THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper Jr., Circuit Court Judge

Appellate Case No.: 2018-000794

South Carolina Public Interest Foundation, Edward D. Sloan, Jr. and William B. DePass, individually, and on behalf of others similarly situated,

Appellants,

v.

Richland County, Respondent,

and

Central Midlands Regional Transit Authority Intervenor/Respondent.

INITIAL BRIEF OF INTERVENOR/RESPONDENT CENTRAL MIDLANDS REGIONAL TRANSIT AUTHORITY

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STATEMENT OF ISSUES ON APPEAL[1]

I. Did the Circuit Court properly grant Central Midlands Regional Transit Authority's Motion for Summary Judgment when S.C. Code Section 4-37-30 permits counties to collect and expend tax funds for transportation related projects, which is defined to specifically include "mass transit systems?"

[1] Appellants' Brief does not contain a statement of issues on appeal. Rule 208 of the South Carolina Appellate Court Rules requires an appellant's initial brief to contain "[a] statement of each of the issues presented for review." Rule 208(b)(1)(B), SCACR. "Ordinarily, no point will be considered which is not set forth in the statement of issues on appeal." *Id.*; *see also State v. Dunbar,* 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("No point will be considered which is not set forth in the statement of issues on appeal."); *Wright v. Craft*, 372 S.C. 1, 21, 640 S.E.2d 486, 497 (Ct. App. 2006) (declining to address estoppel argument that was not set forth in appellant's statement of issues on appeal). Thus, this appeal should be dismissed as there are no issues properly before this court.

STATEMENT OF THE CASE

This case (the "DePass Case") is a legal challenge brought by South Carolina Public Interest Foundation, Edward D. Sloan, Jr., and William B. DePass, Jr., individually and on behalf of all others similarly situated, (collectively, "Appellants") against Defendant Richland County ("Richland County" or the "County") and Intervenor Defendant Central Midlands Regional Transit Authority ("CMRTA") contesting whether CMRTA can use penny sales tax revenues for operating and administrative expenses. [Am. Complaint.] This action commenced on May 9, 2016. [Complaint.] On September 17, 2017, CMRTA moved for summary judgment. [Mot. for Summary Judgment.] This motion was heard on October 26, 2017. On November 22, 2018, the circuit court entered an order finding that the controlling statutory language permitted the spending at issue and that CMRTA was entitled to summary judgment as a matter of law. [Order.] Appellants filed a motion to reconsider, which was subsequently denied. [Motion to reconsider; Order.] Appellants filed a notice of appeal on April 26, 2018. [Notice of Appeal.]

STATEMENT OF FACTS

In 1995, the South Carolina General Assembly passed the "Optional Methods for Financing Transportation Facilities Act," ("Transportation Act"), which established a mechanism for counties to authorize and finance transportation-related projects. [Am. Compl. at 3.] The Transportation Act authorized a county to "impose by ordinance a sales and use tax in an amount not to exceed one percent [("Penny Tax")] 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." S.C. Code Ann. 4-37-30(A).

Using this statutory procedure, Richland County adopted Ordinance Number 039-12HR ("Penny Tax Ordinance") to impose the penny tax subject to referendum approval by the residents of Richland County. [Ord. No. 039-12HR.] The Penny Tax Ordinance stated the Penny Tax "shall

be expended for the costs" of the several projects, including "[c]ontinued operation of mass transit services provided by Central Midlands Regional Transit Authority including implementation of near, mid and long-term service improvements." *Id.*

On November 6, 2012, the Penny Tax Referendum was approved by Richland County voters by a large margin. [Order Granting Summary Judgment at 2.] The Penny Tax became effective May 1, 2013 and has been approved to run for twenty-two years or until over $1 billion is collected. [Ord. No. 039-12HR.] Of the total revenues collected under the Penny Tax Ordinance, CMRTA will receive approximately twenty-nine percent (29%). *Id.* CMRTA is dependent upon these proceeds, which make up a significant portion of the CMRTA operation budget. Without these revenues, CMRTA's service would be affected significantly.

