

SHORT TAKES ON MUNICIPAL CASE LAW (AND OTHER THINGS)

Danny C. Crowe
Turner, Padgett, Graham & Laney, P.A.
Post Office Box 1473
Columbia, SC 29202
Direct Phone: 803-227-4239
Direct Fax: 803-400-1471
E-mail: dcrowe@turnerpadgett.com

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Constitutional challenges (non-zoning cases)

- Sales tax exemptions/Equal protection

Bodman v. State, 403 S.C. 60, 742 S.E.2d 363 (2013). (Filed 5/8/13)

Standing (based on taxpayer status and public importance exception), equal protection and special legislation are discussed in the Court's rejection of challenge to sales tax exemptions as a whole based on the sheer number (85) of exemptions.

- Interference with police ordinance/Vagueness

McCoy v. City of Columbia, 929 F.Supp. 2d 541 (D.S.C. 2013). (Filed 3/11/13)

Arrest of student in Five Points for violation of City ordinance on interference with police, Section 1983 claims for violations of his First and Fourth Amendment rights and tort claims, with DJ on constitutionality of interference ordinance. Ordinance provided "It shall be unlawful for any person to interfere with or molest a police officer in the lawful discharge of his duties." Ordinance held facially unconstitutional as unduly vague because it included no objective standard to guide the police in determining what conduct constituted unlawful interference or molestation.

Employment

- Administrator contract/Limitations on council binding successor council

Cunningham v. Anderson County, 402 S.C. 434, 741 S.E.2d 545 (Ct. App. 2013). (Filed 2/27/13)

Action following County administrator's termination. The appointment of a public officer is a governmental function that cannot be impaired by an employment contract extending beyond the terms of the members of a local governing body. Accordingly, all provisions of such a contract, including provisions for severance pay (and the severability clause), are void. Our case law has not extended the public policy exception (to the at-will doctrine) to contracts for a definite term. However, here, because of void contract, administrator was relegated to at-will employee status and could assert a wrongful discharge claim based on the public policy exception. An allegation that the administrator was required to discharge employees because of political opinions or the exercise of political rights and privileges (contrary to S.C. Code 16-17-560) invokes the public policy exception. Summary judgment for County on breach of contract

(and Payment of Wages Act claim) affirmed and summary judgment for County on wrongful discharge claim reversed and remanded for further discovery.

- Retiree benefits/Limited authority of employees

Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013). (Filed 1/23/13)

City's description of free health insurance for City retirees in employee handbook did not create a contract because it was conspicuously disclaimed. Representations by City employees did not create enforceable unilateral contracts because of employees' limited authority.

Freedom of Information Act

Disabato v. S.C. Association of School Administrators, 404 S.C. 433, 746 S.E.2d 329 (2013). (Filed 7/17/13)

State FOIA's definition of "public body" includes a private corporation supported by public funds (but not a business enterprise that receives payment from public bodies in return for supplying specific goods or services on an arm's length basis). FOIA impacts but does not violate the Association's speech and association rights under the First Amendment. (The Court used an intermediate scrutiny standard of review for a content-neutral statute).

Inverse condemnation

Frampton v. SCDOT, 2013 S.C. App. LEXIS 247 (Ct. App. 2013). (Filed 10/30/13)

Inverse condemnation case arising from access impairment for residential property during highway construction. DOT waived right to contest jury mode of trial during takings determination phase of trial by failing to file interlocutory appeal. Evidence established a physical taking not a regulatory taking or an exercise of the police power to control traffic. Attorneys fees issue of award under S.C. Code § 28-11-30 (reimbursement under relocation assistance act) versus § 28-2-510 of Eminent Domain Procedure Act. Court concludes former more specific for inverse condemnation cases.

Liability

- Contractual

Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 743 S.E.2d 778 (2013).
(Filed 5/29/13)

A governmental entity may be liable to a subcontractor for breach of contract (but not in tort) for failing to comply with the contractor payment bond requirements of the Subcontractors' and Suppliers' Payment Protection Act (S.C. Code §§ 29-6-210 to - 290). [S.C. Code § 29-6-250(1) provides that when a governmental entity is a party to a contract to improve real property, and the contract is for a sum in excess of \$50,000, the property owner must require the general contractor to provide a labor and material payment bond in the full amount of the contract.]

