

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

---

James R. Barber, III, Circuit Court Judge

Opinion No. 5077 (S.C. Ct. App. Filed January 23, 2013)

Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz,  
Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin,  
Williams J. Meyer, Charles F. Morris, Sr., and Joseph A. Smith,

of whom

Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin,  
Charles F. Morris, Sr., and Joseph A. Smith, are . . . . . Respondents,

v.

City of Columbia, . . . . . Petitioner

---

**BRIEF OF *AMICUS CURIAE* MUNICIPAL ASSOCIATION OF  
SOUTH CAROLINA IN SUPPORT OF CITY OF COLUMBIA'S  
PETITION FOR WRIT OF CERTIORARI**

---

Linda Pearce Edwards  
Fred A. Williams  
GIGNILLIAT, SAVITZ & BETTIS, L.L.P.  
900 Elmwood Ave., Suite 100  
Columbia, SC 29201  
Phone: (803) 799-9311

ATTORNEYS FOR *AMICUS CURIAE*  
MUNICIPAL ASSOCIATION OF  
SOUTH CAROLINA

## TABLE OF CONTENTS

|                                                                                                                                                                                                                                                                       |          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Table of Authorities .....                                                                                                                                                                                                                                            | iii      |
| Issue Presented .....                                                                                                                                                                                                                                                 | 1        |
| Argument .....                                                                                                                                                                                                                                                        | 2        |
| <b>I. The Court of Appeals erred in concluding that a genuine issue of material fact existed as to whether Retirees reasonably relied on promises and representations made by City employees concerning their entitlement to free health insurance for life. ....</b> | <b>2</b> |
| <b>II. The Court of Appeals decision, if left unaltered, could have significant detrimental consequences for municipalities throughout South Carolina. ....</b>                                                                                                       | <b>7</b> |
| Conclusion .....                                                                                                                                                                                                                                                      | 9        |

## TABLE OF AUTHORITIES

### CASES

|                                                                                                      |               |
|------------------------------------------------------------------------------------------------------|---------------|
| <i>Ahrens v. State</i> , 392 S.C. 340, 709 S.E.2d 54 (2011) .....                                    | 5-9           |
| <i>Alston v. City of Camden</i> , 322 S.C. 38, 471 S.E.2d 174 (1996) .....                           | 9             |
| <i>Baker v. State Highway Dep't</i> , 166 S.C. 481, 165 S.E. 197 (1932) .....                        | 5             |
| <i>Bishop v. City of Columbia</i> , 738 S.E.2d 255 (S.C. Ct. App. 2013) .....                        | <i>passim</i> |
| <i>Gilstrap v. S.C. Budget and Control Bd.</i> , 310 S.C. 210, 423 S.E.2d 101 (1992) ....            | 3-4           |
| <i>Grant v. City of Folly Beach</i> , 346 S.C. 74, 80-81, 551 S.E.2d 229, 232 (2001) .....           | 4             |
| <i>McCall by Andrews v. Batson</i> , 285 S.C. 243, 329 S.E.2d 741 (1985) .....                       | 5             |
| <i>Morgan v. S.C. Budget &amp; Control Bd.</i> , 377 S.C. 313, 659 S.E.2d 263 (Ct. App.2008). .5, 7  |               |
| <i>Newman v. McCullough</i> , 212 S.C. 17, 25, 46 S.E.2d 252, 256 (1948) .....                       | 3             |
| <i>Piedmont Public Service Dist. v. Cowart</i> , 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995) 4      |               |
| <i>Smothers v. U.S. Fidelity &amp; Guar. Co.</i> , 322 S.C. 207, 470 S.E.2d 858 (Ct. App.1996) ..5,7 |               |
| <i>Stanley v. Kirkpatrick</i> , 357 S.C. 169, 592 S.E.2d 296 (2004) .....                            | 3             |
| <i>Todd v. Smith</i> , 305 S.C. 227, 231, 407 S.E.2d 644 (1991) .....                                | 2             |
| <i>Townes Assoc., Ltd. v. City of Greenville</i> , 266 S.C. 81, 221 S.E.2d 773 (1976) .....          | 6             |
| <i>Wright v. City of Florence</i> , 229 S.C. 419, 93 S.E.2d 215 (1956) .....                         | 3,6           |

