

EMERGENCY MEETING OF THE FLORENCE COUNTY COUNCIL, FRIDAY, SEPTEMBER 6, 2013, 8:30 A.M., COUNCIL CHAMBERS ROOM 803, CITY-COUNTY COMPLEX, 180 N. IRBY STREET, FLORENCE, SOUTH CAROLINA

PRESENT:

James T. Schofield, Chairman
Mitchell Kirby, Council Member
Russell W. Culberson, Council Member
Roger M. Poston, Council Member
Kent C. Caudle, Council Member
Willard Dorriety, Jr., Council Member
Jason M. Springs, Council Member
K. G. Rusty Smith, Jr., County Administrator
D. Malloy McEachin, Jr., County Attorney
Connie Y. Haselden, Clerk to Council

ALSO PRESENT:

Kevin V. Yokim, Finance Director
Ryon Watkins, EMS Director
Sam Brockington, Fire/Rescue Services Coordinator
David Alford, Voter Registration/Elections
Lindsay Buchanan, Morning News
Ken Baker, WMBF News
Patricia Burkett, WBTW News
Tonya Brown, WPDE News

ABSENT:

Alphonso Bradley, Vice Chairman
Waymon Mumford, Secretary-Chaplain

In compliance with the Freedom of Information Act, copies of the Meeting Agenda were provided to members of the media, members of the public requesting copies, posted in the lobby of the City-County Complex, provided for posting at the Doctors Bruce and Lee Foundation Public Library, all branch libraries, and on the County's website (www.florenceco.org) on Thursday, September 5, 2013.

Chairman Schofield called the meeting to order. Councilman Kirby provided the invocation and led the Pledge of Allegiance to the American Flag. Chairman Schofield welcomed everyone attending the meeting on such short notice. This was an unexpected meeting necessitated by the filing of a lawsuit in Columbia late Wednesday afternoon.

REPORTS TO COUNCIL:

COUNTY ADMINISTRATOR/COUNTY ATTORNEY

AMICUS CURIAE BRIEF

County Attorney Malloy McEachin provided a brief summary of the issue. Late Wednesday afternoon, the South Carolina Attorney General (AG) filed an action requesting that the South Carolina Supreme Court hear the case in its original jurisdiction and it involves several issues related to the Capital Project Sales Tax. The AG asked for injunctive relief to stop the referendum from being held in November, 2013 and also asked for a declaration that the County did not have authority to place the Capital Project Sales Tax on the ballot. The Supreme Court required that the County provide a response by noon on Wednesday, September 11th rather than the typical 20 days for response. Councilman Caudle Made A Motion Council Authorize The County Administrator And/Or County Attorney To Request The South Carolina Association Of Counties To Intervene On Behalf Of Florence County And File An Amicus Curiae Brief In The Matter Relating To The State Of South Carolina And DOR Versus Florence County And Authorize The County Administrator And/Or County Attorney To Engage The Services Of Additional Legal Counsel As Needed. Councilman Springs seconded the motion.

Councilman Kirby asked if other counties were already doing this, why Florence County was the only one they were attempting to stop. Chairman Schofield responded “simply because some people in our County believe that the will of the voters expressed in 2006 was to do those road projects and that they must be completed and there’s some obligation that the citizens made at that time to, if any more taxes were put on, they would be to finish those taxes, which nothing in the ballot question at the time authorized that; nothing in the County Ordinance or the SIB agreements authorized that; nothing in the State law requires that. So, you are right, there are three other counties that I know of and have the paperwork on. Aiken County, Newberry County and Orangeburg County have all instituted and re-imposed the sales tax for new projects and the Department of Revenue has facilitated them doing that. I have copies of the Department of Revenue documents where they facilitated the implementation directly to implement a new capital project sales tax for new projects while the other projects were still not completed. So your guess or speculation is as good as mine as to why in the world the Department of Revenue or the Attorney General would take such a position as this.

