

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM JASPER COUNTY  
Court of Common Pleas

JAN 12 2018

S.C. SUPREME COURT

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

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Opinion No. 2015-000310

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George M. Hood,

Petitioner,

v.

Jasper County,

Respondent.

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**PETITION FOR WRIT OF CERTIORARI**

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Nancy Bloodgood, Esquire  
Lucy C. Sanders, Esquire  
Bloodgood & Sanders, LLC  
242 Mathis Ferry Road, Suite 201  
Mt. Pleasant, SC 29464  
(843) 972-0313  
*Attorneys for Petitioner*

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**CERTIFICATE OF COUNSEL PURSUANT TO SCACR 242(D)(1)**

Counsel for Petitioner certifies that a Petition for Rehearing was made and finally ruled upon by the Court of Appeals on December 14, 2017.

**QUESTIONS PRESENTED FOR REVIEW**

1. Did the Court of Appeals err by disregarding the fact that the trial court's order regarding the issue of the separation of powers was based on cases that all predated the Home Rule Act?
2. Did the Court of Appeals err by overlooking the fact that Respondent Jasper County Council's actions usurped the authority of the County Administrator to create and administer the County's employee personnel classification systems?
3. Did the Court of Appeals err in holding that when funds have already been appropriated to a County department pursuant to a budget ordinance, County Council can supervise the expenditure of those appropriated funds by amending the budget ordinance to dictate to the County Administrator how he should spend the appropriated funds?
4. Did the Court of Appeals err in holding Jasper County Council can terminate an employee who was hired by and works for the County Administrator?

**STATEMENT OF THE CASE**

At a circuit court hearing in this matter, the parties agreed to jointly stipulate to the following facts and exhibits which formed the basis for the circuit court's decision.

(R. pp. 43-74.) The stipulation read as follows:

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

3. Jasper County operates under the council-administrator form of government. Jasper County Council is made up of five members elected at-large from the County.
4. Council voted to approve a budget that included funding for a deputy county administrator position in its Fiscal Year (“FY”) 2011-2012 budget.
5. The County’s fiscal years begin on July 1 and end on June 30 of the following calendar year.
6. Immediately prior to Council approving funding for a deputy county administrator position in the FY 2011-2012 budget, the County did not have a deputy county administrator. Several years prior to 2011, the County had two deputy county administrators. From approximately 2006 to 2010, the County had four deputy county administrators, each responsible for various departments of the County administration. In approximately 2010, Council changed the titles of the four deputy county administrators to directors. The deputy county administrator position that was funded in the FY 2011-2012 budget was the first such position to have all departments of the County administration report to a single deputy county administrator.
7. Before and after council’s vote to fund the deputy county administrator position, there was dissent both on council and among the public over whether the position of Deputy County Administrator was needed. The vote approving the FY 2011-2012 budget was 3 to 2, with Councilmembers Blackshear, Gregory and Drayton for, and Councilmembers Etheridge and Saul against the budget. A copy of the June 20, 2011 council minutes approving the budget is included as exhibit 1.

8. The County posted the deputy county administrator position and sought applicants for the position over the Summer and Fall of 2011.
9. County Administrator Andy Fulghum selected and hired Plaintiff George Hood for the position, notifying him on December 1, 2011 that his employment would begin December 12, 2011. A copy of the letter is included as exhibit 2 to this Stipulation.
10. Council funded the deputy county administrator position in the FY 2012-2013 budget. The FY 2012-2013 budget passed by a vote of 3 to 2, with Councilmembers Blackshear, Gregory and Drayton for, and Councilmembers Etheridge and Saul against it. A copy of the June 28, 2012 council budget workshop and meeting minutes approving the budget are included as exhibit 3.
11. Council elections were held in June 2012. As a result of the elections, two new councilmembers were seated. Councilmembers Blackshear and Gregory were replaced by councilmembers Clark and Johnson. The new councilmembers were seated in January 2013.
12. After the new councilmembers were seated in January 2013, Council passed an ordinance amending its FY 2012-2013 budget to remove funding for and eliminate the deputy county administrator position. The ordinance reads in relevant part:

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

1.The FY 2012-2013 Budget of Jasper County is hereby amended so as to reduce from Department 051 – Administration – all funding for salary and wages, FICA – Employer, SC Retirement, Medical, for the position of Deputy County Administrator not committed for services

provided through the effective date hereof; provided however, nothing herein shall be construed so as to prohibit the Finance Director from disbursing sums authorized to be disbursed pursuant to Section 14 of the Jasper County Personnel Policies and Procedures Manual for the position of Deputy County Administrator.

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

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

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

Administration of the Classification Plan

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

\*\*\*

Allocation of Positions

Whenever a newly authorized position is established or duties of an old position change, the Department Head will submit, in writing, a comprehensive description of the duties of such position to the Human Resources Director. The Human Resources Director

may authorize the appropriate classification, the establishment of a new classification, or the abolishment of any existing classification(s).

