

**REPORT TO THE FOURTH
JUDICIAL CIRCUIT COURT OF
THE STATE OF
SOUTH CAROLINA
IN RESPONSE TO ORDER
NUMBER
2010-CP-17- 0187**

HISTORY

On January 24, 2011 Circuit Court Judge Paul M. Burch issued Order C/A No.: 2010-CP-17-0187 (See Exhibit 1) appointed an expert witness to examine Dillon County Government for the purpose of addressing and preventing the micromanaging of County Employees by elected officials, specifically Dillon County Council. The Order stems from previous Order 2010-CP-187 dated June 1, 2010 (See Exhibit 2) involving the micromanagement of employees by Dillon County Council members.

It should be noted the June 1, 2010 Order specially addresses violations of an Order issued pertaining to Case No. : 91-CP-17-274 which found Dillon County Council Members instructing employees to provide various types of work on private property using County equipment, County materials and County employees. (See Exhibit 3)

Further it was alleged through an Affidavit by Chief Magistrate Mackie Hayes that Councilmember Macio Williamson, who at the time was serving as the Council's chairman, violated Judge Burch's Order of June 1, 2010 by demanding that a vacant position in Mr. Hayes court be filled by a minority, specifically an African-American. A hearing was held on January 13, 2011 which precipitated Order 2010-CP-17-0187.

As specified by the Order issued January 24, 2011, a review was begun on February 1, 2011 to "address and prevent the micromanaging of County employees by elected officials." The review by the expert witness was concluded April 5, 2011 and the findings and recommendations are included in this report.

EXPERT WITNESS'S BACKGROUND

The expert witness assigned by Judge Burch, Roland H. Windham, Jr. began his career in local government service in 1978 when he was appointed the first Town Administrator for Kershaw, South Carolina. He was then appointed as a circuit administrator for the Towns of Edgefield, Johnston, Saluda, McCormick and Trenton, South Carolina.

After serving these towns for four years, Mr. Windham then accepted a position as Assistant County Administrator in Spartanburg, South Carolina where he served for 7 years before being appointed County Administrator in 1990. He served as County Administrator for nine years before being appointed County Administrator for Charleston County, South Carolina.

Mr. Windham served Charleston County for 8 years as County Administrator until his retirement from local government in South Carolina in 2007.

After his retirement from local government the expert witness accepted a position with the International City/County Managers Association and the Department of State of the United States of America as a specialist in Municipal Affairs for a Provincial Reconstruction team in Maysan Province, Iraq where he served from 2007 through 2008. This position encompassed helping urban areas within Maysan Province to restore or start providing local government services to citizens. He then accepted a position in humanitarian relief efforts in Basra, Iraq for six months ending in July 2009.

The expert witness has also served as a consultant to the Municipal Association of South Carolina and served two municipalities on an interim basis along with providing consulting services to two counties in South Carolina.

The expert witness has served on numerous state and local boards and panels and is a recipient of the Order of the Palmetto, the highest civilian honor given to a citizen of the state for their contributions to the betterment of South Carolina.

ALLEGATIONS AND FINDINGS

Over the course of eight weeks interviews were conducted with approximately forty persons including employees and citizens of Dillon County. Conversations were also held with law enforcement agencies and inquiries were made with the Fourth Circuit Solicitors office. These interviews and conversations were all part of the Order of the Circuit Court Judge to determine and “address and prevent the micromanaging of County employees by elected officials”. The elected officials in the Order were determined to be Dillon County Council as other elected county officials have, by South Carolina Statutory law 4-9-660, the authority to hire employees at their discretion. For the purposes of inquiry no inquiries were made of the Sheriff’s, Clerk of Court, Probate Judge, Coroner, Auditor and Treasurer Offices. Appointed officials such as the Magistrates, Veteran Affairs Officer and Registration Director and Master in Equity were also not examined as they are appointees of the Legislative Delegation and have authority over their employees.

The scope of the review immediately took on a wider spectrum than outlined by the Court Order as allegations by interested parties exceeded those of the micromanaging of County Employees as outlined in the order. The larger view of the allegations was necessary to make an informed finding as to whether Dillon County Council was in violation of South Carolina State Statute 4-9-660 which outline the duties and authority of County Councils under the Council-Administrator form of Government. Due to the numerous interviews with both employees and citizens it became readily apparent there were other possible violations of State Law by Dillon County Council which needed to be examined. Since these possible allegations of impropriety were brought to the attention of expert witness, it was felt they had to be examined and could not be overlooked. By ignoring the accusations the review would not be complete as ignoring criminal accusations would have made this report suspect and more importantly, the expert witness culpable as he was made aware of these possible wrongdoings.

What follows is a complete list, to the best of the expert witness's knowledge, of all allegations brought before him and his findings on each. After the allegations are listed, a section on recommendations can be found to address each of the reported allegations whether they have been proven or not. It became the intent of this report not only to address what is outlined in Judge Burch's Order but to also make recommendations on what needs to be carried out to prevent the disobedience of the Order in the future.

Please note that in the following allegations Dillon County Council refers to all Dillon County members with the exception of Joe Johnson. The period of the investigation covered a term in which Mr. James "Pee Wee" Webster served on the Council. Mr. Webster was replaced by Mr. Johnson in January of 2011.

ALLEGATION 1

County equipment and personnel performing work on private property

Without question this allegation has proven to be true. Through interviews with citizens and employees along with being presented indisputable pictorial evidence this practice was not only common but blatant and pervasive. The amount of work that was performed by County personnel and equipment on private property was dramatic. This includes:

- a. Scraping of private drives
- b. Use of county equipment to transport dirt and deposit on private property
- c. Cleaning of private property by County employees and inmates under the County's supervision. I.e. cutting grass and picking up litter.

It was reported that these services were provided in exchange for votes but this allegation could not be proven. However, it would be a reasonable opinion to form that these services were not provided without the expectation of some sort of quid pro quo. In order to prove this reasonable opinion, an affidavit would be required from either a citizen who received the service stating the council member was doing this in exchange of a vote or an affidavit from a council member stating he requested the service be provided knowing it was being done in exchange of the property owner's vote. No affidavits could be obtained so the allegation of vote buying could not be proven.

It was reported that 136 loads of dirt was hauled and deposited on one citizen's property. The exact number could not be verified but it is not out of the realm of possibility that this could have occurred due to the pervasiveness of dirt being delivered to private property.

The community good is certainly not being served by work on private property. Taxes and other revenue collected by the County are public monies and explicitly prohibited from being used on private property. Using tax money paid by the

general public to improve certain private properties is tantamount to unlawfully taking from the taxpayers.

However, based on the interviews and evidence presented the use of public property to improve private property by County Council members instruction was in total disregard of Circuit Court Judge Paul M. Burch's Order of July 8, 1992 filed in the Dillon Clerk of Court's office on August 12, 1992 expressly prohibiting this type of work.

ALLEGATION 2

Council members using inmates from Inmate work crew to do work on private property.

It was alleged by citizens and verified by County Employees that Council members were instructing the Supervisor of the County Inmate work crew to have inmates do work on private property. Again, this is a direct violation of not only Council members giving direct orders to an employee but also using public assets on private property.

This problem was most noted in the New Town section of Dillon. In a somewhat ironic twist to the investigation, two citizens called the expert witness to ask as why the inmate clean-up had stopped on their property. They noted clean-up on their properties had not happened in several months. After interviews with employees of the County it was noted the direct contact from Council members had ceased since Judge Burch's Order from June 1, 2010. However, based on conversations with citizens and employees, it was common practice for Council members to instruct the Supervisor of Inmates to do work on private property prior to the Judges' Order.

ALLEGATION 3

Improper use of One Percent Sales and Use Tax Monies as approved by referendum of November 5, 2002 (SEE EXHIBIT 4)

Allegations of improper use of monies generated from the one percent sales tax which was passed on November 5, 2002 were made to the expert witness. The ordinance to levy and impose the tax was examined and found to be in accordance with all State Laws as they pertain to levying the tax if approved by the voters.

However, the amounts spent as of March 31, 2011 for the projects as outlined in the ordinance vary greatly from the original ordinance. For example, the total cost of the construction of the four fire stations as outlined was to have been \$250,000. The total spent on the stations as of March 31, 2011 was \$949,784. One could be lead to believe that the ordinance was not adhered to because of the disproportionate amounts spent on some of the projects as compared to the listed amount in the ordinance. In Section 5.2 of the ordinance the "CONDITIONS AND RESTRICTIONS ON THE USE OF THE SALES AND USE TAX REVENUE COLLECTED UNDER THE CAPITAL PROJECT SALES TAX" stipulates the "net proceeds of the capital project sales and use tax, if approved, must be expended for the purposes stated in the priority listed above. The expenditure of revenues from the capital project sales and use tax, if approved, shall be subject to acquisition of right-of-way, design and engineering considerations, funding of projects and other sources, bids in excess of project estimates, qualifications of bidders, cost overruns, financing costs, exhaustion or insufficiency of net sales and use tax revenues to complete the projects in the order and priority stated above and other unforeseen circumstances and conditions." This wording in the ordinance does and did give the County Council the latitude to shift funding in the projects as long as it is done within the project priority list.

