

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHSTER)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Gerard. E. Ziegler; Brenda Barrington III;)
James Stephen Greene, Jr.; William A.)
Harbeson; David Messinger; South Carolina)
Public Interest Foundation; and Dorchester)
County Taxpayers Association, individually,)
and on behalf of all others similarly situated,)

Case No.: 2016-CP-18-0197

FILED-RECORDED
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CHERYL GRANHAM
CLERK OF COURT
DORCHESTER COUNTY

Plaintiffs,)

Vs.)

ORDER OF DISMISSAL

Dorchester County; Dorchester County)
Council; Charles D. Chinnis, George H.)
Bailey, Sr., Jay Byars, Willie R. Davis,)
Carroll S. Duncan, Larry Hargett and)
William R. Hearn Jr., in their official)
Capacities as members of Dorchester)
County Council,)

Defendants.)

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SC Court of Appeals

THIS MATTER came before the Court upon Defendant's Motion for Judgment on the Pleadings. A hearing was convened on August 24, 2017 at the Orangeburg County Courthouse, at which counsel for all parties were present.

After due deliberation, a thorough review of the pleadings, memoranda, case law, and arguments of counsel, this Court hereby GRANTS Defendant's Motion on the Pleadings and DISMISSES Plaintiff's Complaint in its entirety.

BACKGROUND

On July 18, 2016 Dorchester County Council (hereinafter "Council") passed an Ordinance requiring that a referendum be held on November 8, 2016, on whether Dorchester County should be authorized to issue general obligation bonds not exceeding \$43,000,000 for the purposes of

funding new library facilities, parks, recreational facilities and hiking, biking and pedestrian trails. Dorchester County held an election on November 8, 2016 and included on the ballot was the following question on the referendum:

Shall Dorchester County, South Carolina be authorized to issue general obligation bonds in an amount not to exceed \$30,000,000 for funding the acquisition of land and the design and construction of new library facilities in Summerville and North Charleston and general obligation bonds in an amount not to exceed \$13,000,000 for funding recreational facilities, including the development of the Dorchester County Courthouse Park in St. George, the Ashley River Park and the Pine Trace Natural area in Summerville, and the development of hiking, biking and pedestrian trails, together with associated infrastructure, at various locations throughout the County?

The question passed with 60.46% in favor and 39.54% opposed. Now, the Plaintiffs', including five individual taxpayers and two organizations representing taxpayers, represent that Dorchester County and its Council in their individual capacity unlawfully and unconstitutionally combined two separate issues into one question to be voted on by referendum.

In essence, Plaintiffs contend that the eventual consequence of the question's form was a majority vote supporting bonds for libraries and parks; without insight into whether one would have passed without the other. Specifically, Plaintiffs' claim violations of South Carolina Constitution Article X, § 14(2), (3), (4); S.C. Code Ann. §§ 4-15-10 et seq.; S.C. Code Ann. § 7-13-400; and S.C. Code Ann. § 51-15-330. In short, Plaintiffs' persist that voter confusion is a factual question which requires further proceedings.

Defendants move this Court for Judgment on the Pleadings and to find that the relief sought depends solely on assertions and conclusions which lack sufficient facts to constitute a cause of action. Thus, they surmise that Plaintiffs' opposition to the form of the question as presented and the belief it was without legal authority, and therefore does not authorize issuance of bonds is strictly a matter of law.

DISCUSSION

A judgment on the pleadings, although drastic, shall be granted where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor. Home Builders Ass'n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty., 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). Article X §14(2), (3), (4) of the South Carolina Constitution gives power to both counties and municipalities of this State to incur bonded indebtedness in accordance with the law set forth by the General Assembly. S.C. Const. Art. X, § 14. The power is limited to indebtedness for general obligations and those payable only from a revenue-producing project or from a special source. Id. "General obligation debt" is codified as indebtedness of the political subdivision which shall be secured in whole or in part by a pledge of its full faith, credit and taxing power. Id. at § 14(3). That debt may only be incurred for a **purpose** [*emphasis added*] which is a public purpose and which is a corporate purpose of the applicable political subdivision. Id. at § 14(3). It is this singular "purpose" in the Article about which the majority of this matter revolves.

I. JUDICIAL REVIEW OF LEGISLATIVE ACTS

Although no specific justiciability argument has been made of the current question, this Court takes opportunity to emphasize the fundamental characteristic of a nonjusticiable political question. Specifically, that such adjudication would place a court in conflict with a coequal branch of government. Alexander v. Houston, 403 S.C. 615, 618-19, 744 S.E.2d 517, 519 (2013) (citing Segars-Andrews v. Judicial Merit Selection Comm'n, 387 S.C. 109, 121, 691 S.E.2d 453, 460 (2010) (quoting S.C. Pub. Interest Found. v. Judicial Merit Selection Comm'n, 369 S.C. 139, 142-43, 632 S.E.2d 277, 278 (2006))). Furthermore, courts cannot reject as "no lawsuit" a bona fide controversy as to whether some action denominated political exceeds constitutional authority. Id. Instead, the court is duty bound to review the actions of the legislature and its subsidiaries when it

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is alleged in a properly filed suit that such actions are unconstitutional. Id. Only after a limited review will a complaint challenging the wisdom of the Council's actions or the process by which this situation developed be dismissed for lacking a bona fide legal challenge proper for judicial review. Id.