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

16. The County has a contract with an outside consulting firm to prepare job descriptions.
17. Each year, after an annual operating budget is prepared by the Administrator, County Council debates the budget, suggests changes to the County Administrator and then votes to adopt the budget that is reflected through an ordinance with three (3) readings. Thereafter, millage is set based on the enacted budget, the amount of taxes needed to be collected to fund the budget is determined, and tax bills are mailed out in early fall with taxes due December 31<sup>st</sup> of the budget year.
18. There was no budget shortfall during FY 2012-2013.
19. In 2009, when there had been a shortfall, the County implemented a Reduction in Force (RIF) in accordance with the RIF policy that is part of its County Policy Manual, attached hereto as exhibit 6.
20. On January 28, 2013, following Council's approval of the ordinance, the County Administrator notified Plaintiff in writing of the termination of his employment. Plaintiff's employment was not terminated for performance reasons. A copy of the letter is included as exhibit 7 to this Stipulation.
21. On February 7, 2013, Plaintiff submitted a grievance to the County Administrator seeking "to appeal the decision made by the Jasper County Council on January 28, 2013 to delete the position of Deputy County Administrator and the salary

from the 2012-2013 budget.” A copy of Plaintiff’s letter is included as exhibit 8 to this Stipulation.

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

The circuit court found the elimination of Petitioner’s job to be lawful and held that Petitioner was not entitled to a declaratory judgment in his favor. (R. p. 12.) The Court of Appeals affirmed the judgment of the circuit court and denied Petitioner’s request for a rehearing. George M. Hood v. Jasper County, Op. No. 2015-000310 (S.C. Ct. App. filed Sept. 6, 2017). Petitioner seeks a writ of certiorari to review that decision.

### ARGUMENT

#### **I. THE COURT OF APPEALS ERRED BY DISREGARDING THE FACT THAT THE CIRCUIT COURT’S ORDER REGARDING THE ISSUE OF THE SEPARATION OF POWERS WAS BASED ON CASES THAT ALL PREDATED THE HOME RULE ACT.**

Petitioner contends Respondent County Council violated the separation of powers doctrine when it voted to amend the County’s budget midyear to decrease the previously adopted budget by an amount equal to Petitioner’s salary in order to effectuate his Respondent argued, and the Circuit agreed, that the separation of powers doctrine contained in the State’s Constitution is still inapplicable to counties. However, the cases cited in the Circuit Court’s Order do not stand for the proposition that the separation of powers doctrine contained in the State’s Constitution is inapplicable to counties as the

cited cases were decided before the Home Rule Act, S.C. Code § 4-9-10 *et seq.*, and the Home Rule Act created forms of county government that have separate administrative and legislative bodies.

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

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

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

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

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

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

**II. THE COURT OF APPEALS ERRED BY OVERLOOKING THE FACT THAT RESPONDENT JASPER COUNTY COUNCIL'S ACTIONS USURPED THE AUTHORITY OF THE COUNTY ADMINISTRATOR TO CREATE AND ADMINISTER THE COUNTY'S EMPLOYEE PERSONNEL CLASSIFICATION SYSTEMS.**

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

Administration of the Classification Plan

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

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Allocation of Positions

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

State law and the County's Handbook establish unequivocally that the County Administrator, not County Council, is responsible for establishing and abolishing

personnel positions in the County. Respondent County Council has a contract with an outside consulting firm to prepare job descriptions. (R, p. 46.) The Court of Appeals erred in holding that when funds have already been appropriated to a County department pursuant to a budget ordinance, County Council can remove funds in order to abolish one particular personnel position.

**III. THE COURT OF APPEALS ERRED IN HOLDING THAT WHEN FUNDS HAVE ALREADY BEEN APPROPRIATED TO A COUNTY DEPARTMENT PURSUANT TO A BUDGET ORDINANCE, COUNTY COUNCIL CAN SUPERVISE THE EXPENDITURE OF THOSE APPROPRIATED FUNDS BY AMENDING THE BUDGET ORDINANCE TO DICTATE TO THE COUNTY ADMINISTRATOR HOW HE SHOULD SPEND THE APPROPRIATED FUNDS.**

S.C. Code § 4-9-140 establishes the fiscal years for counties as July first through June thirtieth of the following year. This statute requires counties to adopt budgets prior to the beginning of the fiscal year and “identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted.” (*Id.*) Councils must then provide for the “levy and collection of taxes necessary to meet all budget requirements.” (*Id.*) Therefore, once a budget is adopted by ordinance and taxes are levied and collected, that budget is fully funded and the funds collected are obligated. Any action taken midyear by Respondent County Council to eliminate funding in the budget is simply too late as taxes have already been collected to fund the adopted budget. Therefore, Respondent’s action of amending its budget ordinance midyear to only eliminate the funding for a single job position was ineffective as the funding for that job position was already obligated. The only thing Respondent County Council achieved by amending the budget to decrease funding to the County Administrator, was to decrease his overall budget. How the County Administrator chose to spend his

diminished funds remained up to him; he could have fired other employees or spent less on supplies but he felt obliged to terminate Petitioner because, “The decision to eliminate the position of Deputy County Administrator was made by Jasper County and not by me.” (R., p. 47.).

