

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

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Eminent domain and inverse condemnation/Reimbursement of reestablishment expenses/ Constitutionality of State Code § 28-11-30(4)

Applied Building Sciences, Inc. v. S.C. Department of Commerce, Division of Public Railways, 442 S.C. 421, 900 S.E.2d 241 (2024) (filed 1/17/24) (James)

Supreme Court upheld constitutionality of State Code § 28-11-30(4), providing for payment of reestablishment expenses with cap of \$50,000 in a condemnation proceeding related to the moving of a small business, farm, or nonprofit organization for transportation projects. Reestablishment expenses (uncapped) sought in an inverse condemnation action after just compensation for leasehold and moving expenses paid by State. Statute setting cap challenged as unconstitutional taking under Federal and State Constitutions.

Summary of case law standards on constitutional challenges and on nature of takings claims. Citation of Federal and State case law that, as to leasehold or business interests, removal or relocation of personal property is not included in valuation of property taken by condemnation.

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FOIA/Executive session listing of topics/Announcement of voting to be held post-executive session

South Carolina Coastal Conservation League, Inc. v. Charleston County, 442 S.C. 409, 899 S.E.2d 609 (Ct. App. 2024) (filed 2/21/24) (Hewitt)

Multi-claim challenge to County's use of "penny tax" funds for a particular roadway project. Court of Appeals rejected appeal claims that pledge of penny tax revenue violated ordinances and referenda and was unlawful appropriation, including court conclusion that challenge to referenda was time-barred. Assurances by councilmembers before referenda not a viable claim ("[I]f political bodies or office holders renege on their public positions, it is not for the court to mandate compliance, and the voter's best recourse is at the ballot box.").

As to the first FOIA claim, Supreme Court concluded FOIA requirement for discussion of legal advice related to pending litigation in executive session was satisfied by the County attorney's public announcement before executive session that a listed topic on the agenda of "Transportation Sales Tax Budget" was for receipt of legal advice related to active litigation on the penny tax.

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FOIA/Executive session listing of topics/Announcement of voting to be held post-executive session

South Carolina Coastal Conservation League, Inc. v. Charleston County continued...

As to the second FOIA claim that the public vote after that session to allocate penny tax dollars to the project was not announced in advance, Supreme Court remanded for factual development beyond pleadings. Citing Brock v. Town of Mount Pleasant, 415 S.C. 625, 785 S.E.2d 198 (2016), the Court noted that "it is sufficient for the agenda to reflect that, upon returning to open session, action may be taken on the items discussed during the executive session."

FOIA/ Prevailing party analysis/ Standard for award of attorney's fees/ Continuing violation analysis/ Inclusion of fees for paralegals and support staff

Brawley v. Richland County, ___ S.C. ___, ___ S.E. 2d ___, 2024 WL 428140 (Ct. App. 2024) (filed 9/25/24) (Hewitt)

Lengthy 10-year history from original request to appeal decision with award of attorney's fees of \$81,000. Court of Appeals affirmed circuit court finding of FOIA violation but reversed attorney's fees award and remanded for specific findings on evidentiary basis for award.

Court's statement of standards of review of DJ action under FOIA and of awards of attorney's fees. FOIA does not require public bodies to seek documents from third parties or recreate documents in order to respond to FOIA requests. Although record indicated issues of sufficiency of production during the litigation, there was sufficient evidence of County failure to produce its own documents in response to original request to support finding of FOIA violation. Plaintiff prevailed partially and, therefore, entitled to reasonable fees.

FOIA/ Prevailing party analysis/ Standard for award of attorney's fees/ Continuing violation analysis/ Inclusion of fees for paralegals and support staff

Brawley v. Richland County continued...

Discussion of the extent of lower court's exercise of discretion in determination of "reasonable" award, the absence of any indication of explicit review for "a sound evidentiary basis", and the absence of specific findings explaining amount of award. Cited Burton v. York County Sheriff's Department (Ct. App. 2004) for the six factors in setting an award of fees. For an award when the plaintiff prevails partially, the most critical factor is the "degree of success obtained." Discussed significance of a "continuing violation" in assessing reasonable expenditure of time charged. "A reasonable fee award must include only 'reasonably expended' hours and must be proportional to the degree of success obtained."

