

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2018-000794

Case No. 2016-CP-40-02875

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

v.

Richland County,.....Respondent,

And

Central Midlands Regional Transit Authority,.....Intervenor/Respondent.

BRIEF OF AMICUS CURIAE
South Carolina Department of Revenue

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South Carolina Department of Revenue

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AUG 12 2019

SC Court of Appeals

TABLE OF CONTENTS

Table of Authoritiesii

Interest of Amicus.....1

Statement of the Issue on Appeal2

Statement of the Case2

Statement of Facts.....3

Standard of Review.....4

Argument:

 I. THIS COURT SHOULD NOT APPLY THE GERNERAL
 DOCTRINE OF AGENCY-DEFERENCE TO THE
 GUIDELINES THAT ARE PART OF THE CIRCUIT
 COURT’S TEMPORARY INJUCTION BECAUSE
 THEY ARE NOT AN AGENCY’S INTERPRETATION
 OF A STATUTE.....5

 a. A temporary injunction is neither an agency
 interpretation nor a judicial decision with
 precedential value.....5

 b. The Supreme Court’s decision in *Richland County v.*
 Department of Revenue did not directly
 address the funding of CMRTA.....8

 II. THE DEPARTMENT’S INFORMATION LETTER
 IS NOT AN AGENCY DETERMINATION SUBJECT
 TO DEFERENCE.....8

 III. THE COURT SHOULD DECIDE WHETHER
 ADMINISTRATIVE COSTS ASSOCIATED WITH
 THE OPERATION OF A “MASS TRANSIT
 SYSTEM” ARE ALLOWED BY THE
 TRANSPORTATION ACT.....9

Conclusion10

Certificate of Counsel.....11

TABLE OF AUTHORITIES

Cases:

County of Richland v. Simpkins
348 S.C. 664, 671, 560 S.E.2d 902, 905 (Ct. App. 2002).....5

*Kiawah Development Partners, II v. South Carolina Dept. of Health and
Environmental Control*
411 S.C. 16, 33, 35, 766 S.E.2d 707, 717, 719 (2014).....4

Richland County v. South Carolina Department of Revenue
422 S.C. 292, 306, 811 S.E.2d 758, 765 (2018).....Passim

Statutes:

S.C. Code Ann. §12-4-10 (2014)1

S.C. Code Ann. §4-37-10 to 50 (Supp. 2017).....1

INTEREST OF AMICUS

The South Carolina Department of Revenue (“Department” or “DOR”) is authorized to “administer and enforce the revenue laws of this State.” S.C. Code Ann. § 12-4-10 (2014). This authority extends to revenues generated in accordance with the Optional Methods for Financing Transportation Facilities Act, better known as the Transportation Act. *See* S.C. Code Ann. §§ 4-37-10 to -50 (Supp. 2017).¹ The Department administers and collects Transportation Act revenues (the so-called “Penny Tax”) in the same manner that other sales and use taxes are collected. *Id.* § 4-37-30(A)(8). In fact, the revenues generated through a Penny Tax “are considered to be state tax revenues—not local tax revenues.” *Richland Cty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 299, 811 S.E.2d 758, 762 (2018). Thus, “DOR’s extensive administrative, oversight, and enforcement responsibilities in the Transportation Act and throughout Title 12 of the South Carolina Code confer upon DOR a duty in ensuring the County’s expenditures of Penny Tax revenues comply with the revenue laws DOR is charged with enforcing.” *Id.* at 306, 811 S.E.2d at 765.

The issues in this appeal are similar to the issues that were litigated in *Richland County v. Department of Revenue*, in which the Department challenged Richland County’s use of Transportation Act revenues on “administrative costs” that were unrelated to any specific transportation project. In *Richland County*, the Supreme Court held that proceeds of the County’s Penny Tax program must be used for the capital costs of the types of transportation project identified in the Transportation Act, and that the Department was entitled to an injunction requiring Richland County to expend the funds generated by its Penny Tax program solely on transportation-related projects in accordance with the

¹ South Carolina counties are authorized by state law to impose 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) (Supp. 2017). This tax, commonly referred to as a “penny tax,” can be used to fund “highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects.” *Id.* § 4-37-30(A)(1)(a)(i).

law. *Id.* at 312, 811 S.E.2d at 768. On remand, the Circuit Court issued a temporary injunction that included guidelines for determining whether Richland County's Penny Tax expenditures are proper under the Transportation Act ("Guidelines").