On July 7, 2016, Appellants filed their Amended Complaint challenging the legality of the Penny Tax Ordinance. [Am. Complaint.] Specifically, Appellants assert the County has not complied with the Transportation Act and that the Penny Tax Ordinance exceeds the scope of the Transportation Act. [Am. Compl. at 4.] Appellants state the use of the proceeds for the "continued operation of mass transit services" is unlawful. *Id.*[2]

CMRTA intervened and subsequently moved to dismiss the Amended Complaint. [Mot. to Intervene; Order granting Motion to Intervene; Motion to Dismiss.] Richland County also moved to dismiss the Amended Complaint. [Motion to Dismiss.] These motions were denied. [Order]. A scheduling order was entered on November 18, 2016. [Scheduling Order.] Under this order, discovery was to be completed by July 17, 2017. *Id.* No discovery was conducted before this deadline.

[2] Appellants assert several other causes of actions against the County that do not concern CMRTA and are therefore not addressed in this brief. [Am. Compl. at 4-9.]

As noted in Appellants' brief, while the DePass case was proceeding before the circuit court, a related case captioned *Richland County v. S.C. Department of Revenue* (the "DOR Case") was ruled upon by the trial court and subsequently, the South Carolina Supreme Court. *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 811 S.E.2d 758 (2018). Thus, the relevant facts of the DOR Case are outlined below.

In the DOR Case, Richland County filed suit against the South Carolina Department of Revenue ("DOR") seeking various forms of relief, including (1) a declaration that the County was not "subject to [DOR's] directives, demands, or orders on any matter related to [the] County's spending of Penny Tax Revenues," (2) an injunction prohibiting DOR from issuing directives regarding Penny Tax expenditures, and (3) a writ of mandamus forcing the Department of Revenue to make its quarterly distribution of penny tax revenues to the County. *Id.* at 304, 811 S.E.2d at 764. DOR brought a counterclaim against the County and sought an injunction to prohibit the County from its continued use of the Penny Tax revenues. *Id.* Richland County also asserted that DOR did not have standing to challenge the County's use of the revenues. *Id.* at 304, 811 S.E.2d at 764-65. CMRTA intervened in this action to protect its interest in continuing to receive Penny Tax revenues. Following a hearing, the circuit court in the DOR Case (1) granted Richland County's writ of mandamus, (2) ruled DOR had standing to oversee the County's penny tax program, and (3) denied both parties requests for injunctive relief. *Id.* at 304, 811 S.E.2d at 765. Both parties appealed this decision to the Court of Appeals. *Id.* at 304-05, 811 S.E.2d at 765. Subsequently, upon a joint request of the parties, the appeal in the DOR Case was transferred to the Supreme Court. *Id.* at 305, 811 S.E.2d at 765.

While the appeal in the DOR Case was pending before the Supreme Court, Richland County filed a Motion to Dismiss or for Summary Judgment in the DePass Case on September 18,

2017, arguing in part that (1) the case should be dismissed under Rule 41(b), SCRCP for failure to prosecute and (2) that the statutory language in the Transportation Act permitted the spending at issue in Appellants' Amended Complaint. [Motion to Dismiss/Summary Judgment]. On September 19, 2017, CMRTA also filed a Motion for Summary Judgment in the DePass Case, which incorporated Richland County's arguments by reference and reiterated that Penny Tax Ordinance adhered to the statutory requirements in the Transportation Act. [Motion for Summary Judgment.] On October 26, 2017, the circuit court held a hearing on these two motions.

On November 22, 2017, the circuit court issued an order granting Respondent CMRTA's Motion for Summary Judgment in the DePass Case, which found (1) the Transportation Act authorizes mass transit systems as a transportation related project, (2) the Penny Tax Ordinance does not exceed the scope of the Transportation Act, and (3) that the Transportation Act does not prohibit the use of Penny Tax revenues on operating and administrative expenses. [Order.] On November 30, 2017, the circuit court issued a second order granting the County's Motion to Dismiss for failure to prosecute. [Order.]

On December 11, 2017, Appellants filed two Motions to Alter or Amend pursuant to Rule 59(e), SCRCP, one for each of the orders entered by the circuit court in the DePass Case. [59(e) Motions] Shortly thereafter, CMRTA filed a Memorandum in Opposition to the Motion to Alter or Amend. [Memo in Opp.]