The allegation of a bull dozer and other non pertinent equipment being purchased was also made. I do believe this would not be permitted under the confines of the ordinance if the equipment was used for non sales and use tax purposes. Without examining the complete breakdown of all expenditures, which was time prohibitive, it was impossible to tell if this allegation was true. It should be noted the administrator and council members have great latitude in determining what encompasses a project and what expenditures are necessary. For example, if the Frontage Roads were constructed by the county and it was determined a bull dozer was necessary for the timely completion of the project; I do believe it would be considered a legitimate expense. At the same time, if the construction was contracted and the bull dozer was used for other purposes then it would not be a proper expenditure.

In Section 1.3.B of the ordinance it stipulates that the total amount to be collected from the tax “shall end upon the earlier of the collection of the sum of \$11,777,000 or a period of seven (7) years from the date of imposition. To date, according to the spread sheet provided, an amount of \$12,609,949 has been collected for an overage of \$832,949.

South Carolina State Law, allows for the amount collected in excess of the ordinance be forwarded to the County’s General Fund. It should be noted the South Carolina Department of Revenue collects and disperses receipted revenues on a quarterly basis. It is an unrealistic expectation that the collection can be stopped at the precise sum stipulated in the ordinance unless it is the seven year collection ceiling imposed by the ordinance.

ALLEGATION 4

Interference of Council Members with County Employees and participating in the day-to-day operations of County Government

It has been outlined in allegations one and two and determined to be valid Dillon Council members have interfered in the day-to-day operations . The genesis of this investigation was the interference of then Council Chairman Macio Williamson into the hiring procedure for a position in the Magistrates Court. While this one aspect of Council interference has been settled, a mechanism needs to be put into place in regard to the hiring of county employees who worked under the administrator as outlined in the South Carolina Home Rule Act under the Council-Administrator form of government.

Purportedly, one Council member stated in an open session of county council that he was not subject to State Laws and did not have to abide by them. I have researched council minutes and not found this specific remark but if it was made it should be understood by council members they are subject to any and all laws whether they be federal, state, or local. No person is above the law whether they serve on a city or county council, State General Assembly or in Federal Congress. No man, woman or child can be held above another. So it should be understood that all Dillon County Council members have to abide by the rules of the Home Rule Act. Micromanaging County employees is a violation of that Act and therefore against the law.

What is most disturbing about this allegation is that certain council members have instructed County employees to disregard certain items that are outlined by law. Telling employees to ignore the law is a serious offense and rises to the level of misconduct in office.

If it is determined that this allegation should be pursued, then information gathered can be turned over to the appropriate law enforcement agency, the Fourth Circuit Solicitors' office or the State Attorney General's office.

ALLEGATION 5

Use of County Equipment to provide goods and services to Council member(s)

The most prevalent complaint regarding this particular allegation was of the Fire Department (Station 1) delivering ice to a Council person's place of business. The complaint was substantiated and verified by pictures and the admission of the employee of the fire department that this had been done. It should be stated here that the employee did this act on his own volition and the Council member did not request the service according to the employee. The service was stopped when the South Carolina State Law Enforcement Division began to investigate the Fire Department on another matter and told the employee it was illegal to use County equipment in this manner.

The employee continues the practice of delivering ice today but uses his personal vehicle instead of County equipment. The ice is obtained at a private business as the ice machine at the Fire Department has been inoperable for some time. The employee has and had a valid reason for his actions.

The only fault in this action is both the Council member and the County Employee should have been well aware that using County equipment to make this transaction was illegal and it should not have happened at all. The expert witness is satisfied the practice has stopped and will not commence again in the future by this particular employee.

ALLEGATION 6

Falsification of Fire Department Records

The allegation of falsification of Fire Department Records, particularly false signing of records pertaining to response to fire calls and duplicate response records, was brought to the expert witness's attention. It was learned that the South Carolina State Law Enforcement Division had conducted an investigation into this matter. Conversations were held with SLED Major Roger Heaton to determine the status of the investigation. SLED indicated they had turned over all the records to the South Carolina State Attorney General's office.

A call was placed to the AG's office and the investigator talked with a Mr. Curtis Pauling who is handling the Dillon Fire Department case. Mr. Pauling stated he had not reached a decision as to whether or not he was going to prosecute the case.

Because of the records being in possession of the AG's office it was impossible to make a determination in regard to the allegation. The case will be decided by the Attorney General's office.

It should be noted at this point that the expert witness, who had been made aware of cases being sent to the Fourth Circuit Solicitor's office, contacted the office in regard to any past records which they may have had regarding wrong doing by Dillon County Government. The investigator was informed in writing by the Solicitor that no case files regarding Dillon County could be found.

ALLEGATION 7

Improper use of Public Funds

County Council has wide discretion in determining how funds should be spent and whether or not the spending of these funds is for the public good or public purpose. Each Dillon County Council member is allotted \$1000.00 in the Recreation Fund to spend at their own discretion. In examining how some of these funds have been spent over the past several years it is hard to understand how the allocation of some of these funds could be constituted as being for the public good or for a public purpose. The South Carolina Constitution, Article X, Section 5 states:

SECTION 5. No tax without consent; taxes to be levied in pursuance of law.

No tax, subsidy or charge shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied. (1976 (59) 2217; 1977 (60) 90.)

The use of the recreation funds is ambiguous at best. Examples of how some of the funds have been dispersed are as follows:

1. Funds for contestants to enter beauty pageants.
2. Subscription to the **South Carolina High School League** newsletter
3. Advertisements in high school yearbooks
4. Various donations to churches, and charities
5. Donations for student trips

There are many more examples which could be listed but for the purpose of this report the list will be abbreviated.

However, there were some expenditures from the recreation fund which were entirely appropriate. Items such as buying soft balls for a recreation league and

monies to support the Town of Latta recreation program certainly fit the line item labeled recreation fund.

ALLEGATION 8

Violation of Freedom of Information Act

Records obtained indicate that a dinner for all Council members and other Dillon County staff was hosted by the County Administrator at the South Carolina Association of Counties meeting held at Hilton Head, South Carolina from July 31, 2007 through August 5, 2007. It was determined that a majority of the Council members attended this meeting which was alleged would constitute a violation of the South Carolina Freedom of Information Act. This is incorrect. An Attorney General's opinion regarding the Freedom of Information Act disclosure states the following:

One distinction between a meeting under FOIA and a social gathering is whether the members are gathered for the purpose of discussing public business and taking official action on matters within their supervision, control, jurisdiction, or advisory power. Thus, social gatherings are not meetings under FOIA. The fact that a quorum is present at a social gathering does not, without more, mean the gathering is a meeting under FOIA. However, §30-4-70(b) provides that no "chance meeting" or "social gathering" may be used to circumvent the Act.

What is more concerning than the possible violation of FOIA in this instance is it appears that some County Council members and the County Administrator collected per diem for the same day in which the County dinner was held at a cost of \$1,281.58. This is an example of "double dipping" or claiming expenses for the same meal twice. The per diem of \$125.00 a day would also seem to be higher than what most governmental agencies allow for a daily meal allowance. For example, the current Federal Government per diem rate for Hilton Head is \$61 per day. Dillon is claiming over twice that amount. The state of South Carolina per diem for Hilton Head is \$56.

It was also noted that the hotel rates for various council members and staff varied widely for a five night stay. The low rate for this period was \$757.43 with the high being \$1,719.11. The federal and state room rate allowance for Hilton Head for this time of year is \$127 a night or \$635 for a five night stay. However, there is an

argument to be made that the conference hotel rate is more than both state and federal per diem allow.

Please note that the County Council has full authority under the Home Rule Act to establish per diem rates as they see fit. The specific language is:

SECTION 4-9-175. Per diem, travel, and other expenses authorized for travel by board or commission members outside county.

The governing body of a county may pay per diem, travel, or any other expenses, in an amount it considers necessary, to any member of a county board or commission when the member travels outside of the county and incurs expenses relating to his duties while serving on the board.

It should be noted that Council member Harold Moody did not attend the Association meeting from which these records were examined but was attended by past council member James "Pee Wee" Webster.

ALLEGATION 9

Improper pay raises to County Council

Based on information requested of and provided by the County Administrator's office regarding pay raises given to County Council members it appears a violation of South Carolina law Section 4-9-100 occurred on more than one occasion, specifically during certain years through 2003 through 2010.

From the information presented it appears the County Council has awarded themselves or their successor's raises that have taken them from \$8,851 in annual compensation in 2002 to \$14,357 in 2010 as reported by the South Carolina Association of Counties Annual Wage and Salary Study. This represents a 62% increase over an 8 year period. The question is whether or not these raises, 7 total, were put in place in accordance with South Carolina state law which states:

SECTION 4-9-100. Council members shall not hold other offices; salaries and expenses of members.

