EXHIBIT B

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HORRY	)	**2019-CP-26-01732**
City of Myrtle Beach,	)	
Plaintiff,	)	
Vs	)	**Transcript of Record**
Horry County,	)	**June 14, 2019**
Defendant.	)	

B E F O R E:

The Honorable William Seals
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

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Circuit Court Reporter

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(There were no witnesses called during the hearing.)

EXHIBITS

(There were no exhibits marked during the hearing.)

THE COURT: I'm ready whenever you are.

MR. HOEFER: May it please the Court?

THE COURT: Yes, sir.

MR. HOEFER: Good morning, Your Honor. I'm John Hoefer with the law firm of Willoughby and Hoefer in Columbia. With me are Chad Johnston and Walker Humphrey from my firm. We represent the City of Myrtle Beach in the matter before the Court today. I appreciate the Court working us in during the General Session term. Judge, the City's Motion for Temporary Injunction raises the question of whether or not a county can unilaterally impose a service charge within the corporate limits of a municipality. More specifically, the motion asks the question whether a county can collect a percentage fee based on retail transactions completed within the incorporated area of a county for services provided only within unincorporated areas or services already being provided by the municipality without the consent or agreement of the affected municipality. The City of Myrtle Beach submits that the Constitution and the Code of Laws require that its consent be obtained before the County can impose such a charge and provide services on which that charge is based. The City's consent to the 1.5 percent hospitality fee, which is the name given to the charge on the County's Ordinance 105-96 was limited in both duration and purpose. The subsequent amendments which are the subject of this motion to have

Ordinance provide that it will have perpetual duration and allow the County's continued collection of this uniform service charge beyond the term provided in Ordinance 105-96. And it allows the use of the proceeds for a purpose other than specified in the Ordinance. We believe that the Constitution on Statutory Provisions as well as the Lamens Board itself made the amendments invalid as a matter of law. Because of that we believe the Court must issue a temporary injunction to prevent the County's continued collection of these funds and the expenditure of the funds derived from the Uniformed Service Charge within the incorporated areas for a different purpose. Let me give the Court a little bit of background. I know that this matter has been well briefed so please stop me if this is unnecessary. But, Ordinance 105-96 was adopted on October 15th of 1996, became effective January 1, 1997 and it imposes a 1.5 percent charge, Uniform service charge, on the sale of prepared food and beverages, accommodations and amusements within the incorporated areas of Horry County for a 20-year term. It also provides a 2.5 percent Uniform service charge on these same transactions in the unincorporated areas and that's not an issue in this case because Ordinance provisions leading the use of the funds and duration of 20-years only applies to the 1.5 percent charge, which again is the Hospitality Fee. The stated purpose of the charge under section 1(G) of the Ordinance is to create a fund, and I'm

quoting here, which will be used to implement the comprehensive road plan adopted by the County in concert with the municipalities of the County. That comprehensive road plan that was adopted in concert with the municipalities is the RIDE Development Effort Committee, the acronym is RIDE plan, its referenced in the recitals of Ordinance 105-96. The City of Myrtle Beach and every other municipality in the County that existed at the time, I think there's been one municipality created since then, but all municipalities that were existing in 1996 adopted resolutions prior to the effective date of Ordinance 105-96, in which they consented to imposition of this charge within the respective jurisdictions. Now, by its own terms Ordinance 105-96 terminated on January 1, 2017. That's found in section 1(H) of the Ordinance. The Ordinance references in this recital the new time table for the RIDE plan and that's what the 20 year term and the termination provision relate to. Continued imposition of the charge after January 2017 and the use of the funds of the revenues derived from that charge for purposes other than the comprehensive road plan provided for under the RIDE committee report adopted with the consent of the municipalities is what brings us to the Court today on these motions. Now, as the Court's well aware, the City is required to establish five elements in order to be entitled to injunctive relief and those are irreparable harm, likelihood of success on the