**IV. THE COURT OF APPEALS ERRED IN HOLDING JASPER COUNTY COUNCIL CAN TERMINATE AN EMPLOYEE WHO WAS HIRED BY AND WORKS FOR THE COUNTY ADMINISTRATOR.**

Under the County Administrator form of government, a county administrator terminates employees who report to him, not to any county council. Article 1 of Chapter 9 of Title 4 of the South Carolina Code contains the “general provisions” relating to most of the forms of county government. S.C. Code § 4-9-30 states:

Under each of the alternate forms of government listed in § 4-9-20, except the board of commissioners form provided for in Article 11, each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof: ... (6) to establish such agencies, departments, boards, commissions *and positions in the county as may be necessary and proper to provide services of local concern for public purposes*, to prescribe the functions thereof and to regulate, modify, merge or abolish any such agencies, departments, boards, commissions and positions, *except as otherwise provided for in this title.* (emphasis added).

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

The clear language of S.C. Code § 4-9-30 indicates it is not addressing all positions in county government, but only the positions that are “necessary and proper to

provide services of local concern for public purposes.” There is nothing in the record or stipulated facts of this case indicating the position of deputy county administrator is “necessary and proper to provide services of local concern for public purposes.”

Following Article 1 which contains the general provisions relating to county government, is Article 7 that specifically addresses the County Administrator form of government. “The powers and duties of the administrator shall include, but not be limited to, the following: to serve as the chief administrative officer of the county government....” S.C. Code § 4-9-630. Further, S.C. Code § 4-9-620 found in Article 7 states, “The council shall employ an administrator who shall be the administrative head of the county government and shall be responsible for the administration of all the departments of the county government which the council has the authority to control.”

S.C. Code § 4-9-630, entitled “Powers and duties of administrator” states in pertinent part, “The powers and duties of the administrator shall include, but not be limited to, the following: ... (7) to be responsible for the administration of county personnel policies including salary and classification plans approved by council; (8) to be responsible for employment and discharge of personnel subject to the provisions of subsection (7) of § 4-9-30 and subject to the appropriation of funds by the council for that purpose.”

Subsection (7) of S.C. Code § 4-9-30 states in pertinent part, “This employment and discharge authority does not extend to any personnel employed in departments or agencies under the direction of an elected official or an official appointed by an authority outside county government.” Plaintiff was not an employee of an elected official or an

official appointed by an authority outside county government. It is undisputed Plaintiff was hired by the County Administrator. (R. pp. 44. 57-58.)

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

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

The general rule of statutory construction is that a specific statute prevails over a more general one. Wooten v. South Carolina Dep't of Transp., 333 S.C. 464, 511 S.E.2d

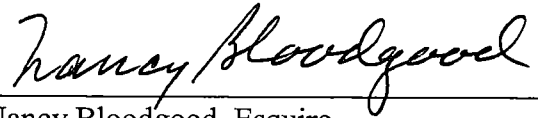
355 (1999); Atlas Food Sys. & Serv., Inc. v. Crane, 319 S.C. 556, 462 S.E.2d 858 (1995); State v. Taub, 336, S.C. 310, 317, 519 S.E.2d 797, 801 (Ct. App. 1999). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 379 537 S.E.2d 543, 545-46 (2000); Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 365 (1994) ("However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention."); see also, City of Camden v Brassell, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997). Here, it is clear that only the County Administrator, not Council, had the authority to discharge the deputy county administrator.

### **CONCLUSION**

For the reasons stated above, Petitioner asks the Court to grant the Petition for a Writ of Certiorari.

**SIGNATURE BLOCK ON FOLLOWING PAGE**

Respectfully Submitted,

A handwritten signature in cursive script that reads "Nancy Bloodgood". The signature is written in black ink and is positioned above a horizontal line.

---

Nancy Bloodgood, Esquire  
Lucy C. Sanders, Esquire  
Bloodgood & Sanders, LLC  
242 Mathis Ferry Road, Suite 201  
Mt. Pleasant, SC 29464  
(843) 972-0313  
*Attorneys for the Petitioner*

January 9, 2018

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**PROOF OF SERVICE FOR PETITION FOR WRIT OF CERTIORARI**

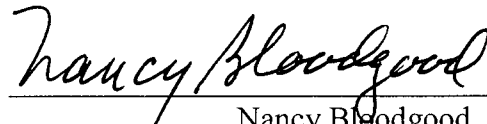
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Nancy Bloodgood, Esquire  
Lucy C. Sanders, Esquire  
Bloodgood & Sanders, LLC  
242 Mathis Ferry Road, Suite 201  
Mt. Pleasant, SC 29464  
(843) 972-0313  
*Attorneys for Petitioner*

I, Nancy Bloodgood, Esquire, certify that on January 9, 2018, I served a copy of the **Petition for Writ of Certiorari** via First Class Mail by placing a copy of said documents in the United States mail with sufficient postage thereon to the following:

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

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Post Office Box 11629  
Columbia, South Carolina 29211

  
\_\_\_\_\_  
Nancy Bloodgood, Esquire