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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

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WM Mobile Bay Environmental Center, Inc.

v.

City of Mobile Solid Waste Authority

**Certified Questions from the United States Court of Appeals for
the Eleventh Circuit**

(No. 19-10239)

STEWART, Justice.

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The United States Court of Appeals for the Eleventh Circuit has certified to this Court, pursuant to Rule 18, Ala. R. App. P., five questions:

"(1) Can property owned by a solid waste disposal authority 'belong[] to' a county or municipality for purposes of section 6-10-10[, Ala. Code 1975]?"

"(2) If so, what factors should courts consider when making such a determination?"

"(3) If section 6-10-10 can apply to property owned by a solid waste disposal authority, is such property 'used for county or municipal purposes' when the authority has not used the property but is holding it for a future use?"

"(4) Does Alabama continue to recognize a common law exemption from execution for property used for public purposes as described in Gardner v. Mobile & N.W.R. Co., 102 Ala. 635, 15 So. 271 (1894)?"

"(5) If so, does that exemption apply to public corporations like [the City of Mobile Solid Waste] Authority, and what standards should courts employ in applying this common law exemption?"

WM Mobile Bay Env't Ctr., Inc. v. City of Mobile Solid Waste Auth., 972 F.3d 1240, 1251 (11th Cir. 2020).

Facts and Procedural History

This case concerns whether Alabama law permits WM Mobile Bay Environmental Center, Inc. ("WM Mobile"), a judgment creditor, to

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execute on certain real property owned by the City of Mobile Solid Waste Authority ("the Authority"), a public solid-waste-disposal authority established pursuant to the Alabama Solid Waste Disposal Authorities Act ("the Act"), § 11-89A-1 et seq., Ala. Code 1975. In its certification to this Court, the Eleventh Circuit Court of Appeals provided the following pertinent facts and procedural background:

"WM Mobile brought this action in federal court against the Authority, alleging that the Authority breached various provisions of a contract between WM Mobile and the Authority for the operation of a landfill (the 'Landfill') owned by the Authority. After a jury trial, WM Mobile obtained a judgment against the Authority totaling \$6,034,045.50. This Court affirmed that judgment in WM Mobile Bay Environmental Center, Inc. v. City of Mobile Solid Waste Authority, 672 F. App'x 931 (11th Cir. 2016).

"To partially satisfy its judgment,¹ WM Mobile applied to the district court for a writ of execution against a 104-acre parcel of land (the 'West Tract') owned by the Authority that sits adjacent to the Landfill. The Authority purchased the West Tract in 1994 and it 'has been held by the [Authority] for expansion of the Chastang Landfill if needed. The expansion has been discussed but has not been needed to date.'

"The Authority moved to quash WM Mobile's request for a writ of execution, asserting, among other things, that Alabama law prohibits execution on the West Tract because that land is owned by the Authority for public use. The Authority emphasized its role as a public corporation, its

purpose and limited rights under the statutes authorizing its creation, and its relationship with the City of Mobile (the 'City'). The Authority argued that its property is held for public use and should be considered, for debt collection purposes, that of the City. Thus, the Authority argued, the West Tract was exempt from execution under Alabama common law and section 6-10-10 of the Alabama Code, which prohibits execution on property 'belonging to the several counties or municipal corporations in this state and used for county or municipal purposes.'

"The district court agreed with the Authority and granted its motion to quash. After first rejecting the Authority's other arguments, the district court found that the West Tract 'belongs' to the City and is used for municipal purposes, as required by section 6-10-10. The district court relied on the 'longstanding principle [in Alabama] that public property is exempt' and discussed cases describing the role of, and certain protections afforded to, certain public corporations. The district court found that these principles are codified in section 6-10-10 and held that the West Tract is protected from execution under that provision. This appeal ensued.

"¹At the time it moved for the writ of execution, WM Mobile claimed \$5,308,640.23 outstanding on its judgment, having recovered about \$725,000 by withholding royalty payments otherwise due to the Authority under their contract. The Authority disputes the amount withheld by WM Mobile and claims that WM Mobile has underreported its revenue."

WM Mobile Bay, 972 F.3d at 1242-43.

