



Mandamus. On November 10, 2020, Defendant/Plaintiff County also filed its Supplemental Memorandum in Support of Supplemental and Amended Motion for Temporary Injunction and Writ of Mandamus as to the Rural and Critical Lands Debt Service Millage Rate. On November 12, 2020, the undersigned conducted oral argument in this matter via WebEx. Attorney M. Dawes Cooke, Jr. argued on behalf of Defendant/Plaintiff County, and Attorney James Brown argued on behalf of Defendant County Auditor.

Having considered the parties' filings, oral arguments and the governing law, it is hereby ORDERED, ADJUDGED and DECREED that Defendant/Plaintiff County's Motion for Temporary Injunction be, and hereby is, GRANTED.

### **INTRODUCTION**

The issue in this Motion is the County Auditor's duty to levy tax millage sufficient for the payment of principal and/or interest on certain indebtedness and for the creation of a sinking fund to service that debt. *See generally* S.C. Code §§ 4-15-150, 4-19-140 and 59-71-150. The process of assessing and collecting taxes, fees and charges involves the work of several county offices, including the office of Treasurer, the County Auditor, and the County Assessor. The general job of the County Auditor is to audit the tax roll and to calculate taxes due. The County Auditor generates the information that the County Treasurer's office uses to bill property owners for taxes and fees.

Beaufort County Budget Ordinance #2020/22<sup>2</sup> authorized the County Auditor to "levy in Fiscal Year 2020-2021 a tax of 65.22 mils on the dollar of assessed value of property within the County," including 4.8 mils for "Purchase of Real Property Program," *i.e.*, debt servicing for Rural and Critical Lands indebtedness. The County expects that the annual servicing of that debt for fiscal year 2020-2021 will be approximately \$10.8 million. There exists a sinking fund for the Rural and Critical Lands debt service, which had a balance of approximately \$2.7 million on June 30, 2020. According to the County, the levy of 4.8 mils for the Rural and Critical Lands debt —

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<sup>2</sup> County Council determined that the original budget contained a mathematical error (which has no bearing on the millage at issue in this Motion), and it amended its budget ordinance to correct the error.

as contained in Council's budget ordinances — would generate revenue of approximately \$10.2 million. The remaining approximately \$600,000.00 required to service that debt would come from the sinking fund, leaving a balance of nearly \$2.1 million. The County believes that this millage is sufficient to service the Rural and Critical Lands debt.

However, when he issued the original tax roll duplicate, the County Auditor increased the levy for Rural and Critical Lands (Purchase of Real Property Program) debt service to 5.8 mils. The County calculates that such levy would generate revenue of approximately \$12.3 million, considerably more than required for debt service. This would inflate the balance of the sinking fund to approximately \$4.1 million.

For the reasons that follow, the Court ORDERS that the County is entitled to a temporary injunction compelling the County Auditor to levy 4.8 mils (and enjoining him from levying 5.8 mils for Rural and Critical Lands debt service) on the tax duplicate.

### ANALYSIS

#### A. Legal Standards

The requirements for temporary injunctive relief are well-settled in South Carolina courts:

An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App.2002). Accordingly, the applicant must establish three elements to receive this relief: (1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

*Compton v. South Carolina Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

#### B. The County Is Likely to Succeed on the Merits

Under South Carolina law, County Council is generally authorized to determine the amount of the operating millage to be levied upon taxpayers to fund the operations of the County. *See* S.C. Code § 6-1-320. The County Auditor "after receiving statements of the rates and sums to be levied for the current year from the department and from other officers and authorities legally

empowered to determine the rate or amount of taxes to be levied for the various purposes authorized by law, shall immediately proceed to determine the sums to be levied . . . ." See S.C. Code § 12-39-180. With regard to debt servicing, South Carolina law provides that:

For the payment of the principal and interest on such bonds as they respectively mature and for the creation of such sinking fund as may be necessary therefor, the full faith, credit and taxing power of the county are irrevocably pledged and *there shall be levied annually by the county auditor* and collected by the county treasurer in the same manner as other county taxes are levied and collected, *a tax, without limit, on all taxable property in the county sufficient to pay the principal and interest of such bonds as they respectively mature and to create such sinking fund as may be necessary therefor.*

See S.C. Code § 4-15-150 (emphasis added). Defendant County Auditor contends that, under this provision, he has the statutory discretion and authority to levy tax for debt service in any millage amount he deems appropriate.

The primary rule of statutory construction is to ascertain and give effect to the intent of legislature. *Joiner v. Rivas*, 342 S.C. 102, 108, 536 S.E.2d 372, 375 (2000); *Shealy v. Doe*, 370 S.C. 194, 199, 634 S.E.2d 45, 48 (Ct. App. 2006). The first inquiry is whether the statute's meaning is clear on its face. *Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). When a statute's plain and unambiguous language conveys a clear meaning, the rules of statutory interpretation are not needed, and the Court may not impose another meaning. See *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 525, 642 S.E.2d 751, 754 (2007); *Vaughn v. Bernhardt*, 345 S.C. 196, 198, 547 S.E.2d 869, 870 (2001). "[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." See *Mun. Ass'n of South Carolina v. AT&T Commc'n of Southern States, Inc.*, 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004). "Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy." *South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989). "Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers."

*See Collins Music Co., Inc. v. IGT*, 365 S.C. 544, 550, 619 S.E.2d 1, 3 (Ct. App. 2005) (citation omitted).

