South Carolina Law Review

Volume 17
Issue 1 *1963-1964 Survey Issue*

Article 17

1964

Public Corporations

Huger Sinkler

Theodore B. Guerard

PUBLIC CORPORATIONS

HUGER SINKLER

THEODORE B. GUERARD*

During the period under review, the South Carolina Supreme Court had before it a variety of questions relating to public corporations. Three of these cases dealt with constitutional debt limitations, and two of them dealt with a claimant's right to recover damages from a municipality. In addition, the court considered the license ordinance of the city of Columbia and an ordinance of the city of Charleston making it unlawful to sell beer during specified periods of time.

CONSTITUTIONAL DEBT LIMITATIONS

The three cases to be considered under this heading cover a wide field. In one the court strictly interpreted the provisions of the South Carolina Constitution relating to its amendment; in the second the court considered the effect of a constitutional amendment after the political entity to which it related had been abolished; and in the third the court considered the constitutionality of a legislative scheme whereby a county's debt limitation is used to provide funds for a school district.

Amendatory Provisions of Constitution Strictly Construed

Gebhardt v. McGinty[1] was a declaratory judgment action brought to obtain an interpretation of article XVI of the South Carolina Constitution which sets forth the procedure to be followed to ratify the constitution.

Article XVI provides that an amendment may be proposed in the senate or the house; and, if it is agreed to by two-thirds of the members elected to each house, the amendment shall be submitted to the qualified electors of the state in the next general election for representatives. If the election results favorably and a majority of each branch of the next general assembly shall ratify the amendment, the same shall become a part of the constitution. However, section 1 of article XVI ends with the following proviso which gave rise to the issues here:

* Sinkler, Gibbs & Simons, Charleston, South Carolina.

1. Gebhardt v. McGinty, 243 S.C. 495, 134 S.E.2d 749 (1964).

> *Provided*, That such amendment or amendments shall have been read three times, on three several days, in each House.

In question was an amendment to article X, section 5, which was proposed by the 1960 General Assembly in order to remove Beaufort County and its political subdivisions from the eight per cent constitutional debt limitation. The amendment read as follows:

> *Provided*, That the limitations imposed by this section, or by any other constitutional provision, limiting the amount of bonded indebtedness which may be incurred by a political subdivision of this State shall not apply to the County of Beaufort or to any political subdivision within such county.

By virtue of the said amendment the Forest Beach Public Service District Commission in Beaufort County sought to issue bonds in excess of the eight per cent debt limitation otherwise applicable. The plaintiffs sought to enjoin the issuance of these bonds on the grounds that the act passed by the 1962 General Assembly for the purpose of ratifying the said amendment did not meet the requirements of section XVI of the South Carolina Constitution and in particular the requirements of the proviso quoted above.

The 1962 ratifying act referred to the amendment only by reference to the proposing resolution, and the amendment did not appear in the ratifying act in the very words in which it was set forth in the proposing resolution. The plaintiff contended that the proviso of article XVI required that the amendment sought to be ratified be set forth *in haec verba* in the ratifying act and that failure to do so rendered the attempted ratification invalid. The circuit court held that the ratifying act referred to the amendment involved and met the requirements of article XVI.

The South Carolina Supreme Court reversed the circuit court and held that article XVI requires a ratifying act to set forth the amendment under consideration *in haec verba*. In reaching this conclusion the court took note of the fact that, since the adoption of the Constitution of 1868, the legislature, when seeking to ratify an amendment to the constitution, with the exception of the act here under attack, had undertaken to set forth the amendment in the ratifying act in the exact language of the proposing resolution.