On March 17, 2018, the Supreme Court issued its opinion in the DOR Case. *Id.* at 292, 811 S.E.2d at 758. The Supreme Court upheld the circuit court's order granting a writ of mandamus to Richland County and ruling DOR has standing to oversee Richland County's Penny Tax program. *Id.* at 305-309, 811 S.E.2d. at 765-67. The Supreme Court reversed the trial court's denial of an injunction requested by DOR and directed the circuit court "to enter the preliminary

injunction in accordance with [its] opinion" within 30 days after remand. *Id.* at 312, 811 S.E.2d. at 769. The Supreme Court further mandated DOR develop "guidelines for determining whether expenses are properly allocable to a specific transportation project, or the direct administration of a specific transportation project." *Id.* at 312, 811 S.E.2d. at 768. By ordering these guidelines, the Supreme Court established a mechanism for DOR and the circuit court to move forward on determining whether expenditures are proper under the Transportation Act.

On March 26, 2018, Appellants filed a Supplemental Memorandum in Support of Motion to Alter or Amend in the DePass Case, which quoted heavily from the Supreme Court's opinion in the DOR Case.

Per the Supreme Court mandate, the circuit court in the DOR Case filed a temporary injunction on April 12, 2018. [Order granting DOR Temporary Injunction.] Also, pursuant to the Supreme Court's instructions, DOR developed guidelines that specify eligible and ineligible costs under the Transportation Act. *Id.* These guidelines were reviewed and approved by the circuit court in the DOR Case and are attached as an exhibit to the order granting the temporary injunction. *Id.* In these guidelines, DOR included a standalone section regarding mass transit systems. *Id.* at 14. That section reads:

> **C. Mass Transit Systems Costs**
>
> "Mass Transit System" as used herein refers to only a mass transit system.
>
> Eligible Costs include costs incurred for the acquisition, design, construction, equipping, and ***operation*** of Mass Transit Systems, provided that such costs are consistent with the public purpose of the Transportation Act, the county's imposition ordinance and the referendum approved by voters.
>
> Eligible Costs for Mass Transit Systems must be tethered to the administration of the Mass Transit System and must be reasonable and not excessive. Eligible Cost include purchase of capital assets.

> ***Eligible Costs also include costs and expenses paid or incurred with the day to day operation of the Mass Transit System.***
>
> Additionally, Mass Transit Systems must comply with certain Federal and State requirements in the operation of the Mass Transit System. The expenditures necessary to fulfill these Federal and State requirements are also Eligible Costs, provided that such expenditures are reasonable and not excessive.

Id. (emphasis added). DOR later issued these same guidelines to the general public in the form of an information letter. S.C. DEP'T OF REVENUE, INFO. LETTER NO. 18-10, GUIDELINES FOR USE OF TRANSPORTATION TAX REVENUE (2018) (available at: https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/IL18-10.pdf).

On April 12, 2018, Respondent CMRTA filed a Supplemental Response in Opposition to Appellants' Motion to Alter or Amend in the DePass Case, which attached a copy of the circuit court's order in the DOR Case adopting DOR's guidelines related to Penny Tax revenues. [Supplemental Memo in Opp. to 59(e) Motion.] On April 17, 2018, the circuit court in the DePass Case issued an Order denying Appellants' Motions to Alter or Amend. [Order.] This appeal followed.

STANDARD OF REVIEW[3]

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. *S.C. Pub. Interest Found. v. Greenville Cnty.*, 401 S.C. 377, 384-85, 737 S.E.2d 502, 506 (Ct. App. 2013). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP; *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002). "In determining

[3] Appellants' brief does not contain standard of review section. Under the recently amended version of Rule 208, an appellant is required to include a section (or sections where different standards of review apply to different issues on appeal) that "set[s] forth the applicable standard of review with citations to relevant case law establishing the standard." Rule 208(b)(1)(D), SCACR (last amended May 1, 2018).

whether any triable issues of material fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Clea v. Odom*, 394 S.C. 175, 179, 714 S.E.2d 542, 545 (2011).

ARGUMENT

I. The circuit court properly granted CMRTA's Motion for Summary Judgment.

The circuit court properly granted summary judgment in this case. First, the plain and unambiguous language of the Transportation Act permits Penny Tax funds to be expended on mass transit systems. Second, even if this Court finds that the language of Transportation Act to be ambiguous, this Court must defer to the interpretation adopted by the Department of Revenue, who is the administrative agency entrusted with administering the Transportation Act. Finally, the language from the Supreme Court's opinion in the DOR Case repeatedly quoted by Appellants in their analysis is dicta that is not controlling or applicable to this Court's analysis. For these reasons, as more fully explained below, the circuit court's order granting summary judgment should be affirmed.