merits, a lack of adequate remedy at law or reasonable necessity for the injunctive relief and a demonstration that the County's conduct in imposing this tax or excuse me, bad slip up, not a tax uniform service charge; imposing a Uniform service charge is oppressive, arbitrary or capricious conduct. We submit that the City has established each of these elements in the pleadings affidavits and exhibits that have been placed on file with the Court. Because it's a similar issue, let me go first to the likelihood of the success on the merit. The City doesn't have to demonstrate here today an absolute legal right to relief, it only has to demonstrate that it's raised a reasonable question as to the existence of a right to relief. We cited the *AJG Holdings* and *Helsel* cases in support of that proposition. We believe that City's made that showing in several respects. The first being that the County's amendments which were seeking to enjoin are inconsistent with the language of Ordinance 105-96, which expressly recognizes that the imposition of the fee was limited in duration to a 20-year period that's now expired. And that the use of revenues derived from the Uniform service charge was limited to the implementation of the road plan adopted in concert with the municipalities, the RIDE committee report. That does not include any part of the law proposed of constructed Interstate Highway 73. I believe we submitted to the Court some minutes of the County Counsel and a resolution indicating that that is

an intended designation for some of these funds, nor does that plan include any other police power function including public safety which has also been mentioned in the County's resolutions in some of their minutes. The County's acting and continuing to act inconsistently with its own Ordinance so we believe we've raised at least a question with respect to our legal right to relief of those violations of its own Ordinance. Secondly, the County has to provide a service in order to provide a Uniform service charge and to provide the service in a municipal limits it has to have the consent of the municipality and we cite to the Court Section 13A of the Constitution and Code Sections 4-9-25, 4-9-35, 4-9-40 and 4-9-41. And these legislative provisions requiring the County to obtain the municipal consent only makes sense because the municipality is bound by the same requirements with respect to services that they might provide under 5-7-30 and under 5-7-60, they have to get the consent of the County to provide their services in the County if the County is providing those services themselves. The municipal consent that was given here by the City of Myrtle Beach was given in a formal action it was adopted resolution. And as I mentioned before every other municipality adopted similar resolutions. All of those resolutions say 20-years. And they all say for the purpose of the road improvement plan that's provided in the RIDE Report. So, we submit that we've demonstrated a reasonable question as

to the existence to a right for relief from the County in violation of the Constitution and the Statute. Third, under Brown versus Horry County for there to be a permissible Uniform service charge there has to be a service primarily for the benefit of the person whom the fee is imposed. The improvement of roads and other uses of the funds that the County has suggested in their resolutions and minutes that they're going to be devoting these funds to, those are typical police function powers. They don't necessarily or primarily benefit anybody but the residents of the City already receive the services for the City itself. We believe 4-9-40 is directly on point with regard to that issue. Fourth, Ordinance 105-96 itself recognizes the Constitutional Statutory Limitations on the County's conduct by recognizing the (inaudible) of municipal governments. By its language which limits the charge in duration and scope to achieve the ends of the road plan, which again were adopted in concert with the municipalities. There don't appear to be any Appellate Court decisions in South Carolina addressing this specific issue. I would submit to the Court that's likely because no County has ever asserted the extraordinary proposition that it can unilaterally impose a service charge, Uniform service charge, within the corporate limits of a municipality. However, we have cited to the Court a number of Attorney General opinions which have been issued over decades

which repeated hold or opine that the provisions of the Constitutions and the implementing statutes that I mentioned both in Title 4 and Title 5 recognize the independence of political subdivisions. The City of Myrtle Beach is a political subdivision. Horry County is a political subdivision. If it were otherwise, County's would be free to impose their will on municipalities of provisional services and the imposition of the Uniform service charge and what's good for the goose would have to be good for the gander. If the County's right then the City of Myrtle Beach ought to be able to go provide whatever services it would like in the unincorporated areas and impose services charges without the County's consent. Lastly on this point, we made the Court aware that legislation was introduced by members of the Horry County House Delegation to allow the County to do what the County believes -- says it has the right to do. We question why you need any legislation if you already have that right. So, we think the City has shown more than just a reasonable legal question as to a legal right to the relief they sought, which is to have the amendments allowing for the continued imposition of this Uniform service charge within the City without the City's consent. Let me next go to the irreparable harm element. The exaction of money by the government pursuant to an unlawful ordinance or the use of public funds for an unlawful purpose have long been recognized in South

