

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF RICHLAND ) FIFTH JUDICIAL CIRCUIT

South Carolina Public Interest Foundation, ) Civil Action No. 2016-CP-40-02875  
Edward D. Sloan, Jr., and William B. )  
DePass, Jr., individually, and on behalf of all )  
others similarly situated, )

Plaintiffs, )  
vs. )  
Richland County, )  
Defendant, )

Central Midlands Regional Transit Authority, )  
Intervenor Defendant. )

ORDER GRANTING INTERVENOR  
CMRTA'S MOTION FOR SUMMARY  
JUDGMENT

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This matter is before this Court on the Motion for Summary Judgment filed by Intervenor-Defendant Central Midlands Regional Transit Authority ("CMRTA"). A hearing was held on October 26, 2017. James G. Carpenter of The Carpenter Law Firm, PC, appeared on behalf of the Plaintiffs. Andrew F. Lindemann of Davidson & Lindemann, P.A., appeared on behalf of Defendant Richland County and Robert E. Tyson, Jr. of Sowell Gray Robinson Stepp & Laffitte, LLC, appeared on behalf of CMRTA. After a review of the pleadings, written submissions by the parties, and the oral arguments of counsel, this Court grants CMRTA's Motion for Summary Judgment.

**BACKGROUND**

Title 4, Chapter 37 of the South Carolina Code of Laws which is entitled "Optional Methods for Financing Transportation Facilities" (hereinafter referred to as the "Transportation Act") was enacted in 1995. The Transportation Act established a mechanism for counties to authorize and finance transportation-related projects.

On July 18, 2012, the Richland County Council enacted Ordinance Number 039-12HR for the purpose of levying a one percent sales and use tax (the "penny tax") pursuant to Section 4-37-30 of the Transportation Act. Ordinance Number 039-12HR set a county-wide referendum to be held on November 6, 2012. The Ordinance established the program upon approval of the referendum. By a large margin, the voters of Richland County approved the referendum.

Plaintiffs have filed this action challenging the legality of Richland County Ordinance Number 039-12HR including expenditures that have been made in accordance with that Ordinance. The Plaintiffs alleged Richland County has not complied with the Transportation act and has not complied with some provisions of Ordinance Number 039-HR12. The CMRTA intervened as a Defendant. Per Rule 56, SCRPC, CMRTA has moved for summary judgment in favor of CMRTA whereby the Court authorizes the use of penny tax revenues for operating and administrative costs as valid and legal under the Transportation Act and Ordinance 039-12HR. Defendant Richland County has moved to dismiss the Complaint for failure to prosecute and has moved for summary judgment. CMRTA joined in and incorporated in full the grounds raised by Richland County in their motions.

#### STANDARD

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder." Singleton v. Sherer, 377 S.C. 185, 197-98, 659 S.E.2d 196, 203 (Ct. App. 2008). Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most

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favorable to the nonmoving party.” Quail Hill, LLC v. County of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010).

“Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” Singleton, 377 S.C. at 197-98, 659 S.E.2d at 203. Instead, “[t]he nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” Id. at 198, 659 S.E.2d at 203. “It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine.” Evans v. Stewart, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006).

### CONCLUSIONS OF LAW

#### I. **Section 4-37-30 Authorizes Mass Transit Systems as a Transportation Related Project.**

In S.C. Code Ann. § 4-37-30, the General Assembly describes how sales and use taxes may be used as revenue for transportation projects. The relevant section of § 4-37-30 is below:

**SECTION 4-37-30.** Sales and use taxes or tolls as revenue for transportation facilities.

To accomplish the purposes of this chapter, counties are empowered to impose one but not both of the following sources of revenue: a sales and use tax as provided in item (A) or to authorize an authority established by the county governing body as provided in Section 4-37-10 to use and impose tolls in accordance with the provisions of item (B):

(A) Subject to the requirements of this section, the governing body of a county may impose by ordinance a sales and use tax in an amount not to exceed one percent within its jurisdiction for a single project or for multiple projects and for a specific period of time to collect a limited amount of money.

