

## Another win for Ed Sloan, S.C.'s top citizen watchdog

By Barbara Williams  
Sunday, August 31, 2008

It can be safely said that there is no other private citizen who has personally invested as much as Greenville's Edward Sloan in trying to make officials at all levels of S.C. government follow the law.

His name was in the news again last week when, for the third time in recent years, he won a legal battle in the S.C. Supreme Court with the state Department of Transportation. Once again the high court found that the department had illegally awarded a construction contract. This time it involved the Trident area's Ladson Road project, mired for years in delays before a new company was given an emergency, no-bid contract. Since the problems with the original contractor were so long-standing, the high court found the situation failed to meet the no-bid criteria for emergencies. The obvious goal is to keep that from happening again.

Three years ago the court also found that the highway department's "design-build" process used to let contracts for such major projects as the \$632 million Ravenel bridge without competitive bids was illegal. While the bridge was finished before the opinion was issued, the court said the issue wasn't moot because the illegal act could be repeated. The Legislature did subsequently legalize the process. The avowed Sloan goal isn't to make laws, but ensure they are followed.

Then there was the successful lawsuit that forced the departure of several members of the highway commission who had been serving longer terms than state law allows. That Sloan challenge deserves at least some of the credit for the department's subsequent administrative reforms.

The highway department is by no means the only government entity on the retired paving contractor's radar. He started out keeping an eye on how

Greenville's various governments did business—and he still does.

According to his Greenville attorney, James Carpenter, Sloan currently is engaged in a "slush fund number three" lawsuit against Greenville County Council over the expenditure of funds by individual council member for their pet projects. While previous challenges have resulted in guidelines for those expenditures, the current lawsuit is an attempt to force council to abide by an attorney general's opinion that says council as a body must approve the funding.

Not even the governor is immune from a Sloan lawsuit. Indeed, Carpenter says he still feels strongly that the high court was wrong when it ruled that Mark Sanford wasn't violating the dual office prohibition when he accepted a commission in the Air Force Reserve.

One of the most attention-getting Sloan victories—assisted by the attorney general—came in a 2005 Supreme Court decision that threw out numerous, non-germane laws, known as "bobtails," attached to what even lawmakers dubbed the "kitchen sink bill." Unfortunately, the unconstitutional "bobtailing" practice—which allows bills to become laws that couldn't stand on their own—continues even though Sloan keeps suing and winning, as he did again earlier this year. Even in light of that ruling and despite warnings from Senate President Pro Tempore Glenn McConnell, an ethanol "bobtail" was among those that made it through this past session. This time, petroleum interests were the first to file suit, with Sloan joining as a friend of the court.

Sloan also has proven to be a friend of the state's Freedom of Information Act and still is in litigation with the Friends of the Hunley. While he quickly got the information he sought, the lawsuit stayed alive for nearly five years before it was declared moot. Carpenter cites as one of the positive outcomes the

Hunley support group's concession that it is a public body. He currently is attempting to recover \$140,000 in attorney's fees.

One of the most significant aspects of the Sloan lawsuits has been the high court's finding on numerous occasions that the private citizen had "standing"—the right to sue government agencies even though he had no direct interest in the outcome. That was the case in last week's decision when the majority concluded that his state taxpayer status was enough since the case was one "of great public importance."

It's a safe guesstimate, according to Carpenter, that Sloan has spent many hundreds of thousands of dollars in his effort to keep governments toeing the legal line. The lawyer estimates he's handled about 50 lawsuits for Sloan in the last 12 years. Less than half have been successful and court costs have been recovered in even fewer.

While there's no more committed government watchdog than Sloan, the 79-year-old Citadel graduate and family man says he has a multitude of other interests, including S.C. history and genealogy. He's also enlisted others in his watchdog role, forming the S.C. Public Interest Foundation a few years ago that has its name on the more recent lawsuits.

Let's hope that means his vigilance, perseverance and his goal "to protect and defend the constitution and other laws" will be perpetuated.

*Barbara S. Williams, the editor emeritus of The Post and Courier, can be reached at [bwilliams@postandcourier.com](mailto:bwilliams@postandcourier.com).*

Copyright © 1997 - 2007 the Evening Post Publishing Co.

