letter, it says what it says.

21 MR. WISE: Right. But it is also a specious argument
22 in this sense that if you grant, there is no need to grant
23 an exemption to a Class E Certificate holder if all they
24 are doing is hauling stuff through Greenwood County
25 because they are not doing any business here. So it has

1 to mean something beyond, you know, transportation. It
2 has to mean you actually going to stop and do something in
3 the County with your Class E Certificate, on the City as
4 it may be. So, I think that is, you know, keep that in
5 mind, if they wanted to, you know, it has to mean
6 something because it doesn't apply to somebody who just
7 drives through a County.

8 MR. CROWE: And, Your Honor, not to prolong the
9 argument but the Attorney General's opinion in 1962 was
10 looking at the same statute, the predecessor statute that
11 Mr. Wise argued. And it says it is not a blanket
12 exemption, it only applies if the other work is directly
13 related to the transportation. So that is the distinction
14 that the City Council has made here in differentiating
15 between the shredding activity and the transportation
16 activity which are not necessarily connected or subsidiary
17 of each other.

18 THE COURT: I image though that the reason that they
19 shred it on site, and I am just thinking this, I have
20 never seen them collect this stuff. But I assume they
21 shred it on site so that it can be compacted and maybe
22 make it easier to transport especially if this truck is
23 doing, you know, multiple bouts throughout the town or
24 throughout the State or area or whatever it is. They
25 shred on site so that they can compact it and it is a much

1 more efficient way, that would make the shredding part of
2 the transportation because obviously you can have a
3 greater volume of material that you are taking back to
4 Columbia if you shred it and compact it on site which
5 would seem to indicate that this relates to the act of
6 transporting it.

7 MR. CROWE: At the hearing the Principal of Shred
8 with Us, Mr. Ragsdale, testified that his primary business
9 activity was document destruction. The shredding is
10 actually part of the document destruction, it is meant to,
11 it is sold as a confidential means of document
12 destruction. So it is more related to the manner in which
13 the document destruction is packaged, if you will, rather
14 than the transport of, it is the same amount of paper, it
15 will occupy the same volume regardless of its form. So,
16 it is really, the shredding is an element of the
17 destruction of the document, not an element, not a
18 necessary element of the transportation. That would be
19 our argument.

20 MR. WISE: He testified in great length about it but
21 my take on his testimony was that he is in the recycling
22 business and the shredding is incidental to that.

23 THE COURT: I am taking way too much under advisement
24 but I am going to add another one. All right, I am adding
25 another one to the pile. Interesting.

1 MR. WISE: It is, it is.

2 THE COURT: Very interesting. You do agree, as far
3 as their standard of review is concerned?

4 MR. WISE: I agree with their standard of review.

5 THE COURT: I will try to get y'all something next
6 week at the latest.

7 MR. CROWE: Thank you, Your Honor...

8 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4 CERTIFICATE OF REPORTER5 State of South Carolina)
6)
7 County of Newberry)8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Greenwood, South
14 Carolina on the 17th day of February, 2017.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
1718 April 18, 2017
1920
21 22 Joy E. Holston, Court Reporter
23
24
25

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas
Frank R. Addy, Jr., Circuit Court Judge

Case No. 2017-000847

Shred with Us, LLC Appellant,

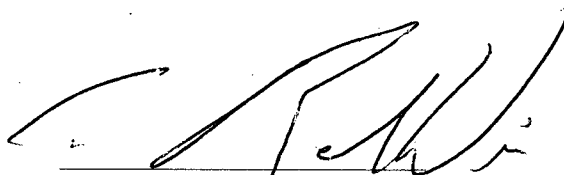
vs.

Steffanie Dorn, City of Greenwood Business License Official, ... Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Amended Record on Appeal contains all
material proposed to be included by any of the parties and not any other material.

December 22, 2017



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 00188

Attorney for Appellant

RECEIVED
JAN 09 2018
SC Court of Appeals