A. The plain language of the Transportation Act permits the spending at issue.

The plain language of the Transportation Act permits the spending at issue as it allows for Penny Tax funds to be spent on transportation related projects including "mass transit systems." Because the language of the Transportation Act is clear and unambiguous on its face, the circuit court properly granted summary judgment.

"The usual rules of statutory construction apply to the interpretation of tax statutes." *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 319-20, 731 S.E.2d 869, 872-73 (2012). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." *Montgomery v. Spartanburg Cnty. Assessor*, 419 S.C. 77, 81, 795 S.E.2d 866, 868 (Ct. App. 2016). "In doing so, we must give the words found in the statute their 'plain and ordinary

meaning without resort to subtle or forced construction to limit or expand the statute's operation.'" *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *Sloan v. Hardee,* 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). "Under the plain meaning rule, it is not the province of the court to change the meaning of a clear and unambiguous statute." *Alltel*, 399 S.C. at 320, 731 S.E.2d 873. "Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* at 320-21, 731 S.E.2d 873.

The Transportation Act permits the governing body of a county to "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." S.C. Code Ann. § 4-37-30(A). Any such ordinance is subject to a referendum by the voters who will be subject to the tax. S.C. Code Ann. § 4-37-30(A)(2). The Transportation Act restricts the use of penny sales tax funds and states that "these revenues and interest earnings must be used only for the purpose stated in the imposition ordinance." S.C. Code Ann. § 4-37-30(A)(15).

The Transportation Act requires imposition ordinances to include certain information about the proposed tax and its purpose. The first such requirement is that the ordinance must specify "the project or projects" for which the tax is being collected and include "a description of the project or projects." S.C. Code Ann. § 4-37-30(A)(1)(a). The Transportation Act goes on to list the types of "projects" for which the tax may be collected, which include "highways, roads, streets, bridges, ***mass transit systems***, greenbelts, and other transportation-related projects." S.C. Code Ann. § 4-37-30(A)(1)(i) (emphasis added).[4] In addition to identifying and describing the projects

[4] The original language of Section 4-37-30(A)(1)(i) of the Transportation Act adopted in 1995 listed only "highways, roads, streets, bridges, and other transportation-related projects." 1995 S.C. Act No. 52, § 2. However, in 2000, the General Assembly amended this provision to add

for which the tax is used, the ordinance must also state the maximum time for which the tax may be imposed, the estimated capital cost of the project or projects to be funded in whole or in part from proceeds of the tax, the principal amount of bonds to be supported by the tax, and the anticipated year the tax will end. S.C. Code Ann. § 4-37-30(A)(1)(b-d).

The plain and unambiguous language of the Transportation Act permits the spending at issue. The Transportation Act permits funds to be raised for and spent on transportation related projects, which is defined to specifically include "mass transit systems." There is no language in the Transportation Act that limits this spending to facilities or capital costs. The only portion of the Transportation Act that uses the phrase "capital cost" is the requirement the imposition ordinance specify the estimated capital costs for the project to be funded by the proposed tax. *See* S.C. Code Ann. § 4-37-30(A)(1)(c). Requiring the imposition ordinance to include an estimate of capital costs in no way limits the permitted spending under the such an ordinance to only capital costs. *CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 (noting that courts should refrain from "subtle or forced construction to limit or expand the statute's operation").

As noted by the circuit court, the preamble to the Transportation Act passed by the General Assembly in 1995, states that the purpose of the act is to authorize counties to establish optional methods of financing certain transportation related projects, including "the acquisition, construction, equipment, and ***operation*** of highways, roads, streets, bridges, and ***other transportation-related projects***." 1995 S.C. Act No. 52, § 2 (emphasis added). As noted by the circuit court, the "preamble of an act may be used as a guide in determining legislative intent." [Order Granting CMRTA's MSJ at 7.]; *see also State v. Thrift*, 312 S.C. 282, 306, 440 S.E.2d 341,

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"mass transit systems" and "greenbelts" to the list of pre-approved "transportation related projects" listed under subsection (A)(1)(i). 2000 S.C. Act No. 368, § 1. Since the Penny Tax Ordinance was enacted in 2012, this amended language applies.