No member of council, including supervisors, shall hold any other office of honor or profit in government, except military commissions and commissions as notaries public, during his elected term. After adoption of a form of government as provided for in this chapter, council shall by ordinance prescribe the salary and compensation for its members. After the initial determination of salary, council may by ordinance adjust the salary but the ordinance changing the salary is not effective until the date of commencement of terms of at least two members of council elected at the next general election following the enactment of the ordinance affecting the salary changes at which time it will become effective for all members. A chairman of a county council who is assigned additional administrative duties may receive additional compensation as the council may provide. The additional compensation becomes effective with the passage of the ordinance increasing the compensation of the chairman. Members may also be reimbursed for actual expenses incurred in the conduct of their official duties. The restriction on salary changes does not apply to supervisors under the council-supervisor form of government whose salaries may be increased during their terms of office but supervisors shall not vote on the question when it is considered by council.

It has been reported that Council members have incorporated salary increases when across the board raises have been given to all employees and based on information provided this appears to be the case. Council members cannot be treated as ordinary employees in relation to pay raises. The members raises have to be in accordance with Section 4-9-100 therefore it appears the statute has been violated.

ALLEGATION 10

Alleged Discrimination in the Delivery of County Services

A concerned group of citizens known as Citizens for a Better Community alleged that the county discriminated in the delivery of County Services. The one instance named was the playground known as Wood Park on Marion Street/East Calhoun Street in the Newtown section of Dillon which is a predominantly minority section of Town.

A grant was obtained to refurbish this park in late 2009 purportedly a member of the South Carolina General Assembly. (See Exhibit 7) When examining this park in regard to grant compliance it was noted that very minimal repairs had been made. It was apparent the sliding boards had been replaced and a few wood components. Other than this the park was in deplorable condition.

Numerous broken glass bottles, nails protruding from play structures, broken gates and other severe safety hazards were noted. The park is a very unsafe place for children yet no sign stating the park was closed or other barriers barring access were in place. This park poses a huge liability for Dillon County.

The County's Risk Manager conducted a safety inspection of the park somewhere around May, 2009 and found numerous problems associated with the park.

Other recreation areas that were supposedly built and maintained by the County appeared to be in good condition and did not pose near the hazards of Wood Park hence the allegations of discrimination in providing services.

At the Dillon County Safety Committee on July 15, 2009, member Robert Abson, Jr. noted a letter was sent to the Administrator regarding the safety issue at the park according to minutes from the meeting.

In examining further records it was determined that the grant for repairs expires May 31, 2011. It appears if action is not taken in the immediate future, the monies available for the repair of this park will be lost unless an extension is obtained.

One disturbing aspect of this issue is a letter to the editor of the **Dillon Herald** from Ms. Grace Currie where she stated she was told by her Council member that the monies “would be used at discretion”. The money is stipulated for Park refurbishment as outlined in the grant award and cannot be used for discretionary purposes . Also, no council member can have exclusive say on how this money is going to be spent. It is stipulated in the grant how the money is to be used. Even if it was not stated in the grant the monies are public monies and have to be voted on how they will be spent by the majority of Council.

For this park to continue to operate in its current condition is a clear neglect of responsibility by Dillon County. There is no question that if someone is hurt at the park and legal action is taken, the County will be held liable as it has been well documented the park is unsafe.

Using Wood Park as an example, it is perfectly understandable why some citizens believe they are receiving disproportionate services from the County

ALLEGATION 11

Allegation of Voter Fraud During last year's Dillon Probate Judge Election

Major Roger Heaton of the South Carolina Law Enforcement Division informed the expert witness this is an open and active case for his department. All records related to this case are now in the possession of SLED. No timetable was given for when a decision would be made in regard to moving the case forward or determining that sufficient evidence is not present to warrant indictments.

ALLEGATION 12

Purported Illegal Gambling Activities by County Employee(s)

It was reported to the expert witness that one or more county employees were involved in an illegal gambling business and doing so during working hours.

Of course this allegation rises to the level of a criminal offense(s). The expert witness did not have the means to examine the charges so no further action was taken.

It is the expert witnesses' opinion that the claim was not frivolous and should be turned over to law enforcement for further investigation. Information presented to the expert witness will be turned over to the proper law enforcement officials if it is determined this allegation should be pursued further.

ALLEGATION 13

Irregularities in the Town of Latta Operations

Based on the information received by the expert witness it appears there may be some irregularities in the operation of the Town of Latta operations. This issue falls out of the purview of the Order of the examination of Dillon County Council so it was not pursued in detail.

Information gathered by the expert witness can be turned over to the appropriate law enforcement division to determine if further investigation is warranted. It is known that in the not too distant past an investigation was conducted into the Town of Latta operations and employee(s) were found guilty of misconduct in office. Whether or not these new allegations rise to the level of justification of a new investigation would need to be determined by the proper law enforcement agency or solicitor's office.

ALLEGATION 14

Misuse of County Gasoline and Facilities at the Roads and Bridges Compound

Allegations of employees using the county's gasoline pumps to fuel personally owned vehicles were not able to be substantiated. Also, it was alleged that county employees used the facilities to do work on their personal vehicles. This could not be substantiated as well.

These two problems are unfortunately fairly common in many governmental agencies. There are safeguards which can be put in place to address these issues and are outlined in the "Recommendations" section.

RECOMMENDATIONS

The following pages are recommendations for corrective action for all the allegations listed in the report whether they have been substantiated or not. The report would not be complete without identifying problems and not offering possible corrective action.

RECOMMENDATIONS FOR ALLEGATION 1

County Equipment and Personnel Performing Work on Private Property

It is without question that county employees have been instructed to do work on private property using the county's labor force and equipment. This is in direct violation of the laws of South Carolina and also in direct violation of Judge Paul M. Burch's Order of both 1992 and 2010. There are two possible ways to remedy the situation

1. The Judge can either find the Council members who have participated in these activities either in contempt of his Order(s) or have all of the evidence generated by the expert witness turned over to the Forth Circuit Solicitor for possible prosecution. It should be noted that all Council members along with past member James "Pee Wee" Webster and with the exception of newly elected Council member Joe Johnson have been implicated in being involved with this particular allegation.
2. The citizens of Dillon County can find other candidates to run against the current incumbents and replace them at the ballot box if they are not satisfied with their current representation. The old adage of "You get the government you deserve", in my opinion, does not apply to the citizens of Dillon County.

Of all the allegations heard, this one was the most common and most concerning. If it is proven true, it would seem decisive action to eliminate what is occurring needs to be forthcoming.

It should be noted the County Administrator and County Attorney have drafted a "Dillon County Road Acceptance and Maintenance Ordinance" which is currently being considered by Council. (See Exhibit 5). This policy should help in determining the distinction between private and public roads.

RECOMMENDATIONS FOR ALLEGATION 2

Council members using inmates from the Inmate Work Force to perform work on private property

The allegation of Council member(s) instructing the inmate work crew to do work on private property falls in a category closely aligned with allegation one. Again, Council members are using a public asset to benefit private concerns. Since this is an unlawful act the corrective actions should be the same as recommended in allegation 1.

RECOMMENDATIONS FOR ALLEGATION 3

Improper use of Sales and Use Tax Monies

The alleged improper use of One Percent Sales and Use Tax Monies could not be substantiated. If a determination is made that improper use of the monies was made, Council has violated their own ordinance it would again be up to a court of law to determine what the penalties should be.

As stated, it appears the Council did follow the guidelines of the ordinance from the standpoint of completing the projects in the priority listed in the ordinance which was established ordering the referendum. However, it is understood how the general public perceives there has been improper use of these monies. It does appear there was a lack of due diligence as to the feasibility of these projects before the ordinance was put to a referendum question.

RECOMMENDATIONS FOR ALLEGATION 4

Interference of Council members in the day-to-day operations of County Government

The involvement of Council members in the day-to-day operations of Dillon County government is probably the most significant deterrent to the successful operation of the Council-Administrator form of Government. Not only is it unlawful, the interference is costing tax payers dollars that are unnecessarily spent.

As stated previously, former Chairman and current Council member, Macio Williamson became involved in the hiring process of a vacant position in the Chief Magistrates office. This, of course, is out of the purview of duties of the Council member simply in the fact that Council members are not to get involved in the hiring process of any office. Mr. Williamson's claim was that the position should be filled by a minority.

To alleviate this problem it is recommended that County Council adopt an Affirmative Action plan. The plan will give the Administrator guidance on what the make-up of personnel should be in each office. It will also give department heads an idea of the type of candidate he or she should be looking for in filling a position.

Many people have the wrong perception of what Affirmative Action is and what it helps accomplish. Affirmative action is an effort to develop a systematic approach to eliminate any current and lingering effects of prior discrimination regardless of race, sex, or ethnic background. It is a conscious effort to achieve equal employment opportunity for all race/sex groups in a workforce. Affirmative Action has been upheld by the United States Supreme Court as a permissible method to reach the goal of fair employment and is not a quota system. Affirmative Action is voluntary and is not required by any law.

An Affirmative Action Plan sets forth employment goals for minorities and women whose representation in the workforce is less than would be reasonably expected

by availability estimates of the qualified labor pool. The qualified labor pool is important in an Affirmative Action plan as it determines how many eligible employees there are from all races that are qualified for a specific job. The plan also names the positive affirmative steps the employer will take to recruit and to employ qualified minorities and women. If followed, the Affirmative Action Plan becomes the guide for a program that should result in fair employment for all race/sex groups, including white males.