In this appeal, Appellants contend that the Transportation Act does not authorize the use of Penny Tax revenues to fund the "continued operation of a mass transit system" such as the Central Midlands Regional Transit Authority ("CMRTA"). In defending its use of Penny Tax funds, CMRTA argues in its brief that the Guidelines adopted by the Circuit Court in the *Richland County* matter constitute the Department's interpretation of the Transportation Act, and that because the Guidelines permit the funding of the CMRTA this Court must give deference to the administrative agency's interpretation.

The Department contends the CMRTA has distorted the substance and effect of the temporary injunction's Guidelines entered by the Circuit Court in the *Richland County* matter and misconstrued the Department's position regarding the use of Penny Tax revenues to fund the operational expenses of a mass transit system. The Department has an interest in advising the Court of its position on the import of the Circuit Court's Temporary Injunction and the Guidelines.

STATEMENT OF THE ISSUE ON APPEAL

The Department's interest in this matter is limited to the Appellant's first Issue on Appeal: "Did the Circuit Court's CMRTA order violate the Supreme Court Ruling?"

STATEMENT OF THE CASE

The Department adopts the Appellants' Statement of the Case.

STATEMENT OF FACTS

The specific matters raised in this case do not directly overlap all issues in *Richland County v. Department of Revenue*², but the overarching issue in both cases is whether the County, and ultimately the CMRTA, is spending revenue obtained from the Penny Tax on expenses that are not authorized by the Transportation Act.

In 2018 the South Carolina Supreme Court held that the Department was authorized to enforce provisions of the Transportation Act that limit the ways in which Penny Tax revenues can be spent. The Court found that some of the expenses paid by Richland County with Penny Tax funds were not authorized by the Transportation Act and, accordingly, the Court enjoined the County “from violating the Transportation Act.” The Supreme Court also ordered the Circuit Court to enter a “preliminary injunction in accordance with this opinion” within thirty days of the date that the case was remanded. *Richland Cty.*, 422 S.C. at 312, 811 S.E.2d at 769.

As a result, Richland County, DOR, and CMRTA jointly prepared a set of Guidelines to be proposed to the Circuit Court that became part of the temporary injunction entered in accordance with the Supreme Court’s direction. Among other things, the Guidelines instruct that,

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 Costs include purchases of capital assets. Eligible Costs also include costs and expenses paid or incurred in connection with the day to day operation of the Mass Transit System.

The temporary injunction was entered by the Circuit Court on April 12, 2018.

Meanwhile, in the case at bar, the Appellants, Richland County, and CMRTA were litigating whether CMRTA was spending Penny Tax funds in accordance with the Transportation Act’s limitations. In November 2017 the Circuit Court granted CMRTA’s motion for summary judgment

² The South Carolina Supreme Court heard *Richland County v. Department of Revenue, et al.* and rendered a decision in March 2018. The case was remanded to the Circuit Court and remains a pending action in the Richland County Court of Common Pleas (C/A No. 16-CP-40-3102). The matter is currently stayed.

and ordered that the CMRTA was properly spending its penny tax funds on operational expenses; the Plaintiffs appealed.

In this appeal, both the County and CMRTA contend that the Circuit Court's decision was correct. As support for its position that the summary judgment order should be upheld, CMRTA argues that this Court should defer to the temporary injunction Guidelines entered by the Circuit Court in the *Richland County* case because they represent an administrative agency's interpretation of the Transportation Act. CMRTA misconstrues the purpose and effect of the Guidelines, and also overstates the Department's position—vis-à-vis the Guidelines—regarding the use of Transportation Act revenues to fund the ongoing operations of the CMRTA. DOR provides this *amicus curiae* brief to address why the Guidelines should not be afforded deference in this matter.

