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**Sep 16 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

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Appellate Case No: 2018-001262

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Dorchester County Taxpayers Association, individually and on behalf of all others similarly situated, Weatherstone Property Owners Association, individually and on behalf of all others similarly situated, George Resnick, William A. Harbeson, James Stephen Greene, Jr., Homer P. Gonzalez, Gerald E. Ziegler and South Carolina Public Interest Foundation, ..... Appellants,

v.

Dorchester County, Dorchester County Council, David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council, Town of Summerville, Summerville Town Council, William E. McIntosh, III, in his official capacity, Dorchester County Sheriff, Luther C. Knight, in his official capacity, Dorchester School District Two, Dorchester School District Two Board of Trustees, Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in the official capacities, Dorchester School District Four, Dorchester School District Four Board of Trustees, Dorchester County Career and Technology Center, and Dorchester County Career and Technology Center Board of Trustees,.....Respondents.

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PETITION FOR REHEARING

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Pursuant to Rule 221, Appellants hereby petition for a rehearing of the Court's decision in this appeal, Opinion No. 2021-UP-312, filed on September 1, 2021.

The opinion of the Court, respectfully, overlooks and misapprehends the following particular points at issue in this appeal:

1. The Court, in dismissing the challenge to the practice of Dorchester County, the Town of Summerville, and Dorchester School Districts 2 and 4 in using tax revenue derived from owner-occupied dwellings for school operating expenses in violation of S.C. Code Ann. Sec. 12-37-220 because the statute did not provide for a right of action for taxpayers overlooked a century or more of authorized public interest challenges by the citizens of this state to illegal practices of state and local government in the use of public funds as illustrated by *Sloan v. School District of Greenville County*, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000) and multiple cases like it.
2. The Court, in dismissing the action against Dorchester School District Four and its Board ("DD4"), misapprehended the Appellants' argument and overlooked the fact that DD4 was a party with an interest that would be affected by the action and therefore was a proper party in this declaratory judgment action.

## Law/ Analysis

“In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument.” Kennedy v. S.C. Ret. Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). When the Court fails to address some of the arguments raised in the appeal, “a *prima facie* case for rehearing has been made.” Covar v. Sallat, 22 S.C. 265, 272 (1885).

- 1. This action challenging the use of public funds by Dorchester County, the Town of Summerville, and Dorchester School Districts 2 and 4 in funding School Resource Officers was similar to many others litigated in the courts of this state where it was not necessary for the statute that served as the basis of the challenge to authorize a private cause of action.**

Actions by citizens challenging the illegal use of public funds by state and local governments has a long and storied history in this state dating back at least to the case of *Mauldin vs. City Council of Greenville*, 33 S.C. 1, 11 S.E. 434 (1890) and exemplified by the many cases brought by Mr. Edward Sloan and the organization he founded, the South Carolina Public Interest Foundation,<sup>1</sup> including the case of *Sloan v. School District of Greenville County*, 342 S.C. 515, 523, 537 S.E.2d 299, 303 (Ct. App. 2000). As this Court wrote and as cited in Appellant’s Brief in this appeal: “In this case, the public interest involved is the prevention of the unlawful expenditure of money raised by taxation. Public policy demands a system of checks and balances whereby taxpayers can hold public officials accountable for their acts . . . Taxpayers must have some mechanism of enforcing the law.” *Sloan*, 537 S.E.2d at 303.

Though the standing of the Appellants to bring this action was never challenged and the issue of standing (or lack of it) was not briefed or argued, this Court, by dismissing the Appellant’s claim on a “different but related basis,” that Section 12-37-220 “does not confer a right on a taxpayer to question a school district’s budgetary decisions or otherwise direct how the money collected is spent,” misses the point. The Appellants are not seeking relief in their own right for the effect of these illegal

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<sup>1</sup> The South Carolina Public Interest Foundation is a plaintiff in this action.

expenditures on them. Rather, they are, as citizens of this state, challenging the illegality of the use of these funds by the County, the Town and the School Districts just as has been done on so many occasions in the past.

