

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Edward D. Sloan, Jr.,
individually and as a Citizen,
Resident, Taxpayer and
Registered Elector of the State of
South Carolina, and on behalf of
all others similarly situated, Appellant/Respondent,

v.

The Department of
Transportation, an Agency of
South Carolina, and the
Commission of the Department
of Transportation, Robert W.
Harrell, John N. Hardee, Eugene
Stoddard, F. Hugh Atkins, B.
Bayles Mack, L. Morgan Martin,
and J. M. Truluck, in their
capacities as Commissioners
thereof, Respondents/Appellants.

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2003-UP-416
Submitted May 12, 2003 – Filed June 19, 2003

AFFIRMED IN PART, REVERSED IN PART

Jennifer J. Miller, of Greenville; for Appellant-Respondent.

Franklin J. Smith, Jr., of Columbia; William A. Coates, and Chace D. Campbell, both of Greenville; for Respondents-Appellants.

PER CURIAM: Edward Sloan brought three actions against the South Carolina Department of Transportation and the Commissioners of the Department of Transportation (collectively referred to as DOT), alleging DOT violated South Carolina Code sections 57-5-1620 and -1660 (Supp. 2002) when it awarded construction contracts on three large highway projects: (1) the Carolina Bays Parkway in Horry County, (2) the widening of Highway 170 in Beaufort County, and (3) the Cooper River Bridge in Charleston County. After the actions were consolidated for trial in Richland County, the trial court allowed Sloan to proceed with the lawsuit on the basis of the public importance of the litigation, but also found Sloan lacked both taxpayer standing and a particularized interest in the controversy. On the merits, however, the trial court held for DOT on all of Sloan's claims. Both sides appeal. We affirm the trial court's findings that Sloan did not have either taxpayer standing or a particularized interest in the litigation and reverse the trial court's determination that Sloan had standing based on the public importance of the lawsuit.¹

FACTS

On January 15, 1999, DOT issued a request for qualifications (RFQ) for the design and construction of the Carolina Bays Parkway in Horry County. Four firms submitted qualifications and three were determined to be

¹ Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.

qualified. The three firms were each issued a request for proposal (RFP), listing the requirements of the project and the maximum price to be paid. Of the three, Palmetto Transportation Constructors was selected for the project. The bid of Palmetto Transportation Constructors to accomplish the entire project was \$225.5 million, which was the lowest submitted bid.

On February 3, 1999, DOT issued an RFQ for improvements to Highway 170 in Beaufort County. Nine firms responded, of which DOT determined six were qualified. DOT invited each qualified firm to submit a proposal for the project. Of the six, Balfour Beatty Construction submitted the lowest bid and its proposal was determined to be the most advantageous to the State.

On July 14, 2000, DOT issued an RFQ for the Cooper River Bridge Project in Charleston County. Three firms responded and all three were found qualified to bid on the project. All three responded to the RFP that was issued. At the time of trial, no proposal had been selected, but the RFP indicated DOT would select the proposal least costly to the State.

The main funding for the Highway 170 project was from revenue bonds issued by the South Carolina Transportation Infrastructure Bank (SIB); however, DOT admitted 1.7 per cent of the total contract cost had been paid out of cash reserves created from the general revenue.

The funding for the Carolina Bays project was entirely from revenue bonds issued by the SIB. Although the funding for the Cooper River Bridge project had not been fully determined when the appealed order was issued, counsel for DOT averred that no general tax revenue would be used to fund the project.

On the Carolina Bays project, DOT accepted a guaranty from the parent company of the construction firm whose proposal was accepted. DOT did not require a separate performance bond from a separate commercial entity as surety.

Sloan filed three separate actions against DOT challenging the three procurements and alleging violations of statutory bonding and competitive bidding requirements. In each action, Sloan sought declaratory and injunctive relief.

Both parties moved for summary judgment. Sloan asserted the RFPs violated South Carolina Code section 57-5-1620 (Supp. 2002), which gives the procedure for awarding construction projects totaling \$10,000 or more. Sloan also claimed the guaranty received from the parent company on the Carolina Bays project did not meet the requirements of South Carolina Code section 57-5-1660 (Supp. 2002). DOT moved for summary judgment alleging (1) Sloan lacked standing to bring the suit, (2) the method employed by DOT was proper under the statutes, (3) the projects were awarded to the lowest bidders, (4) DOT complied with the bonding process in section 57-5-1660, and (5) the suit was barred by laches.

The trial court found Sloan lacked both taxpayer standing and a particularized interest in the three projects to bring a lawsuit; however, the trial court concluded Sloan nevertheless had standing because of the great public importance of the matters raised. As to the merits of the case, however, the trial court held that DOT's procedures in awarding the contracts were proper and that the actions regarding the Carolina Bays and Highway 170 projects were barred by laches.²

LAW/ANALYSIS

On appeal, Sloan contends that the trial court erred in rejecting his claims to standing based on taxpayer status and a personalized nexus to the litigation. In its appeal, DOT contends the trial court erred in determining Sloan raised issues of significant public interest to give him standing to maintain the lawsuit. We hold (1) Sloan's status as a state taxpayer did not confer standing to bring this action, (2) Sloan failed to show he had the requisite personal stake in the litigation to maintain the lawsuit, and (3) there

² At the hearing, counsel for both sides acknowledged there were no genuine issues of material fact and the case should be decided as a matter of law.

was no overwhelming public interest that would warrant a finding of standing where it otherwise would not exist.

