

SOUTH CAROLINA CASE LAW UPDATE

To: Chief Administrative Officer; County Attorney; County Treasurer
From: SCAC Legal Staff

SCAC legal staff review and summarize appellate court opinions impacting county government operations. CAOs/Attorneys are encouraged to forward this update to impacted county departments.

South Carolina Supreme Court

Alvetta L. Massenberg v. Clarendon County Treasurer, et al., Appellate Case No. 2023-000098, Opinion No. 28234. August 21, 2024

Areas of Law: Tax Sale, Statutory Compliance.

This case involves the question of compliance with the statutory requirements for delinquent tax sales pursuant to S.C. Code section 12-51-40(c). The Supreme Court held that a tax sale conducted by the Clarendon County Treasurer was defective in that it did not comply with the “conspicuous posting” requirements of section 12-51-40(c) and was thus void.

Prior to a tax sale, section 12-51-40(c) requires the tax collector post a notice at one or more conspicuous places on the subject property. Strict compliance with this statute is required, and any defect in the process will render a tax sale absolutely void. The tax collector hired a private contractor to post the required notice. The contractor posted a single 8.5 x 11 notice to a tree facing a single-lane dirt road. The tree was found to be indistinguishable from any other trees and the dirt road was infrequently traveled. The court found that the property bordered on a paved two-lane road that intersected another residential road in addition to the dirt road. The court concluded that the area selected by the vendor was not conspicuous and thus did not satisfy the statute. The court pointed to the fact that there was no evidence that the county official used judgment in determining a conspicuous location or that the third-party contractor had knowledge of or was made aware of the statutory requirements.

The court made clear that section 12-51-40(c) does not require that the location selected be the most conspicuous place. The court did hold that the official statutorily tasked with posting the tax sale notice must use some judgement when determining a conspicuous location.

The takeaway from this case should be that officials tasked with conducting tax sales should be able to provide evidence that judgment was used in selecting potential locations and the selected posting location was conspicuous. If the official decides to use a third-party contractor to physically post the notice at the property, they should be made aware of the statutory requirements contained in section 12-51-40(c).

The full opinion can be found here:

<https://www.sccourts.org/opinions/HTMLFiles/SC/28234.pdf>