STANDARD OF REVIEW

The Department adopts the Intervenor/Respondent's Standard of Review as to an appellate court's review of a grant of summary judgment.

However, the more important standard related to this *amicus curiae* brief is when, and to what extent, an appellate court should defer to an agency's interpretation, *if* an interpretation has been made. An administrative agency may provide an interpretation of a statute where the statute is entrusted to the administration of the agency and a Court should defer to the agency's interpretation if the statute or regulation "is silent or ambiguous with respect to the specific issue..." so long as the interpretation is not "arbitrary, capricious, or manifestly contrary to the statute." *Kiawah Development Partners, II v. South Carolina Dept. of Health and Environmental Control*, 411 S.C. 16, 33, 35, 766 S.E.2d 707, 717, 719 (2014).

ARGUMENT

I. **This Court should not apply the general doctrine of agency deference to the Guidelines that are part of the Circuit Court's Temporary Injunction because they are not an agency's interpretation of a statute.**

a. **A temporary injunction is neither an agency interpretation nor a judicial decision with precedential value.**

CMRTA contends that the Guidelines issued by the Circuit Court as part of its temporary injunction "were prepared by DOR." This statement is only partially correct. In fact, all three parties to *Richland County v. Department of Revenue* worked together to draft and develop the Guidelines, and the Guidelines are the by-product of negotiation and collaboration among the parties.³ However, even if it were true that the Department prepared the Guidelines exclusively, they still would not constitute an agency interpretation. The Guidelines are an order of the Circuit Court. *See Richland County v. Department of Revenue*, 422 S.C. 292, 312, 811 S.E.2d 758, 769 (2018) ("We direct the circuit court...to enter the preliminary injunction in accordance with this opinion."). Circuit Court judges routinely solicit proposed orders from parties in litigation, but, when the judge accepts and signs that order, it is not the order of a party. It is the order of the court.

Furthermore, while it is axiomatic that a temporary injunction from a circuit court is not binding on an appellate court, a temporary injunction is not even binding on the parties to the litigation in which it was issued. "A temporary injunction is used to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity offered for full and deliberate investigation and to preserve the existing status during litigation. A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined without reference to the temporary injunction." *County of*

³ Correspondence among the parties reflecting the negotiations leading to the Guidelines are attached as Exhibit A.

Richland v. Simpkins, 348 S.C. 664, 671, 560 S.E.2d 902, 905 (Ct. App. 2002) (internal quotation marks and citations omitted).

Maintaining the status quo was precisely the purpose of the temporary injunction in the *Richland County* case. This fact is best understood in the context of the timeline surrounding the Circuit Court's rulings on both of the relevant litigation matters:⁴

- On November 21, 2017, Judge Cooper signed an Order granting CMRTA's Motion for Summary Judgment, holding that "penny tax revenues may be expended on the operation of transportation-related projects, which the statute [sic] specifically defines to include mass transit systems, such as the CMRTA." (Order Granting CMRTA's Mot. for Summ. J., p. 8.)
- On March 7, 2018, the Supreme Court entered its opinion in *Richland County v. Department of Revenue*, and the remittitur was issued on April 10, 2018.
- On March 16, 2018, Judge Cooper held a status conference with all counsel for the parties in the *Richland County* matter, in which he directed the parties to jointly draft and submit proposed guidelines to be included in a temporary injunction, as directed by the Supreme Court. Thereafter, representatives for the Department, Richland County, and CMRTA met on several occasions and circulated numerous versions and revisions of proposed guidelines. In addition, Judge Cooper held multiple additional status conferences with counsel for the parties to discuss certain aspects of the proposed guidelines.
- On April 12, 2018, Judge Cooper entered a temporary injunction and Guidelines in the *Richland County* matter.
- Judge Cooper denied the Appellant South Carolina Public Interest Foundation's Motion to Alter or Amend the Order granting CMRTA's summary judgment motion on April 17, 2018.