354 (1994); *Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 158, 711 S.E.2d 895, 898 (2011) ("We believe this approach is in harmony with legislative intent, as expressed in the preamble to our FOIA statute."). The inclusion of the phrase "operation of . . . other transportation related projects" in this preamble is even more persuasive in light of the fact that the Transportation Act was later amended to specifically list "mass transit systems" as one of the projects covered by the Transportation Act. 2000 Act No. 368, § 1. This evidence of the legislative intent further supports an interpretation of the Transportation Act that permits spending on the operation of mass transit systems. *Montgomery*, 419 S.C. at 81, 795 S.E.2d at 868 ("The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature.").

Finally, Appellants have not argued that the Penny Tax Ordinance fails to comply with the requirements of 4-37-30(A)(1). Richland County has procedurally complied with all of the requirements necessary to enact the Penny Tax Ordinance. The Penny Tax Ordinance contains all the information required under subsection (A)(1) of Section 4-37-30, including descriptions of the projects, estimates of the costs for these projects, the maximum time for which the tax would be imposed, the principal amount of bonds to be supported by the tax, and the anticipated year the tax will end. [Ordinance 039-12HR.] Further, this ordinance was then voted on by referendum, as required by the Transportation Act, and was approved overwhelmingly by Richland County voters. The circuit court examined this issue and found that the Penny Tax Ordinance complied with all the statutory conditions set forth in the Transportation Act and was therefore valid. [Order Granting CMRTA's MSJ at 6.]

Because the plain and unambiguous language of the Transportation Act permits the spending at issue, the circuit court's order should be affirmed.

B. The South Carolina Department of Revenue, the administrative agency that is entrusted to administer the Transportation Act, has interpreted the language to permit the spending at issue and this court must give deference to that interpretation.

Because the Department of Revenue recently addressed whether penny sales tax revenues can be spent on day-to-day operations of a mass transit system in the guidelines that were submitted and adopted by the circuit court in the DOR Case, any silence or ambiguity in the Transportation Act must be resolved in favor of this interpretation. Under the deference doctrine, this court must defer to the interpretation of the administrative agency entrusted with administering the act being examined. Accordingly, the circuit court's grant of summary judgment must be affirmed.

"The construction of a statute by an agency charged with its administration will be accorded most respectful consideration and will not be overturned absent compelling reasons." *Montgomery v. Spartanburg Cnty. Assessor*, 419 S.C. 77, 82, 795 S.E.2d 866, 868 (Ct. App. 2016) (quoting *Jasper Cnty. Tax Assessor v. Westvaco Corp.*, 305 S.C. 346, 348, 409 S.E.2d 333, 334 (1991)); *Barton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 404 S.C. 395, 415, 745 S.E.2d 110, 121 (2013) (stating that an agency's interpretation "will not be overruled absent compelling reasons"); *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (2011) (same); *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (same); *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014) ("As repeatedly stated in our decisions, our deference doctrine provides that courts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations unless there is a compelling reason to differ."). "If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming

the interpretation is worthy of deference." *Kiawah Dev. Partners*, 411 S.C. at 33, 766 S.E.2d at 717 (quoting *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984)).

"Accordingly, the deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts . . . will defer to the agency's interpretation absent compelling reasons." *Id.* at 34, 766 S.E.2d at 717. Courts will "defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" *Id.* at 34-35, 766 S.E.2d at 717 (citing *Chevron*, 467 U.S. at 844).

In this case, DOR is the administrative agency tasked with administering the Transportation Act and Penny Tax program. The Supreme Court specifically found this to be the case in their analysis as to whether DOR had standing in the related case. *Richland Cnty.*, 422 S.C. at 306, 811 S.E.2d at 765 ("Because ***DOR is the agency statutorily tasked with administering the Penny Tax program***, . . . the circuit court correctly determined DOR has standing." (emphasis added)).

