SHORT TAKES ON MUNICIPAL CASE LAW (AND OTHER THINGS)

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Business license tax/Interstate commerce

- Town of Hilton Head Island v. Kigre, Inc., 408 S.C. 647, 760 S.E.2d 103 (2014) (Filed 6/4/14)

  Broad-based challenge to business license tax on sales in interstate commerce, where business' only manufacturing facility in Town and business paid no other license tax to any other taxing jurisdiction.

  Helpful summary of general principles of law relating to business license tax, including principle that business license tax is an excise tax (tax on the privilege of doing business in the municipality) and not an income tax or sales tax.

Cable television franchise/Denial of franchise by municipality/Testimony by councilmembers as to motives for legislative acts

- Horry Telephone Cooperative, Inc. v. City of Georgetown, 408 S.C. 348, 759 S.E.2d 132 (2014) (Filed 6/4/14)

  Municipal denial of cable television franchise upheld. S.C. Competitive Cable Services Act (S.C. Code § 58-12-5 et seq.) provides procedure for state-issued cable television franchise with municipal consent. Act creates a private cause of action for cable providers aggrieved by denial of municipal consent.

  Testimony by council members as to their motivations for denying consent was not competent evidence at trial. Discussion by court that inquiry into individual city council members' motives for legislative acts is "fundamentally inappropriate."

  Requested relief of injunction requiring City to enact ordinance granting franchise is "fundamentally improper."

  Evidence not sufficient to hold that franchise was unreasonably refused.

Contract/Memorandum of Understanding/Quantum meruit

- Stevens and Wilkinson of South Carolina, Inc. v. City of Columbia, 409 S.C. 568, 762 S.E.2d 696 (2014) (Filed 8/20/14)

  Hotel development deal subsequently revised. Issues included whether memorandum of understanding could be treated as enforceable contract, quantum meruit, unjust enrichment, parol evidence. Revised Court of Appeals decision at 396 S.C. 338, 721 S.E.2d 455 (Ct. App. 2012).

Criminal/Authority of Attorney General to Prosecute

- State v. Long, 406 S.C. 511, 753 S.E.2d 425 (2014) (Filed 1/8/14)

  The State Attorney General has the authority to prosecute criminal cases in magistrate and municipal courts. Article V, § 24 of State Constitution (which provides that AG is the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in "courts of record") does not preclude AG's ability to prosecute in summary courts that are not "courts of record."

Freedom of Information Act

- Lambries v. Saluda County Council, 409 S.C. 1, 760 S.E.2d 785 (2014) (Filed 6/18/14)

  Council's amendment of agenda during regularly scheduled meeting to consider and act on a resolution in public session did not violate the § 30-4-80 written public notice requirement of the FOIA. Reversing 2012 Court of Appeals decision at 398 S.C. 501, 728 S.E.2d 488 (Ct. App. 2012). Plain meaning of the words "if any" in referring to agenda for regularly scheduled meeting can mean only that an agenda is not required for a regularly scheduled meeting. Meetings are not limited to instances where action is taken. No restriction contained in FOIA on amendment of agenda. Supreme Court declined to judicially impose a restriction on amendment of agenda that was not expressly provided for by General Assembly or that was based on a subjective view of "spirit" and "purpose" of FOIA.

Freedom of Information Act

- Perry v. Bullock, 409 S.C. 137, 761 S.E.2d 251 (2014) (Filed 7/16/14)

  Autopsy report that revealed extensive medical information was "medical record" exempt from disclosure under FOIA. No definition of "medical records" in FOIA but customary meaning is records containing medical information. Court contrasts autopsy report to death certificate determined to be subject to disclosure under FOIA in Society of Professional Journalists v. Sexton, 283 S.C. 563, 324 S.E.2d 313 (1984).

- Sloan v. SCDOR, 409 S.C. 551, 762 S.E.2d 687 (2014) (Filed 8/20/14)

  Agency compliance with FOIA request after complaint filed rendered FOIA action moot. However, requesting party was prevailing party entitled to award of attorney's fees and costs. Court (majority and dissent) acknowledged burden placed on public bodies to make final determination as to disclosure within 15 days. Majority determined Sloan entitled to attorney's fees but dissent noted award of attorney's fees under § 30-4-100(b) should be discretionary with trial court.

Freedom of Information Act/Public Records Retention Act/Executive sessions (specific purpose and post-session action)

- Brock v. Town of Mount Pleasant, 2014 WL 5654291 (Ct. App. 2014) (Filed 11/5/14)

  Sufficiency of statements of specific purpose of executive sessions and appropriateness of post-session actions. Post-executive session action of Council not encompassed by stated specific purposes for executive session. FOIA does not mandate an agenda for executive session.

  Plaintiff also argued violation of Public Records Retention Act (S.C. Code § 30-1-10 et seq.) by deletion by councilmembers of e-mails on personal e-mail accounts concerning Town business. Subsequent Town policy requiring use of Town-issued computers and retention policy. Per Court of Appeals, trial court did not abuse its discretion in declining DJ on this issue, since law in this area is developing and Town subsequently adopted a computer use and retention policy.

  Discussion of attorney's fees. Remand for trial court consideration of further attorneys fees award (beyond $42,000 already awarded) in light of "beneficial result accomplished" and 2014 Sloan decision.

Public nuisance/Zoning/Standing

- Carnival Corporation v. Historic Ansonborough Neighborhood Association, 407 S.C. 67, 753 S.E.2d 846 (2014) (Filed 1/22/14)

  Associations of neighbors and conservationists lacked standing to bring public nuisance and zoning claims against cruise ship operations. No concrete, particularized harm to a legally protected interest, no associational standing, and public importance exception to requirement of standing did not apply. Generally, a private action does not lie to abate a public nuisance, and a particularized injury is required for a public nuisance cause of action. Plaintiffs failed to establish "specially damaged" for standing for zoning enforcement as neighboring or adjacent property owners under S.C. Code § 6-29-950, and a particularized injury is required.

Tort claims/Street defect/Constructive notice

- Major v. City of Hartsville, 410 S.C. 1, 763 S.E.2d 348 (2014) (Filed 9/17/14)

  Recurring condition of ruts in unpaved area of street sufficient to create jury issue as to constructive notice.