The Post and Courier, August 31, 2008

# Another win for Ed Sloan, S.C.'s top citizen watchdog

It can be safely said that there is no other private citizen who has personally invested as much as Greenville's Edward Sloan in trying to make officials at all levels of S.C. government follow the law.

His name was in the news again last week when, for the third time in recent years, he won a legal battle in the S.C. Supreme Court with the state Department of Transportation. Once again the high court found that the department had illegally awarded a construction contract. This time it involved the Trident area's Ladson Road project, mired for years in delays before a new company was given an emergency, no-bid contract. Since the problems with the original contractor were so long-standing, the high court found the situation failed to meet the no-bid criteria for emergencies. The obvious goal is to keep that from happening again.

Three years ago the court also found that the highway department's "design-build" process used to let contracts for such major projects as the \$632 million Ravenel bridge without competitive bids was illegal. While the bridge was finished before the opinion was issued, the court said the issue wasn't moot because the illegal act could be repeated. The Legislature did subsequently legalize the process. The avowed Sloan goal isn't to make laws, but ensure they are followed.

Then there was the successful lawsuit that forced the departure of several members of the highway commission who had been serving longer terms than state law allows. That Sloan challenge deserves at least some of the credit for the department's subsequent administrative reforms.

The highway department is by no means the only government entity on the retired paving contractor's radar. He started out keeping an eye on how Greenville's various governments did business — and



Barbara  
S. Williams

he still does.

According to his Greenville attorney, James Carpenter, Sloan currently is engaged in a "slush fund number three" lawsuit against Greenville County Council over the expenditure of funds by individual council member for their pet projects. While previous challenges have resulted in guidelines for those expenditures, the current lawsuit is an attempt to force council to abide by an attorney general's opinion that says council as a body must approve the funding.

Not even the governor is immune from a Sloan lawsuit. Indeed, Carpenter says he still feels strongly that the high court was wrong when it ruled that Mark Sanford wasn't violating the dual office prohibition when he accepted a commission in the Air Force Reserve.

One of the most attention-getting Sloan victories — assisted by the attorney general — came in a 2005 Supreme Court decision that threw out numerous, non-germane laws, known as "bobtails," attached to what even lawmakers dubbed the "kitchen sink bill." Unfortunately, the unconstitutional "bobtailing" practice — which allows bills to become laws that couldn't stand on their own — continues even though Sloan keeps suing and winning, as he did again earlier this year. Even in light of that ruling and despite warnings from Senate President Pro Tempore Glenn McConnell, an ethanol "bobtail" was among those that made it through this past session. This time, petroleum interests were the first to file suit, with Sloan joining as a friend of the court.

Sloan also has proven to be a friend of the state's Freedom of

Information Act and still is in litigation with the Friends of the Hunley. While he quickly got the information he sought, the lawsuit stayed alive for nearly five years before it was declared moot. Carpenter cites as one of the positive outcomes the Hunley support group's concession that it is a public body. He currently is attempting to recover \$140,000 in attorney's fees.

One of the most significant aspects of the Sloan lawsuits has been the high court's finding on numerous occasions that the private citizen had "standing" — the right to sue government agencies even though he had no direct interest in the outcome. That was the case in last week's decision when the majority concluded that his state taxpayer status was enough since the case was one "of great public importance."

It's a safe guesstimate, according to Carpenter, that Sloan has spent many hundreds of thousands of dollars in his effort to keep governments toeing the legal line. The lawyer estimates he's handled about 50 lawsuits for Sloan in the last 12 years. Less than half have been successful and court costs have been recovered in even fewer.

While there's no more committed government watchdog than Sloan, the 79-year-old Citadel graduate and family man says he has a multitude of other interests, including S.C. history and genealogy. He's also enlisted others in his watchdog role, forming the S.C. Public Interest Foundation a few years ago that has its name on the more recent lawsuits.

Let's hope that means his vigilance, perseverance and his goal "to protect and defend the constitution and other laws" will be perpetuated.