The goals component of the plan is not designed to be, nor should be interpreted to be, permitting unlawful quotas with respect to persons of any race or sex. Rather, the goals are used to target and measure the effectiveness of affirmative action efforts to eliminate and prevent discrimination.

It is recommended that an Affirmative Action Plan be approved by the South Carolina Human Affairs Commission to ensure an equitable plan that meets the Human Affairs Commission standards for an acceptable planning document.

An Affirmative Action Plan and program will not immunize Dillon County against charges or discrimination. Thus, the County may have the very best written Affirmative Action Plan but still be susceptible to charges of discrimination. But most importantly, the plan will give the Administrator and other County officials a document adopted as County policy to guide them in hiring practices. And it will help eliminate instances such as the one between Council member Williamson and the Chief Magistrate.

To also help prevent further intrusion by Council members in the day-to-day operation of Dillon County Government it is also recommended a section on disciplinary actions be added to the county personnel policies and procedures. Included in these actions should be an action which states the following:

Any Dillon County employee who receives job directions directly from any member of the Dillon County Council shall report the violation of the South Carolina Home Rule Act under the Council/Administrator form of government directly to his or her supervisor. The communication can be oral or written. Failure to do so shall result in disciplinary action against the employee which can

result in an oral or written reprimand, suspension, or termination as determined by the County Administrator.

The County Administrator has drafted a written policy to this affect (see Exhibit 6) which could be adopted as soon as possible and later incorporated in a set of policies and procedures which deal with disciplinary actions that would be outlined in the Dillon County Personnel Policies and Procedures manual.

An issue the expert witness observed that lends to a perception problem is that some Dillon County employees frequent a place of business operated by a member of the Dillon County Council. While in of itself, the patronizing of the establishment is perfectly legal. However, it has led many to speculate that instructions are being given to employees at the establishment to do certain work. This allegation remains unsubstantiated. However, perception in many people's eyes is reality. It would not be prudent to instruct employees to not patronize the establishment as it would have the improper effect of hurting the Council members business.

It is imperative that Dillon County Council members adhere to the South Carolina Home Rule Act specifically as it relates to interacting with Dillon County employees as outlined in Section 4-6-660 which specifically states:

Except for the purposes of inquiries and investigations, the council shall deal with county officers and employees who are subject to the direction and supervision of the county administrator solely through the administrator, and neither the council nor its members shall give orders or instructions to any such officers or employees..

Anything less diminishes the faith of the public in the operations of Dillon County Government.

RECOMMENDATIONS FOR ALLEGATION 5

Use of County Equipment to Provide Goods and Services to Council member(s)

As stated in the allegation, it is clear that an employee of the Dillon County Fire Department was delivering ice with County equipment to the business establishment of a Dillon County Council. The fault in this action is both the Council member and the County Employee should have been well aware that using County equipment to make this transaction was illegal. The expert witness is satisfied the practice has stopped and will not commence again in the future.

It should be reiterated the Council member did not initiate this action. His fault is in accepting and being complicit in accepting an item that would benefit his business by means of county equipment. The employee has admitted his error and the expert witness is convinced the employee will not commit this action again.

RECOMMENDATIONS FOR ALLEGATION 6

Falsification of Fire Department Records

This allegation is currently being investigated by the State Attorney General's office with a decision on prosecution pending.

RECOMMENDATIONS FOR ALLEGATION 7

Improper Use of Public Funds

While the improper use of public funds was widely alleged, the expert witness only examined the disbursement of funds in the recreation account. It does appear that some of the uses of these monies could be considered suspect and not for the public good. However, council has wide discretion how public funds are spent. Giving each individual council member an allowance in discretionary funds may not be the best way to disperse public monies although all Dillon County Council members must vote on the distribution of these recreation funds.

It is recommended that Council members abandon the \$1000 per council member allowance and put a single line item in each budget to cover recreation expenses. How much would be needed for this particular line item would be determined through the budget process. Individuals or groups requesting an appropriation would be allowed to make a request through the Administrator to be included in the budget and he then could make a determination as to whether or not the item would be in his recommended budget to Council. If he did not include a particular item that was requested, the applicant could then appeal to Council during the budget process. Council, of course, has the final determination as to what is and what is not included in the budget and they can override any decision in the Administrator's recommended budget.

In these tight economic times the Administrator and Council will have to be making some very hard decisions on how public funds are being spent. Being good stewards of the taxpayer's dollar is essential. Unfortunately, it appears there is a currently a lack of confidence in a segment of the Dillon County population in how some of these monies are being distributed as the recreation discretionary funds are referred to by some as "slush funds". Using the above process will help instill public confidence as to how their monies are being used.

RECOMMENDATIONS FOR ALLEGATION 8

Violation of Freedom of Information Act

Transparency is a common term that is currently used in advocating for openness in government. South Carolina first passed the Freedom of Information Act which provided for openness in government in 1976. It has been updated by the General Assembly in 1987 and again in 1998, 2000, and 2003. Also known as "The Sunshine Law" the FOIA provides for governmental bodies to abide by certain laws as outlined in Title 30 Section 4 of the South Carolina code of laws as they pertain to providing the public's business be performed in a manner that the public is sufficiently notified of a public meeting and the meeting is conducted in conformance with the law.

Allegations were made against Dillon County Council that they violated the State's Freedom of Information Act in a dinner setting in Hilton Head at the South Carolina Association of Counties annual meeting. As outlined in the allegation, it is of the expert's witness opinion that the FOIA was not violated at this particular time. However, in the future it is recommended that if there is any doubt that the FOIA may be violated; the Council should follow this guideline:

When in doubt, disclose requested information.

When in doubt, post the time, place, and purpose of the meeting.

When in doubt, open the meeting to the public.

When in doubt, release the document.

A social gathering cannot be used to circumvent the Act but can lead to a more productive council. However, while proper notification to the press is not required for a social gathering of a majority of council members, it is a good practice to inform them that the gathering will occur. Most press corps members will recognize the meeting for what it is and abide by the social atmosphere. Keeping good relations with the press is important for the council. Journalists are taught to be fair and will be so if the Council reciprocates. Keeping a good repoire with the press can and will be very advantageous to the Council in helping keep the public informed of what their representatives are doing to better the community.

While looking into this allegation it was discovered that the per diem County Council was granting itself was out of line with what Federal and State employees receive. It is strongly recommended that Council pass a per diem policy related to all Dillon County employees that is somewhere in line with what other entities in South Carolina charge.

The Council should also pass a reimbursement policy for hotel stays. As noted, there was a wide reimbursement for stays in Hilton Head for the South Carolina of Counties annual meeting. The reimbursement policy should be for no more than what the host hotel charges. Any extra costs for staying in a condominium or other accommodation charging more than the host hotel should be borne by the Council member.

The biggest concern of this particular meeting was that Council members received the meal per diem on the same day a meal was hosted for and paid by the County Administrator. A reimbursement policy should be initiated that only allows for reimbursement for meals that were not provided for by either another party or was included in the price of registration for the meeting.

It appears some council members were also reimbursed for meals on days that either a lunch was provided through the meeting registration costs and/or through banquet tickets which came with the registration. The county is in effect paying for the meals twice and a per diem policy should also address this matter.

RECOMMENDATIONS FOR ALLEGATION 9

Improper Pay Raises for County Council Members

Adhere to Section 4-9-100 of the South Carolina Code of Laws when authorizing pay increases for County Council members.

RECOMMENDATIONS FOR ALLEGATION 10

Discrimination in the Delivery of County Services

Wood Park needs to be closed immediately and rehabilitated as soon as possible. To leave the Park available for use is opening Dillon County to a possible suit if a child or adult is injured while utilizing the park facilities.

If the grant monies are no longer available or expire on May 30, 2011 then Dillon County needs to explore alternative funding necessary for the repairs. Perhaps Council members could use their discretionary recreation funds if no other monies can be identified.

RECOMMENDATION FOR ALLEGATION 11

Voter Fraud

Per written correspondence from the South Carolina Law Enforcement Division the allegations of Voter Fraud during last year's Probate Judge Election are still being investigated and a decision is pending as to whether there is enough evidence for prosecution

RECOMMENDATIONS FOR ALLEGATION 12

Purported Illegal Gambling Activities by County Employee(s)

An allegation of illegal gambling activity involving county employee(s) was made. This rises to a level of a criminal offense and any and all information will be given to a stipulated Law Enforcement agency if it is determined that enough information exists to move forward.

RECOMMENDATIONS FOR ALLEGATION 13

Irregularities in the Town of Latta Operations

Based on the information received by the expert witness, it appears there may be some irregularities in the operation of the Town of Latta operations. This issue falls out of the purview of the Order of the investigation of Dillon County Council so it was not pursued in detail. Any and all information regarding this allegation will be turned over to the appropriate law enforcement agency if it is determined the allegation should be pursued.