Carolina as a basis for injunctive relief. We cited the *Santee Lumber* case, the *Riverwoods* case, *Ware Shoals*, *Kirk v. Clark*, *Shillito vs City of Spartanburg*. Not withstanding that Ordinance 105-96 terminated on January 1, 2017, the City continues to collect that money -- the County collects that money. And that happens every time the City, and the City is a payer of this fee, every time the City purchases prepared food and beverages or accommodations, they're paying that. That's happening without the City's consent and the money according to the County's resolutions and the minutes of the Counsel, they're going to use that for purposes not authorized by that Ordinance. We believe that sort of exaction to be unlawful from a Constitutional Statutory standpoint. We think that's the essence of irreparable harm and we've met that standard. The City lacks an adequate remedy of law for a number of reasons, which is the third element that I mentioned. There's no statutory process by which a Uniform service charge can be paid under protest and then a judicial proceeding initiated for covering of that charge after its determined to be unlawful. Now, County has cited their Ordinance 8-00 which creates a quote board of fee appeals. That ordinance doesn't provide an accurate remedy for a variety of reasons, Judge. First, the County doesn't have the authority to create such a board, 4-9-30 subsection 6 gives the County the authority to appoint boards quote, as making

necessary and proper to provide services upon concern for public purposes. The County's Board of Fee Appeals doesn't provide any services authorized to be provided by the County. It only reviews the propriety of Uniform service charges imposed by the County. Even assuming the authority to appoint this board, it's not lawfully created by this ordinance because it provides for the appointment of the board members by the County Administrator. Section 4-9-170 requires that the County Counsel appoint members of the County's board. And I'd also note that under the statutes providing for the powers of the County Administrators, specifically 4-9-630, there's no authority for a County Administrator to appoint this board. So, even if they had a board that was lawful, it's not lawfully constituted, and the members are appointed by the County Administrator. Third, Ordinance 8-00 reports to vest in a Court of competent jurisdiction, appellate authority. I know the Court can take notice that the authority of any Court in this State arises either by the Constitution or by statutes. There is no statute vesting any Court in this State with jurisdiction to hear an appeal from the Board of Fee Appeals in Horry County and we don't believe that an ordinance can create jurisdiction. The ordinance itself, 8-00, has some real disincentives and this goes to the points that we raised under the Supreme Court's decision in the McKesson case. There's a requirement that the fee payer file the appeal

within 10 days of paying the fee. I think the Court could take notice there are a lot of visitors to this area. They might not get back in home in time to get that done. It requires a $25 filing fee in order just to cover the amount of the fee paid, someone would have had to spent $1,666 before they get the $25. And while that filing fee might be recovered if you prevail, there's a real question about whether or not you can prevail under the McKesson case, whether or not there's an adequate remedy form that standpoint. So, when you couple that with the fact that there's no real ability of a Court to review the decisions of this Board of Appeals, there's no clear and certain remedy. Also, this system would be swamped if every person that paid 15 percent on every meal, drink, accommodation or amusement in Horry County were to appeal that, it would be overcome that means that it's not really a meaningful remedy. It's inadequate as a matter of law. In McKesson it doesn't provide a post defamation remedy according to due process it doesn't provide a clear and certain remedy. Finally, on this point about Ordinance 8-00 that the County has claimed constitutes an adequate remedy of law. That was not raised in their Answer as an affirmative defense to these claims under Rule 8(c) and so therefore it's waived. Let me go to the reasonable necessity requirement, this is in the Richland County versus DOR case that we've cited to the Court. Judge,

because there's no adequate remedy of law an injunction is the only relief available to the City of Myrtle Beach. Without an injunction the City and every other payer of this uniform service charge within the incorporated areas are going to be paying a fee and a tax on any transaction. This nearly doubles the amount of exactions on these transactions. That, of course, has impacts on retailers as well. So, we would submit that there's a reasonable necessity to address both of those issues. But, in addition, the action that the County is taking affectively disenfranchises the voters and municipalities because there are many members of the County Counsel who are not elected by municipal residents or specifically by residents of Myrtle Beach. This results in the alteration of the City's political integrity. That's prohibited under 4-9-41, even where there's consent given to the imposition of the charge, and here we don't have it. So, we believe that we've demonstrated that the injunction against these amendments 105-96 are reasonable and necessary. The last factor, this also comes out of the Richland County and DOR case and other cases, is we have to show the County's conduct are arbitrary, oppressive and capricious. Because the County has no authority under the law to provide services and impose a uniform service charge on transactions within the corporate limits of a municipality without the municipalities consent, it's doing so is unlawful and that's necessarily

