

THE STATE OF SOUTH CAROLINA  
SUPREME COURT

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OCT 04 2019

APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS

S.C. SUPREME COURT

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Appellate Case No.: 2018-002255

James Mikell "Mike" Burns, Garry R. Smith,  
and Dwight A. Loftis, ..... Appellants,

v.

Greenville County Council and  
Greenville County, ..... Respondents.

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INITIAL REPLY BRIEF OF APPELLANTS

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**STATEMENT OF THE ISSUES IN REPLY**

I. ARE FACTS STIPULATED BELOW THAT COUNCIL “PASSED” THE ORDINANCES AT ISSUE DISPOSITIVE OF THE APPEAL WHERE APPELLATE HAS ALWAYS MAINTAINED THAT THE PASSAGE WAS NOT VALID?

II. DO THE FACTS ESTABLISH AN EXISTING CASE OR CONTROVERSY CONTRARY TO THE MASTER’S RULING?

III. WAS THE TAXPAYER PROTECTION PROVISION BOTH AN ORDINANCE AND RULE OF COUNCIL BY WHICH IT WAS REQUIRED TO ABIDE IN THIS CASE?

## ARGUMENT

### **I. THE "PASSAGE" OF THE ORDINANCES AT ISSUE BY COUNCIL IS NOT DISPOSITIVE OF THE ISSUE, AS THE "PASSAGE" BY COUNCIL WAS NEVER VALID.**

The stipulation of fact was that council "passed" the ordinances at issue. It was never stipulated that council's "passage" was valid. The stipulation that council passed the ordinances under a simple majority is therefore not dispositive of the issue. South Carolina Code Section 6-1-330 requires the approval of a "positive majority" of local council is "authorized to charge and collect a service or user fee." A "positive majority" is defined as "a vote for adoption by the majority of the members of the entire governing body, whether present or not..." The Rules of Greenville County Council require two-thirds of members of Council (8 members) to vote to suspend or amend the Rules of Greenville County Council. (Appendix A). The Ordinance to repeal the Taxpayer Protection Provision could not amend the Rules of Greenville County Council since it passed with only seven (7) votes. Even if Appendix A of the Rules of Greenville County Council was implicitly amended by the Ordinance to repeal Ordinance No. 3867, the Rules of County Council state that a two-thirds (8 members) vote is required to increase any tax for Greenville County. (Rules, B(4)(b)(iii). The Road Maintenance Ordinance and the Telecommunications Ordinance amount to an increase in taxes. The Ordinance increasing the Road Maintenance Tax passed by a mere majority of 7 votes. At the time the ordinances in question were enacted, the Rules of Greenville County that increases in taxes and fees required 9 votes. (Rules, Appendix A). Therefore, the Road Maintenance Fee Ordinance was never validly approved by Greenville County Council either as a tax or a fee increase since it neither had a 2/3rds vote as a fee or a tax as 3/4rds vote as a tax. Even without considering the Taxpayer Protection Provision, the Rules of County Council still required more than a majority vote since as discussed below since the Road Maintenance Fee is a tax. Since, Greenville County Council must follow its own rules, the Road Maintenance Fee increase has never been validly enacted. The stipulation of facts as to the "passage" of the ordinances at issue therefore are not dispositive of the issue of whether their passage was valid.

**II. THE FACTS SHOW THAT THIS ACTION WAS BASED ON AN EXISTING CASE OR CONTROVERSY.**

The first ordinance was passed on March 7, 2017. Suit was initiated on March 23, 2017. The original fee ordinance was not repealed until June 6, 2017, and then with the passage of the two ordinances at issue, neither of which received the required super majority vote. Therefore, there was a case or controversy at the time of filing, which continues where the passage of the two ordinances lacked sufficient votes and were therefore invalid.

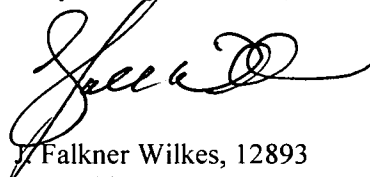
**III. THE TAXPAYER PROTECTION PROVISION WAS BOTH AN ORDINANCE AND RULE OF COUNCIL.**

The TPP was an ordinance but also a rule of Council. The Respondent overlooks that the fact that the Council adopted the TPP as part of its rules. Rules of Council require a super majority to amend or repeal. Council failed to change the rules. While the Respondents argue that one council may not bind another, under Wright v. City of Florence, 229 S.C 419, 93 S.E.2d 215 (1956), Respondents' argument overlooks that council adopted the rule. While it was entitled to subsequently change the rules, it required a super majority to do so. It was never able to obtain sufficient votes to change the rules. It must therefore abide by them.

**CONCLUSION**

Greenville County violated its own rules and ordinances in enacting the Fees Ordinance which was subsequently repealed while the County had not substantial justification in contending it was validly enacted. Greenville County continued to violate its own rules in attempting to pass the new Ordinances.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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I certify that on the 1st day of October, 2019, I served the Appellants' Initial Reply Brief on the Respondents by placing a copy of same into the United States Mail, first class postage pre-paid, addressed to counsel of record as indicated below, and by facsimile if so indicated:

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