⁴ Both the case at bar and *Richland County v. Department of Revenue* had been designated as complex cases and assigned to G. Thomas Cooper as the presiding judge.

As the above timeline indicates, the parties in *Richland County* were directed by Judge Cooper to develop Guidelines regarding the proper expenditure of Penny Tax funds just months after Judge Cooper had ruled in a related case that CMRTA's operational expenses were properly paid from Penny Tax funds. Importantly, although the Supreme Court in *Richland County* clearly held that the "proper expenditure of Penny Tax funds must be tethered to a specific transportation-related capital project or the administration of a specific transportation project," *id.* at 312, 811 S.E.2d. at 768, the Court did not specifically address whether it was proper for the County to use Penny Tax funds to subsidize the operation of the bus system. Because Judge Cooper would be entering the temporary injunction and because he had already ruled that Penny Tax revenue could be used for CMRTA's operational expenses, the Department concluded that, for purposes of a *temporary* injunction only, it would not contest the propriety of using the Penny Tax for CMRTA's operations costs.

Moreover, based on the litigation history of Edward Sloan and the South Carolina Public Interest Foundation, it was almost certain that the issue of whether CMRTA's operational costs were properly paid from Penny Tax funds would be decided by an appellate court. Obviously the Department's prediction proved correct. Thus, the Court of Appeals or the Supreme Court would consider the issues raised by Sloan and SCPIF, and ultimately provide final and conclusive guidance concerning whether CMRTA's operations costs were appropriately paid with Penny Tax funds. In other words, the most efficient means of obtaining a final decision on that issue would be through appellate review in the *Sloan* case, not attempting to persuade a Circuit Court that had already rendered its decision.

Therefore, when deciding the case at bar, this Court should not apply the "agency deference" doctrine to the Circuit Court's Guidelines. The temporary injunction is not an agency interpretation about the meaning of the Transportation Act Penny Tax.

b. The Supreme Court's decision in *Richland County v. Department of Revenue* did not directly address the funding of CMRTA.

The Department has not interpreted the Transportation Act to allow Penny Tax funds to be spent on CMRTA's operations expenses. To the contrary, in the *Richland County* case the Department asserted counterclaims against the County alleging the County's impermissible use of Penny Tax funds in relation to the operation of CMRTA. (Dept's Answer and Countercl., ¶¶ 159–60)

While the Supreme Court analyzed whether some of the Penny Tax expenditures were improper, it did not directly address any spending related to the CMRTA. In fact, there is no specific mention of the CMRTA or the bus system in the opinion. The Supreme Court did rule that “administrative costs’ that were unrelated to any specific transportation project were improper as they exceeded the scope of the Transportation Act.” *Id.* at 302. CMRTA's operations expenses may or may not be improper “administrative costs;” the question of whether CMRTA's operational expenses are proper under the Transportation Act was not before the Supreme Court at that time. However, since the Department's counterclaim necessarily questions the expenses related to CMRTA's operations, and since the counterclaim remains pending because the Supreme Court did not comment on the propriety of those costs, it is incorrect to assert that the temporary injunction guidelines represent an agency interpretation entitled to deference in this appeal. Whether those expenses are appropriate has yet to be decided by the Circuit Court.

II. The Department's information letter is not an agency determination subject to deference.

As a result of the temporary injunction, on August 14, 2018, DOR issued an “information letter” advising the general public of the Guidelines that were incorporated into the temporary injunction. “An Information Letter is a written statement issued by the Department to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.” (SC Revenue Procedure #09-3, p. 5.) The Department

does not issue an Information Letter “[w]hen the primary purpose is to provide *interpretations* or procedural guidance....” (*Id.*, p. 6 (emphasis added).) There are other “advisory opinions” that have the purpose of providing the agency’s determination as to the meaning or effect of a statute or regulation. (*See id.*, pp. 2-3 (identifying one reason for issuing a “revenue ruling” as “the law or regulations are not clear and the issue may affect many people”) .)