As an initial matter, this Court finds that Plaintiffs' have not plead sufficient factual allegations in the Complaint or incorporated pleadings which would support a judgment that the referendum was ambiguous and confusing. The assertion that there is uncertainty as to whether a majority of voters supported both bonds and whether some would have supported one without the other are simply conclusory. Plaintiffs in this case rely heavily on an Attorney General's opinion which purports to state that the bond question impermissibly combined two separate and distinct questions because the applicable article of the Constitution does not allow for "purposes" as does other statutes. Op. S.C. Atty. Gen., September 30, 2016, page 2. That opinion further suggests that since a "library is governed by a separate statute than one for a park" separate bond questions are necessary. Op. S.C. Atty. Gen., September 30, 2016, page 9. To support the statement, the Attorney General's letter draws attention to S.C. Code Ann. §§ 4-9-35, 39 and S.C. Code Ann. § 51-15-330 which separately provide counties and municipalities with the authority to create, control, and fund libraries and parks respectfully. While helpful, the Attorney General's opinion is not binding, and after proper review, this Court finds the statements and opinions relied upon by Plaintiffs' do not present a bona fide legal challenge supporting further proceedings.

II. HOME RULE ACT OF 1975

Article VIII of the South Carolina Constitution provides that the "Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall

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include those fairly implied and not prohibited by this Constitution.” S.C. Const. art. VIII, § 17. The “Home Rule Act” passed in 1975 was created to strengthen local governments and to provide significant independence from the state legislature. Pierce T. MacLennan, A Long Way from Home: Slow Progress Toward "Home Rule" in South Carolina and A Path to Full Implementation, 64 S.C. L. Rev. 781, 783 (2013). The Article now provides general law for the structure and responsibilities of counties and prohibits the Legislature from passing laws specific to one county. Id. at 783. After passage of the Act, local governments were granted greater flexibility and authority which was formerly constrained by the “county purpose doctrine.” Id. at 787. As local governments have been granted flexibility, it is no longer proper to constrain analysis to form over function. Id. at 791 (citing then Chief Justice Toal’s dissent in Hamm v. Cromer, 305 S.C. 305, 310, 408 S.E.2d 227, 230 (1991)). As stated in Hamm, the essential purpose and intent of the Act is to be considered. Id.

Additionally, “The County Bond Act” found in Chapter 15 of the South Carolina Code provides power and purpose(s) so that local government(s) may incur debt. As defined, an “*authorized purpose*” means any purpose for which the particular county might, under the applicable constitutional provisions, issue bonds or levy taxes. S.C. Code Ann. § 4-15-20 (2). Only upon favorable election on the issuance of bonds by the voters may a county issue general obligation bonds to defray cost of any authorized purpose. S.C. Code Ann. § 4-15-30 (1). The issue must be in the form of a question or questions expressing whether the voter is in favor of or opposed to the question or issue. S.C. Code Ann. § 7-13-400. Combined, Home Rule and The County Bond Act may be liberally construed to give, as in this case, the Council power to fund its own purpose(s) free from the Legislature’s management.

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III. STATUTES PERTAINING TO LOCAL GOVERNMENT

Plaintiff(s) contend that the existence of distinct chapters in the Code of Laws relating to the bond question's purpose necessitate separate bond questions in the instance. The argument is that, since the State requires county run or operated public library systems in one section, and allows cities to create their own parks in another, whether a single bond question pertaining to library and parks facilities is consequently factual in nature. The Code defines governing "authorities" within a county as those such as county board of commissioners or other board or body to which is delegated the administrative duties of the particular county provide. S.C. Code Ann. § 4-15-20 (1). One specific statute gives a county authority to make appropriations for recreation and libraries alike. S.C. Code. Ann. § 4-9-30(5). Nothing in that statute limits a county fund raising authority to those two purposes. Id.

Meanwhile, S.C. Code Ann. § 51-15-330 deals directly with a municipality's ability to call for the issuance of bonds for parks and recreational facilities. True, the chapter is separate and distinct from that above proscribing county authority. Nonetheless, the Council's bond question at hand unambiguously asks voters to consider a "County" referendum. The argument that the legislature in separating grants of power to county and municipalities separately automatically requires separate bond questions is not persuasive. Instead, the law includes, but does not limit local governments in their purpose(s) or projects so long as they remain "a public purpose." South Carolina Constitution Article X, § 14 (4).