arbitrary and capricious and oppressive conduct. Members of the County's own Counsel have recognized that there's a disconnect between having obtained that municipal consent to Ordinance 105-96 before it became affective, which again allowed imposition of that uniform service charge within incorporated areas for a 20-year period. And now seeking to impose that charge perpetually and for a different purpose than set out in the ordinance and specifically I think that's section 1(G). This can be seen in the minutes of counsel meetings that we've mentioned as well as in the resolutions of the County adopted in 2018 and 2019 that have been submitted. Your Honor, I'll conclude by saying the City has met its burden. It's established all five of the elements for injunctive relief. Without that injunctive relief the County's going to be collecting a uniform service charge within the corporate limits of the City without the City's consent, contrary to the terms of Ordinance 105-96, contrary to Section 13(A) of the Constitution, contrary to the statutory provisions in Title 4, Chapter 9 that I mentioned. All of which recognize the independence and political integrity of municipalities. The County must be enjoined from enforcing an amendment providing for the continued imposition of this uniform service charge.

THE COURT: Alright, thank you.

Yes, ma'am.

MS. GOLDING: Good morning, Your Honor.

THE COURT: Good morning.

MS. GOLDING: First of all, I'd like to introduce two members of my firm with me today, Adam Artigliere and we have Grayson Lambert. Also, today with me we have Arrigo Carotti, he is the County attorney. I have some counsel members here today with us, Dennis DiSabato, Gary Loftus, Mr. Howard, Mr. Hardee, Mr. Bellamy, Mr. Vaught, and Barry Spivey. We are here today with you, Your Honor. And I have to apologize for Mr. Gardner, he's the Chairman of the County Counsel. He asked me specifically to apologize to the Court but he had hernia surgery earlier this week and he wanted very much to be here. First of all, Your Honor, I was listening very carefully to the argument of the City. The City not one time mentioned one law that actually required a municipality to consent to the ordinance in question, 105-96. If you look through all of the writings submitted to this Court, Your Honor, there is not one State law that required a municipality to consent to 105-96. Going directly to the City's request for an injunction, Your Honor, it cannot meet any of the five elements or the three elements, however you look at it. Because none of those elements are satisfied. The first element is will they win on the merits or will the succeed or do they have a likelihood to succeed on the merits. The bottom line of their position is they had to consent to the

amendments extended 105-96. In the filings with the Court, Your Honor, they said we've admitted the City has consented to 105-96 but we never consented to the amendments. Your Honor, the City has never consented to the enactment of the County Ordinance 105-96. If you look at 105-96, Your Honor, it's the -- that ordinance established a hospitality fee and that ordinance, it's not too clear but, Your Honor, in section 1(A) County Counsel established the hospitality fee within the geographical confines of Horry County. It doesn't say, Your Honor, that hospitality fee of 1 percent is in the municipalities and in the unincorporated areas. This is significant, that ordinance says it is hospitality fee of 1.5 percent -- excuse me, 1 percent -- excuse me, 1.5. I can't see my own writing, Your Honor, I apologize -- is within the geographical confines of Horry County. And then section H is the sunset provision. These are two separate provisions, Your Honor. And in that sunset provision it states the 1.5 percent hospitality fee, it doesn't say only in unincorporated areas. That 1.5 was within the confines of Horry County. It's 20 years from the affective date of the ordinance. Those two sections, section 1(A) and Section H

are two separate sections of that ordinance. So, the questions is can the County amend its own ordinance? Local governments, Your Honor, have the authority to amend their own ordinances. They have that authority, if they have the power

to amend and its consistent with State law. There's no argument from the City that the County does not have the power to amend. There's no argument from the City that they can amend any other provisions and that's significant, Your Honor, because the County has amended this ordinance at least five times since its passage in 1996. There was an ordinance in 2004, 11-04 that first amended section H, the sunset provision. And, Your Honor, that ordinance was amended the first part of 2004. And this is the ordinance, while it's not clear, that provision specifically in paragraph 1 said it's hereby amended for an additional period of five years. Now, that was 2004. That was 15 years before the City brought its lawsuit. In those 15 years this ordinance in 2004 existed, it was recorded, you saw on the front page of that ordinance that it was recorded with the Clerk of Court's Office on April 23, 2004. Not once did the City say you can't do that. And what's ironic, Your Honor, in the City's memo with respect to this ordinance -- excuse me, Your Honor -- in the City's Complaint, I found this to be telling. In their Complaint, Your Honor, which they filed on March 20 of 2019, specifically in paragraph 27 of their Complaint, they identify this amendment in 2004, they identified a number of other amendments. But, what did they say about this amendment in 2004, which is Ordinance 11-04? What it said was the amendment made no changes to the pertinent provision, the