Analysis

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The initial question posed by the Eleventh Circuit Court of Appeals concerns whether property owned by a solid-waste-disposal authority is exempt from execution under § 6-10-10, Ala. Code 1975. That section, the language of which has not been altered since 1886, provides that "[a]ll property, real or personal, belonging to the several counties or municipal corporations in this state and used for county or municipal purposes shall be exempt from levy and sale under any process or judgment whatsoever."

In answering this first question, we initially explore the relationship between a solid-waste-disposal authority created under the Act and its "determining municipality." See § 11-89A-2(9), Ala. Code 1975. That relationship was aptly summarized by the Eleventh Circuit Court of Appeals as follows:

"The Authority is a public corporation created by the City [of Mobile] and authorized by Chapter 89A of the Alabama Code. The Alabama Legislature, through Chapter 89A, declared the 'need for planning, research, development, and innovation in the design, management, and operation of facilities for solid waste management' and concluded with the need for the creation of 'authorities which will have the power to issue and sell bonds and notes ... to acquire and construct such facilities.' Ala. Code § 11-89A-1. These authorities are organized as public corporations. Id. §§ 11-89A-3, 11-89A-4(d).

"To incorporate a solid waste disposal authority, at least three qualified electors of a county or municipality must file an application with the governing body of their county or municipality. Id. § 11-89A-3. The governing body of the county or municipality must then review the electors' application and adopt a resolution either denying the application or declaring the need for the requested authority and authorizing the electors to file incorporation documents for the authority. Id. Once incorporated, the authority can acquire facilities for waste disposal and enter into contracts to accomplish its statutory purpose. See id. § 11-89A-8(a)(5), (12). It can also 'borrow money,' 'assume obligations secured by a lien' on its facilities, and 'sue and be sued in its own name.' See id. § 11-89A-8(a)(2), (6), (11).

"The Authority's ability to borrow money and issue bonds is significant. The Alabama constitution prohibits the legislature from authorizing 'any county, city, town, or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever, ... by issuing bonds or otherwise.' Ala. Const. art. IV, § 94(a), Statutorily authorized public corporations, however, are not subject to this constitutional restriction because they are '[s]eparate, independent public corporations[,] ... not subdivisions of the State within the meaning of Section 94 of the [Alabama] Constitution.' Knight v. W. Ala. Env'tl. Improvement Auth., [287 Ala. 15, 21,] 246 So. 2d 903, 907 (Ala. 1971). As recognized by the Alabama Supreme Court:

" 'Public corporations were initially authorized by the Legislature as a means for municipalities to finance improvements to their utilities infrastructure without running afoul of constitutional and statutory debt limitations, as

well as to shield municipalities from the large financial obligations that often accompany such utilities projects.'

"Water Works & Sewer Bd. of [the City of] Talladega v. Consol. Publ'g, Inc., 892 So. 2d 859, 861 (Ala. 2004).

"Nonetheless, a public corporation is not completely [independent of] the county or municipality that authorizes it, and, in some ways, the role played by the local government is analogous to a shareholder of a public corporation. For example, the City is the Authority's 'determining municipality' because it authorized the creation of the Authority. See Ala. Code §§ 11-89A-2(9), 11-89A-3. The Authority's board of directors is elected by the City's governing body, and the City must approve any amendments to the Authority's articles of incorporation. See id. §§ 11-89A-5, 11-89A-6. In the event the Authority is dissolved, title to its property will vest in the City. See id. § 11-89A-21. Moreover, any net earnings generated by the Authority, if any, are paid over to the City because the Authority must operate as a nonprofit corporation. See id. § 11-89A-19. Additionally, by statute, the Authority shares certain characteristics with the City. For example, the Authority has the power of eminent domain, see id. § 11-89A-14, its directors can be removed only via the same impeachment process used to remove municipal officials, see id. § 11-89A-6(d), and the Authority is required to include 'City of Mobile' in its corporate name, see id. § 11-89A-4(b)(4)."

WM Mobile Bay, 972 F.3d at 1243-44.

The term "municipal corporations" generally refers to incorporated villages, towns, and cities but not public corporations like the Authority.