RECOMMENDATIONS FOR ALLEGATION 14

Misuse of County Gasoline and Facilities at the Roads and Bridges Compound

There are currently several refueling and video systems that require the input of enough information it makes the illegal use of refueling unauthorized vehicles difficult. With the high cost of fuel it is recommended the county look into modern implementing refueling stations that track all gasoline dispersed. While the installation of these systems can be fairly expensive, they can often be paid for in a short period of time, depending on the level of unauthorized use before installation.

Likewise, a system tracking inventory and use of parts for county equipment can be put into place to help prevent use of these parts on unauthorized vehicles. A regular inventory check by a designated employee of the County Administrator can also help with missing parts and equipment.

The Administrator has indicated he is in the process of implementing a fixed assets system which will help make hand tools and small equipment more accountable. This should dramatically reduce the number of thefts of small equipment such as weed eaters and lawn mowers that have been reported missing.

SUMMARY

Dillon County has a reputation. It is one that is deep seated. Whether or not it is fully deserved is a matter of debate. But one thing is clear; the actions of County Council over the past several years have not helped with giving the County a stellar name when it comes to good government. While many of the actions and intentions of the Council have been admirable, their desire to micromanage and have employees perform duties with questionable legality diminish their credibility in the public's eye.

To understand where County Council is, it is necessary to see where they have been. Prior to the Home Rule Act passed in 1975 Dillon County was governed by a Board of Commissioners who represented the general populace areas of certain areas of the County. It was a crude form of single member districts. Each Commissioner's focus was then his area of representation. Commissioners also had the authority to run the County on a daily basis.

With the advent of Home Rule the County was forced to change the way it was governed. When the County chose the Council/Administrator form of government, not much changed from the old Commissioner form of government. Under the new Council/Administrator form of government, the County Council was to establish the policies on how the County was to operate with the Administrator being responsible for the day-to-day operations. As stated previously, prior to Home Rule, Council basically ran the day-to-day operations.

It appears that it has been hard for Council to let go of the past. Vestiges of the old Commissioner form of government still can be found with individual Council members still wanting to be able to instruct County employees on what to do and how they should be doing their jobs. It appears from statements and pictures some of the instructions given to employees have been to do illegal work such as working on private property. This was expressly outlined in Circuit Court Judge Paul M. Burch's Order of 1992 telling the Council members it was in violation of the law to circumvent the Home Rule Act.

It does not appear the interference with employees or working on private property diminished much after the 1992 Order prompting Judge Burch to Issue another Order in 2010 along the same lines. However, it must be said that it appears most of the interference with employees and work on private property has diminished greatly after the 2010 Order was issued. But there remain isolated reports of Council involvement even after the 2010 Order.

In order for Dillon to progress, County Council must begin to restore the public's faith which can only be accomplished through following the guidelines of the law and principals the South Carolina Home Rule Act. By doing so, it will also help the Administrator in carrying out the day-to-day operations of the county but more importantly let employees carry out their duties in the manner instructed by their direct supervisors. If this occurs, employee morale will greatly increase which will, in turn, lead to better productivity and better use of the public's funds. The Dillon County Government workforce seems to be capable and desirous of providing good local government services. The employees deserve to be able to do their jobs without worrying about Council interference and what the repercussions will be if they don't follow a Council member's orders and directives.

In the short time Dillon County government was observed and with talking to local citizens; it would appear that the County suffers from many more problems which were out of the scope of the examination as outlined by Judge Burch's Order. The appointment instead of election of the school board, water and sewer issues and municipal affairs become associated with County Council when in reality it is out of their hands to control. This perception by some citizens unfairly adds to their negative views of how Council functions.

Dillon County has much to offer. The road and rail infrastructure along with an abundance of land are all in place for Dillon to grow and prosper. However, strong leadership is a necessary component for positive growth to occur. Now is the time for Dillon County Council to step forward, obey the law and the Judge's Order and restore confidence in the community. By doing so, Dillon County will become a better place to live and work.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF County Name) OF THE FOURTH JUDICIAL CIRCUIT
)
 Dillon County, a body politic, by and) C/A No.: 2010-CP-17-0187
 through It's members of County Council:)
 James Pee Wee Webster, Macio)
 Williamson, Andrew Graves, Bobby)
 Moody, Harold Moody, Archie Scott,)
 and Aaron Gandy, and through It's)
 County Administrator: David Mobley) **ORDER**
)
 Plaintiff,)
)
 v.)
)
 John Doe, a citizen of Dillon County,)
)
 Defendant.)

This matter is before the Court on a Rule to Show Cause dated August 24, 2010. The Rule to Show Cause was issued based on the Affidavit of Chief Magistrate Mackie Hayes. The matter was scheduled for a hearing on January 13, 1011 at the County Name County Courthouse. Prior to the call of the case, the matter was discussed in Chambers with the Attorneys for the Plaintiff, Daniel H. Shine and Carl F. Muller, and the Attorney for the Defendant, Charles E. Curry, all present. Both the Plaintiff and the Defendant consented to the Court appointment of an expert in city and county management to investigate the claims made in the Affidavit. The purpose of this investigation is to address and prevent the micromanaging of County employees by elected officials. Accordingly, it is

ORDERED that Roland H. Windham, Jr. be, and hereby is, appointed to investigate this matter. Should he uncover that anyone involved with County government is involved in any criminal activity, Mr. Windham shall report such findings directly to the Fourth Circuit Solicitor's Office and/or the South Carolina Attorney General's Office.

IT IS FURTHER ORDERED that Mr. Windham shall complete his investigation within 45 days from receipt of this Order and shall submit his completed report to the Dillon County Clerk of Court within 10 days thereafter. Upon receipt, the Clerk shall mail a copy of the report to the parties, Dillon County Counsel, and the Court. This matter shall be held in abeyance during the pendency of the investigation.

IT IS FURTHER ORDERED that Dillon County shall compensate Mr. Windham at a rate of one hundred twenty five and no/100 (\$125.00) dollars per hour; plus meals, lodging, and travel based on the mileage allowed by law for official travel of State officers and employees.

AND IT IS SO ORDERED.

Honorable Paul Michael Burch
Judge, Fourth Judicial Circuit

Pageland, South Carolina
January 19, 2011

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF County Name)	OF THE FOURTH JUDICIAL CIRCUIT
)	
Dillon County, a body politic, by and through It's members of County Council:)	C/A No.: 2010-CP-17-0187
James Pee Wee Webster, Macio)	
Williamson, Andrew Graves, Bobby)	
Moody, Harold Moody, Archie Scott,)	
and Aaron Gandy, and through It's)	
County Administrator: David Mobley)	ORDER
)	
Plaintiff,)	
)	
v.)	
)	
John Doe, a citizen of Dillon County,)	
)	
Defendant.)	

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AND IT IS SO ORDERED.

Honorable Paul Michael Burch
Judge, Fourth Judicial Circuit

Pageland, South Carolina
January 19, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS

2010-CP-17-187

FILED
GWEN T. HYATT
2010 JUN -9 PM 2: 16
CLERK OF COURT
DILLON COUNTY

Dillon County, a body politic)
and corporate, by and through)
its corporate, by and through its)
members of County Council:)
James Pee Wee Webster, Andrew)
Graves, Bobby Moody, Harold)
Moody, Archie Scott, Aaron Gandy)
and Macio Williamson and through)
its Administrator, David Mobley,)
Plaintiffs,)

- v-)

John Doe, a citizen of Dillon)
County,)
Defendant,)
_____)

ORDER



This matter was instituted by the Plaintiff as a Declaratory Judgment Action to determine the validity of a County Policy dealing with E-911 roadways and seeking to determine if this Policy violates an Order issued by the Court in 1992 in Civil Action 91-CP-17-274. The Defendant filed an Answer and Counterclaim wherein the Defendant seeks to hold Plaintiff in contempt of court for violating the 1992 court Order and further seeking to enjoin Dillon County Council members from violating Section 4-9-660 of the Code of Laws of South Carolina. The Defendant also sought a Writ of Mandamus against the County Administrator and attorney fees. The Defendant abandoned the prayer for attorney fees and Mandamus.

Prior to the call of the case, the matter was discussed in Chambers with the Attorney for the Plaintiff and the Attorney for the Defendant both present. Both the Plaintiff and the Defendant have asked the Court to review the 2004 County Policy dealing with E-911 roads and driveways.

Plaintiff's Attorney stated that if the County's E-911 Roadways Policy is found not to be in compliance with the law and with the 1992 Order, the County would consent to an Order of the Court holding Dillon County in contempt of Court for violation of the 1992 Order and would further consent to an injunction prohibiting Council members from violating Section 4-9-660 of the South Carolina Code. Defendants Attorney stated that Dillon County had violated the 1992 Order without regard to the ruling on the 2004 E-911 Policy. Since the Court finds that the 2004 E-911 Policy violates the Order of 1992 there is no need to determine if other violations exist. There was also a discussion concerning the maintenance of abandoned cemeteries by Dillon County. The Court is informed that Dillon County, pursuant to Code Section 6-1-35, has a policy that provides for the use of County equipment and personnel to preserve and protect such cemeteries. Council members vote in public session to place abandoned cemeteries on a list of cemeteries to be maintained by the County. The Court is informed that there are certain cemeteries on this list that are still active and presently are being used for the burial of bodies. The Court is also informed that there is some ambiguity in the Courts use of the term "emergency" in the 1992 Order. The Court will address these matters in this Order.