sunset provision. You know what happened, Your Honor? The City just didn't read it. The City knew that ordinance was there but for some reason it didn't read it and it didn't read it up to the time it filed this lawsuit. Because in its Complaint the City says no amendments -- this amendment had no effect on the sunset provision. Well, it's the very first thing it does is amend the sunset provision, Your Honor. And then also in the City's Complaint in paragraph 30 they reference all of the ordinances that the County undertook to amend and the City states these ordinances referenced in paragraphs 15 to 21 and 27 to 29 have been codified by the County in its code of ordinances, Section 19-6. While the City plead this in their Complaint, they now in their Memorandum say something very different. They say this one's not codified, 11-04 is not codified. So, the City has come to this Court seeking a serious and drastic remedy but taking two different positions. With the first position being that it was codified, they knew about it but they didn't read it. So, going back to this sunset provision. It was first amended in 2004. It was filed in April of 2004 in the Register of Deeds Office. Additionally, the City comes before you and says our consent is needed because look at all of our resolutions that we've passed. The resolutions, Your Honor, are also attached to the Complaint. And in their resolutions they attached every resolution that was passed in Horry County by the

municipalities supported this 105-96. In the Complaint, Your Honor, they not only provided the resolutions for the different municipalities, and they're all basically the same. All of these were done at the same time. They also provided the resolution from the Board of Education and the resolution from South Carolina Department of Commission. All of these resolutions are very similar. So, I guess what the County is saying is we also needed to have the approval or consent of the Board of Education to amend our ordinance because that's what happened in 1996, Your Honor. These various entities wanted to show their political support. And how did they show their political support, is they passed these resolutions, Your Honor, that urged the County to adopt. Didn't use the word consent, they used the word urge. Then in addition to saying, Your Honor, the City resolution means we consented even though they didn't use the word consent. They say, okay, look at the County application to the State Infrastructure Bank. Well, in the County application we made no reference that there was a consent required of any municipality. And also the County application is not a law, a State law, it doesn't say anything that consent was mandated. Then they say, okay, look at the RIDE Report. That shows that the municipalities had to consent and the RIDE Report says 20 years. The RIDE Report is attached to their Complaint. The RIDE Report has various years. It says up to 30 years and

even more. Yes, it says 20. It says long-term 30 years or more. So, the bottom line is, Your Honor, with respect to 105-96, the City says look at the face of that. There's nothing in that ordinance that says that any municipality has to consent. They extrapolate, Your Honor, and go to a provision regarding where the comprehensive plan adopted by the County, not adopted by the City, adopted by the County, in concert with municipalities. And so, the City stood up before you today and said we have to consent because section G of the ordinance says the comprehensive plan adopted by the County in concert with a municipality of the County. It has to be deposited in a road fund. So, there are four basis that the City comes before you today and says we must consent, so since we didn't consent to any of these extensions you cannot pursue. The face of the ordinance, clearly there's nothing on the face of the ordinance. Two, the City's resolutions, clearly using the urge and getting resolutions from the Board of Education and South Carolina Department of Commission along with other municipalities, clearly shows that those resolutions are nothing but political support. The County application, that's not law. Nothing in there is mandated. The RIDE Report, it refers to many different years. And as I said earlier, Your Honor, the City never objected to any amendments. And finally, Your Honor, with respect to this ordinance saying, you know, this ordinance cannot be amended.

