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

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Annexation/Cross-annexations by two municipalities/Standing/Alleged substantive defects in annexation ordinance/Prior Pending Proceedings Doctrine

City of Charleston v. City of North Charleston, 439 S.C. 6, 885 S.E.2d 151 (Ct. App. 2023) (filed 2/1/23) (Williams)

Facts involved annexation by North Charleston (“unintentional”) in 2017 by 100% annexation method of portion of parcel previously annexed by Charleston in 2005 under 75% annexation, and 2018 Charleston ordinance annexing same parcel annexed by North Charleston in 2017. Appeals court panel affirms circuit court conclusions of (1) proper annexation by North Charleston in 2017 and (2) lack of standing by Charleston to challenge North Charleston’s 100% annexation 2017 ordinance. Basis for lack of standing was no State challenge action and Supreme Court’s declining of adoption of prior pending proceedings rule in 1994 case of City of Columbia v. Town of Irmo.

Annexation/Property owned by municipality/Standing to challenge/Adjacent versus contiguous

National Trust for Historic Preservation in the United States v. City of North Charleston, 439 S.C. 222, 886 S.E.2d 487 (Ct. App. 2023) (filed 2/1/23) (Williams)

Annexation by Code § 5-3-100 of a single acre owned by North Charleston. Challenge by National Trust (owner of intervening acreage) and City of Charleston. Overlap of four inches into National Trust property inconsequential and not determinative of standing. Circuit court finding of no standing upheld and unnecessary to reach issue of any requirement of contiguity in 5-3-100. Absence of “public importance” or “public interest” exception to standing illustrated by lack of involvement of State as party in mere municipal boundary dispute, and lack of evidence of deceitful conduct by North Charleston.

Defamation/Elements/Constitutional actual malice standard for public officials/Absence of evidence of reference of statement to person complaining rather than group

Stokes v. Oconee County, ___ S.C. ___, ___ S.E.2d ___, 2023 WL 7372405 (Ct. App. 2023) (filed 11/8/23) (Geathers)

Fired building official sued County and two Councilmembers for defamation based on statements about building department made by Councilmembers at a public hearing relating public comments and their own experiences. Circuit court granted summary judgment for defendants (and denied motion to amend by plaintiff) based on absence of evidence of actual malice and absolute privilege of Councilmembers to make the statements in course of their legislative functions. Discussion of elements. Affirmed with panel declining to address issue of immunity.

FOIA/Executive session/Requirements of stated purpose and “no votes”/Criticism of governing body action by consensus in private session/Nature of injunctions under FOIA

Miramonti v. Richland County School District One, 438 S.C. 612, 885 S.E.2d 406 (Ct. App. 2023) (filed 1/4/23) (Hill)

Parent complaint on application of policy on offering of a classroom course. Discussed in executive session of School District Board meeting. In ensuing public session, Chair announced Board will respond to parent based “off the discussion” of the Board in executive session.

Court discussion of requirements of (1) public vote on stated purpose before entering executive session and (2) no votes or polling in executive session. Appeals court panel agrees with circuit court that Board decided how to respond during executive session, and upholds DJ and attorney’s fees.

Portion of circuit court injunctive order requiring Board revisit parent complaint at next meeting vacated as judicial restraint on legislative power of Board, and in nature of writ of mandamus not pled or raised in case.

Municipal council disruptions by councilmember/Section 1983 action by councilmember alleging First Amendment and Fourth Amendment rights/Legislative immunity as bar to action/Failure to exhaust administrative remedy after presiding officer ruling of removal

Lockaby v. City of Simpsonville, 440 S.C. 156, 889 S.E.2d 631 (Ct. App. 2023) (filed 6/21/23) (Geathers)

Broad reading of “legislative act” to support circuit court finding of legislative immunity for summary judgment. Appeals court panel states: “We have little trouble concluding that disciplinary actions targeted at a council member for the sake of keeping order during a meeting is a legislative function.” Grant of summary judgment affirmed. Issues of exhaustion of “internal remedies” not reached as unnecessary to address.

Municipal elections/Invalidation of Town elections by Municipal Election Commission/Finding by MEC of violation of previous version of S.C. Code § 7-15-330 by individual requesting applications to vote by absentee ballot on behalf of other voters/Reversal of MEC by circuit court for absence of supporting evidence upheld by majority of Supreme Court

Odom v. McBee Municipal Election Commission, 440 S.C. 367, 891 S.E.2d 663 (Ct. App. 2023) (re-filed 8/30/23) (Few)

Spirited majority opinion and dissent by two Justices (Hearn and Kittredge) in context of “the recent tortured history of municipal elections in McBee.” Dissent discusses limited standard of appellate review of findings of fact and witness credibility determinations by MEC.

Procurement/State Accommodations Tax/Selection of Designated Marketing Organization (DMO) by Town not subject to Town Procurement Code

Buonaiuto v. Town of Hilton Head Island, 440 S.C. 144, 889 S.E.2d 625 (Ct. App. 2023) (filed 6/14/23) (Lockemy)

Town’s “Contract for Professional Services” with local Chamber of Commerce not a contract for services as defined in the Town Procurement Code. Affirming master’s grant of summary judgment to Town, panel concludes DMO contract formalizes duties placed on Town by State statutory law (S.C. Code § 6-4-10(3)) and related Town Code provision rather than addressing services for Town.