### STATUTES

|                                |        |
|--------------------------------|--------|
| S.C. Code Ann. § 5-13-30 ..... | 3, 6-7 |
|--------------------------------|--------|

### OTHER AUTHORITIES

|                                                                                                                                                                                                                                                    |   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| Steven Greenhouse, <i>States Aim Ax at Health Cost of Retirement</i> , N.Y. Times, February 13, 2011, at <a href="http://www.nytimes.com/2011/02/14/business/14retirees.html">http://www.nytimes.com/2011/02/14/business/14retirees.html</a> ..... | 8 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|

## **ISSUE PRESENTED**

**Did the Court of Appeals err in concluding that a genuine issue of material fact existed as to whether Retirees reasonably relied on promises and representations made by City employees concerning their entitlement to free health insurance for life?**

## ARGUMENT

**I. Because the Court of Appeals erred in concluding that a genuine issue of material fact existed as to whether Retirees reasonably relied on promises and representations made by City employees concerning their entitlement to free health insurance for life, this Court should grant the City of Columbia's certiorari petition.**

On January 23, 2013, the South Carolina Court of Appeals issued an Opinion holding “the trial court erred in granting summary judgment against Retirees<sup>1</sup> on their estoppel claims based upon representations made by their supervisors and the City's human resource personnel.” *Bishop v. City of Columbia*, 738 S.E.2d 255, 261 (S.C. Ct. App. 2013). On March 12, 2013, the City filed a Petition for Writ of Certiorari requesting this Court to review the Court of Appeals' decision. Because a promise of free health insurance for life made by a City employee could not be reasonably relied upon, and reasonable reliance is a necessary element of estoppel, the decision of the Court of Appeals was in error, and the Municipal Association urges this Court to review the Court of Appeals' decision and correct that error.

*1. City Could Not Guarantee Free Lifetime Health Insurance.*

The City operates under a council/manager form of government. (Gantt, R. p. 491). “In the council/manager form of city government all legislative powers of the municipality and the determination of all matters of policy shall be vested in the municipal council, each member, including the mayor, to have one vote.” *Todd v. Smith*, 305 S.C. 227, 231, 407

---

<sup>1</sup>Respondents shall be referred to as “Retirees” and Petitioner as “the City” in accordance with the Court of Appeals' decision and the City of Columbia's Petition for Writ of Certiorari. References to testimony will likewise be in the form described in footnote 1 of the City of Columbia's Petition.

S.E.2d 644, 646 (1991) (citing S.C. Code Ann. § 5-13-30). City employees, under this form of government, “do not have the authority to set city policy, nor can their acts be said to represent official policy in view of the legislative authority granted to the municipal council.” *Stanley v. Kirkpatrick*, 357 S.C. 169, 176 n.6, 592 S.E.2d 296, 299 n.6 (2004). Therefore, the Court of Appeals correctly concluded that Retirees failed to “provide a scintilla of evidence that the supervisors and human resource personnel who made the alleged promises had authority to create contracts for continuing free life insurance.” *Bishop*, 738 S.E.2d at 261.

Even City council has limits on its authority to set policy: “One council may not by an ordinance bind itself or its successors so as to prevent free legislation in matters of municipal government.” *Wright v. City of Florence*, 229 S.C. 419, 424-25, 93 S.E.2d 215, 218 (1956). As this Court has explained, “a council may not by contract bind its successors to forego or to exercise their legislative functions.” *Newman v. McCullough*, 212 S.C. 17, 25, 46 S.E.2d 252, 256 (1948) (quotations and citations omitted). Therefore, the Circuit Court correctly ruled in this case that, because a “lifetime health insurance program would span multiple four-year council terms and restrict subsequent elected officials in representing the interests of their constituents,” no City council in office during the terms of employment of Retirees “had or has the authority to provide such a benefit.” (Order Granting Summ. J., p. 10).