Information Letter #18-10 provides the same disclaimers as the Revenue Procedure. The Information Letter restated the guidelines adopted by the Circuit Court *verbatim*. Because a court had provided instructions in a litigated matter about the use of Penny Tax funds, and because there are other political subdivisions that had implemented a Transportation Act Penny Tax, it was reasonable and helpful for DOR to advise others of the Circuit Court’s ruling. However, informing the public of the Court’s ruling is not the same as the Department issuing an official interpretation of the Transportation Act. Thus, for all of the same reasons that the temporary injunction is not an agency interpretation, Information Letter #18-10 is not an agency determination either.

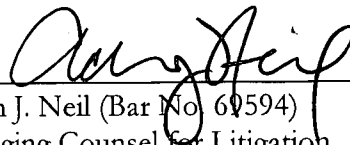
III. The Court should decide whether administrative costs associated with the operation of a “mass transit system” are allowed by the Transportation Act.

The Department invites the Court to make a determination as to whether, or to what extent, Penny Tax revenue may be used to fund CMRTA’s operations while remaining compliant with the Transportation Act’s limitations. The Supreme Court has already held that administrative costs are not allowable in certain instances. However, the Supreme Court did not address the bus specifically and was not presented with the issue of what expenses related to a “mass transit system” are authorized. However, the issues raised in *Richland County v. Dept. of Revenue* include the propriety of paying CMRTA’s operation expenses. Therefore, in the interests of judicial economy, this Court should analyze whether the Transportation Act allows for Richland County to pay CMRTA’s operations costs with Penny Tax funds.

CONCLUSION

This Court should not apply the general doctrine of agency deference to the Guidelines that are part of the Circuit Court's Temporary Injunction in *Richland County v. Department of Revenue* because the Guidelines are not the Department of Revenue's interpretation of the Transportation Act. The Guidelines are merely a component of a temporary injunction that is neither an agency interpretation nor a judicial decision with precedential value. The Guidelines are the Circuit Court's effort to maintain the status quo during the pendency of the *Richland County* litigation; this was the same Circuit Court that had already ruled in the case at bar that Penny Tax funds can be used to cover the CMRTA's operations costs. Likewise, the Department's Information Letter is not its interpretation of the statute, but serves only as notice to the public of the Circuit Court's Guidelines established in *Richland County v. Department of Revenue*. Therefore, this Court should not defer to either the Guidelines or Information Letter #18-10 when deciding the issues on appeal in this matter. However, because the Supreme Court's decision in *Richland County v. Department of Revenue* did not directly address the funding of CMRTA, the Department encourages this Court to make a determination about whether and to what extent CMRTA's operations expenses are properly paid with Penny Tax funds.

Respectfully submitted,



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Jason P. Luther (Bar No. 78021)
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Columbia, South Carolina
August 9, 2019

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v.

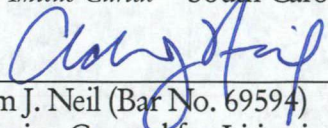
Richland County,.....Respondent,

And

Central Midlands Regional Transit Authority,.....Intervenor/Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of *Amicus Curiae* – South Carolina Department of
Revenue complies with Rule 211(b), SCACR.



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Columbia, South Carolina
August 9, 2019

EXHIBIT A

Adam Neil

From: Malane Pike <pikemal@gmail.com>
Sent: Monday, March 12, 2018 4:24 PM
To: Jason Luther; Joe S. Dusenbury Jr.; Ashley Thomas; Hartley Powell
Cc: Amy Wright; LARRY SMITH
Subject: Proposed RC Transportation Guidelines
Attachments: RC Transportation Guidelines.pdf

Everyone:

Attached please find a draft of the proposed guidelines that we discussed. We will look forward to discussing these with you. In the meantime, we are soliciting comments from other interested parties.