Barbara S. Williams, the editor emeritus of The Post and Courier, can be reached at [bwilliams@postandcourier.com](mailto:bwilliams@postandcourier.com).

www.greenvillejournal.com AUGUST 31, 2008

Barbara S. Williams, the editor emeritus

## Another win for Ed Sloan, S.C.'s top citizen watchdog

It can be safely said that there is no other private citizen who has personally invested as much as Greenville's Edward Sloan in trying to make officials at all levels of S.C. government follow the law.

His name was in the news again last week when, for the third time in recent years, he won a legal battle in the S.C. Supreme Court with the state Department of Transportation. Once again the high court found that the department had illegally awarded a construction contract. This time it involved the Trident area's Ladson Road project, mired for years in delays before a new company was given an emergency, no-bid contract. Since the problems with the original contractor were so long-standing, the high court found the situation failed to meet the no-bid criteria for emergencies. The obvious goal is to keep that from happening again.

Three years ago the court also found that the highway department's "design-build" process used to let contracts for such major projects as the \$632 million Ravenel bridge without competitive bids was illegal. While the bridge was finished before the opinion was issued, the court said the issue wasn't moot because the illegal act could be repeated. The Legislature did subsequently legalize the process. The avowed Sloan goal isn't to make laws, but ensure they are followed.

Then there was the successful lawsuit that forced the departure of several members of the highway commission who had been serving longer terms than state law allows. That Sloan challenge deserves at least some of the credit for the department's subsequent administrative reforms.

The highway department is by no means the only government entity on the retired paving contractor's radar. He started out keeping an eye on how Greenville's various governments did business — and he still does.

According to his Greenville attorney, James Carpenter, Sloan currently is engaged in a "slush fund number three" lawsuit against Greenville County Council over the expenditure of funds by individual council member for their pet projects. While previous challenges have resulted in guidelines for those expenditures, the current lawsuit is an attempt to force council to abide by an attorney general's opinion that says council as a body must approve the funding.

Not even the governor is immune from a Sloan lawsuit. Indeed, Carpenter says he still feels strongly that the high court was wrong when it ruled that Mark Sanford wasn't violating the dual office prohibition when he accepted a commission in the Air Force Reserve.

One of the most attention-getting Sloan victories — assisted by the attorney general — came in a 2005 Supreme Court decision that threw out numerous, non-germane laws, known as "bobtails," attached to what even lawmakers dubbed the "kitchen sink bill." Unfortunately, the unconstitutional "bobtailing" practice — which allows bills to become laws that couldn't stand on their own — continues even though Sloan keeps suing and winning, as he did again earlier this year. Even in light of that ruling and despite warnings from Senate President Pro Tempore Glenn McConnell, an ethanol "bobtail" was among those that made it through this past session. This time, petroleum interests were the first to file suit, with Sloan joining as a friend of the court.

Sloan also has proven to be a friend of the state's Freedom of Information Act and still is in litigation with the Friends of the Hunley. While he quickly got the information he sought, the lawsuit stayed alive for nearly five years before it was declared moot. Carpenter cites as one of the positive outcomes the Hunley support group's concession that it is a public body. He currently is attempting to recover \$140,000 in attorney's fees.

One of the most significant aspects of the Sloan lawsuits has been the high court's finding on numerous occasions that the private citizen had "standing" — the right to sue government agencies even though he had no direct interest in the outcome. That was the case in last week's decision when the majority concluded that his state taxpayer status was enough since the case was one "of great public importance."

It's a safe guesstimate, according to Carpenter, that Sloan has spent many hundreds of thousands of dollars in his effort to keep governments toeing the legal line. The lawyer estimates he's handed about 50 lawsuits for Sloan in the last 12 years. Less than half have been successful and court costs have been recovered in even fewer.

While there's no more committed government watchdog than Sloan, the 79-year-old Citadel graduate and family man says he has a multitude of other interests, including S.C. history and genealogy. He's also enlisted others in his watchdog role, forming the S.C. Public Interest Foundation a few years ago that has its name on the more recent lawsuits.

Let's hope that means his vigilance, perseverance and his goal "to protect and defend the constitution and other laws" will be perpetuated.

*The State* September 10, 2008

## **Latest Sloan win further chips away at government arrogance**

By Cindi Ross Scoppe, Associate Editor

A WORD to the wise: If Ed Sloan sues you — or even comes after you outside of court — settle. Quickly. Don't waste the courts' time or taxpayers' dollars fighting what will, with what appears to be increasing certainly, be a losing battle.

