

# Under the Microscope

*Retired contractor and 'court gadfly' keeps government in line*

**BY RICK BRUNDRETT**  
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It's easy to miss the "headquarters" of Edward D. "Ned" Sloan Jr. His cramped, wood-paneled office sits quietly on the back side of an alteration shop on East North Street heading toward downtown Greenville. But Sloan's impact on South Carolina jurisprudence has been neither hidden nor small. Over the past five years, no private individual has brought—and mostly won—more original jurisdiction and other declaratory-action appeals before the S.C. Supreme Court than the 79-year-old retired contractor and father of four.

Consider his appellate record:

- He took on Gov. Mark Sanford, contending that under the S.C. Constitution, Sanford couldn't be governor and hold an Air Force Reserve commission at the same time. The court in 2004 ruled against Sloan.
- He attacked the S.C. Department of Transportation for awarding more than \$1 billion in contracts for three massive construction projects—including the Cooper River Bridge replacement—without competitive sealed bids. The Court in 2005 sided with Sloan.
- In two separate cases decided in 2005 and this year, the court agreed with Sloan that the S.C. Legislature engaged in unconstitutional "bobtailing" by attaching unrelated pieces of legislation to various bills.
- He challenged the Friends of the Hunley, Inc., a nonprofit corporation formed to recover and restore the Confederate submarine, contending it was a public body under the state's Freedom

of Information Act and was required to turn over requested documents. The court in 2006 ruled against him on two issues but sided with him on another.

- He complained that three DOT commissioners were violating state law by serving multiple consecutive terms. The court sided with Sloan in 2007; one commissioner had resigned by the ruling and the other two quit shortly thereafter.
- In his latest victory, the court ruled on Aug. 25 that the Department of Transportation erred when it allowed an "emergency" procurement for a road-widening project in Charleston County (see the Sept. 1, 2008, issue of *South Carolina Lawyers Weekly*).

In 2000, the appeals court also granted Sloan standing in another "emergency" procurement case involving the Greenville County School District, which he eventually won on remand. In a separate Greenville County ruling in 2003, the Court of Appeals sided with Sloan that one public works project didn't comply with the county's procurement code, though it said two other projects were properly handled.

Despite his string of legal victories, Sloan still fumes about losing the Sanford case. "The Supreme Court didn't have the backbone," he told *South Carolina Lawyers Weekly* in a recent interview at his office. "They made up something fictitious. But they have feet of clay sometimes."

## **Champion for the Constitution**

Many men Sloan's age might prefer spending most of their time hitting golf balls or playing with their grandchildren. While Sloan is no doubt proud of his grandson

—a picture of the boy hangs on his office wall next to the 23 checks he's received over the years for attorney's fees and costs awarded to him—he says he's on a mission. "Defending the Constitution—fundamentally, I don't know anything more important than that," Sloan said. "Some of the Bible-thumpers might have a different answer, but I'm not one of them."

Greenville attorney James G. Carpenter has stood by Sloan's side in court over the past 10 years.

"He's a no-nonsense guy," Carpenter told *South Carolina Lawyers Weekly*. "Some people stand around and gripe, but he takes action." Carpenter said he was first introduced to Sloan in 1998 by one of Sloan's personal attorneys at the Wyche law firm in Greenville. He acknowledges that a "significant" amount of his practice has been devoted to Sloan's cases, though he doesn't know how much Sloan has spent over the years. "It's been a lot, I can tell you that," Carpenter joked.

## **Preventative Effect**

Sloan earned his money running a construction firm for 30 years. At the height of his business, he said he had 400 employees who worked on projects in South Carolina, other states and overseas, noting, "My main client was the South Carolina Highway Department." Not everything went smoothly, however. Years ago, he said his company along with a number of other S.C. contractors were indicted on federal charges of bid collusion on road-building projects. A jury acquitted his firm, he said, adding his business was one of the few exonerated in the scandal.

"To protect my own interests, I had to become an expert in pro-

curement,” Sloan said. Sloan acknowledged his experiences with procurement as a contractor fueled his interest after retirement in pursuing procurement litigation against government agencies. Although those cases typically don’t grab headlines as do public-spending issues involving salaries, they are just as important, he said.

As an example, he said, the S.C. Supreme Court ruled in his case involving the Cooper River Bridge replacement project that the DOT used the wrong procedures in awarding contracts. He said although he won the case, he believes the department can use that ruling to escape future liability. “If the bridge falls down, they’ll laugh,” he said.

Carpenter said Sloan has had a “preventative effect as well as a corrective effect” in the area of procurement. “We’ve had anecdotal evidence of contractors going to local governments, and they (government officials) saying, ‘Well, we can’t do that because Ned Sloan will sue us.’”

Sloan has been in plenty of court battles in recent years with the county and city of Greenville, the Greenville County School District and Greenville Hospital System over procurement and encroachment issues, FOIA requests and other matters.

Asked why he didn’t pursue his lawsuits while he was in the construction business, Sloan replied, “For one reason, I was not immune from retaliation. ... I don’t want any favors out of the government. They can’t do anything for or against me now.”

### **Taxpayer Standing**

Carpenter said he believes Sloan’s biggest legal impact has been in the area of private citizens’ standing. He explained that while Circuit Court judges typically have ruled that Sloan doesn’t have standing in the cases he brings, the S.C. Court of Appeals and Su-

preme Court have been more receptive. “[Chief Justice] Jean Toal has referred to him in open court as the court’s favorite gadfly and always says it’s with no pejorative intent,” Carpenter said. In contrast, Carpenter added, the federal courts have a “very limited view of citizen and taxpayer standing.”

Sloan said the South Carolina Public Interest Foundation, which he co-founded in 2005, has helped him obtain standing in some cases. “Before the foundation was created, I had to rely on other people to have standing in local procurement cases,” he explained. The foundation also has been a party in at least two of Sloan’s cases before the S.C. Supreme Court. A draft position paper about the organization said its purpose is “in South Carolina, to defend its Constitution from violation by governments, deter violation of its statutory and common law by governments, and promote the rule of law. “Its method is litigation, not political persuasion.” Carpenter said Sloan shares the same belief, noting, “He thinks it’s a whole lot more effective way to spend money than to try to persuade politicians to change something.”

Sloan said he doesn’t have any political motives behind the litigation he brings, though he acknowledges his political views are best described as libertarian. One bumper sticker on his office wall reads, “Help Save America—Scratch Every Democrat.” “Government that governs least is best,” Sloan said.

Although not an attorney, Sloan compares himself to ultra-conservative U.S. Supreme Court Justice Antonin Scalia. “Me and Scalia think alike,” he said. “He’s an originalist and has no interest in results or consequences.”

As for his next big lawsuit, Sloan said he typically relies on whistleblowers in government agencies to make him aware of problems. “Without their help,

half of these suits wouldn’t have been initiated.”

Sloan said he realizes his suits haven’t made him many friends in government. But he said he isn’t out to win a popularity contest. “Maybe I’m defined by my enemies—the more I have, the better I like it,” he said, laughing.

**Editor’s note:** Besides writing for *South Carolina Lawyers Weekly*, Brundrett also is a staff writer for *The State* newspaper in Columbia. Questions or comments may be directed to him at [rick.brundrett@gmail.com](mailto:rick.brundrett@gmail.com).