Following are just a few examples of the decisions of the appellate courts of this state recognizing the public importance of and the right of citizens to challenge the illegal expenditure of public funds by state and local government:

- *Sloan v. Dep't of Transp.*, 365 S.C. 299, 304, 618 S.E.2d 876, 878-79 (2005) (challenging the alleged violation of statutory bidding violations by DOT);
- *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004) (challenging that the governor's holding of a commission in the Air Force Reserve as inconsistent with the eligibility requirements to serve as Governor);
- *Baird v. Charleston Cnty.*, 333 S.C. 519, 511 S.E.2d 69 (1999) (whether the county illegally issued hospital bonds beyond the county's authority);
- *S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 119, 804 S.E.2d 854, 859 (2017) (whether DOT could use public funds to inspect bridges in private neighborhoods);
- *Sloan v. School Dist. of Greenville Cnty.*, 342 S.C. 515, 523, 537 S.E.2d 299, 301 (Ct. App. 2000) (whether "the public interest involved is the prevention of the unlawful expenditure of money raised by taxation."); and
- *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013) (whether the South Carolina Transportation Infrastructure Bank is constitutional and whether its enabling statute which governs the composition of the Bank's Board of Directors, violates both the dual office holding and the separation of powers prohibitions of the South Carolina Constitution).

This case is no less a challenge to the public action in misusing public funds by local government and should not be subject to dismissal because the statute upon which the challenge is based does not provide a private cause of action for citizens to enforce it when local government violates it. To insist on that in this instance is contrary to more than 100 years of jurisprudence in this state, including the cases cited above, and deprives the citizens of this state a fundamental tool in safeguarding their rights and the rule of law.

The Appellants respectfully request that this Court reconsider this aspect of its decision and revise its opinion, reversing the trial court and upholding the right of the Appellants to challenge the illegal action of local government as alleged in the Complaint.

**2. The Appellants' claim involving DD4 was based on the school district's involvement in the funding of the School Resource Officers in its district, so DD4 was a proper party under this declaratory judgment action.**

As alleged in the complaint and as argued before the Circuit Court and in its briefing before this Court, DD4 is a party because it is involved in the funding of School Resource Officers in its district with revenue derived from taxing owner occupied residences, so it is a proper party under a declaratory judgment action. The Declaratory Judgment Act commands that when declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and empowers courts to declare rights, status, and other legal relations whether or not further relief is or could be claimed. S.C. Code Ann. §§15-53-20, 80 (2005); *Farmer v. CAGC Ins. Co.*, 424 S.C. 579, 581, 819 S.E.2d 142, 143 (Ct. App. 2018). DD4 would certainly be affected by a judgment in this case that changes the way in which School Resource Officers in its district are funded. This ground for its inclusion in this case was alleged in the complaint and has been argued consistently.

Appellants did not abandon its claim that DD4's not being a taxing authority is irrelevant to the complaint by not citing a supporting case when its status as proper party is provided in the Declaratory

Judgment Act. Appellants did dispute the Circuit Court's finding that DD4 was not spending disputed funds to pay its SROs.

Moreover, Appellants statement that DD4's claim that it is not a taxing entity cannot logically support its claim that it should be dismissed from this lawsuit that claims that DD4 spent money inconsistently with the statute. DD4 receives money even if Dorchester County authorizes the collection of it, and what is being challenged is how DD4 spends that money.

In addition, Appellants did dispute the Circuit Court's finding that DD4 was not spending disputed funds to pay its SROs when it said in its brief "The Dorchester District 4 defendants are proper defendants to this declaratory judgment action because they participated in the practice of paying School Resources Officers with owner-occupied residential property taxes in violation of state statute." That statement by Appellants directly contradicts the Circuit Court's finding that DD4 was not spending disputed funds to pay its SROs. The Circuit Court made its ruling on the pleadings, prior to discovery being conducted and based on a document submitted by DD4 that was not authenticated or identified by a witness under oath, the meaning of which is unclear. Appellants should be permitted to engage in discovery to prove its claims.

The Appellants respectfully request that this Court reconsider its ruling on this issue and revise its opinion, reversing the trial court's dismissal of DD4.

### **CONCLUSION**

For all the reasons stated herein and in the record of this case, including in the Appellants' briefs submitted to the Court, the decision of the Circuit Court on these two issues should be reversed.

Respectfully submitted,

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PROOF OF SERVICE

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I, Rachel Fete, of Austen & Gowder, LLC hereby certify that I have served a true and accurate copy of the Petition for Rehearing by U.S. Mail on September 16, 2021, to counsel of record as shown below:

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September 16, 2021  
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