Following the Supreme Court's opinion in the DOR Case, DOR reviewed the statutory language at issue and interpreted the Transportation Act to permit the spending at issue. Pursuant to the directives contained in the Supreme Court's opinion, the circuit court in the DOR Case issued an order granting DOR a temporary injunction. In this order, the court states "as directed by the Supreme Court, I find that it is necessary for guidelines or standards to be established to serve as objective criteria for determining whether expenses are proper under the Transportation Act." The order attaches guidelines that were prepared by DOR.[5] DOR later issued these same

[5] This order adopting DOR's guidelines was presented to the circuit court in the DePass Case as an exhibit to CMRTA's Supplemental Memorandum in Opposition to Appellants' Motion to Alter or Amend. [Supplemental Memo in Opp.]

guidelines in the form of an information letter to the general public. DOR S.C. Information Letter #18-10.

These guidelines address whether certain categories of spending are permitted under the Transportation Act. The guidelines specifically reference the Transportation Act and note that the Department of Revenue is "the agency statutorily taxed with administering a Transportation Act program . . . ." [Guidelines.] The guidelines address which costs are permitted under the Transportation ("Eligible Costs") and those that outside of the of the scope of the Transportation Act ("Ineligible Costs"). [Guidelines.] The Eligible Costs outlined in these guidelines are broken into three categories of permitted spending: direct costs, indirect costs, and costs for mass transit systems. [Guidelines.] With regard to spending on mass transit systems, the guidelines specifically state that "Eligible Costs also include costs and expenses paid or incurred with the day to day operation of the Mass Transit System." [Guidelines.]

Accordingly, even if this Court finds that the statutory language "is silent or ambiguous with respect to the specific issue" as to whether penny tax revenues can be spent on operational costs for mass transit systems, this Court "must give deference to the agency's interpretation." *Kiawah Dev. Partners*, 411 S.C. at 33, 766 S.E.2d at 717 (internal quotation marks omitted). Because DOR is the agency charged with its administration of the Transportation Act, pursuant to the deference doctrine, this Court must defer to DOR's interpretation of the Transportation Act found in the guidelines issued in April 2018. Under this interpretation, the Transportation Act permits penny tax revenues to be expended on "costs and expenses paid or incurred with the day to day operation of the Mass Transit System." [Guidelines.] Appellants have failed to demonstrate that this interpretation is "arbitrary, capricious, or manifestly contrary to the statute." *Kiawah Dev. Partners*, 411 S.C. at 34-35, 766 S.E.2d at 717 (internal quotation marks omitted).

Accordingly, under the standard set forth in our State's deference doctrine, the circuit court's order granting summary judgment, which offered the same statutory interpretation as the Department of Revenue's guidelines, must be affirmed.

C. The language from the Supreme Court's opinion in the related case repeatedly relied upon by Appellants in their analysis is noncontrolling dicta.

Finally, the language from the Supreme Court's opinion in the DOR Case relied upon by Appellants to argue that "the circuit court's order violates the supreme court's ruling" is dicta and therefore not controlling law. Accordingly, the circuit court's order should be affirmed.

"Judicial dicta is 'not essential to the decision.'" *Nash v. Tindall Corp.*, 375 S.C. 36, 40, 650 S.E.2d 81, 83 (Ct. App. 2007) (quoting *Black's Law Dictionary* 465 (7th ed. 1999)). "Dicta or, as it is also known, dictum 'is a statement on a matter not necessarily involved in the case, and is not binding as authority. Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, is not the court's decision.'" *Id.* at 40-41, 650 S.E.2d at 83 (quoting 21 C.J.S. *Courts* § 227 (2006)).

The majority of the quotes relied upon in Appellants' brief come from the Supreme Court's detailed factual recitation outlining the procedural history that led to the appeal in the DOR Case. See [Br. of App. at 1-3, 7-8.]; *Richland Cty. v. S.C. Dep't of Revenue*, 422 S.C. at 298-305, 811 S.E.2d at 761-265. As such, these quotes are the Court's attempt to capture the arguments of the parties below, rather than legal conclusions by the Court. These quotes are "not essential to the decision[s]" set forth in the legal analysis that follows, and therefore "not binding as authority." *Nash*, 375 S.C. at 40-41, 650 S.E.2d at 83.