Based upon the information presented, the Court makes the following findings of fact:

- 1: That the Dillon County Policy regarding E-911 Roadways violates the Order Dated July 8, 1992.
- 2: That Dillon County has violated the Order of the Court dated July 8, 1992.
3. That the use of County equipment and personnel on cemeteries that are still used for the burial of bodies is improper.
4. That the term "emergency" as used in the Court's Order of July 8, 1992, is intended to mean those emergencies that have been declared to be emergencies by some governmental entity such

as the President or the Governor or some executive agency having the authority to declare emergencies.

5. That the Dillon County Council Members, or at least some of them, have violated Section 4-9-660 of the South Carolina Code of Laws in that they have given instruction to County employees. That this practice has continued over a long period of time and has lead to the practice of using County personnel and County equipment on private property.

Based upon the forgoing findings of fact, it is

ORDERED:

1. That the County Policy dealing with E-911 Roadways violates the Order of the Court dated July 8, 1992 and is therefore void.
2. That Dillon County is held in Contempt of Court for violating the Order of the Court dated July 8, 1992. With the consent of the Defendant the Court will impose no punishment on any of the Plaintiffs for this violation. However the Court issues this stern warning that any further violation of the Order will lead to severe fines and perhaps jail time for those who are guilty of such violation.
3. That the Dillon County Council members are jointly and severally enjoined from dealing directly with county employees who are subject to the direction and supervision of the Dillon County Administrator and they are Ordered to comply with Section 4-9-660 of the South Carolina Code of Laws. Council Members shall deal with County Employees only through the Administrator except for the purposes of inquires and investigations. These inquires and investigations must be approved by a majority of Council in advance of the inquiry or investigation. County employee personnel issues shall be handled through the County Administrator and in accordance with the County's established personnel policies. Any violation

of this Section 4-9-660 of the South Carolina Code of Laws and of this provision of this Order may lead to severe fine or jail time for those Council Members who violate this provision.

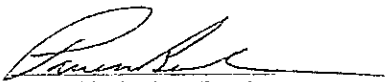
4. That the term "emergency" as used in the Order dated July 8, 1992, is intended to mean only those emergencies that have been so declared by the President of The United States, the Governor of South Carolina or by a public governmental entity or agency having the authority to declare emergencies.

5. That Dillon County is enjoined from using county personnel and county equipment for the preservation and protection of cemeteries until and unless said cemeteries have been abandoned. The Court notes that "abandon" as defined in Black's Law Dictionary is defined as "To give up absolutely; to forsake entirely; to renounce utterly; to relinquish all connection with or concern in." The Court finds that a cemetery that is still being used for burials or one which has been so used for a period or less than ten (10) years cannot be defined "abandoned". Dillon County is therefore enjoined from using county personnel and or county equipment for the purpose of maintaining any cemetery which has been used for the burial of human bodies within the prior ten (10) year period.

6. The Court has issued an oral warning at the time this matter was presented. It is further ordered that a copy of the transcript of the hearing be attached to this Order for the purpose of expressing the Court's disapproval of the actions of Dillon County and should be used by any future Judge who may hear a contempt charge.

7. That the Order of July 8, 1992 remains in full force and effect.


AND IT IS SO ORDERED.



Honorable Paul M. Burch
Circuit Judge for the Fourth Judicial Circuit

Date April 2010

WE CONSENT:


Daniel H. Shine
Attorney for Plaintiff

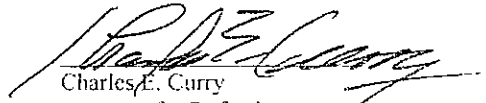

Charles E. Curry
Attorney for Defendant

Exhibit 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DILLON

CASE NO.: 91-CP-17-274

PROPERTY for the construction and maintenance of
B.P. GORDON, EARL CARTER,
DILLON WOODWORKS, INC., AND
E&B BACKHOE, INC.,

Plaintiffs,

vs.

MACIO WILLIAMSON, E. HORACE
ARNETTE, TOM ROLAND, CHESTER TAYLOR,
FLOYD GRIFFIN, KROMER STEPHENS, JAMES
PEE WEE WEBSTER, Dillon County
Councilmen, and C.H. FOWLER, JR.,
Dillon County Administrator,

Defendants.

A TRUE COPY
Caryn M. [Signature]
CLERK OF COURT
FOR DILLON COUNTY

FILED
CARYN M. PROCTOR
1992 AUG 12 PM 4:17
CLERK OF COURT
DILLON COUNTY
ORD

This matter comes before the Court for trial on May 6, 1992, upon the Complaint of the Plaintiffs wherein they seek the Order of this Court restraining and enjoining the Defendants from providing certain labor, services and materials to and performing certain private work on private property in Dillon County. The Complaint basically alleges that the County has been constructing and maintaining private driveways, hauling dirt to private property and performing other work on private property in the County at public expense, that such services, material and labor do not serve a public purpose, and therefore, that the providing of such material, services and labor to private individuals on private property and at public expense constitutes a violation of Article 1, Section 3, and Article 10, Sections 5 and 8, of the South Carolina Constitution, and further constitutes a violation of the Fifth and Fourteenth Amendments to the United States Constitution.

[Signature]

The Defendants duly filed an Answer wherein they admitted that county equipment and personnel have been used on private property for the construction and maintenance of driveways but otherwise denied that county equipment, material and employees were involved with any other work on private property.

Upon the call of the case for trial, the Plaintiffs presented several witnesses, one of whom was a named Defendant and member of the Dillon County Council. The clear and uncontroverted testimony was that county equipment, materials and personnel were being used to construct and/or maintain private driveways in Dillon County. There also was testimony and evidence that County equipment, materials and personnel were used in the hauling and placing of dirt on private property other than private driveways. There was further evidence that County equipment and personnel were used to haul dirt to and place it on the highway right-of-way adjacent to private property for the apparent purpose of allowing the adjacent property owner to, at his own expense, move the dirt onto this property and use it for his own private purposes. The testimony indicated that these practices were continuing up to approximately one week prior to the date of this trial.

Upon the conclusion of testimony by the Plaintiffs and the Defendant County Council member, the Plaintiffs moved for Summary Judgment/Directed Verdict based upon that testimony as well as upon the admission contained in the Defendants' Answer that equipment and employees had been used on private property for the construction and maintenance of driveways. Counsel for the

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Plaintiffs indicated that he had approximately eight other witnesses whose testimony would also be cumulative in nature. Based upon the testimony and evidence presented, as well as the admission contained in the Answer of the Defendants, the Court makes the following findings of fact and law:

1. That the County of Dillon, by and through its elected County Council members and County employees, has been providing, at public expense, County employees, equipment and material to private property owners, and more specifically, the County has hauled dirt at public expense to private property and dumped it thereon for the use of the private property owners. Further, the County has constructed and maintained private driveways, avenues and lanes with county equipment, personnel and material, and the County has provided dirt to private landowners by hauling it to and dumping it on the highway right-of-way adjacent to the landowner's property so that the landowner could move the dirt onto his private property at his own expense.
2. The Court finds that the foregoing practices by the County are blatantly illegal. The Fifth and Fourteenth Amendments to the United States Constitution clearly state that no person shall be deprived of property without due process of law. Additionally, Article 1, Section 3 of the South Carolina Constitution likewise prohibits Dillon County from depriving any person of property without due process of law. This has been construed to mean that no tax funds can be used for other than a public purpose. It is this Court's finding that the spending of tax revenues for the purpose of maintaining and providing



~~equipment, labor and material to private property owner in the construction and maintenance of private driveways and the dumping and leveling of dirt on private property is a clear violation of the Fifth and Fourteenth Amendments to the United States Constitution.~~

3. It is the further finding of this Court that Article 10, Section 3 of the South Carolina Constitution (which requires that tax funds shall be levied only in pursuance of a law distinctly states the object of the tax, and that they shall be expended only for the purpose stated) clearly prohibits the use of tax funds for private purposes such as the construction and maintenance of private driveways and avenues and the hauling of and providing of dirt to private property and the leveling of same at public expense for the benefit of the private property owner. Likewise, Article 10, Section 6 of the South Carolina Constitution provides that counties are authorized to levy taxes solely for the purposes of building and repairing public roads, building and bridges, and for other public purposes clearly stated in the South Carolina Constitution.