Thank you,
Malane

--
ATTORNEY-CLIENT OR OTHER PRIVILEGED COMMUNICATION NOT FOR DISSEMINATION BEYOND ORIGINAL ADDRESSEE(S) AND ORIGINAL COPIED RECIPIENT(S).

Adam Neil

From: Malane Pike <pikemal@gmail.com>
Sent: Wednesday, March 21, 2018 5:15 PM
To: Hartley Powell; Jason Luther; Joe S. Dusenbury Jr.
Cc: LARRY SMITH; GERALD SEALS; SANDRA YUDICE; Rob Tyson; Betsy Gray
Subject: Proposed Transportation Guidelines
Attachments: RC Guidelines .Transportation Program 2018.03.21 FINAL.docx

Hartley, Jason, and Joe,
As promised, we have revised the guidelines. First, we have adopted a different format that is more organized and could easily be transformed into a policy document if the need arises. Second, we have taken the definitions and incorporated them into the various sections that they apply to for ease of reading. Third, we have tightened the basic concepts and fleshed them out in more detail. Please feel free to contact us if you would like to discuss any issues or if we can otherwise be of assistance.

Thanks,
Malane

--
ATTORNEY-CLIENT OR OTHER PRIVILEGED COMMUNICATION NOT FOR DISSEMINATION BEYOND ORIGINAL ADDRESSEE(S) AND ORIGINAL COPIED RECIPIENT(S).

Adam Neil

From: Rob Tyson <Rtyson@sowellgray.com>
Sent: Friday, March 16, 2018 1:04 PM
To: Jason Luther
Cc: Betsy Gray
Subject: RE: Richland County v. DOR
Attachments: CMRTA proposed guidelines (sent to DOR) (A1157301xA08D7).docx; Order granting CMRTA's Motion for Summary Judgment (A1113231xA08D7).pdf

Jason, Per your request, please find attached a WORD version of the CMRTA proposed guidelines. Please let us know whether you prefer to have us attend the meeting with the County on Monday or whether you prefer to meet with us individually.

Also, please find attached a copy of the Judge Cooper Order in the Sloan/Depass case granting the CMRTA Motion for Summary Judgment. Let us know if you need anything else.

Tks. Rob

From: Jason Luther [mailto:Jason.Luther@dor.sc.gov]
Sent: Monday, March 12, 2018 10:00 AM
To: Cooper, G. Thomas Law Clerk (Jamie Rutkoski) ; Nicholson, Ned
Cc: Cooper, G. Thomas ; Crum, Liz ; raystevens@parkerpoe.com; rayjones@parkerpoe.com; james@jamesmithpa.com; dylan@gofflawgroup.com; mkimpson@scal.net; Dana Krajack ; Nicole Wooten ; Lauren Acquaviva ; Rob Tyson ; Andrew Lindemann ; LARRY SMITH
Subject: RE: Richland County v. DOR

Judge Cooper and Jamie –

I understand that some folks on this email have had difficulty opening the PDF letter attachment that I emailed on Saturday morning. I have attached a new version, hopefully this should remedy the problem but please let me know if you have any difficulty with this attachment.

Thank you,

Jason

Jason P. Luther, Esq.
General Counsel - Litigation
South Carolina Department of Revenue
803-898-5785

From: Jason Luther
Sent: Saturday, March 10, 2018 7:53 AM
To: 'Cooper, G. Thomas Law Clerk (Jamie Rutkoski)' <GCooperLC@sccourts.org>; Nicholson, Ned <NNicholson@MCNAIR.NET>
Cc: Cooper, G. Thomas <GCooperJ@sccourts.org>; Crum, Liz <LCrum@MCNAIR.NET>; raystevens@parkerpoe.com; rayjones@parkerpoe.com; james@jamesmithpa.com; dylan@gofflawgroup.com; mkimpson@scal.net; Dana Krajack <Dana.Krajack@dor.sc.gov>; Nicole Wooten <Nicole.Wooten@dor.sc.gov>; Lauren Acquaviva

<Lauren.Acquaviva@dor.sc.gov>; Rob Tyson <Rtyson@sowellgray.com>; Andrew Lindemann <Andrew@LDH-Law.com>;
LARRY SMITH <SMITHLA@rcgov.us>

Subject: RE: Richland County v. DOR

Judge Cooper and Jamie:

Please see the attached correspondence (dated yesterday) from the Department. Please let me know if you have any difficulty opening the attachment.