Consistent with the plain language of the statute, the South Carolina Supreme Court has determined that — when levying taxes for debt service — the County Auditor acts in a ministerial capacity. *See Stackhouse v. Floyd*, 248 S.C. 183, 198, 149 S.E.2d 437, 445–46 (1966) ("The amount of the levy, therefore, is established by the maturity schedule of the bonds and the interest rate. The Auditor acts in a ministerial fashion as the agent of the General Assembly in this matter."). "The *only task* is for the auditor to determine the number of mills necessary to raise the required revenue." *See In re Betty J. Catoe*, Opin. No. 85-24 (S.C. Atty. Gen. Op. March 20, 1985). "[T]he auditor's role is limited in determining the millage" and "is limited to levying the millage upon all taxable property in the county. The Auditor does not possess any discretion in doing so, but act[s] in a *ministerial capacity* only." *See In re Elizabeth Kearse Gooding* (S.C. Atty. Gen. Op. December 4, 1998) (emphasis added).

The plain statutory language set forth above makes clear that the County Auditor has a limited, non-discretionary role when levying taxes for debt service. Defendant County Auditor had a ministerial duty to levy for debt service in an amount sufficient to pay the debt service and create a sinking fund. A sinking fund already exists, so he had no responsibility in that regard. He did not have discretion to make policy determinations concerning the amount of taxes to be levied. County Council has determined — based on its policy decisions for the sinking fund — that the rate of 4.8 mills is sufficient for Rural and Critical Lands debt service. If the County's projection falls short, there are ample funds in the sinking fund to service a shortfall for the next tax year. County Council has the authority to determine whether and how much to use the sinking fund to service the debt. Defendant County Auditor has not cited any authority that would allow him to substitute his own judgment for County Council's on this subject. Therefore, the Court believes that the County has shown a substantial likelihood of success on the merits.

**C. The County Has Shown Irreparable Harm and Inadequacy of a Legal Remedy.**

The Court determines that injunctive relief is proper because of the County's interest in having timely, accurate tax bills sent out. The County, including its taxpayers, will be irreparably harmed if Defendant County Auditor is permitted to levy an incorrect amount for debt servicing. The County's expectation is that it will generate tax bills that accurately reflect taxes owed in accordance with all governing laws. It rightly expects that such tax bills will reflect only the levies that County Council approved, as the governing authority responsible for the County's budget, including servicing of its debts. Any improper millage in the tax bill would cause substantial harm to the County because once bills are being paid there is no way to correct them without immense expense, inconvenience, and waste of the County's resources. The burden of sending amended bills and refunding overpayments would be substantial and unfair. This burden would interfere with the County's ability to provide needed services to its citizens.

The County also has a vested interest in enforcing its duly-enacted ordinances, which in the absence of a strong showing to the contrary are presumed to be valid.

Additionally, delays in issuing correct tax bills will harm the other taxing entities that rely upon the County to collect their taxes. The inability to timely send complete and accurate tax bills is imposing financial hardship on the County as well as its component municipalities.

For these reasons, there is no legal remedy that would make the County whole. To the contrary, the only possible way to avoid irreparable harm to the County would be to order the County Auditor to levy 4.8 mils for Rural and Critical Lands debt servicing and to enjoin him from levying 5.8 mils.

**D. This Case Does Not Present a Political Question**

Defendant County Auditor argues that the County is not entitled to relief because the claims made involve a non-justiciable political question. The Court disagrees and concludes that this case does not present an improper "political question."

"The fundamental characteristic of a nonjusticiable "political question" is that its adjudication would place a court in conflict with a coequal branch of government. [Citation

omitted.] Thus, the courts will not rule upon questions which are exclusively or predominantly political in nature rather than judicial." See *South Carolina Pub. Interest Found. v. Judicial Merit Selection Comm'n*, 369 S.C. 139, 142–43, 632 S.E.2d 277, 278 (2006). The County is not challenging the wisdom of a particular course of action. It is not asking the Court to legislate policy. Rather, it asks the Court to determine the scope of the County Auditor's powers under the statute and whether his actions were legal. The County's request would not blur the lines between branches of government or violate the separation of powers. There is no merit to Defendant County Auditor's suggestion that this case presents a non-justiciable political question.

### CONCLUSION

For all of the foregoing reasons, the Court GRANTS County's Supplemental and Amended Motion for Temporary Injunction and enter a writ of mandamus or temporary injunction as set forth above.

It is hereby ORDERED, ADJUDGED and DECREED pursuant to S.C.R. Civ. P. 65 that Defendant County Auditor James Beckert shall, **on or before the close of business on November 25, 2020**: (a) fulfill his ministerial duty and levy taxes on properties at 4.8 mils for Rural & Critical (Purchase of Real Property Program) debt service for the 2020-2021 tax year, as set forth in Beaufort County Budget Ordinance #2020/22; (b) prepare an amended tax roll duplicate reflecting the same; (c) deliver the amended tax roll duplicate to the Beaufort County Treasurer. Defendant County Auditor is hereby ENJOINED from levying taxes on properties at 5.8 mils, or any number of mils other than 4.8 mils, for Rural & Critical debt service (Purchase of Real Property Program) for the 2020-2021 tax year. In light of the importance of this to the funding for the operations of Beaufort County, the Court requests that Defendant County Auditor do his best to comply with this Order as promptly as reasonably possible but in no event later than the close of business on November 25, 2020.

**IT IS SO ORDERED!**

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Hon. Carmen T. Mullen



Beaufort Common Pleas

**Case Caption:** Hilton Head Town South Carolina VS Beaufort County South Carolina  
**Case Number:** 2020CP0701840  
**Type:** Order/Temporary Injunction

So Ordered

s/Carmen T Mullen 2142