Thus the rule which permits the general assembly to validly enact a statute by reference does not apply in the case of a constitutional amendment. The court noted:

> That the dangers of amending the constitution by reference are much greater than those involved with ordinary legislation should be readily apparent, since ordinary legislation may be quickly amended or repealed by the same or a succeeding general assembly, while a constitutional amendment, of course, cannot and should not be so readily or quickly changed.[2]

The respondents unsuccessfully contended that the "enrolled act rule" applied to the controversy here. That rule is concisely stated as follows:

> [W]hen an act has been duly signed by the presiding officers of the general assembly, in open session in the senate and house, approved by the governor of the state, and duly deposited in the office of the secretary of state, it is sufficient evidence, nothing to the contrary appearing upon its face, that it passed the general assembly, and that it is not competent, either by the journals of the two houses, or either of them, or by any other evidence, to impeach such an act.[3]

In rejecting this contention, the South Carolina Supreme Court held that there was no question here regarding the passage of the ratification act, but that it was apparent that the act did not comply with section 1 of article XVI of the South Carolina Constitution. Hence "the enrolled act rule is clearly not applicable."

Special Constitutional Amendment "Repealed" by Legislative Consolidation

Miller v. Farr[4] was a declaratory judgment action brought by a taxpayer-elector of an area which had been included within Union School District No. 11 before it was abolished in 1952. The purpose of the action was to determine the constitutionality of an act authorizing the county board of education of Union County to issue general obligation bonds of the school district of Union County, an area co-extensive in area with Union County

2. *Id.* at 502, 134 S.E.2d at 753.

3. *Id.* at 501, 134 S.E.2d at 752, quoting from State *ex rel.* Hoover v. Town Council of Chester, 39 S.C. 307, 17 S.E. 752 (1893).

4. Miller v. Farr, 243 S.C. 342, 133 S.E.2d 838 (1963).

itself and created in 1952 by the consolidation of all school districts in Union County.

Prior to the consolidation, Union School District No. 11 was one of the several school districts in Union County. An amendment to article X, section 5, of the South Carolina Constitution, ratified February 19, 1949, provided that the eight per cent debt limitation otherwise applicable did not apply to the then existing Union School District No. 11, but that Union School District No. 11 could issue bonds in an amount not to exceed twenty per cent of the value of all taxable property therein. The amendment also required that the qualified electors of School District No. 11 vote favorably upon the issuance of any of its bonds.

It was the provision of the constitutional amendment requiring an election that gave rise to the issue before the court in this appeal. Although the corporate existence of Union School District No. 11 had been terminated by the 1952 consolidation, the appellant contended that the said constitutional amendment entitled the persons residing in the area formerly constituting such district to the protection of an election as a prerequisite to the issuance of bonds by or for the benefit of any public agency operating the public school system within the former school district. Therefore, they argued that the 1952 consolidation act was subject to such constitutional limitation or condition.

The circuit court entered judgment adverse to the taxpayer-elector, and the South Carolina Supreme Court affirmed. The court considered the question of legislative intent in the proposing and ratifying of the constitutionl amendment. It noted that the amendment does not propose to affect any other school district in Union County except Union School District No. 11, nor does it apply to any other agency than the said Union School District No. 11. The opinion quotes with approval from *Walker v. Bennett*,[5] which held that, upon consolidation of several school districts, the entity of the former district as such was destroyed and that the constitutional debt limitation was extinguished as far as the former districts were concerned and related only to the consolidated district. The court found no difficulty in extending the principle of the *Walker* case to apply in the case of the special constitutional amendment requiring an election.

The court noted that the amendment here was adopted subsequent to the *Walker* decision and that it was, therefore, presumed

5. Walker v. Bennett, 125 S.C. 389, 118 S.E. 779 (1923).

that those who brought about the adoption of the amendment were familiar with the *Walker* case. Therefore, the court concluded that, if it had been their intent to give the constitutional amendment the effect argued for by the appellant, the general assembly would have made it clear that the provision requiring voter approval would be applied not only to the then existing Union School District No. 11 but to any district or political entity into which it might thereafter be merged.

Finally, the court called attention to the fact that the amendment here relates to article X, section 5, which provides constitutional debt limitation, clearly indicating that the purpose of the amendment considered in the light of the article and section amended was merely to affect the debt limitation which would otherwise apply.