I have copied all counsel on this email to notify them of my communication with the court.

Kind regards,

Jason

Jason P. Luther, Esq.
General Counsel - Litigation
803-898-5785
Jason.Luther@dor.sc.gov

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Office of General Counsel
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Taxpayer Service Center Hours: Monday-Friday 8:30 a.m. - 5:00 p.m.

SCDOR offices are closed on weekends and state holidays.

-----Original Message-----

From: Cooper, G. Thomas Law Clerk (Jamie Rutkoski) [<mailto:GCooperLC@sccourts.org>]

Sent: Friday, March 9, 2018 1:41 PM

To: Nicholson, Ned <NNicholson@MCNAIR.NET>; Jason Luther <Jason.Luther@dor.sc.gov>

Cc: Cooper, G. Thomas <GCooperJ@sccourts.org>; Crum, Liz <LCrum@MCNAIR.NET>; raystevens@parkerpoe.com; rayjones@parkerpoe.com; james@jamesmithpa.com; dylan@gofflawgroup.com; mkimpson@scal.net; Dana Krajack <Dana.Krajack@dor.sc.gov>; Nicole Wooten <Nicole.Wooten@dor.sc.gov>; Lauren Acquaviva <Lauren.Acquaviva@dor.sc.gov>; Rob Tyson <Rtyson@sowellgray.com>; Andrew Lindemann <Andrew@LDH-Law.com>; LARRY SMITH <SMITHLA@rcgov.us>

Subject: Re: Richland County v. DOR

All,

I inadvertently left Mr. Luther off the chain below. I've added him and I believe now all parties are included in this email thread. If not, please let me know.

Thank you,

Jamie Rutkoski

Sent from my iPhone

On Mar 9, 2018, at 12:23 PM, Nicholson, Ned <NNicholson@MCNAIR.NET<mailto:NNicholson@MCNAIR.NET>> wrote:

Thank you, your honor.

With this email, I am copying Rob Tyson and Betsy Gray who represent the Central Midlands Transit Authority, an intervener in the case. Also, I have inserted Andrew Lindemann's new email address.

Ned Nicholson

[McNair]

Benjamin E. (Ned) Nicholson V

Shareholder

nnicholson@mcnair.net<mailto:nnicholson@mcnair.net>

McNair Law Firm, P.A.

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From: Cooper, G. Thomas [<mailto:GCooperJ@sccourts.org>]
Sent: Friday, March 09, 2018 12:17 PM
To: Cooper, G. Thomas Law Clerk (Jamie Rutkoski) <GCooperLC@sccourts.org<<mailto:GCooperLC@sccourts.org>>>; Andrew Lindemann (alindemann@dml-law.com<<mailto:alindemann@dml-law.com>>) <alindemann@dml-law.com<<mailto:alindemann@dml-law.com>>>; Nicholson, Ned <NNicholson@MCNAIR.NET<<mailto:NNicholson@MCNAIR.NET>>>; Crum, Liz <LCrum@MCNAIR.NET<<mailto:LCrum@MCNAIR.NET>>>; raystevens@parkerpoe.com<<mailto:raystevens@parkerpoe.com>>; rayjones@parkerpoe.com<<mailto:rayjones@parkerpoe.com>>; james@jamesmithpa.com<<mailto:james@jamesmithpa.com>>; dylan@gofflawgroup.com<<mailto:dylan@gofflawgroup.com>>; mkipson@scal.net<<mailto:mkipson@scal.net>>; dana.krajack@dor.sc.gov<<mailto:dana.krajack@dor.sc.gov>>; nicole.wooten@dor.sc.gov<<mailto:nicole.wooten@dor.sc.gov>>; lauren.acquaviva@dor.sc.gov<<mailto:lauren.acquaviva@dor.sc.gov>>
Subject: RE: Richland County v. DOR