- Odors

Babb v. Lee County Landfill SC, LLC, 405 S.C. 129, 747 S.E.2d 468 (2013).
(Filed 8/14/13)

Trespass and nuisance explained on certified questions. Trespass requires an invasion of property by a physical tangible thing; invisible odors cannot constitute a trespass. The mere annoyance, inconvenience or discomfort a plaintiff may suffer from offensive odors is not sufficient to establish a negligence claim, absent some physical injury or property damage. The damages recoverable for trespass and nuisance are limited to property interests, and the only proper measure is the value of the property.

- Gross negligence in demolition of house

Chakrabarti v. City of Orangeburg, 403 S.C. 308, 743 S.E.2d 109 (Ct. App. 2013). (Filed 5/1/13)

City demolished a house under the IPMC. Owners sued for wrongful condemnation and inverse condemnation. At trial, negligence cause of action amended to conform to gross negligence standard. Court determined a compensable taking and jury returned verdict for owners on gross negligence with jury awards of \$85,000 for just compensation and \$165,000 for gross negligence. Owners elected the \$165,000 verdict. Court of Appeals upheld gross negligence award based on some evidence that work on house was being performed up until time City demolished so that IPMC two-year period for no substantial construction not met. TCA exceptions to liability for administrative action,

enforcement of law, and institution of administrative proceeding did not apply because gross negligence standard read into those exceptions. Trial preservation issue on owners' failure to file administrative appeal. Owners conceded in brief that demolition did not amount to inverse condemnation and judgment for that cause of action reversed. Damage award of \$165,000 consistent with owner's testimony as to fair market value.

Referendum/Capital Projects Sales Tax

State v. County of Florence, 2013 S.C. LEXIS 273 (2013). (Filed 10/17/13)

In original jurisdiction, Court rejects challenge to a proposed tax referendum under the Capital Projects Sales Tax Act (S.C. Code §§ 4-10-300 to – 380). New tax versus reimposed tax. "In our view, the Act permits a county to reimpose the tax at each opportunity without ever completing the projects set forth in the previous referendum." A "general election" does not necessarily coincide with a federal election year.

Road closing

Town of Kingstree v. Chapman, 405 S.C. 282, 747 S.E.2d 494 (Ct. App. 2013). (Filed 7/24/13)

Court of Appeals reversed order of special reference granting Town's petition, pursuant to S.C. Code § 57-9-10, to close a portion of a street. Issues included dedication of roads to public use, acceptance, private easements, public easements, and abandonment. Plat language did not provide sufficient evidence of dedication, and evidence did not establish use as public road. Additionally, the private easements in the road by the property owners were not extinguished by any public use of the road.

Standing/Requirement of injury in fact/Stormwater control discharges

Town of Arcadia Lakes v. SCDHEC, 404 S.C. 515, 745 S.E.2d 385 (Ct. App. 2013). (Filed 6/12/13)

Real estate developer received authorization under DHEC permit for storm water discharges from excavation of a private pond that drained into a private lake. Court concluded no injury in fact and, therefore, no standing to challenge permit determination for Town, residents of subdivision adjacent to pond, and property owners bordering the lake. A municipality must allege an infringement of its own proprietary interests or statutory rights (have a personal stake in the litigation) to establish standing. Town not owner of lake and not responsible for maintenance or remediation. Town's interests in aesthetics and property values not sufficient. Public importance exception not raised.

Zoning

- Golf course conversion/Takings

Dunes West Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280, 737 S.E.2d 601 (2013). (Filed 1/9/13)

City placed all golf courses within a special Conservation Recreation Open-space (CRO) zoning district to limit golf course conversion to residential uses. City denied owner's requested rezoning to allow residential development. Court upheld City's denial of rezoning against equal protection, substantive due process and takings challenges. Lengthy analysis of regulatory takings law.

- Standing for appeals from administrative boards

Bevivino v. Town of Mount Pleasant Board of Zoning Appeals, 402 S.C. 57, 737 S.E.2d 863 (Ct. App. 2013). (Filed 2/16/13)

BZA decision to allow construction of a telecommunications tower upheld on appeal. Good pocket summary of standard of judicial review. Residents of neighborhood adjoining tower site had statutory standing to appeal to circuit court as persons who "may have a substantial interest" in BZA decision and were not required to have been parties to appeal to BZA from zoning administrator's decision.

- Subdivision approval/equal protection

Town of Hollywood v. Floyd, 403 S.C. 466, 744 S.E.2d 161 (2013). (Filed 5/15/13)

Grant of summary judgment to Town upheld on issue that Town Code required Planning Commission approval, rather than Zoning Administrator approval, of plat for proposed subdivision of land. Jury verdict of \$450,000 in favor of developer against Town on equal protection counterclaim reversed on Court's analysis that other comparator development not similarly situated.