There's no law that they've presented it can't be amended. A local government has a right to amend its ordinances. And I specifically draw the Court's attention to Hospitality Association versus Town of Hilton Head. Then the City in its memo argued well when you amended it in 2016 and then again in 2017 you really adopted a new fee. That goes hand in hand with you can't amend a sunset provision or a provision that is time related. There is nothing in the law that says you can't relate -- you cannot amend a sunset provision. But, significantly, Your Honor, this Court needs to look at Section 6-1-330(A). This is an Article 3 and the Title of Article 3 is Authority of Local Governments to Assess Taxes and Fees. Authority of Local Government to Assess Taxes and Fees. And the provision 6-1-330 specifically states, fees adopted prior to December 31, 1969 - 1996, sorry; remain in full force and effect until repealed by the local governing body. The City has not given one ordinance from Horry County that has appealed 109-96. So, we continue -- that ordinance continues in full force and affect. Now, while I could stop right here< Your Honor, and say clearly the City does not have any possibility of winning on the merits, that is simply not the case. They cannot win on the merits in this. But, I will go on, your Honor, and show that the City has not suffered any irreparable harm and I think this is ironic. The City today and in its memo says that we have suffered irreparable harm

and the irreparable harm is basically that they will have to pay double the amount in hospitality fees and accommodations if the City -- if this Court does not issue an injunction. In the Memorandum, and I made a note of the page, I apologize. In the City's Memorandum they describe the irreparable harm and that's on page 15 of their Memorandum which they submitted to the Court on May 3. And they say the irreparable harm to the City will be forced to pay nearly double what they currently pay. Then they say it will be a cumulative 6 percent on accommodations and 4.5 percent on prepared food. Your Honor, that irreparable harm is self-inflicted. The only reason the City says it suffers irreparable harm is because what it did earlier this year, just a few months ago when it enacted their own ordinances of hospitality fee and accommodation. So, what the City has done is inflicted their own irreparable harm if, in fact, such exists. And what's ironic in the case, the County has moved for injunctive relief and the City's Memorandum proves our injunctive relief because if the City is permitted to proceed forward with their taxes that they have imposed then irreparable harm is established because they've admitted they can't do what they've done because it's against the law because it exceeds the caps permitted by the statutory provisions. Aside from the fact that the loss of money is not an irreparable, but what the City has done is they've created the scenario and they planned

this carefully. And the City has said, okay we're going to take advantage of this because while we did read the 2004 amendment, it appears that we can take the position there's consent. So, we're going to make these amendments because there's several cases that the first governmental entity outside the door to levy the taxes or levy the service charges is the one that wins on the case established under State law. So, they were being diabolic, how it was planned. But, unfortunately for this City, the City had one fatal flaw and that flaw is they don't have a say so on the County ordinance. They're not required to consent to a County ordinance. And aside from not having irreparable harm, they certainly have an adequate remedy of law. I don't know if it's necessary to go but the City didn't even know there was this Board of Fee Appeal. But, what's ironic, the City stands here before you and says how, well it's a $25 filing fee, it's a 10 day appeal time; they never tried it. Not one time has the City made an effort to go through that appeal process. And what is 10 days? I mean, you go through workers compensation hearing you have 10 days. The law in South Carolina is replete that there are provisions within different governmental agencies that have 10 days as the time period to file notice. And certainly $25 filing fee, Your Honor, we don't establish filing fees in this State based on the amount in controversy. That's not a factor. Then another issue is, has the County exercised its

power in an arbitrary, capricious or oppressive manner? There's ample authority that a county can amend its own ordinances. If this Court granted the injunctive relief sought by the City, then this Court will be saying no county can amend their ordinances. That's the bottom line of the result. There's no law that requires the City to consent to this amendment. The City pointed to personal statements of County Counsel members. Your Honor, knows that it's the collective decision of the body that's the law. It's not the personal opinions of County Counsel members or legislators. Your Honor, there's something the City didn't talk about and that's called status quo. What the County is trying to do by obtaining an injunction against the City is to preserve the status quo. The City's enactment of its new taxes will take effect July 1, 2019. The County's hospitality service fee has been in existence since January 1, 1997. Who is changing the status quo? It's certainly not the County, it is the City. And the purpose of an injunction is to maintain the status quo. Your Honor, I think there's something to note that even though it was not argued in any of the briefs or memorandums submitted to the Court, if the Court granted the injunction that's sought by the City then this Court would be rewriting in entirety the Ordinance of 105-96. The City has jumped around and in several parts of its Complaint says they want declared unconstitutional the revisions to the sunset