Counsel: In light of the Supreme Court's Opinion No. 27775 issued on Wednesday, I am scheduling a status conference for Friday, March 16 at 11:00 am, in Courtroom 2-C in the Richland County Courthouse. Please be present. GTC

From: Cooper, G. Thomas Law Clerk (Jamie Rutkoski)
Sent: Friday, March 9, 2018 11:40 AM
To: Andrew Lindemann (alindemann@dml-law.com<<mailto:alindemann@dml-law.com>>) <alindemann@dml-law.com<<mailto:alindemann@dml-law.com>>>; nnicholson@mcnair.net<<mailto:nnicholson@mcnair.net>>; lcrum@mcnair.net<<mailto:lcrum@mcnair.net>>; raystevens@parkerpoe.com<<mailto:raystevens@parkerpoe.com>>; rayjones@parkerpoe.com<<mailto:rayjones@parkerpoe.com>>; james@jamesmithpa.com<<mailto:james@jamesmithpa.com>>; dylan@gofflawgroup.com<<mailto:dylan@gofflawgroup.com>>; mkipson@scal.net<<mailto:mkipson@scal.net>>; Cooper, G. Thomas <GCooperJ@sccourts.org<<mailto:GCooperJ@sccourts.org>>>; dana.krajack@dor.sc.gov<<mailto:dana.krajack@dor.sc.gov>>; nicole.wooten@dor.sc.gov<<mailto:nicole.wooten@dor.sc.gov>>; lauren.acquaviva@dor.sc.gov<<mailto:lauren.acquaviva@dor.sc.gov>>
Subject: Richland County v. DOR

Good morning all,

Judge Cooper wants to schedule a hearing with the parties in light of the recent Supreme Court decision. I've included him on this email so he can communicate with all parties.

Thank you,

Jamie Rutkoski

Law Clerk to the Honorable G. Thomas Cooper, Jr. and the Honorable Jean H. Toal Circuit Court of South Carolina

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**Adam Neil**

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**From:** Malane Pike <pikemal@gmail.com>  
**Sent:** Friday, March 16, 2018 7:02 PM  
**To:** Hartley Powell; Joe Dusenbury; Jason Luther  
**Cc:** LARRY SMITH; GERALD SEALS; SANDRA YUDICE  
**Subject:** Revised Guidelines and Proposed Agenda  
**Attachments:** Administrative Memorandum 3-2 SC Supreme Court Opinion Transportation Penny Program.pdf; RC Guidelines 03162018.docx; New Employee Handbook version 3 - July 17 2017 - OFFICIAL COPY.pdf; Council Memorandum 3-2 Revised Strategic Response to SC Supreme Court Opinion No 27775.pdf

Hartley, Joe, and Jason,

Per my conversation with Hartley earlier today, attached are our revised guidelines along with the employee handbook which contains the ethics policy referenced in the guidelines. We anticipate that the following people will be present on the County's behalf in addition to the three of us that were present at the last meeting:

Rob Tyson/Betsy Gray on behalf of CMRTA  
Dr. Sandra Yudice - Assistant County Administrator  
Dr. John Thompson - New Director of Transportation  
Gerald Seals - Richand County Administrator  
Alan Robinson, CPA - Cherry Beckaert

It is my understanding that you would like us to explain our proposal and the thought process behind it. As such, we would like to propose the following agenda:

1. Explanation of Guidelines
2. Corrective Actions Implemented
  - a. Administrative Memorandum 3-2 (Attached)
  - b. Revised Council Memorandum 3-2 (Attached)
3. Q & A

Please let us know if there are additional topics you would like us to cover.

Thanks,  
Malane

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