The South Carolina Supreme Court distinguished the situation here from that involved in the case of *Connor v. Charleston High School Dist.*[6] There the court struck down an act which was passed with the intent and purpose of circumventing the constitutional amendment applicable to Charleston school district and to that end had authorized an existing school district under a new name to issue bonds in excess of the limit prescribed in the constitutional provisions affecting the same area.

County Aid to School District Upheld

The school district of Jasper County is co-extensive in area with Jasper County and resulted from the consolidation of several former school districts into a single unit in 1952. The school district is subject to the eight per cent constitutional debt limitation applicable to school districts in general. The school district's trustees felt that it was necessary to undertake a school improvement program within the district, involving an expenditure of approximately 800,000 dollars in order to equalize education opportunities throughout the district. The eight per cent constitutional debt limitation, however, limited the school district's ability to issue bonds to approximately 300,000 dollars.

In 1953, the general assembly authorized Jasper County to issue county bonds in the amount of 500,000 dollars and to turn the proceeds of the bond sale over to the school district to complete its improvement program.

6. 191 S.C. 412, 4 S.E.2d 431 (1939).

The plaintiff in *Grey v. Vaigneur*[7] instituted this declaratory judgment action for the purpose of having the court adjudicate whether the legislative scheme which involved the use of Jasper County's credit to provide funds for the school district was constitutional. Specifically, plaintiff urged that the legislative scheme was unconstitutional in that (1) the sale of the bonds would not be for a corporate purpose of Jasper County since the duty to operate the school system rests upon the school district and not upon the county, and (2) that the effect of the scheme is to permit the school district by indirection to incur bonded debt prohibited by the constitutional debt limitation applicable to the school district. The lower court sustained the constitutionality of the legislation in question and, on appeal, the South Carolina Supreme Court affirmed.

The principal issue before the court was whether a county is restricted by sections 5 and 6 of article X of the South Carolina Constitution from issuing bonds to assist a school district co-extensive in area with county in the construction of public school facilities. Section 5 of article X provides that the corporate authorities of counties may be vested with the power to assist and collect taxes "for corporate purposes"; and section 6 of article X restricts the general assembly's power to authorize a county to levy a tax or issue bonds to those purposes specifically set forth in section 6. One of the permitted purposes specified in section 6 is "educational purposes."

The court reiterated the proposition that the school district is the governmental unit to which is devolved the primary duty of administering the school system in Jasper County.

However, the court found nothing in the constitution which would limit the county's right to issue bonds for educational purposes only to those situations in which the county itself operated the public school system and, therefore, concluded that the bonds here were specifically permitted by section 6 of article X. The fact here that the general assembly has seen fit to authorize the expenditure of the funds through the co-extensive school district related, the court held, only to the method adopted by the general assembly and not to the purpose for which the bonds are to be issued. Furthermore, the court noted that Jasper County "has an interest in promoting and providing for the education of its citizens" and that, therefore, the school improvement pro-

7. Grey v. Vaigneur, 243 S.C. 604, 135 S.E.2d 229 (1964).

gram here could properly be accomplished through the joint efforts of the county and the school district.

It should be noted that the situation here involved a school district co-extensive in area with the county, a situation materially different from that before the court in the case of *Moseley v. Welch*,[8] where the court struck down as unconstitutional a legislative enactment authorizing Williamsburg County to assume the debt of some of the several school districts within Williamsburg County. The vice in the *Moseley* case was that the taxpayers of debt free school districts would be called upon to pay debts incurred by other school districts.

Finally, the court found nothing wrong in the use of the county's debt limitation to provide funds for the school district. The court further noted that, while the county and the school district are co-extensive in area, they are separate and distinct corporate entities and are separately subject to the constitutional debt limitation applicable to each.

LIABILITY OF A MUNICIPALITY

"Personal Injuries" Includes Loss of Consortium

Sossaman v. Nationwide Mut. Ins. Co.[9] involved two separate actions which were consolidated on appeal. The respondents were man and wife and each brought an action as a result of an accident involving a station wagon operated by the wife and a school bus belonging to a Cherokee County school district. In the wife's complaint, she sought damages in the amount of 7000 dollars for personal injuries and property damage for the alleged gross negligence and recklessness on the part of the school bus driver.