The Attorney General in their brief to the Supreme Court make some comment about they are trying to protect the sanctity of the will of the voters in 2006. We had nine public hearings in Florence County and at those nine public hearings of the Capital Project Sales Tax Commission that had four members from the previous Sales Tax Commission, no one, including Mr. Welch or anybody else on the Commission or any member of the public stood up and said, why don’t ya’ll put some money in here so we can finish those other road projects. So I mean, I think the will of the voters has been clearly expressed in the ballot question before. It has been expressed at nine public hearings here and it certainly trumps the will of the voters and the protection of the sanctity of the will of the voters much more than anything the Attorney General might speculate about. We are going to defend this in every way possible. The Attorney General here is arguing that the

only way you can re-impose the capital project sales tax is to re-impose for projects that were on the last question. And, that, if you are going to have new projects you must wait until after the other capital projects tax is gone off. Well that has not happened and they have facilitated these other counties in doing just exactly what we are trying to do.

Quite frankly, it is just a matter that some people in our community want nothing but roads and have expressed that to me specifically. This Council is going to see to it that every opportunity is afforded the citizens of this County to express their will. If the people of this County are mad because there's not enough money to finish those roads or worried about that, well they can vote against this referendum. The will of the voters is best expressed at a referendum, not at the Supreme Court or not in a court room. We should listen to the will of the voters and let the people of Florence County speak. This Council is going to do whatever it takes and no one is going to interfere with our right to do that and we do have a very short timeframe to answer in the Supreme Court. But we are going to defend the people of Florence County's right to speak on this matter. As I said, if they wanted to vote against, if they don't like it because it doesn't have something in it, that's their right. Everything I hear from the people is they understand the critical nature of the life-safety. We have people here in the audience from the fire department, EMS; we have other people that have called that want the projects that are out there. They understand and that is why they didn't stand up at those public hearings and ask for us to do anything about the other. The other comment I would make on that is they flipped around and said that there's not enough money. Well, that argument was never advanced to us and to the contrary, in the Morning News of August 27, 2012, Senator Leatherman is quoted as saying that the Department of Transportation estimated it would take \$70 - \$72 million dollars more to complete the projects and so he announced that he was getting \$90 million dollars. He got \$90 million dollars, quoting his words, '*just to be safe.*' So the Senator, quite obviously in August, thought what he was doing was more than adequately providing for the funds to finish those six road projects. But, now that County Council wants to try to put a referendum on and do something besides roads and farm-to-market roads, it seems that his position has changed. All I can tell is that we are going to the Court and do our best to ensure that the will of the people of Florence County can be expressed on November 5th of this year."

Councilman Caudle stated, "One comment I'd like to make is that the current tax goes off regardless, I understand next March. Is that correct?" Chairman Schofield responded that it goes off April 30, 2014. Councilman Caudle asked, "What we are proposing will not start until after that one goes off, is that correct?" Chairman Schofield confirmed. Councilman Caudle stated "I just want everybody to understand that. And I also, too, have, I guess, a real difficulty in seeing how our capable legal counsel here (Mr. McEachin and Mr. Zeigler) have opposing views that's so opposite of the Attorney General. If it's a law, it's a law and I don't know how you can ... I know these guys are capable and I am sure the Attorney General is, as well, and I'm not throwing a rock at him, but I'm just saying that I feel like that this, there must be some kind of caveat either we don't understand or they don't understand that puts them in the position they are in, and us, too." Chairman Schofield stated there was a little more going on than what the law says. Councilman Caudle stated he didn't want to speculate that.

Chairman Schofield stated, "I was at the meetings, I was summoned to Columbia to a meeting with the Attorney General and I sat there and I listened to one of the Association of County attorneys ask the question, 'Mr. Deputy Attorney General why are you not doing something about Aiken or these other counties, why did you not have a concern about that when those were done?' The Deputy Attorney General, quite irritated, basically said 'Well we're not here to discuss that; we're not going to discuss it.' So, you can take that where it is ... this is a very serious matter, this is not just Florence County. You've got counties in South Carolina that have relied on the law as everybody's interpreted the whole time it's been in effect. They have done bonds, they've done these projects, they've got projects out there and all counties are in jeopardy at this time. If what the Supreme Court is being asked to do, no county in South Carolina will be allowed to build court houses, build fire stations, or anything else. They are going to make it where you have to wait until that goes off. We don't need to wait, we need these fire stations now and they argue and say, well why don't you just wait until 2014. Why are we going to wait a year and cost the people of this County probably another \$8 million on the cost of the bonds? Why wait? Let's see what the public wants to say. The public has a right to vote on this. I mean, that's what we all stand for is letting the public express their will at the ballot box. So that's where we are trying to take it and we are going to fight this case as vigorously in every avenue that we have a chance to fight it."