The monies the City uses to pay for employee and retiree health insurance come from appropriations of City council. (Petition for Writ of Certiorari, 2-3). The appropriation of funds is a legislative function. *Gilstrap v. S.C. Budget and Control Bd.*, 310 S.C. 210, 216,

423 S.E.2d 101, 105 (1992). Because the provision of funds to pay for health insurance premiums is a legislative function, a promise of lifetime free health insurance was outside the authority, not only of City employees, as the Court of Appeals held, *see Bishop*, 738 S.E.2d at 261, but outside the City's authority generally. *Piedmont Public Service Dist. v. Cowart*, 319 S.C. 124, 132, 459 S.E.2d 876, 880 (Ct. App. 1995) ("If the contract involves the legislative functions or governmental powers of the municipal corporation, the contract is not binding on successor boards or councils."). Therefore, the City generally did not have the authority to promise Retirees they would receive lifetime free health insurance. (Order Granting Summ. J., p. 11 ("The City is constitutionally prohibited from undertaking an open-ended pledge of future payments on behalf of former employees.")). The Court of Appeals erred in holding otherwise, contrary to the authorities discussed above.

2. *Retirees Cannot Establish Justifiable Reliance.*

"To prove estoppel against the government, the relying party must prove (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question<sup>2</sup>, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." *Grant v. City of Folly Beach*, 346 S.C. 74, 80-81, 551 S.E.2d 229, 232 (2001). As discussed above, the City was prohibited by law from promising Retirees free health insurance for life. Retirees were charged with the knowledge of that prohibition as a "public officer derives his

---

<sup>2</sup>In addition to Retirees' inability to establish reasonable reliance on alleged promises of lifetime free health insurance, communications to Retirees from the City provided them with knowledge of the fact that they may be required to contribute in the future. (See R. pp. 215-218 ("Under the current policy, the City pays retirees' portion of the health premium."); pp. 396, 399, 403, 406, 410 ("[C]ost containment . . . decreases the possibility of contribution increases.") (emphasis added)).

authority from statutory enactment, and all persons are in law held to have notice of the extent of his powers, and therefore, as to matters not really within the scope of his authority, they deal with the officer at their peril.” *Baker v. State Highway Dep’t*, 166 S.C. 481, 490, 165 S.E. 197, 201 (1932), *rev’d on other grounds by McCall by Andrews v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). “[C]itizens are presumed to know the law and are charged with exercising ‘reasonable care to protect their interests.’” *Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008) (quoting *Smother v. U.S. Fidelity & Guar. Co.*, 322 S.C. 207, 210–11, 470 S.E.2d 858, 860 (Ct. App.1996)).

Retirees were, therefore, presumed to have notice that the City did not have the authority to promise them free health insurance for life. Because Retirees were on notice that any promises of free health insurance for life could not be justifiably relied upon, their estoppel claim must fail. *Ahrens v. State*, 392 S.C. 340, 355, 709 S.E.2d 54, 62 (2011) (“Recognizing the well-established rule that citizens are presumed to know the law and are charged with using care to protect their interests, we find that any reliance created by the representations of the Retirement Systems was not justified; especially in light of the disclaimers included in the Retirement Systems’ distributed material, and the Retirees’ knowledge that laws are subject to change.”).

The Court of Appeals sought to distinguish the present case from this Court’s clear mandate in *Ahrens* on the grounds that *Ahrens* “holds that a party cannot reasonably rely on government conduct to create a contract where the governmental actor purports to act pursuant to legislation that itself does not give authority to make the contract.” *Bishop*, 738 S.E.2d at 262. In attempting to distinguish *Ahrens*, the Court of Appeals found “the evidence

does not conclusively indicate the City's employees gave information that contradicted a statute or ordinance. Nor does the evidence conclusively indicate the employees acted outside their authority when they explained Retirees' benefits." *Id.* at 263. This is a distinction without a difference.