provision. And half of them say, but that only applies to the municipalities. But, then they say we want the entire 105-96 declared unconstitutional. And then in a prayer they say, but only applicable to the municipalities. When I started my argument a few minutes ago I went directly to the first Section H in 105-96 where I pointed out that the 1.5 percent hospitality fee is within the geographical boundaries of Horry County. That's the 1.5. The City seeks to declare that that 1.5 is unconstitutional. Aside from the fact that the standard of review for constitutionality is beyond a reasonable doubt. What the City wants to do is this Court rewrite Section H and say 1.5 percent applies only to the unincorporated areas but not the municipalities. So, that's the relief the City is seeking, Your Honor. And Your Honor knows that this Court, nor any Court in this State can legislate. You are not a legislator. Your Honor, the City must be enjoined. The City passed in February of this year, knowing with full absolute knowledge of the County's 105-96. It had full knowledge of the amendments. The City's fees are in direct violation of Section 6-1540, which relates to the accommodations and Section 6-1740, which relates to the hospitality fee. They are in violation because the cumulative effect of the County and the City's taxes and service fess is above the limit permitted by the State of South Carolina. The City did that knowingly. Your Honor, I'm not sure I know of

another case that really established unclean hands on the part of the City as what the City has done here. Clearly the City, knowing what it would be doing would be against the law, that is unclean hands if there ever was. In addition to the City being in direct violation of State law, the County has no remedy for overpayment. The County cannot undue unlawful payments. There is no remedy for that. What would result is a 6 percent accommodations and 4.5 percent on prepared food and beverages. How do you give that back to an individual that bought a snow cone at Broadway? It's not possible. This Court has the power under Rule 65 to enjoin the City pending this case and the outcome of this case. Rule 65, contrary to what the City's position is, doesn't require a complaint. It requires notes and the County has given notes. While we've moved to amend, we have followed Rule 65 and asked the Court to enjoin the City. And we have been in compliance with the Court. But, I'm going to go back again, Your Honor, there is no law that prohibits County Counsel from amending its ordinances. Thank you, Your Honor.

THE COURT: Alright. Would you like to briefly reply?

MR. HOEFER: I would like to briefly reply I'm just not sure I'm able to do that, Your Honor. There was a lot said there. I wasn't aware that we were going to argue both motions at the same time, but I see Ms. Golding has already gone into that -- to the County's motion against the City.

Your Honor, Ms. Golding didn't address the constitutional provisions, Section 13(A). She didn't address the Title 4 opinion -- or Title 4 provisions we mentioned. And she didn't address the AG opinions that we mentioned. The law is abundantly clear. If you want to jointly exercise functions and provide joint responsibility for the cost, there has to be an agreement. Section 13, article 8 says, the legislator read article, section 13(A) and said okay, 4-9-25, everything they do has to be consistent with the Constitution of the General Law. 4-9-30, Subsection 5, the first part of that section says it has to be consistent with the Constitution of the General Law. 4-9-40 and 4-9-41 require that it has to be consistent with the Constitution of the General Law. All of which require the City's consent. And this argument about they can't ever amend an ordinance, get out your fishing net, that's the biggest red herring you've ever heard. What we're saying is, that they have to have the consent initially to impose this service charge for services provided in the incorporated areas. They had that consent and it was limited to 20 years. It was limited to a specific use of the funds. She doesn't address any of that. Now, what the County would like for you to do is to read provision or sections of 105-96 in isolation. The Court can't do that. You've got to read the ordinance as a whole giving effect to all of its parts and its intended purposes. And the County in their submissions

have acknowledged in their submissions that these recitals are part of the ordinance. So, look at a few of these recitals; whereas, considerable time and effort was expended by the governor's RIDE committee to establish a new plan and a new timetable. Whereas current law allows local government, not counties, not municipalities, both local government; current law allows local government to levy reasonable and necessary fees to provide needed infrastructure. Section 1(A), there is established a uniform service charge, and this is important later on because Ms. Golding wants you to thing that this is a tax, it's not, it's a uniform service charge. The uniform service charge hereinafter referred to as the Hospitality Fee equal to 1.5 percent within the geographic confines of Horry County. So, that's inside and outside of the City limits. Then you go to section 1(G), it says the funds derived from the 1.5 percent fee, specifically the 1.5 percent fee, shall be deposited into a road fund which will be used to implement the comprehensive plan adopted by the County in concert with the municipalities. And then you go to (H) the imposition of the 1.5 percent fee, percent Hospitality Fee for infrastructure will terminate 20 years from the effective date. Now, I must have misread the document before I filed it but when I look at page 17 of that Complaint all the City of Myrtle Beach is asking for is a declaration that the 1.5 percent fee cannot be imposed against the City of Myrtle