IV. A PUBLIC PURPOSE

Plaintiffs seek to handcuff reading of the words "a purpose" found in the applicable law to the singular. However, the General Assembly has expressed intent to include the plural in words importing the singular and further requires the spirit and intent of an act to be considered over the

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form of a single word. S.C. Code Ann. § 2-7-30. Following that logic, Plaintiffs' believe that if one purpose were allowed in a question to be voted on in the referendum, the law would have read that election approval must be for authorized purposes [plural] and not for an authorized purpose [singular]. The Attorney General seems to agree. Op. S.C. Atty. Gen., September 30, 2016, page 9.

With that in mind, the Attorney General's opinion correctly states: the bond question must be viewed as a whole in determining whether it would likely mislead the average voter. Op. S.C. Atty. Gen., September 30, 2016, page 3 (citing Lowery v. Shirley, 234 S.C. 279, 282, 107 S.E.2d 769, 771 (1959)). Typically, where the intention of a statute requires funding for individual projects be regarded as separate and independent, the qualified electors should have the opportunity of voting separately for the issuance of bonds. Johnson v. Roddey, 83 S.C. 462, 65 S.E. 626, 627 (1909). Other states have held that whether a single or multiple proposition is presented asks "whether or not there exists a natural relationship between the objects united in one proposition and whether or not the several projects are so related that united they form in fact one rounded whole." Henkel v. City of Pevely, 504 S.W.2d 141, 146-47 (Mo. App., 1973).

"Every reasonable presumption in favor of sustaining contested election will be employed and irregularities or illegalities which do not appear to have affected the result of the election will not be allowed to overturn it." Fielding v. S.C. Election Comm'n, 305 S.C. 313, 408 S.E.2d 232 (1991). A bond question is not required to set out the specific details of the proposed work or improvements on the ballot. Sadler v. Lyle, 254 S.C. 535, 546, 176 S.E.2d 290, 295 (1970); See also, Fairfax County Taxpayers Alliance v. Board of County Supervisors of Fairfax County, 202 Va. 462, 117 S.E.2d 753 (1961). Unless fraud has been perpetrated, a violation of the single-

purpose rule (as complained presently) does not invalidate bonds per se. Wood v. Ross, 85 S.C. 309, 67 S.E. 449, 451 (1910).

Only where the law requires and a different result would occur should a court overturn an election result. In Johnson, it was held that questions for funding the erection of plants, either for waterworks or sewerage, or lighting purposes required separate questions. Johnson v. Roddey, 83 S.C. 462, 65 S.E. 626, 627 (1909). However, in another instance a bond question was found proper that called for the purchase of waterworks plant where part of the proceeds were for equipment and part for operation. McDaniel v. Bristol, 160 S.C. 408, 158 S.E. 804 (1931). The reason, the voters in that case understood what was to be purchased, the purchase price, and that the purchase price could only be paid by the issue of municipal bonds. Further, by answering "Yes" to that question, the voters approved the town council to purchase the plant at a price not exceeding the bond amount, issue municipal bonds therefor, and pay the sellers the purchase price. Id.

Here, the pleadings shade closer to those in McDaniel. Dorchester County Council sought funding for a general obligation bond for the acquisition of land, design, and construction of new facilities. The laws of this state are multi-faceted. The Constitution may refer to "all laws." While the Legislature separates county and municipal authority. Both are controlling and both important to the instant case. Likewise, those pre-Home Rule cases should not be ignored. Viewed together, even if Council chooses in the Referendum to specify with detail its proposed work, it is not required to do so. Thus, the intent of the bond question and whether the voters of Dorchester County understood its results must dominate. There are no factual allegations to suggest they did not.

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This Court finds as a matter of law that the Council was within its power to call for the referendum. That the question clearly asks whether the Council should be authorized to incur \$43,000,000 dollars in debt to provide for new facilities which would include library, recreational, and associated infrastructure throughout Dorchester County. Further, it is undisputed by answering "Yes" to that question, the voters approved Dorchester County to issue bonds, specifically \$30,000,000 for library facilities, and \$13,000,000 for parks and recreation and that no issue of fact raised by the complaint would entitle the Plaintiffs to judgment if resolved in their favor.

CONCLUSION

Accordingly, IT IS THEREFORE ORDERED, that Defendant's Motion for Judgment on the Pleadings is hereby GRANTED.

IT IS FURTHER ORDERED, that Plaintiff's Complaint is summarily DISMISSED in its entirety.

AND IT IS SO ORDERED.



Edgar W. Dickson
Presiding Judge, First Judicial Circuit

December 8, 2017
Orangeburg, South Carolina

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