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## Short Takes on Recurrent Topics: Indemnification, E-Records Retention, Civil Infractions, Code Enforcement Liens, Etc.

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### Civil Infractions

- ▶ *Foothills Brewing Concern, Inc. v. City of Greenville*, 660 S.E.2d 264 (2008), held that municipalities could comply with S.C. Const. Art. VIII, Sec. 14 by making violations civil infractions rather than crimes.
- ▶ S.C. Code § 14-25-45 says that municipal courts "shall have no jurisdiction in civil matters."
- ▶ The Kiawah Island municipal court concluded it had no jurisdiction over a COVID-related local ordinance that classified violations as civil infractions.
- ▶ On May 4, 2021, the Circuit Court reversed the municipal court: "[T]he most reasonable and logical reading of the last sentence is that it was only meant to exclude civil actions based on civil law and initiated by a summons and complaint. It was not meant to exclude municipal ordinance violations punishable by a civil fine."



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### Records Retention



- ▶ The Public Records Act (S.C. Code §§ 30-1-10 through -180) makes it a misdemeanor to destroy "public records," using the same definition as is contained in FOIA.
- ▶ The definition of public records clearly includes electronic communications like emails, texts, and social media posts.
- ▶ The S.C. Department of Archives and History publishes retention schedules for public records, which create a safe harbor for local governments.
- ▶ Unfortunately, the schedule for municipal records was last updated in 2003 and does not squarely address electronic records. So, what retention requirements apply?
- ▶ *Ballard v. Newberry County*, 432 S.C. 536 (Ct. App. 2021): Court determined there was no private right of action for violation of Public Records Act



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### Code Enforcement Liens



- ▶ Ideally, for collection of code enforcement liens, the municipality would either collect its own taxes or have a clear agreement with the county.
- ▶ But ...
  - Constitutional officers (in certain counties) have refused to levy fees, charges or lien on behalf of the municipality;
  - If the county elects to do so, but does not collect, can they issue a tax receipt (See S.C. Code § 12-45-430)?
  - Is it cost-effective to pursue?
  - Can you institute enforcement proceedings?



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### Code Enforcement Liens



- ▶ S.C. Code § 5-7-80 provides that a local ordinance "may provide that the cost of [correction of property maintenance code violations] shall become a lien upon the real estate and shall be collectable in the same manner as municipal taxes."
- ▶ S.C. Code § 31-15-30 provides that a local ordinance may provide that "the cost of [remediating dwellings unfit for human habitation] shall be a lien against the real property upon which such cost was incurred and shall be collectable in the same manner as municipal taxes."
- ▶ S.C. Code § 6-9-60 permits a municipality to enact the International Property Maintenance Code (latest edition), as a standard code.
- ▶ For municipalities that do not collect their own taxes, significant questions arise. Several AG opinions have further complicated the question, in particular 2018 WL 1663624 (S.C.A.G. Mar. 27, 2018).



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**Indemnification**

- ▶ The AG "has consistently stated that the State agencies and political subdivisions of the State possess no authority to enter into indemnification agreements." 2016 WL 6781913, at \*2 (S.C.A.G. Nov. 7, 2016).
- ▶ The prohibition clearly applies to municipalities.
- ▶ In 2004, the AG opined that qualifying indemnity "to the extent permitted by law" cannot "be relied upon in an effort to validate an indemnification agreement." 2004 WL 2247469 (S.C.A.G. Sept. 29, 2004).
- ▶ In the modern context, in many critical contracts – for example, software licenses, payment processing services, bond purchase agreements, etc. – the counterparty simply will not negotiate the indemnity clause.



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**Roads & Annexation**

- ▶ **Roads**
  - Can county agree not to accept municipal roads?
  - Can county agree not to fund municipal roads?
  - "Concurrency" debate in Lexington County.
- ▶ **Annexation**
  - Does municipality accept the roads in the event of an annexation?
  - What about S.C. Code § 5-27-120 – municipality (1000+) shall keep in good repair all the streets, ways and bridges within the limits of the municipality and for such purposes, it is vested with the powers of the several counties of the State.

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**Potpourri**

- ▶ Elections – when do municipal council members get sworn in?
- ▶ **Budgeting: what is the authority for a budget amendment?**
  - How is done?
  - When should it be done?
- ▶ **Contracts in excess of tax or appropriation**
  - See S.C. Code § 11-1-40
  - Unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the tax levied or the amount appropriated for that purpose.
- ▶ **Binding the hands of a future council:**
  - What is a ministerial function, and what is a proprietary function?
- ▶ Can municipality implement Bailey Bill (S.C. Code § 5-21-140) against other affected taxing districts without consent? See S.C.A.G Opinion No. January 4, 2017.

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