Section 21-840 of the South Carolina Code of Laws, 1962, provides for insurance coverage to protect members of the general public who are injured by the negligent operation of a school bus and limits recovery to 5000 dollars "for any one person" not riding on a school bus who suffers "personal injuries . . . because of the negligent operation of any such school bus." This section also limits recovery to actual damages and imposes a 5000 dollar limit for property damage.

The appellant, the insurance carrier for the school district, had unsuccessfully moved before the trial judge to strike from the complaint all allegations of "gross negligence and reckless-

8. Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133 (1946).
9. 243 S.C. 552, 135 S.E.2d 87 (1964).

ness" on the grounds that such allegations were irrelevant and improper and not in conformity with the statute which limited recovery to actual damages. The South Carolina Supreme Court held that the trial court's refusal to grant such a motion was error but further held that, in the event of a plea of contributory negligence on the part of the appellant, the respondent would have a right to show reckless, wilful and wanton conduct on the part of the appellant.

There are a number of additional questions relating to pleadings considered on this appeal which will be more properly covered under another heading. However, of significance as far as this topic is concerned, is the court's decision regarding the right of the husband to recover under the said code section for loss of consortium resulting from injury to his wife.

The court recognized that a husband generally is entitled to recover damages for loss of consortium resulting from negligent injury to his wife. The question was, however, whether, under the applicable code section which provided for recovery only by one "who suffers personal injuries," the husband would be entitled to recover for loss of consortium.

The court held that the term "personal injury" is broader and more comprehensive than the term "bodily injury," and that the language of the statute included an action for loss of consortium.

The holding here should be compared with the court's holding in *Hollifield v. Keller*.[10] There it considered the right of a husband to recover for loss of consortium against a municipality under section 47-70 of the South Carolina Code of Laws, 1962, as a result of injuries allegedly sustained by his wife through a defect in the street. Section 47-70 refers to "any person who shall receive bodily injury or damages in his person or property. . . ." In the *Hollifield* decision, the court held that the language of section 47-70 does not authorize an action against a municipality for loss of consortium and therefore the husband's right to recover on that account was denied.

Statute Permitting Suit Against City Strictly Construed

Section 47-71 of the South Carolina Code of Laws, 1962, provides, as a condition precedent to instituting an action against a city for personal injuries thereunder, "a claim duly verified shall

10. 238 S.C. 584, 121 S.E.2d 213 (1961).

be filed with such municipal corporation within three months after the date of such injury or damage on action commenced within such time on a verified complaint. . . ."

The plaintiff in *Cochran v. City of Sumter*[11] was allegedly injured when an automobile driven by a captain on the city of Sumter police force struck a ladder on which the plaintiff was standing thus causing the plaintiff to fall heavily to the ground and resulting in his injury.

The complaint admitted that no verified claim for damages was filed within ninety days. The city of Sumter demurred, alleging that the complaint did not state facts sufficient to constitute a cause of action against the city for the reason that the complaint admitted plaintiff's failure to file a verified claim or a summons and complaint within the time prescribed by statute. The circuit court overruled the demurrer and the city of Sumter appealed to the South Carolina Supreme Court.

The South Carolina Supreme Court reversed the lower court and held that statutes permitting suits against a political subdivision of the state are in derogation of its sovereignty and therefore must be strictly construed. The court further held that the statute was clear and unambiguous in its details and that the complaint clearly showed that the plaintiff had failed to comply with the conditions upon which the municipality may be sued.

The court reached this conclusion notwithstanding the fact that the captain of the police force who allegedly caused the accident was charged with the duty of investigating and reporting the facts to the city. The court held that this fact did not establish any waiver or estoppel against the city to assert the failure to comply with the terms and conditions of section 47-71 as a defense.