Pretty much everybody outside the Legislature has already figured out that's good advice for the Legislature; and even legislative leaders are starting to catch on, as they declined to challenge several of the charges in his latest anti-bobtailing lawsuit.

But the latest state Supreme Court ruling in favor of the one-man citizen litigation team extends that message to state agencies as well. Of course, the case involved the state agency that was most closely tied to the Legislature at the time the suit was filed. But while that might have influenced the agency's actions, I doubt it played into the court's rather straightforward ruling.

I probably wouldn't have given a sideways glance at Sloan v. the Department of Transportation were it not for the name of the plaintiff, whose previous lawsuits resulted in back-to-back rebukes of the Legislature's unconstitutional practice of stringing unrelated matters together in a single bill, and that almost certainly will result in a third such ruling. Although Mr. Sloan lost his suit challenging the governor's right to join the Air Force Reserve, it was one of his suits that got the Legislature practically laughed out of court for claiming that "one consecutive term" actually referred to two in a row, and thus allowed legislators to re-appoint members to the board of the ... Transportation Department.

One close observer of the court told me that the justices seem to have grown comfortable with Mr. Sloan: He has demonstrated to their satisfaction that he doesn't waste his or their time raising frivolous issues, and that he argues his cases well.

And so I read the ruling, which arose after the Transportation Department canceled a road-widening contract because it wasn't finished on time, and then hired a replacement firm under an emergency procurement process that let it avoid putting the contract back out to bid.

Mr. Sloan argued that there was no "emergency" as defined by state procurement law (or by common sense). Circuit Court Judge Thomas Cooper dismissed the case, ruling that an emergency had indeed existed, that the case was moot anyway because the work had been completed and Mr. Sloan, as a mere citizen, didn't have standing to sue.

The Transportation Department put up a laughable defense to the substantive issue. Although internal documents showed it opted for the emergency/no-bid contract because of the "unacceptable delay and increase(d) frustration among the already frustrated public that live and conduct business in the area" that would result if the agency took the extra two months to bid out the contract, it argued in court that delay created a public safety emergency. The best explanation it could dream up for this, though, was that "traveling through that work zone was a hazard." Mr. Sloan, and a 5-1 Supreme Court, noted that traveling through any work zone is a hazard, but not an emergency.

The justices likewise agreed with Mr. Sloan that this case merited an exception to the mootness rule because it raised an important issue that was likely to come up again and unlikely ever to be addressed without making an exception.

Most significantly, they once again ruled that Mr. Sloan had standing to bring a suit, even though he couldn't demonstrate that the state's actions hurt him any more than they hurt anyone else, noting that "competitive bidding laws are for the benefit of taxpayers" and not just competing businesses. (This was the point on which Justice Costa Pleicones sided against Mr. Sloan.)

I don't agree with all of Mr. Sloan's priorities when it comes to selecting litigation targets. I certainly don't agree with all of his politics. And his proclamation that his new S.C. Public Interest Foundation's "method is litigation, not political persuasion" is one I would normally find off-putting, since determining public policy is the exclusive domain of the political branches.

Except.

Except that there's a world of difference between trying to twist the law or the constitution to make them apply in creative new ways that their authors never imagined — as public interest groups usually do when they rely on litigation rather than politics — and asking merely that the government live by the rules it has written for itself. Don't like the rules? Then change them. But as long as they're on the books, abide by them.

In South Carolina, that idea is honored far too often in the breach. Whether it's legislators writing laws that apply to a single county or local councils thumbing their nose at the open meeting laws or state or local agencies defying public record laws, they do it because they know they're unlikely to get sued. One reason this was a safe bet was that our Supreme Court has traditionally allowed only those with a direct, usually financial, stake in a government action to bring suit, and the players all know better than to sue, lest they suffer repercussions later.

Every time Mr. Sloan is granted standing to sue merely because he's a citizen who expects his government to follow the rules, he makes it a little harder for our government to keep ignoring the rules. And whether you agree with those rules or not, this is something that should encourage us all.