The final block quote in Section I of Appellants' Argument section is from the Supreme Court's analysis on whether DOR was entitled to an injunction barring the further use of Penny Tax revenues until the County adopted appropriate guidelines. The quote at issue reads:

> In light of the County's many suspect expenditures of Penny Tax funds, DOR requested an injunction against the County prohibiting the further expenditure of Penny Tax funds **until the County "adopts IRC 262/263A or some other acceptable alternative** as a standard to be used to determine when expenditures are proper within the [Transportation] Act." **Under these compelling circumstances, we find an injunction is appropriate.** To ensure objective criteria establishing compliance with the Transportation Act, **the County shall be subject to guidelines** for determining whether expenses are properly allocable to a specific transportation project, or the direct administration of a specific transportation project. Accordingly, the County is hereby enjoined from violating the Transportation Act. We direct the circuit court, no later than thirty days following remand, to enter the preliminary injunction in accordance with this opinion.

Richland Cty., 422 S.C. at 312, 811 S.E.2d at 768-69 (emphasis from Br. of App.). Again, the first portion of the quote emphasized by Appellants is the Supreme Court's recitation of the relief sought by DOR. It is not the Court's endorsement of Internal Revenue Code §§ 262 and 263A, as suggested in Appellants brief. [Br. of App. at 8.]. The Court simply finds that guidelines are necessary to ensure appropriate spending going forward. These guidelines have since been issued and found CMRTA's spending at issue, i.e. costs and expenses associated with the day to day operation of a mass transit system, is permitted under the Transportation Act. [Guidelines.] The remainder of the quote does not offer any legal conclusion as to the scope of the Transportation Act and certainly does not constitute a finding that spending under the Transportation Act is limited to "capital costs."

Nothing in the Supreme Court's opinion in the DOR Case is controlling authority in this appeal. The quotes set forth and relied upon in Appellants' brief are either unrelated to the issues on appeal now or dicta from the Court, which is not binding as authority. Accordingly, the quoted language does not affect the analysis set forth in the previous two sections and the circuit court's order granting summary judgment must be affirmed.

CONCLUSION

The current appeal is full of irony. Appellants claim to be bringing this case in the interest of the public to protect taxpayer funds from misuse. However, Appellants continued prosecution of this case in the face of the developments in the related case, namely the guidelines issued by DOR and the circuit court's order adopting the same, represents a waste of both taxpayer's funds and judicial resources. It is unfair and unnecessary that Richland County and CMRTA continue to expend funds defending a lawsuit over an issue that has already been resolved with the Department of Revenue.

The statutory language in the Transportation Act plainly and unambiguously permits the spending at issue. Moreover, even if the Transportation Act's language is found to be ambiguous, under the controlling law of this state, this court must defer to DOR's interpretation of the Transportation Act found in the guidelines issued in April 2018. As the administrative agency charged with administering the Transportation Act, the Department's interpretation, which allows for spending penny sales tax funds on the day to day expenses associated with running a mass transit system, has resolved this issue. Appellants have failed to demonstrate any compelling reason to overturn this interpretation. Finally, the dicta repeatedly quoted in Appellants brief is not controlling of this appeal and does not represent a reasonable interpretation of the Transportation Act. For these reasons as more fully set out above, this Court should affirm the circuit court's grant of summary judgment.

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October 22, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper Jr., Circuit Court Judge

Appellate Case No.: 2018-000794

South Carolina Public Interest Foundation, Edward D. Sloan, Jr. and William B. DePass, individually, and on behalf of others similarly situated,

Appellant,

v.

Richland County, Respondents,

and

Central Midlands Regional Transit Authority Intervenor/Respondent.

PROOF OF SERVICE

I certify that I have caused the Initial Brief of Intervenor/Respondent and Designation of Matter to be served on Appellant and Respondents by U.S. Mail and electronic mail on October 22, 2018, addressed to their attorneys of record at the following addresses:

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October 22, 2018

Via Hand Delivery
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: South Carolina Public Interest Foundation, et al. v. Richland County, et al.
Appellate Case No. 2018-000794
File No. 6908/1500

Dear Ms. Kitchings:

I enclose for filing the original and one copy of the Initial Brief of Intervenor/Respondent, Designation of Matter to be Included in the Record on Appeal and Proof of Service.

I would appreciate your filing as appropriate and returning the clocked-in copies via our courier.

By copy of this letter and as evidenced by the Certificate of Service, we are serving all counsel of record with a copy of same.

Sincerely,

Robert E. Tyson, Jr.

Enclosures

cc: James G. Carpenter, Esquire
Andrew F. Lindemann, Esquire