

**SHORT TAKES ON MUNICIPAL CASE LAW
(AND OTHER THINGS)**

Danny C. Crowe
Crowe LaFave, LLC
Post Office Box 1149
Columbia, South Carolina 29202
Direct Phone: 803-724-5728
Direct Fax: 803-724-5730
E-mail: danny@crowelafave.com

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1

Attorney's fees/§ 15-77-300/Legislative immunity

South Carolina Public Interest Foundation v. Courson, 420 S.C. 120, 801 S.E. 2d 185 (Ct. App. 2017) (Filed 5/11/17) (Rehearing denied 6/23/17)

Legislative immunity prevents S.C. Code § 15-77-300, the State action statute which allows for an award of attorney's fees and costs to a party who successfully contests State action, from applying to individual State senators. Also, the State action statute only applies to agencies (here, executive branch agencies) and not to the legislature.

2

Council conflicts of interest and effects on vote count and quorum/Employment contract/Severance agreement

Anderson County v. Preston, 420 S.C. 546, 804 S.E.2d 282 (Ct. App. 2017) (Filed 5/21/17) (Withdrawn, substituted and refilled 8/16/17)

Action by County against outgoing County Administrator, seeking rescission of Administrator's negotiated \$1.13 million severance agreement which had been approved by a previous Council by a 5-2 vote. Finding by trial court that four of seven Council members (including the two negative votes) had undisclosed conflicts of interest under State Ethics Act or County Code.

Unsuccessful claims by County that Administrator's nondisclosure of financial interest conflicts of two of the Council members constituted breach of fiduciary duty, fraud, constructive fraud, and negligent misrepresentation. Elements of these causes of action explained.

3

Council conflicts of interest and effects on vote count and quorum/Employment contract/Severance agreement (Continued)

County also claimed that "single tainted vote rule" required invalidation or rescission of severance agreement. Discussion of "single tainted vote rule" applied in several other states under which the decision of a body is invalidated when a member with an undisclosed conflict votes in the decision (even if not the deciding vote). Court of Appeals, citing *Baird v. Charleston County* (1999), determined that South Carolina does not follow this rule and that a disqualified vote simply is not counted in determining the necessary majority for a valid action.

Trial court's determination in its final order that four Council members were disqualified from voting due to conflicts of interest gave rise to an absence of quorum issue that could be raised in a Rule 59(e) motion. With this issue preserved for appeal, Court of Appeals then concluded that a council member disqualified due to a conflict of interest may not be counted toward a quorum, and that the severance agreement vote was invalid (null and void) due to the absence of a quorum. Court of Appeals observes that abstention, rather than recusal, can avoid such loss of quorum situations.

4

Economic regulation/Police powers/Reasonable hypothesis to support a legislative enactment

Retail Services & Systems, Inc. v. SCDOR, 419 S.C. 469, 799 S.E.2d 665 (2017) (Filed 3/29/17) (Rehearing denied 5/31/17)

Statutes (§§ 61-6-140 and -150) that limit an owner to three retail liquor stores held unconstitutional as exceeding scope of General Assembly's police powers under Article VIII-A, § 1 of State Constitution. Economic protectionism of small retailers does not promote public health, safety or morals, and is not a constitutionally sound basis for regulating liquor sales. Vigorous dissent by Justice Kittredge.

5

Permits/Basis for denial of renewal

Kan Enterprises, Inc. v. SCDOR, 420 S.C. 596, 803 S.E. 2d 882 (Ct. App. 2017) (Filed 7/12/17) (Rehearing denied 9/22/17)

Administrative law court denial of renewal of permit to sell beer and wine for off-premises consumption upheld. Substantial evidence (including testimony of police, community members and City Council member) to support finding that conditions at convenience store (including loitering, vagrancy, panhandling and acts of violence) made it an unsuitable location for sale of alcohol. Suitability of a location involves not only geography but also impact on community and burden on law enforcement. Licenses and permits to sell alcohol are the property of DOR and do not create vested interests.

6

Property tax disputes/Remedy of Revenue Procedures Act

Lightner v. Hampton Hall Club, Inc., 419 S.C. 357, 798 S.E.2d 555 (2017) (Filed 2/1/17) (Rehearing denied 5/3/17)

State Revenue Procedures Act (§§ 12-60-10 to -3390) is not limited to property tax disputes with DOR but applies to (1) disputes with DOR (which may or may not concern property taxes) and (2) disputes concerning property taxes (which may involve DOR or a county or municipality). Except for DJ actions with sole issue of constitutionality of statute, the Act (with its administrative remedies) is the exclusive remedy for cases involving illegal or wrongful collection or attempted collection of taxes. Under § 12-60-80(c), a claim or action for refund of taxes may not be brought as a class action in any court of law in the State (and DOR, political subdivisions or their instrumentalities may not be named or made a defendant in any other class action brought in this State).

7

**Streets and highways/Public purpose/
Public importance standing**

South Carolina Public Interest Foundation v. SCDOT, ____ S.C. ____, 804 S.E.2d 854 (2017) (Filed 9/14/17), *reversing* 412 S.C. 18, 770 S.E.2d 399 (Ct. App. 2015)

Expenditure of public funds by DOT for inspection of private bridges in a gated community (upon request from a city council member and not from the city) contravened constitutional requirement that expenditure of public funds serve a public purpose. Taxpayers challenging DOT action did not have constitutional standing (because no concrete and particularized injury) but had "public importance" standing. The key to public importance standing is that resolution of the issue is needed for future guidance. Majority rejects argument that DOT responded to a municipal request pursuant to S.C. Code § 57-3-110(7). Dissents by Justices Kittredge and Pleicones.

8

Zoning/State agencies or departments

County of Charleston v. SCDOT, 420 S.C. 405, 803 S.E. 2d 316, (Ct. App. 2017) (Filed 7/12/17)

DOT held exempt from compliance with tree removal and tree protection provisions of County zoning and land development regulations ordinance. Requirement of a tree removal permit interfered with DOT's maintenance work on State highway system. Per Article VIII, § 14, local governments cannot set aside general law for matters requiring statewide uniformity. State statutes set out duty of DOT to construct and maintain and establish standards for State highway system. As to S.C. Code § 6-29-770(A) (providing State agencies and subdivisions that use real property as owner or tenant are subject to zoning ordinances), DOT was not an owner or tenant here but was engaging in governmental service or function and had exclusive authority over State highway system.

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