In *Ahrens*, the "Retirement Systems agents [who] told Retirees that upon entering the working retiree program, they would not be required to make contributions to the system" were not alleged to have acted outside their authority when they explained those Retirees' benefits. *Ahrens*, 392 S.C. at 353, 709 S.E.2d at 61. Instead, the Retirement Systems agents made "representations . . . outside of *the agency's* authority." *Id.* (emphasis added). The City employees made an identical error in this case in allegedly promising that the City would provide to Retirees free health insurance for life. As shown above, the City council – the only entity which could make policy under the council/manager form of government, S.C. Code Ann. § 5-13-30 – did not have the authority to promise lifetime free health insurance because it would have bound future councils. *See Wright*, 229 S.C. at 424-25, 93 S.E.2d at 218. Because the alleged promises by City employees were outside the City's authority, they were inherently unreasonable, and Retirees' estoppel claim must fail. *See Ahrens*, 392 S.C. at 352, 709 S.E.2d at 60 ("When agents or officers of a governmental body act within the proper scope of their authority, the government 'cannot escape liability on a contract *within its power to make.*'" (quoting *Townes Assoc., Ltd. v. City of Greenville*, 266 S.C. 81, 87, 221 S.E.2d 773, 776 (1976)) (emphasis added)).

The City was prohibited by law from promising Retirees free health insurance for life, and Retirees were charged with knowing that law. Therefore, Retirees could not have

justifiably relied upon a promise from City employees that the City would provide them free health insurance for life. Because such justifiable reliance is a necessary element of Retirees' estoppel claim, the Court of Appeals erred in reversing the trial court's grant of summary judgment against Retirees on their estoppel claims "based upon representations made by their supervisors and the City's human resource personnel." *See Bishop*, 738 S.E.2d at 261.

In light of the Court of Appeals' error, the Municipal Association urges the Court to grant the City of Columbia's Petition for Certiorari and review the *Bishop* decision.

**II. The Court of Appeals decision, if left unaltered, could have significant detrimental consequences for municipalities throughout South Carolina.**

This Court's *Ahrens* decision provides clear guidance on estoppel claims based on unauthorized acts of a governmental body's agents. This guidance is essential to municipalities in South Carolina. Legislative and policy-making powers in municipalities with a council/manager form of government are vested solely in the municipal council. S.C. Code Ann. § 5-13-30. This vesting of policy-making authority with council, in conjunction with the fact that "citizens are presumed to know the law and are charged with exercising 'reasonable care to protect their interests,'" prevents municipalities from being subject to estoppel claims based on erroneous statements of their employees on which citizens or employees could not have justifiably relied. *Morgan*, 377 S.C. at 320, 659 S.E.2d at 267 (Ct. App.2008) (quoting *Smothers*, 322 S.C. at 210–11, 470 S.E.2d at 860). The Court of Appeals' decision in this matter muddies the waters in that regard and increases the chances of increased litigation for South Carolina municipalities.

Municipalities in South Carolina rely on their employees to communicate municipal

policy to fellow employees and to citizens. However, inevitably, municipal employees will make erroneous statements concerning municipal policy. While there are instances where such erroneous statements may bind a municipality, *see Ahrens*, 392 S.C. at 352, 709 S.E.2d at 60; in cases such as this – where the erroneous statement was outside of the City’s authority to promise – the municipality should not be bound by the statement. Under the decision of the Court of Appeals, every municipal employee’s statements could potentially bind a municipality – a problematic public policy concern.