(1) The governing body of a county may vote to impose the tax authorized by this section, subject to a referendum, by enacting an ordinance. The ordinance must specify:

(a) the project or projects and a description of the project or projects for which the proceeds of the tax are to be used, which may

include projects located within or without, or both within and without, the boundaries of the county imposing the tax and which may include:

(i) highways, roads, streets, bridges, *mass transit systems*, greenbelts, *and other transportation-related projects* facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, *and other transportation-related projects*;

.....

In (A), the legislature gives counties the authority to “impose by ordinance a sales and use tax ...for a single project or multiple projects...” Further, (A)(1) states a governing body, by passing an ordinance, can set a referendum for county wide vote to approve the sales and use tax. This section mandates the ordinance must specify a list of items. Section (A)(1)(a) mandates the ordinance must specify the project or projects with a description of each project. The statute further describes the type of projects contemplated by the General Assembly when it states, “and which may include.” To be clear, (A)(1)(a)(i), certain projects are specifically referenced: “highways, roads, streets, bridges, *mass transit systems*, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects.”

To recap, the statute permits the use of sales and use tax revenues for “projects”. The law further provides a list of projects which includes “mass transit systems....and other transportation-related projects.” The plain language of §4-37-30 mandates an interpretation that mass transit systems, such as CMRTA, are defined as transportation-related projects.

## II. Ordinance 039-12HR Does Not Exceed the Scope of the Statute.

Richland County Ordinance Number 039-12HR complies with the Transportation Act and does not exceed the scope of the law. Ordinances are presumed valid. See, e.g., State v. Roper, 274 S.C. 14, 18, 260 S.E.2d 705, 707 (1979); Huffman v. City of Columbia, 146 S.C. 436, 438,

144 S.E. 157, 159 (1928) (finding an ordinance that has been passed is “presumptively valid”). Determining whether a local ordinance is valid is a two-step process. The first step is to determine whether the county had the power to adopt the ordinance. In this case, Section 4-37-30 authorizes a county to impose a sales and use tax by enacting an ordinance that orders a referendum to be voted on by citizens of the county. Given Richland County had the power to enact the ordinance, the second step is to determine whether the ordinance is consistent with the Constitution and general law of the State. Diamonds v. Greenville County, 325 S.C. 154, 480 S.E.2d 718 (1997); Bugsy's, Inc. v. City of Myrtle Beach, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000).

“It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question.” Smith v. Tiffany, 419 S.C. 548, 555, 799 S.E.2d 479, 483 (2017); see also Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 401, 175 S.E.2d 805, 817 (1970) (“If a statute is clear and explicit in its language, then there is no need to resort to statutory interpretation or legislative intent to determine its meaning.”). “Absent an ambiguity, there is nothing for a court to construe, that is, a court should not look beyond the statutory text to discern its meaning.” Tiffany, 419 S.C. at 555, 799 S.E.2d at 483. “[T]here is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning unless a statutory provision is ambiguous.” Id. (citing Paschal v. State Election Comm’n, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995)). “Only where the language of an act gives rise to doubt or uncertainty as to legislative intent may the construing court search for that intent beyond the borders of the act itself.” Id. (citing Kennedy v. S.C. Ret. Sys., 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001)). A statute is ambiguous if it “is susceptible to two reasonable interpretations.” S.C. Dept. of Social Servs. v. Lisa C., 380 S.C. 406, 416, 669 S.E.2d 647, 652 (Ct. App. 2008) (citing Sloan v. S.C. Bd. of Physical Therapy Exam’rs, 370 S.C. 452, 489, 636 S.E.2d 598, 617 (2006)).

Whether ambiguity exists is a question of law for the Court to decide. See, e.g., Transp. Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010) (“[Q]uestions of statutory interpretation are questions of law.”)).