Beach. We're not asking to have ordinance 105-96 itself declared unconstitutional. We're not asking to stop the County from doing anything under that ordinance other than imposing the 1.5 percent fee on the City of Myrtle Beach and other payers of that fee for the transactions in the incorporates areas. That's all it's about. If there wasn't any requirement to get consent, ask yourself this question. Why did they go get it from every municipality in the County? What was the purpose? And these weren't just a letter form the City Administrator or the City Manager to the County Administrator saying, yeah we don't have a problem with that. They were formal actions, municipalities and counties both can act by statute either by one of two ways, either by ordinances or resolutions. So, they went and got these resolutions from all of these counties or form all of these cities. It begs the question, why do you need that if you don't have to have their consent? And, if Ms. Golding is right and there wasn't any consent then that means that this 135 percent fee has been invalid for a long time given the constitutional statutory requirements. The City would be entitled to do exactly what the County is doing, don't need the County's consent, we'll just go do it. Now, with respect to ordinance 11-04, Ms. Golding made a big deal about that and it is certainly correct that in the Complaint, the allegation was made that ordinance 11-04 was codified. We'll amend that to conform with the

record because it was never codified. If you read ordinance 11-04 very carefully it just says, we may expend it for a period up to five years if we need to. It didn't expend it and the language of 11-04 was never codified, that's a statutory requirement of the County that they didn't follow. But, even if it was codified, it can't have any effect because they can't amend the ordinance to extend the period or change the purpose of the uniform service charge without the City's consent. They're imposing this inside the City. So, there's another fish for your net, Your Honor. Now, Ms. Golding, I think she said that the City has alleged that the RIDE Report required a 20 years period. I don't think we ever said that. I think what we said was ordinance 105-96 and the consents of the eight municipalities all require the 20-year period. She mentioned 6-1-330, and the grandfathering provisions. The only thing that was grandfathered for the 1.5 percent was 20 years to pay for the RIDE, that's all that was grandfathered. And if you accept Ms. Golding's argument, that means they can change that ordinance to say, well okay we're going to bump it up to 2.5 percent and we're going to decide we're going to redo the Carolina Pottery Outlet Mall because we think that's a good idea. She attributed to the City an argument on page 15 about irreparable harm. The City's argument about irreparable harm is not on page 15, it's on page 13 and 14. And her assertion about exceeding the caps, and she's

specifically talking provisions of Title 6, chapter 1, articles 5 and 7. Those caps only apply to local accommodations and local hospitality taxes. Ordinance 105-96 does not impose a local accommodation tax or local hospitality tax. It imposes a uniform service charge and if you need any confirmation of that it says in ordinance 105-96 and it says it in the affidavit that the County submitted by Mr. Spivey on the County's behalf. It's a uniform service charge and those caps simply don't apply. She said that the City didn't read ordinance 11-04. Your Honor, when a City Counsel has an obligation to its residents to protect the City's political integrity and that's 4-9-41, there's nothing diabolic about that. She said that fatal flaw is the City can't control what the County does. A different but an analogist context is the City of Hardeeville versus Jasper County, Judge, in which the Supreme Court said this, the municipalities effectively do determine the amount of tax a county can impose within a municipality. All that the City is saying here is that they have the ability under law to require consent for the County to provide a service in the incorporated areas and attempts to impose a charge. Regarding unclean hands, Your Honor, if the City is complying with the law and the law specifically says you can impose an accommodations tax for 3 percent, you can impose a hospitality tax at 2 percent and there is no Horry County ordinance imposing a local hospitality tax or a local

accommodations tax for 2 or 3 percent inside incorporated areas. There's no diabolic motive, there's no untoward conduct. They were simply recognizing their authority given to them by the legislature to determine what transactions will be subject to these taxes and how the revenue from those taxes will be used. Last thing, Your Honor, I'll close by saying this, the example that Ms. Golding gave you about the snow cone, that tells you all you need to know about why the County's Board of Fee Appeals process is not an adequate remedy for the City. I'd be glad to go in and address the County's motion which she briefly argued, but we can rely on our briefs if that suits the Court.

THE COURT: Alright, that's fine.

I'll let you know something soon.

Thank you.

Y'all have a good day.

(ADJOURNED)