I. Taxpayer Standing

"The general rule is that a taxpayer may not maintain a suit to enjoin the action of State officers when he has no special interest and his only standing is the exceedingly small interest of a general taxpayer."³ Nevertheless, "[a] citizen and taxpayer has standing as such to contest the expenditure of public funds under an alleged unconstitutional statute."⁴

The cases cited by Sloan as authority for the proposition that he has taxpayer standing to bring this action all involve standing for a municipal or county taxpayer. Here, however, Sloan bases his standing on his status as a state taxpayer. He does not allege the statutes in question, South Carolina Code sections 57-5-1620 and -1660, are unconstitutional. Rather, he alleges only statutory violations in the methods employed by DOT in awarding the contracts for the various projects.

As this court observed in Sloan v. School District of Greenville County,⁵ there is a difference between a municipal or county taxpayer and a state taxpayer in terms of what must be demonstrated in order to have

³ Crews v. Beattie, 197 S.C. 32, 49, 14 S.E.2d 351, 357-58 (1941); see also, Beaufort County v. Trask, 349 S.C. 522, 529, 563 S.E.2d 660, 664 (Ct. App. 2002) ("[A]bsent a truly individual injury, . . . a taxpayer plaintiff [] must demonstrate some overriding public purpose or concern to confer standing to sue on behalf of her fellow taxpayers.").

⁴ Shillito v. City of Spartanburg, 214 S.C. 11, 22, 51 S.E.2d 95, 99 (1948); see also Myers v. Patterson, 315 S.C. 248, 433 S.E.2d 841 (1993) (finding standing because the plaintiffs alleged that the expenditure that they were challenging violated the constitution).

⁵ 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000).

standing. In that case, the county taxpayers whom the plaintiff purported to represent were deemed to constitute only a comparatively small part of the general public; hence, their interest in the lawsuit was distinct from that of the general public, which included people outside the county.⁶ In contrast, the taxpayers of the State of South Carolina, on whose behalf Sloan has filed the present action, comprise a class that represents a very large portion of the general public. We therefore hold Sloan's interest in this case is not specific or distinct from that of the general public; therefore, his status as a taxpayer of the State of South Carolina would be insufficient to confer standing in this instance.

II. Particularized Interest

We further agree with the trial court that any harm Sloan alleged would be de minimis at best. Two of the projects, the Carolina Bays and Cooper River Bridge, did not utilize general taxpayer funds. The Highway 170 project used approximately \$1,383,331.25 in taxpayer funds, or about 1.7 per cent of the cost of the project. According to DOT's calculations, this amount divided by the number of taxpayers in the State would be \$0.35 per taxpayer. Sloan, therefore, had no special interest in the litigation that would accord him taxpayer to bring the lawsuit.⁷

⁶ Id. at 519-20, 537 S.E.2d at 301.

⁷ We do not address Sloan's contention that he had standing because he was challenging an ultra vires act by the State. The trial court did not rule on this argument in the appealed order, and Sloan failed to raise the issue in any post-trial motions. See Noisette v. Ismail, 304 S.C. 56, 403 S.E.2d 122 (1991) (holding that, when the trial court does not explicitly rule on a question and the appellant fails to move to alter or amend the judgment on that ground, the issue is not properly before the court of appeals and should not be addressed).

III. Public Importance

The trial court found the issues presented in the lawsuit were of such significant public importance to warrant a finding that Sloan had standing on this ground. We disagree.

Regarding the right of an individual to obtain injunctive relief against an action by the State, the supreme court has held that “[t]he mere fact that the issue is one of public importance does not confer upon any citizen or taxpayer the right to invoke per se a judicial determination of the issue.”⁸ In so holding, the court explained that the basis for this rule is the “salutary public policy of limiting the judicial process to real controversies between the parties to the proceeding.”⁹

In Carolina Alliance for Fair Employment v. South Carolina Department of Labor, Licensing, and Regulation,¹⁰ this court found the plaintiff had standing based on the public importance of the issue of a worker’s right to notice of the wage being offered. Although the plaintiff had not suffered any specific harm, there were no other potential plaintiffs with a greater interest in the case.¹¹

In contrast, although the issue in this case is unquestionably important to the public, as any public works project would be, there are potential plaintiffs who were directly affected by DOT’s actions in awarding the contracts on the three projects. Clearly, any of the firms whose bids were rejected would have a greater interest in DOT’s procurement procedures than

⁸ Crews, 197 S.C. at 49, 14 S.E.2d at 358.

⁹ Id.

¹⁰ 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999).

¹¹ Id. at 488, 523 S.E.2d at 801.

did Sloan. None of these firms, however, brought suit alleging the procedures were improper.¹²

We therefore uphold the trial court's determinations that Sloan did not have taxpayer standing or standing based on a particularized interest in the lawsuit, but reverse the trial court's decision to allow Sloan to proceed with the case based on the public importance of the litigation.¹³

AFFIRMED IN PART, REVERSED IN PART.

GOOLSBY and HOWARD, JJ., and BEATTY, A.J., concur.

¹² In other cases in which the plaintiff was determined to have standing based on the public importance of the issues in the case, there were additional factors that would confer standing. See Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999) (holding the plaintiffs had standing to sue to enjoin Charleston County's issuance of tax exempt bonds for the purchase and renovation of a medical care facility); Thompson v. South Carolina Comm'n on Alcohol and Drug Abuse, 267 S.C. 463, 229 S.E.2d 718 (1976) (holding the plaintiffs had standing to sue for declaratory and injunctive relief against allegedly unconstitutional provisions of the Uniform Alcoholism and Intoxication Treatment Act).

¹³ We therefore do not address the arguments concerning the merits of the case or the trial court's findings regarding laches.