Attorney's fees may include paralegal and support staff time in a computation of reasonable fees and costs so long as they are billed at appropriate and reasonable rates and their tasks contributed to the litigation.

FOIA/Statutory requirement of State Code § 30-4-100(A) for initial 10-day hearing/No statutory requirement that party filing the action responsible for scheduling the initial hearing/Statutory interpretation

Osmundson v. School District 5 of Lexington and Richland Counties, 443 S.C. 635, 905 S.E. 2d 418 (Ct. App. 2024) (filed 6/26/24) (Thomas)

Circuit court dismissed plaintiff's FOIA action because no initial court hearing was held within 10 days of the service of Complaint as required by State Code § 30-4-100(A). Court of Appeals determined, as a matter of statutory interpretation, that the Code section did not require the party filing the FOIA action to be the party responsible for scheduling the initial hearing.

Implied covenant of good faith and fair dealing/Necessary relationship to the existing contract from which implied and not to the creation of a new contract

Road, LLC v. Beaufort County, 443 S.C. 11, 902 S.E.2d 366 (2024) (filed 5/15/24) (Few)

On review on certiorari, the Supreme Court affirmed in result the decision of the Court of Appeals at 433 S.C. 164, 857 S.E.2d 371 (Ct. App. 2021).

County's purchase of property that was a subject of a Settlement Agreement, after another party's option to purchase the property expired, was not a breach of the covenant of good faith and fair dealing implied in the Settlement Agreement. The implied covenant cannot create new contractual duties but must relate to an express term of an existing contract, such as a party's manner of enforcing existing contractual rights or performing existing contractual duties. The covenant cannot impose a duty separate from the terms of the existing contract itself.

Interstate commerce and State sales tax/ Dormant commerce clause prohibition of regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors/Sales tax exemption only for in-state sellers of durable medical equipment violated dormant commerce clause/ Severability principles required invalidation of entire exemption

Orthofix, Inc. v. S.C. Department of Revenue, 443 S.C. 138, 903 S.E.2d 496 (2024) (filed 6/26/24) (Kittredge)

State Code § 12-36-2120(74) provided for a sales tax exemption for the sale of durable medical equipment paid by Medicaid or Medicare when the seller's principal place of business is located in the State. The Supreme Court determined the exemption fostered economic protectionism, had both a discriminatory effect and a discriminatory purpose, and violated the dormant Commerce Clause. The DOR failed to show that the exemption "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives."

Interstate commerce and State sales tax/ Dormant commerce clause prohibition of regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors/Sales tax exemption only for in-state sellers of durable medical equipment violated dormant commerce clause/ Severability principles required invalidation of entire exemption

Orthofix, Inc. v. S.C. Department of Revenue continued...

Applying a severability analysis (including the absence of a savings clause), the Court declared the entire durable medical equipment exemption invalid.

Multi-county industrial park/ Distribution of FILOT revenue/ Consent of a municipality with territory in the MCIP required only prior to execution of agreement creating the park/ S.C. Constitution, article VIII, § 13(D) and S.C. Code § 4-1-170(C)

City of Hardeeville v. Jasper County, 443 S.C. 635, 905 S.E. 2d 431 (Ct. App. 2024) (filed 7/17/24) (Geathers)

City annexed property in an existing MCIP. State Code § 4-1-170 (C) provides that "If the industrial or business park encompasses all or a portion of a municipality, the counties must obtain the consent of the municipality prior to the creation of the multi-county industrial park." (Emphasis added). Once park agreement executed by participating counties, the MCBP property becomes exempt from all ad valorem taxes and the park agreement controls the levying, collection, and distribution of revenue generated by the MCBP, regardless of any future annexation of park property into municipalities.

Promissory estoppel/ Public body only estopped by employees acting with actual authority, and apparent authority not applicable/ Employee benefits are by legislative act that only municipal council can set/ Standard of proof of promissory estoppel is greater weight of evidence and not clear and convincing evidence

Cruz v. City of Columbia, 443 S.C. 201, 904 S.E.2d 451 (2024) (filed 7/17/24) (Hill)

Ten retired firefighters claimed City (by verbal statements of other employees and written statements in newsletters and retirement letters) promised free lifetime health insurance for retirees. Supreme Court affirmed the conclusion of the Court of Appeals at 437 S.C. 204, 877 S.E.2d 479 (Ct. App.2022) but "modified" by "vacating" its reasoning. Statement of elements of promissory estoppel. Per Supreme Court, the Court of Appeals held that any promise by the City was ambiguous due to insufficient details of the scope of insurance given, and there was no reasonable reliance because of the statement in retirement letters as to "current" policy.