Furthermore, although no verified claim was filed, plaintiff through his counsel had notified the city manager of his claim by letter within about twenty-seven days of the injury and the city manager was thereafter advised at intervals of plaintiff's progress. The court, however, held that such notification did not meet the requirements of the statute that "a claim duly certified" shall be filed.

This decision is in keeping with other recent holdings of the South Carolina Supreme Court strictly interpreting statutes permitting suits against a municipality.[12]

11. 242 S.C. 382, 131 S.E.2d 153 (1963).
12. Hollifield v. Keller, 238 S.C. 584, 121 S.E.2d 213 (1961); Pinkston v. Morrall, 236 S.C. 601, 115 S.E.2d 286 (1960).

CITY OF COLUMBIA LICENSE ORDINANCE INTERPRETED

The appeal in *Glens Falls Ins. Co. v. City of Columbia*[13] was from an order of the lower court granting motions to strike certain defenses set forth by the defendant city of Columbia. The issue involved was the right of the city of Columbia under its ordinances and state statutes to impose an annual business license on the plaintiff insurance companies in excess of 2500 dollars each.

The plaintiff's insurance companies instituted separate suits against the city of Columbia to recover sums paid under protest for municipal business licenses. Paragraph 4 of the answers of the city of Columbia alleged that a separate license was required for each agency; that in 1954 an agreement was reached whereby the plaintiffs would give to the city a list of its numerous agencies and the total gross premiums collected by each and that the city would then issue one license covering all agencies; that it was also agreed that the one license so issued would be considered the same as if a separate license had been issued to the plaintiffs for each of those agencies; and that the license fees of which the plaintiffs complained in this action were paid in accordance with the said agreement and that not more than 2500 dollars was charged the plaintiff or any one agency.

In considering the relevancy of the allegations of paragraph 4 of the city's answers, the court analyzed the license ordinance in question and concluded that the ordinance clearly contemplated a license tax on the basis of two per cent gross premiums "collected through offices or agents located in the city or collected on policies written on property located in the city."[14] The court further concluded that the maximum amount of such tax which may be annually imposed on any company is limited to the sum of 2500 dollars as prescribed by section 47-407[15] of the South Carolina Code of Laws, 1962.

On the basis of this analysis, the court concluded that the allegations of paragraph 4 were properly stricken, and that the agreement between the plaintiffs and the city relative to the

13. Glens Falls Ins. Co. v. City of Columbia, 242 S.C. 237, 130 S.E.2d 573 (1963).

14. *Id.* at 240, 130 S.E.2d at 575.

15. "Cities of over seventy thousand inhabitants, according to the latest official United States census, may require the payment of such sum of money, not exceeding $2500, for a license as in their judgement may be just and wise by any person or corporation engaged or intending to engage in any calling, business or profession, in whole or in part within the limits of such cities . . . ."

manner of the assessment of the taxes was not relevant in view of the fact that the construction placed thereon by the city authorities was contrary to the clear and plain meaning of the ordinance. This would be the case even though the plaintiffs had acquiesced in such construction during the previous years. The opinion notes that the construction given an ordinance or statute by those charged with the duty of executing it is entitled to weight, but that this doctrine is usually and properly restricted to cases in which the meaning of the ordinance or statute is really doubtful.

Paragraph 5 of the city's answers alleged that section 47-407 of the South Carolina Code of Laws, 1962, was unconstitutional special legislation in violation of article III, section 34, subdivision 9 of the South Carolina Constitution.[16] Section 47-407 applies only in the case of cities having a population in excess of 70,000 inhabitants and the city contended that such a classification has no reasonable relation to the purposes and objects to be obtained by the legislature. The South Carolina Supreme Court, however, again agreed with the lower court that the allegations of paragraph 5 of the answers were irrelevant and were properly stricken, inasmuch as it cannot be said that density of population has no reasonable relation to the fixing of license taxes. In this connection the opinion notes that in the case of a smaller city a 2500 dollar limitation would undoubtedly not be necessary, inasmuch as the tax, graduated as to income, would be unlikely to reach that figure; but that in the case of a larger city such a limitation might prove necessary in order to prevent an unreasonable or unconscionable license tax. Under the circumstances, the court held that the exact line of demarcation between the classifications of cities to effect such a result was a matter within the discretion of the legislature.