4. The South Carolina Supreme Court has defined a public purpose as one which has for its objective the promotion of the public health, safety, morals and general welfare, security, prosperity and contentment of all of the inhabitants or residents or at least a substantial part thereof. Anderson vs. Baehr (1975) 265 S.C. 153. The public purpose was further defined in that case as being such that "...it is not sufficient that an undertaking bring about a remote or indirect public benefit to

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characterize it as a project within the sphere of public purpose." Our Supreme Court has also further defined public purpose in the case of Caldwell vs. McMillan (1953) 224 S.C. 150. There the Court stated: "In general, a public purpose has for its objective of the public health, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division, so that whatever is necessary for the preservation of the public health and safety is a public purpose, and if an object is beneficial to the inhabitants and directly connected with the local government, it will be considered a public purpose; but in order to sustain a public purpose the advantage accruing to the public must be direct, not merely indirect or remote." Ninety-eight years ago, the South Carolina Supreme Court prohibited any officers of the State (which includes county officials) from applying public funds to any purpose not authorized by law. Butler vs. Ellerbe, 44 S.C. 256 (1894) Further, the United States Supreme Court long ago held that the power of the state (or county) to tax and to expend tax monies for private benefits was unconstitutional. "To lay with one hand, the power of the government on the property of the citizens, and with the other to bestow it upon favored individuals... is none the less a robbery because it is done under forms of law...." Savings and Loan Association vs. Topeka, L. ED. 455, -20-U.S.-(Wall.)-655. The use of tax funds to provide county personnel, equipment and materials to private property owners for the purpose of constructing and maintaining private road and driveways and to haul dirt to private property and to

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level it for the private property owner at, again all expense, constitutes a clear violation of the Constitutional provisions cited hereinabove, and such practices immediately. Accordingly,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the practices set for hereinabove are clear and direct violations of the South Carolina Constitution and the United States Constitution, all as specified hereinabove.

IT IS FURTHER ORDERED that Dillon County, its duly elected public officials, and its employees, agents and servants, are permanently restrained and enjoined from hauling dirt to and dumping and/or leveling dirt on private property, at public expense.

IT IS FURTHER ORDERED that Dillon County, its duly elected public officials, employees, agents and servants, are hereby permanently restrained and enjoined from constructing, scraping, leveling or otherwise maintaining driveways located on private property within the County.

IT IS FURTHER ORDERED that Dillon County, its duly elected public officials, employees, agents and servants, are hereby permanently restrained and enjoined from constructing, leveling, scraping or otherwise maintaining private roadways and avenues located in Dillon County.

IT IS FURTHER ORDERED that in the event of a natural disaster or emergency, the Defendants may provide such material, labor and services are necessary to maintain the public health and safety. This contemplates the use of public equipment, personnel and

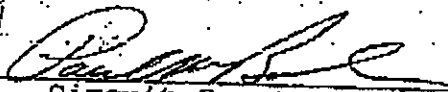
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~~material on private property in the event of a hurricane, tornado, massive explosion or some other kind of natural or man-made disaster which creates conditions threatening the public health and safety.~~

IT IS FURTHER ORDERED that nothing contained herein shall be construed so as to preclude the dedication on public record by private landowners of roadways and avenues within the County as county roadways should private property owners wish to cede such roadways and avenues to the County and should the County wish to accept such avenues and roadways into the county road system. Such dedication, however, must be duly and properly recorded in the records of the Clerk of Court for Dillon County and should be of a permanent nature.

IT IS FURTHER ORDERED that the injunction contained herein is of a permanent nature and shall apply to all future duly elected County Council members, employees, public officials, agents and servants of the County, as well as to the County itself.

AND IT IS SO ORDERED.


Circuit Court Judge

Dillon, South Carolina

July 8th, 1992

Exhibit 4

02-12

AN ORDINANCE TO LEVY AND IMPOSE A ONE PERCENT (1%) SALES AND USE TAX, SUBJECT TO A REFERENDUM, WITHIN DILLON COUNTY PURSUANT TO THE CAPITAL PROJECT SALES TAX ACT, S. C. CODE ANN. SECTION 4-10-300, ET SEQ.; TO DEFINE THE SPECIFIC PURPOSE OR PURPOSES AND DESIGNATE THE PROJECTS FOR WHICH THE PROCEEDS OF SUCH TAX MAY BE USED; TO PROVIDE THE MAXIMUM TIME FOR WHICH SUCH TAX MAY BE IMPOSED; TO PROVIDE THE MAXIMUM COST OF THE PROJECTS OR FACILITIES FUNDED FROM THE PROCEEDS OF SUCH TAX AND THE MAXIMUM AMOUNT OF NET PROCEEDS TO BE RAISED BY SUCH TAX; TO PROVIDE FOR A COUNTY-WIDE REFERENDUM AND TO PRESCRIBE THE CONTENTS OF THE BALLOT QUESTION IN SUCH REFERENDUM; TO ESTABLISH THE PRIORITY IN WHICH THE NET PROCEEDS OF SUCH TAX, IF APPROVED IN A REFERENDUM, ARE TO BE EXPENDED FOR THE PROJECTS AND PURPOSES STATED; TO PROVIDE FOR THE PAYMENT OF CERTAIN OF THE PROJECTS THROUGH THE ISSUANCE OF BONDS TO BE REPAYED SOLELY FROM THE PROCEEDS OF THE SALES AND USE TAX REVENUES; AND TO PROVIDE FOR OTHER MATTERS RELATING THERETO.

WHEREAS by Resolution dated June 26, 2002, the Dillon County Council established a Capital Project Sales Tax Commission (The Commission); and

WHEREAS The Commission members were duly appointed by Dillon County and the municipalities therein; and

WHEREAS The Commission has met and conferred on numerous occasions; and

WHEREAS The Commission has issued its report to the Dillon County Council; and

WHEREAS The Dillon County Council has reviewed the Report of The Commission and finds the projects listed therein to be projects that would be beneficial to the citizens of Dillon County

NOW THEREFORE BE IT ORDAINED

- 1) That a capital projects sales and use tax (The Tax) as set forth in Section 4-10-310 of the Code of Laws of South Carolina is hereby imposed on the entire area of Dillon County for the

purposes set forth in this Ordinance, subject to a referendum, and limited in time and or amount as also set forth in this Ordinance.

2) The Report of The Commission is hereby approved and adopted.

3) If approved by a favorable vote of a majority of the qualified electors voting in a referendum to be held at the next General Election which is to be held on Tuesday, November 5, 2002

(A) The tax shall commence on May 1, 2003;

(B) The tax shall end upon the earlier of the collection of the sum of \$11,777,000.00 or a period of seven (7) years from the date of imposition.

(C) The tax authorized by this ordinance shall be expended for the design, engineering, construction, and improvement of highways, roads, streets, and or bridges; acquiring, designing, constructing and/or renovating municipal, community and fire station buildings; acquiring, designing, constructing and/or renovating cultural, recreational and historic facilities; designing, engineering, constructing, or repairing water, sewer, or water and sewer projects; designing, engineering, constructing and improving flood control projects and storm water management facilities; and acquiring, designing, engineering, and/or constructing jointly operated projects in Dillon County, South Carolina, (the "capital projects") including payment of such sums as may be required in connection with the issuance of revenue bonds, the proceeds of which are applied to such capital projects, for the purposes stated in the following priority:

- | | | |
|----|--|--------------|
| 1. | Frontage Road(s)
(Hwy 9 to Hwy 34 both sides) | \$ 2,500,000 |
| 2. | Lake View and Latta
Wastewater Project | \$ 1,000,000 |
| 3. | New Dillon County Airport | \$ 350,000 |

4.	Detention Center Expansion Total Project		\$ 2,000,000
5.	Fire Stations (4)		\$ 250,000
6.	School Repairs		
	(a) Dillon	\$1,200,000	
	(b) Latta	600,000	
	(c) Lake View	600,000	
			\$ 2,400,000
7.	New Animal Shelter		\$ 300,000
8.	Hwy 38 Industrial Park Infrastructure Improvement		\$ 1,500,000
9.	Latta Library		\$ 150,000
10.	Lake View Infrastructure Improvement		\$ 700,000
11.	Tri-County Industrial Park - Road		\$ 127,000
12.	Dillon Recreation Complex		\$ 500,000

PROVIDED that those projects enumerated as projects 1, 2, 3, 4 and 5 may be financed by the issuance of special source bonds or general obligation bonds of Dillon County which bonds shall have a due date not to exceed the estimated date on which the South Carolina Department of Revenue shall estimate as the date upon which the total tax provided herein shall be collected and if such bonds are issued then only those sums necessary to amortize said bonds shall have priority over the remaining projects.

4) The Tax imposed by this Ordinance shall be collected and disbursed in accordance with Article 3 of Chapter 10 of Title 4 of the South Carolina Code of Laws.

5.1) The registration and Election Commission of Dillon County shall conduct a referendum on the question of imposing a capital projects sales and use tax in the area of Dillon County on Tuesday, November 5, 2002, under the election laws of the State of South Carolina, mutatis

mutandis. The Dillon County Registration and Election Commission shall publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of capital projects and the cost of projects, and shall publish such election and other notices as required by law.

5.2) The referendum question to be on the ballot of the referendum to be held in Dillon County on November 5, 2002, must read substantially as follows:

Must a special one percent sales and use tax be imposed in Dillon County for not more than seven (7) years to raise the amounts specified for the following purposes?