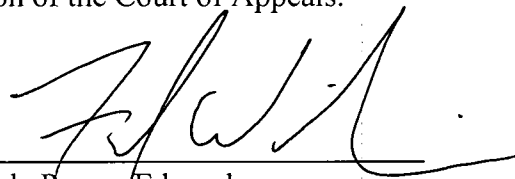
The Court of Appeals’ *Bishop* decision is also of concern in that it handcuffs municipalities in their efforts to control rising health care costs. In this case, the “City’s cost of providing group health and dental benefits rose from \$8,484,055.46 during fiscal year 2002/2003 to \$17,256,661.34 in 2008/2009. (R. p. 220).” (Petition for Writ of Certiorari, 3). Because of the explosion of health care costs in recent years, there is a growing trend nationally of state and local governments requiring retirees to contribute to their health insurance costs. Steven Greenhouse, *States Aim Ax at Health Cost of Retirement*, N.Y. Times, February 13, 2011, at <http://www.nytimes.com/2011/02/14/business/14retirees.html> (“68 percent of city and county officials surveyed said they were pushing to have retirees assume more of their health costs, while 39 percent said they had eliminated or planned to eliminate retiree health benefits for new hires.”). Should the Court of Appeals’ decision in this case remain unaltered, every municipality in South Carolina that seeks to stem costs by requiring retirees to contribute their fair share for health insurance (in this case either \$33.18 or \$63.17 per month, Petition for Writ of Certiorari, 6) will open itself up to costly litigation based on any past remarks from municipal employees who may have suggested that retiree

health insurance was free.

In order to avoid a glut of lawsuits precipitated by the inevitable move towards municipalities' requiring health insurance contributions from retirees, this Court should grant the City of Columbia's certiorari petition and overturn the Court of Appeals' *Bishop* decision. The Court's decision to grant certiorari and make it clear that *Ahrens* is still good law on the issue of estoppel claims based on unauthorized acts of a governmental body's agents will prevent serious public policy concerns for municipalities in South Carolina that move toward requiring health insurance contributions from retirees. *See Alston v. City of Camden*, 322 S.C. 38, 49, 471 S.E.2d 174, 180 (1996) ("We reject Employees' arguments. Most important to this Court, the arguments lack merit legally. Perhaps more important to the state and its municipalities, however, any ruling other than the one we issue today would cripple the efficient operation of government.").

### CONCLUSION

For all the foregoing reasons, the Municipal Association urges the Court to grant the City's certiorari petition and review the decision of the Court of Appeals.



Linda Pearce Edwards  
Fred A. Williams  
GIGNILLIAT, SAVITZ & BETTIS, L.L.P.  
900 Elmwood Ave., Suite 100  
Columbia, SC 29201  
Phone: (803) 799-9311

April 24, 2013

ATTORNEYS FOR *AMICUS CURIAE*  
MUNICIPAL ASSOCIATION OF  
SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

Opinion No. 5077 (S.C. Ct. App. Filed January 23, 2013)

Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz,  
Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin,  
Williams J. Meyer, Charles F. Morris, Sr., and Joseph A. Smith,

of whom

Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin,  
Charles F. Morris, Sr., and Joseph A. Smith, are ..... Respondents,

v.

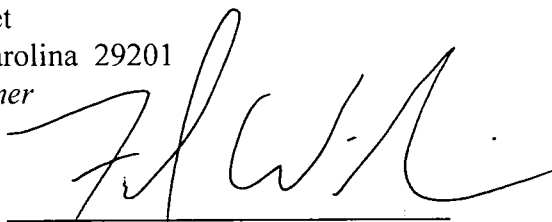
City of Columbia, ..... Petitioner

**CERTIFICATE OF SERVICE**

This is to certify that I have this date caused to be served copies of the foregoing  
Municipal Association of South Carolina's Motion for Leave to File *Amicus Curiae* Brief  
on all counsel of record by deposit in the United States Mail, First Class, postage-prepaid,  
addressed to:

Nancy Bloodgood, Esquire  
Foster Law Firm, LLC  
895 Island Park Drive, Suite 200  
Daniel Island, SC 29492  
*Attorney for Respondent*

W. Allen Nickles, III, Esquire  
Nickles Law Firm, LLC  
1519 Richland Street  
Columbia, South Carolina 29201  
*Attorney for Petitioner*

  
Fred A. Williams

April 24, 2013