Councilman Kirby stated, "In reality, really there's not going to be a simultaneous action here; ones got to go out before the other one can come in, so I don't know why in the world the Attorney General's Office is worried about that because one doesn't affect the other one; they are two separate things here."

Chairman Schofield stated, "Their arguments have gone all over the place. They argued one thing to start with and now they have changed it to something else and it flows and suits them. We are going to try to present all of that to the Supreme Court and hopefully get this thing resolved quickly so that we can get on and let the people decide."

Councilman Springs commented that, "If you read the wording of the lawsuit it's clear that they are not trying to do this on any legal grounds whatsoever; this is strictly political; this is not a legal lawsuit. It is not about the law, it is not about the intent of the law, it is about the will of a couple of politicians who I think are trying to bully us into doing what they want done in Florence County. If you read that lawsuit, it specifically calls out as facts opinion letters that were written to the newspaper. It says emails and voice mails that were left by Senators and Mayors and that stuff, that shows right there that there is no legal basis, that we are not doing anything wrong, they are grasping at straws to make sure that their will is done, not the will of our voters. Like you said, we've had nine meetings. Talked to so many people over the last few months about this and there are a lot of people who want these projects and there are a few people who are against it. But we'll never know and they'll never get their chance to vote if this lawsuit goes through. We can't sit and let the will of the voters not be heard and to fall into what seems like we are going back to a monarchy, where one guy runs everything in the whole State. That's what we got to get away from and we got to stand up for our citizens and do the right thing."

Councilman Caudle called for the question. The motion was approved unanimously.

Chairman Schofield stated that at the discretion of the Chair, he would like to make further comment. "The Capital Project Sales Tax in Florence this time was put on the agenda and on this Council's Agenda before I was Chairman. When I assumed the Chairmanship in January the Commission was empowered to do what it was to do. The people from the other side came to me and asked me to stop the meetings with the public and I informed them that I felt that I had no legal authority to stop those public hearings and the public hearings would continue. During that time I was willing to compromise and work with them and work with the Commission and try to write a ballot question that would be acceptable to everybody in Florence County. In December of last year, before I was Chairman, Mayor Wukela came back from Columbia and informed me that the Senator was opposed to this. I called Robby Dawkins, the Chief of Staff and asked for a meeting with the Senator the first week in December. I called again and again to ask for a meeting with the Senator. I finally, at the end of January, called Dr. Fred Carter and asked him if he could get me a meeting with the Senator. The meeting occurred and Mr. Smith and I went there, along with Yancey McGill and staff and sat with the Senator and I explained to him the critical life-safety issues we have in this County. I talked to him and said, you know, we are willing to work with you any way we can to do as much roads as possible (I mean we have \$70 million worth of roads in this question that has been written). The Senator looked at me said there will be no compromise. It is all for farm-to-market roads.

After that meeting in Columbia, I came back to Florence, I have been a personal friend of the Senator for many years, I called Mr. Dawkins and I said I want a personal one-on-one meeting with no staff there so he and I can talk. That meeting occurred in his office here in Florence and I looked at the Senator and I asked him, 'Senator, we will work with you any way we can, but we've got to build some fire stations and we've got to build some EMS stations.' I told him that I could not stop the public hearings from going on that I had no legal authority to do that and that Council at the proper time would consider whatever the Commission wrote and would move forward or not move forward and would fully be willing to talk to him. But I asked him a simple question, and this is what changed everything for me, I asked him, I said, 'Senator, what happens when we have the public hearings, just say if the public stands up and say we want water tanks in Pamplico and Coward and Lake City and we want sewer in Scranton and we want something else?' And he looked at me and said, 'well then, I guess we will just do nothing.'

Ladies and gentlemen, members of this Council, the will of the voters trumps everything and if the will of the voters expressed at those meetings does not take precedence then we are not where we should be. That is what your Council is trying to do. We are not trying to waste your money hiring attorneys to fight this. We are fighting for *your* right to speak *your* will and let *you* decide whether we will continue that penny or not."

There being no further business to come before Council, Councilman Culberson made a motion to adjourn. Councilman Dorriety seconded the motion, which was approved unanimously.

COUNCIL MEETING ADJOURNED AT 8:50 A.M.