Specifically, the Ordinance complies with §4-37-30(A)(1)(a) by listing the specific projects and a description of said projects. Section 1 (c) states:

The County Council finds that a one percent sales and use tax should be levied and imposed within Richland County, for the *following projects* and purposes: For financing the costs of highways, roads, streets, bridges, greenways, pedestrian sidewalks, and bike paths and lanes and other transportation-related projects facilities, and drainage facilities related thereto, and *mass transit systems* operated by Richland County or (jointly) operated by Richland County, other governmental entities and transportation authorities.

As described above, Section 4-37-30 requires the ordinance to list the projects and a description of the projects. The law also requires the maximum time for which the tax may be imposed; the estimated capital cost of the project; and the anticipated year the tax will end. Richland County Ordinance 039-12HR complies with all three requirements. Section 2(b) provides the tax shall be imposed no longer than 22 years. Section 2(c) describes the maximum total costs of the projects to be \$1,037,900,000 and of the total, the cost for mass transit systems shall not exceed \$300,991,000. Section 2(f) provides the termination date of April 1, 2035 or when the revenues raised meet the maximum capital costs.

Following the statutory conditions set out in §4-37-30, Richland Ordinance 039-12HR accordingly is valid and does not does not exceed the scope of the statute.

**III. Section 37-4-30 Does Not Prohibit Penny Tax Revenues to be used for Operating and Administrative Expenses.**

Plaintiffs allege CMRTA’s use of penny tax revenues for operating expenses or administrative expenses is unlawful. They allege this use of funds exceeds the scope of §4-37-30.

Also, Plaintiffs take exception to the language in Section 2 of Ordinance 039-12HR describing the mass transit systems project, "continued operation of mass transit services." Plaintiffs maintain these penny tax revenues must be used solely on capital costs for transportation facilities and not the continued operation of the system.

However, the statutory language does not make such declaration. The statute authorizes the imposition of a sales and use tax for transportation projects. The statute further establishes terms the county must include in its authorizing ordinance and subsequently, the referendum. However, there is no statutory language stating penny tax revenues cannot be used for operating and administrative expenses.

In fact, concluding otherwise would lead to an illogical result. The General Assembly clearly intended mass transit systems to be included as a transportation-related project by listing mass transit systems in the type projects contemplated by the General Assembly. But if one used the Plaintiffs' interpretation of the statute, the penny tax revenues could be used for mass transit systems, but only for expenditures on capital costs. This interpretation goes beyond the plain language of the statute and would result in the expenditures being used only to buy buses or construct facilities related to the mass transit system. The statute does not provide such a limitation; thus, the Plaintiffs' interpretation is rejected.

As described more fully above, Ordinance Number 039-12HR is presumed to be valid. In the preamble to the Transportation Act passed in 1995, the General Assembly's authorized penny tax revenues to be used for "operating" transportation-related projects, which was later amended to include "mass transit systems." The Supreme Court routinely has held the "preamble of an act may be used as a guide in determining legislative intent." State v. Thrift, 312 S.C. 282, 440 S.E.2d 341, 354 (1994) and Sloan v. Friends of Hunley, Inc., 393 S.C. 152, 711 S.E.2d 895, 898 (2011).



The Court finds that the legislative intent is clear from the enabling Act itself. There is no statutory language that states expenditures of penny tax revenues are limited to "capital costs". Further, the legislature's preamble and findings lead to an opposite result -- penny tax revenues may be expended on the operation of transportation-related projects, which the statute specifically defines to include mass transit systems, such as the CMRTA.

### CONCLUSION

Having considered all the materials submitted and arguments raised, both at the hearing and through the written submissions, the Court finds the Central Midlands Regional Transit Authority is entitled to a judgment as a matter of law in this case for the reasons addressed above. Accordingly, CMRTA's Motion for Summary Judgment is granted.

IT IS SO ORDERED.



G. THOMAS COOPER, JR.  
Circuit Court Judge  
Fifth Judicial Circuit

Columbia, South Carolina

November 21, 2017