Regulatory taking/City merger ordinance requiring merger of contiguous lots under common ownership into single lot/Analysis of Penn Central factors including economic impact, character of governmental action, and investment-backed expectations/”Relevant parcel” denominator

Braden’s Folly, LLC v. City of Folly Beach, 439 S.C. 171, 886 S.E.2d 674 (2023) (filed 4/5/23) (Kittredge)

Unanimous Supreme Court, with excellent in-depth factual and legal analysis by Justice Kittredge, reversed circuit court determination of unconstitutional regulatory taking. In context of accelerating beachfront erosion and existence of troublesome “super-beachfront” lots, City sought to reduce and reverse super-beachfront development by several methods including the merger ordinance and a prohibition on rebuilding of 50% damaged nonconforming structures.

Plaintiff owner of two merged lots, including one super-beachfront lot with a structure, claimed a regulatory taking when City attempted to halt sale of lots as separate lots. Plaintiff owner claimed interference with investment-backed expectation of sale of one lot and family use and rental of the other. Court’s application of Penn Central factors blending facts and law, including conclusion that two of the three factors weigh in favor of City and factor of investment-

backed expectation was neutral due to competing evidence. Further conclusion that City's merger ordinance is a reasonable land-use regulation enacted as part of a coordinated effort to preserve the beach and surrounding land.

Zoning/Overlay district prohibiting smoke shops, tobacco stores and merchandising of sexually oriented material in historic downtown area/Ordinance upheld against claims of reverse spot zoning and unconstitutional exercise of police powers

Ani Creation, Inc. v. City of Myrtle Beach Board of Zoning Appeals, 440 S.C. 266, 890 S.E.2d 748 (2023) (re-filed 6/28/23) (Kittredge)

Direct appeal from circuit court to State Supreme Court by businesses appealing BZA order denying variance request and finding businesses engaged in prohibited retail uses. Ordinance upheld against several constitutional and procedural claims, including claims that (1) amendments on second reading so different from first reading as to require a third reading, (2) impermissible "reverse spot zoning," (3) equal protection violations due to irrational boundaries of overlay district, and alleged absence of City evidence of impact on public safety, (4) due process violations in hearing process and for arbitrary and unreasonable amortization period, (5) taking, and (6) conflict with State criminal law by criminalizing sale of legal products (effect of business license revocation as civil penalty).

OTHER THINGS

Unpublished Opinions/State Court of Appeals

FOIA/Provision on adding items to meeting agenda/Meaning of “agenda”

Holcomb v. City of North Augusta, No. 2023-UP-158 (Ct. App. 2023) (filed 4/19/23) (Per curiam - Thomas, McDonald and Hewitt)

Negligence/Duty of law enforcement to protect/Public duty rule/Factors of voluntary assumption of duty, special relationships, evidence of negligent creation or increase of risk, legal duty arising from special circumstances

Davenport v. Town of Iva, No. 2023-UP-318 (Ct. App. 2023) (filed 9/27/23) (McDonald)

Standing/Constitutional standing/DJ involving beach boundary between public and private property and ownership of all or portions of super-beachfront lots/Elements of standing summarized/Organizational standing/Allegations that public trust doctrine applied to super-beachfront lots stated cause of action

City of Folly Beach v. State of South Carolina, No. 2023-UP-284 (Ct. App. 2023) (filed 8/2/23) (Per curiam – Geathers, Vinson and Verdin)

Tort of “negligent separation” from employment/Does not exist

Edmonds v. City of Columbia, No. 2023-UP-134 (Ct. App. 2023) (filed 4/5/23)
(Per curiam – Williams, Konduros and Vinson)

Zoning/Appeal from BZA/Standard of review/Interpretation of term “monument” in zoning ordinance to exclude a 60-foot flagpole not erroneous/Standards of interpretation

Abdo v. City of Charleston and Board of Zoning Appeals, No. 2023-UP-005 (Ct. App. 2023) (filed 1/4/23) (Per curiam – Williams, Thomas and Lockemy)

State Attorney General Opinions

Business license tax/Analysis of “doing business” within the municipality/Summary of cases and opinions/Isolated, incidental or casual acts/Subject business of Turo, a technology platform for peer-to-peer car sharing, and its “host” vehicle owners

S.C.A.G. Opinion, 2023 WL 4918024 (7/26/23)

FOIA/Executive Session/Stated specific purpose of “employment matter”/Ensuing public session vote to place Superintendent on paid administrative leave pending an investigation of his actions/”Personnel matters” and “discussion of proposed contractual matter” do not comply with § 30-4-70(a)/”Employment matter” also does not apply

S.C.A.G. Opinion, 2023 WL 6804635 (10/9/23)

Noise Ordinance/Enforcement by “noise camera”/Since ordinance frames violation as nuisance and not as traffic offense or speeding offense, camera prohibition in S.C. Code § 56-7-35 not applicable/Any presumption of vehicle owner as violator would require General Assembly authorization due to “statewide uniformity” of criminal laws requirement of Article 8, § 14 of State Constitution

S.C.A.G. Opinion, 2023 WL 3681816 (5/16/23)

Public conduct at public meetings/Regulations as “time, place and manner” restrictions/Detailed discussion of relevant State statutes and FOIA provisions/Also factors of “limited public forums” and no viewpoint discrimination

S.C.A.G. Opinion, 2023 WL 3975070 (6/5/23)