Promissory estoppel/ Public body only estopped by employees acting with actual authority, and apparent authority not applicable/ Employee benefits are by legislative act that only municipal council can set/ Standard of proof of promissory estoppel is greater weight of evidence and not clear and convincing evidence

Cruz v. City of Columbia continued...

Supreme Court concluded no promissory estoppel because no right to rely on the verbal or written statements by City employees in the absence of evidence of actual authority of those employees to bind the City on future health insurance benefits. Analysis that municipal council had all legislative power under City's form of municipal government and that any decision on health insurance benefits as part of employee compensation was a legislative act.

A public body may not generally be estopped to deny liability for the statements or conduct of its agents unless the agent acted within the scope of their actual authority. "Like any citizen dealing with the government, Petitioners were charged with notice of the limits of a public employee's actual authority." Cited McQuillin for principle that "The doctrine of apparent authority is inapplicable in the context of a municipal contract."

Promissory estoppel/ Public body only estopped by employees acting with actual authority, and apparent authority not applicable/ Employee benefits are by legislative act that only municipal council can set/ Standard of proof of promissory estoppel is greater weight of evidence and not clear and convincing evidence

Cruz v. City of Columbia continued...

Supreme Court also vacated the reasoning of the Court of Appeals and clarified that the correct standard of proof of a promissory estoppel claim is the "greater weight" of the evidence and not "clear and convincing" evidence.

Tort claims/ Reckless infliction of emotional distress is a subset of intentional infliction of emotional distress and is not a separate cause of action/ The cause of action is barred by Code § 15-78-30(f)'s definition of "loss" in the S.C. Tort Claims Act

Gore v. Dorchester County Sheriff's Office, 442 S.C. 1, 896 S.E. 2d 765 (2024) (filed 3/27/2024) (Per curiam)

OTHER THINGS

Unpublished Opinions/State Court of Appeals

Emergency ordinances related to COVID/Temporary ban on rental property check-ins/Penalties included suspension or revocation of business license / City had power to enact ordinance under State Code § 5-7-30 and 5-7-250 / No preemption by Governor's Executive Order/ Ordinance did not criminalize otherwise legal conduct contrary to Article VIII, § 14(5) of State Constitution

Fred Holland Realty, Inc. v. City of Folly Beach, Unpublished Opinion No. 2024-UP-009 (Ct. App. 2024) (filed 1/3/24) (Per curiam- Thomas, Konduros, and Geathers)

OTHER THINGS

Unpublished Opinions/State Court of Appeals

Exhaustion of administrative remedies/ General principles stated

West Street Farms, LLC v. City of Beaufort, Unpublished Opinion No.2024-UP-373 (Ct. App. 2024) (filed 10/30/24) (Per curiam- Williams, Konduros, and Geathers)

FOIA/Councilmember use of private e-mail accounts pertaining to public business is not a violation of FOIA/ Award of attorney's fees within discretion of special referee/ Attorney-client privilege waived for communications including third party

Baracco v. County of Beaufort, Unpublished Opinion No. 2024-UP-018 (Ct. App. 2024) (filed 1/10/24) (Per curiam- Thomas, Konduros, and Geathers)

OTHER THINGS

Unpublished Opinions/State Court of Appeals

Zoning/ Appeal from BZA/Interpretation of definition of "building line"/ Principles of statutory interpretation/ Determination of legislative purpose and intent/ Standard of review of zoning board decisions

Wolfe Marie Vernon Trust v. Town of Mount Pleasant, Unpublished Opinion No. 2024-UP-383 (Ct. App. 2024) (filed 11/13/24) (Per curiam- Williams, McDonald, and Turner)

Zoning/ County must comply with notice of violation procedure specified in zoning code before issuance of Uniform Ordinance Summons

Beaufort County v. Adams Outdoor Advertising Limited Partnership, Unpublished Opinion No. 2024-UP-232 (Ct. App. 2024) (filed 7/3/24) (Per curiam- Thomas, McDonald, and Verdin)