City of Charleston Ordinance Restricting Sale of Beer Upheld

Esau Jenkins, the operator of a cafe located in the city of Charleston, was convicted before the municipal court of the city of Charleston of a violation of section 3-11 of the Charleston City Code. These sections make it unlawful for the owner or person in charge of any store, beer parlor, or other place of business or commercial establishment to sell, give away, or in any manner

16. ". . . where a general law can be made applicable, no special law shall be enacted. . . ."

dispense or permit the consumption of any wines or malt liquors in such store, beer parlor, or other place of business or commercial establishment between the hours of 1:30 A. M. and 7:00 A. M.

When the case was called for trial in the municipal court, the defendant moved to quash and dismiss the warrant upon the grounds that, under section 4-204 of the Code of Laws of South Carolina, 1962, he had the right to sell beer at all hours except between the hours of twelve o'clock midnight on Saturday and sunrise Monday morning. The motions were refused by the municipal court and the circuit court affirmed. On appeal, the South Carolina Supreme Court in *City of Charleston v. Jenkins*[17] affirmed the circuit court.

Under the provisions of section 4-204[18] of the South Carolina Code of Laws, 1962, a person is prohibited from selling beer only between the hours of twelve o'clock midnight on Saturday and sunrise Monday morning. The basic question here involved the right of the city of Charleston to enact an ordinance more restrictive than the applicable general law on the subject.

The opinion points out that the city of Charleston under its charter is empowered and authorized to make and establish rules, regulations and ordinances ". . . requisite and necessary for the security, welfare and convenience of the said city or for preserving peace, order and good government within the same."[19] This grant of power and authority is also contained in section 47-61[20] of the South Carolina Code of Laws, 1962, which confers upon municipalities the authority to exercise police powers.

The only limitations upon the police power delegated by the state to municipalities are (1) the territorial confines of the municipality and (2) the proviso that legislation thereunder shall not be inconsistent with state laws.

17. 243 S.C. 205, 133 S.E.2d 242 (1963).

18. "It shall be unlawful for any person to sell or offer for sale any wine or beer in this state between the hours of twelve o'clock Saturday night and sunrise Monday morning . . . ."

19. City of Charleston v. Jenkins, 243 S.C. 205, 208, 133 S.E.2d 242, 243 (1963).

20. "The city and town councils of the cities and towns of the state shall, in addition to the powers conferred by their respective charters, have power and authority to make, ordain and establish all such rules, by-laws, regulations and ordinances, not inconsistent with the laws of this state, respecting the roads, streets, markets, police, health and order of such cities and towns or respecting any subject as shall appear to them necessary and proper for the security, welfare and convenience of such cities and towns or for preserving health, peace, order and good government within them. And the city and town councils may fix fines and penalties for the violation thereof, not exceeding one hundred dollars' fine or thirty days' imprisonment."

Here the Charleston City Code imposed additional regulations upon the operator of any place of business in the city of Charleston engaged in the sale of beer. The South Carolina Supreme Court held that the city ordinance was not in conflict with the provisions of the South Carolina Code and its enactment was within the power of the city.

In reaching this conclusion, the court reiterated the general rules that, in order for a conflict to exist between a state enactment and a municipal regulation:

> [B]oth must contain either express or implied conditions which are inconsistent and irreconcilable with each other . . . . If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists both laws stand. . . .[21]
>
> As a general rule additional regulations to that of the state law does not constitute a conflict therewith. . . . [M]erely because a municipal ordinance is not as broad as the statute does not render it so inconsistent as to make it void.[22]

In the instant case, the court found that the exercise of the police power by the city of Charleston, in adopting the ordinance involved here, was reasonable, proper and valid and was designed "to preserve the peace, order and good government within the City."

21. City of Charleston v. Jenkins, 243 S.C. 205, 210, 133 S.E.2d 242, 244 (1963).
22. *Ibid.*