1.	Frontage Road(s) (Hwy 9 to Hwy 34 both sides)	\$ 2,500,000
2.	Lake View and Latta Wastewater Project	\$ 1,000,000
3.	New Dillon County Airport	\$ 350,000
4.	Detention Center Expansion Total Project	\$ 2,000,000
5.	Fire Stations (4)	\$ 250,000
6.	School Repairs	
	(a) Dillon \$1,200,000	
	(b) Latta 600,000	
	(c) Lake View 600,000	\$ 2,400,000
7.	New Animal Shelter	\$ 300,000
8.	Hwy 38 Industrial Park Infrastructure Improvement	\$ 1,500,000
9.	Latta Library	\$ 150,000
10.	Lake View Infrastructure Improvement	\$ 700,000
11.	Tri-County Industrial Park - Road	\$ 127,000

12. Dillon Recreation Complex	\$ 500,000
Total Cost of All Capital Projects	\$11,777,000

YES _____

NO _____

INSTRUCTIONS TO VOTERS:

All qualified electors desiring to vote in favor of imposing the tax for the stated purposes shall vote "YES" and all qualified electors opposed to levying the tax shall vote "NO".

CONDITIONS AND RESTRICTIONS ON THE USE OF SALES AND USE TAX REVENUE COLLECTED UNDER THE CAPITAL PROJECT SALES TAX ACT:

The capital project sales and use tax shall be used and expended for acquisition, design, engineering, construction or improvement of the capital projects listed above including payment of such sums as may be required in connection with the issuance of revenue bonds, the proceeds of which are applied to such capital projects. Net proceeds of the capital project sales and use tax, if approved, must be expended for the purposes stated in the priority listed above. The expenditure of revenues from the capital project sales and use tax, if approved, shall be subject to acquisition of right-of-way, design and engineering considerations, funding of projects from other sources, bids in excess of project estimates, qualifications of bidders, cost overruns, financing costs, exhaustion or insufficiency of net sales and use tax revenues to complete the projects in the order and priority stated above and other unforeseen circumstances and conditions.

5.3) If a majority of the electors voting in the referendum shall vote in favor of imposing the tax, then the tax is imposed as provided in the Capital Project Sales Tax Act, Section 4-10-300 et. seq., and this ordinance. Expenses of the referendum must be paid by the governmental entity or entities that would receive the proceeds of the tax in the same proportion that those entities would receive the net proceeds of the tax.

5.4) Upon receipt of the returns of the referendum, the Dillon County Council shall, by resolution, declare the results thereof. The results of the referendum, as declared by resolution of the Dillon County Council, are not open to question except by suit or proceeding instituted

within thirty (30) days from the date the Dillon County Council shall adopt a resolution declaring the results of such referendum.

6) The imposition of a capital project sales and use tax by Dillon County is subject in all respects to the favorable vote of a majority of qualified electors casting votes in a referendum on the question of imposing a capital projects sales and use tax in the area of Dillon County in a referendum to be conducted by the Registration and Election Commission of Dillon County on November 5, 2002, and the favorable vote of a majority of the qualified electors voting in such referendum shall be a condition precedent to the imposition of a capital project sales and use tax pursuant to the provisions of this ordinance.

7) This ordinance shall take effect immediately upon adoption.

First Reading - 08/05/02

Second Reading - 08/06/02

Public Hearing - 08/14/02

Third Reading - 08/14/02

Passed - 08/14/02

Present

For

Against

Handwritten signatures:
1. ~~Handwritten signature~~
2. ~~Handwritten signature~~
3. ~~Handwritten signature~~
4. ~~Handwritten signature~~
5. ~~Handwritten signature~~
6. ~~Handwritten signature~~
7. ~~Handwritten signature~~

Dillon County Road Acceptance and Maintenance Ordinance

Pursuant to the powers granted to County Governments under South Carolina Code Title 4 Chapter 9 (§4-9-25 and §4-9-30) and the general laws as they apply to County Governments, the County Council of Dillon County enacts this ordinance which shall be known as the Dillon County Road Acceptance and Maintenance Ordinance.

(a) Dillon County Council shall accept and maintain all roads open to public use and existing as of March 23, 2011, provided:

1. The public use of such roads is recognized by all contiguous property owners, and so stated in a signed document recorded in the Clerk of Court's Office,
2. The road provides the only access to two or more developed properties,
3. The road does not constitute a private drive or private access easement,
4. That appropriate drainage and site easements, and road bed easements as determined by the County Director of Public Works, are available and that access and use of these easements is legally assured and granted in documents recorded in the Clerk of Court's Office, and

(b) Roads that are constructed after March 23, 2011 shall comply with the Dillon County Road Specifications attached hereto and incorporated herein.

(c) The County shall continue to maintain all public roads used by the public at large over which the County has a prescriptive easement and which roads are public roads prior to the enactment of this Ordinance.

THIS ORDINANCE IS EFFECTIVE JULY 1, 2011.

DILLON COUNTY COUNCIL

By: _____
County Council Chairman

Dillon, South Carolina

First Reading: 03/23/2011
Second Reading: 04/27/2011
Public Hearing: 04/27/2011
Third Reading:

ATTEST:

Clerk to Council

Exhibit 6

MEMO

To: Dillon County Employees
From: Clay Young, Dillon County Administrator
Date: March ____, 2011
Re: Policy Forbidding County Personnel from Working on Private Property

This memorandum is being published to set forth a county policy regarding county personnel and the prohibition against performing work on private property.

In the past, some county employees have provided labor, services and materials to, and performed certain work on, private property in Dillon County in order to maintain access to emergency vehicles pursuant to the Dillon County Policy regarding E-911 Roadways. Also, county employees have constructed and maintained private driveways and scraped and hauled dirt to private roads in order to maintain access to emergency vehicles pursuant to the Dillon County Policy regarding E-911 Roadways. As a result, legal actions were filed and Judge Burch issued two orders regarding this practice. The judge found these actions illegal and in violation of the South Carolina Constitution and other laws because the practices violated the principle that public funds could not be spent for private purposes.

Dillon County employees are expressly and strictly forbidden from performing work on private property unless in the time of a natural disaster or extreme emergency. This prohibition includes, but is not limited to: hauling dirt to and dumping and/or leveling dirt on private property; constructing, scraping, leveling or otherwise maintaining driveways located on private property; and constructing, leveling, scraping, plowing, or otherwise maintaining private roadways located in Dillon County.

There will be zero tolerance for violations of this policy by any Dillon County employee. Violations of this policy will warrant immediate punishment and can include termination of employment.

If any Dillon County employee has any questions about this policy, please do not hesitate to contact me. In addition, a copy of Judge Burch's orders are kept in my office if you need clarification about a specific situation.

Exhibit 7

**STATE OF SOUTH CAROLINA
DEPARTMENT OF PARKS, RECREATION AND TOURISM
PARK AND RECREATION DEVELOPMENT FUND
PROJECT AGREEMENT**

PROJECT NUMBER: 2010031

PROJECT NAME: Marion Street "Wood" Park- Phase 2

PROJECT SPONSOR: Dillon County

PERIOD COVERED BY THIS AGREEMENT: January 21, 2010 to January 21, 2021

PROJECT SCOPE (Describe in detail in the project file, but is summarized as follows):

Purchase and install new playground equipment.

BILLING PERIOD

The project sponsor must submit billing for at least the amount indicated within the designated period(s):

\$12,977.31 By May 31 2011

PROJECT COST

State Share	\$10,381.85
Local Share	\$2,595.46
Total Cost	\$12,977.31

The State of South Carolina, represented by the Department of Parks, Recreation, and Tourism, (hereinafter referred to as PRT), and The Project Sponsor, mutually agree to perform this agreement in accordance with the guidelines established by PRT, and with the terms, promises, maps, and assurances attached hereto and made part of this agreement.

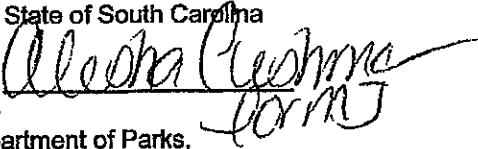
The State of South Carolina promises to obligate the amount of money referred to herein. The Project sponsor promises to execute the project above in accordance with the terms of this agreement.

The following special project terms and conditions were added to this agreement before it was signed by the parties involved:

- 1) The Project Sponsor agrees to operate the above described facilities in a nondiscriminatory manner with regards to race, color, creed, national origin, or handicap such that the general public is not prohibited except possibly during night hours when it might be deemed unsafe for use.
- 2) The Project Sponsor agrees to operate and maintain the above described facilities in a safe and useable manner for their intended purposes throughout the agreement period.
- 3) The Project Sponsor agrees to erect and maintain throughout the agreement period, a sign which credits the State and The Parks and Recreation Development Fund for assisting in the project.
- 4) In the event that any portion of this agreement applied to leased property, the Project Sponsor must provide PRT with an adequate lease to the subject property prior to the first billing request. And, if the lease is terminated for any reason prior to the expiration date of this agreement, the Project Sponsor agrees to relocate any improvements developed under this agreement to another site which would be open for public use. Any and all expenses for real estate, relocation and/or other expenses will be borne by the project sponsor.

The State of South Carolina

By

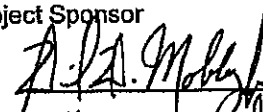


Department of Parks,
Recreation and Tourism

Date: 26-Jan-2010

Project Sponsor

By


Title: Dillon County Administrator

Date:

2/11/10