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See, e.g., Dunn v. Court of Cnty. Revenues of Wilcox, 85 Ala. 144, 146, 4 So. 661, 662 (1888), and Dillard v. Webb, 55 Ala. 468, 473-74 (1876). We note that, in this case, the parties have apparently stipulated that the Authority is not a municipal corporation for the purposes of § 6-10-10. WM Mobile Bay, 972 F.3d at 1245 ("The parties agree that ... the Authority is a public corporation -- not a municipal corporation -- separate from the City."). Therefore, the question whether a solid-waste-disposal authority or other public corporation is encompassed within the definition of "municipal corporation" as that term is used in § 6-10-10 is not before this Court, and we do not endeavor to address it. But see, e.g., Dunn, 85 Ala. at 146, 4 So. at 662 (noting that the phrase "municipal corporation" may also include "public corporations created by government for political purposes"). Nevertheless, the question whether the property of a solid-waste-disposal authority may be said to be that of an associated municipal corporation for the purposes of § 6-10-10 remains.

Under well-established Alabama law, a public corporation is a distinct entity that is separate from the state, county, or municipality.

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"A public corporation is a separate entity from a county, city, or town, and is not a subdivision of the state. Smith v. Indus. Dev. Bd. of the City of Andalusia, 455 So. 2d 839 (Ala. 1984). Moreover, a public corporation is not the alter ego or agent of the county or the municipality in which it is organized. Id."

Dobbs v. Shelby Cnty. Econ. & Indus. Dev. Auth., 749 So. 2d 425, 430 (Ala. 1999); see also Health Care Auth. for Baptist Health v. Davis, 158 So. 3d 397, 402 (Ala. 2013) (noting that a public corporation "is an entity separate from the State and from the persons and entities who participated in its creation"); Alabama Hosp. Ass'n v. Dillard, 388 So. 2d 903, 905 (Ala. 1980) (quoting Opinion of the Justices No. 120, 254 Ala. 506, 511, 49 So. 2d 175, 180 (1950)) ("We simply hold, as we have so often, 'that a public corporation is a separate entity from the state and from any local political subdivision, including a city or county within which it is organized.' "); George A. Fuller Co., v. Vulcan Materials Co., Se. Div., 293 Ala. 199, 202, 301 So. 2d 74, 76 (1974). This separate-entity doctrine has long been applied for the purpose of exempting public corporations from certain constitutional and statutory prohibitions applicable to the state,

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counties, and municipalities.¹ See, e.g., Limestone Cnty. Water & Sewer Auth. v. City of Athens, 896 So. 2d 531 (Ala. Civ. App. 2004) (holding that water-works authority was a separate entity and thus was not subject to reimbursement requirements of § 22-25-16, Ala. Code 1975, applicable to "the State of Alabama, any county, municipality, or [a] municipal utility board"); Dillard, 388 So. 2d at 905-06 (holding that public-hospital corporations were separate entities from the State and, therefore, not bound by §§ 68 and 94 of the Alabama Constitution of 1901); Knight v. West Alabama Env't Improvement Auth., 287 Ala. 15, 21, 246 So. 2d 903, 907 (1971) (concluding that public corporations are not subject to constitutional restriction on local governments borrowing because they are "[s]eparate, independent public corporations They are not subdivisions of the State within the meaning of Section 94 of the Constitution..."); Opinion of the Justices No. 169, 270 Ala. 147, 148, 116 So. 2d 588, 589-90 (1959) ("It has been repeatedly held that a public corporation is an entity

¹Whether a public corporation as a separate entity is immune from suit is another question. See Armory Comm'n of Alabama v. Staudt, 388 So. 2d 991 (Ala. 1980), and Vandenberg v. Aramark Educ. Servs., Inc., 81 So. 3d 326, 339 (Ala. 2011).

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separate and distinct from the State, and that debts of such corporation are not the debts of the State, within the purview of Section 213[, Ala. Const. 1901]."); Opinion of the Justices No. 120, 254 Ala. at 512-13, 49 So. 2d at 181-82 (holding that act that permitted bonds to be issued by public corporations organized by municipal governments did not violate constitutional provision restricting the State or local governments from incurring debt, lending credit, or issuing bonds when such public corporations were separate entities from the State or local government). Furthermore, the individuality of corporate entities, including public corporate entities, was well established at the time the predecessor to § 6-10-10 was originally enacted in 1886. See, e.g., Fitzpatrick v. Dispatch Publ'g Co., 83 Ala. 604, 606, 2 So. 727, 728-29 (1887); Paschall v. Whitsett, 11 Ala. 472 (1847); and John F. Dillon, Commentaries on the Law of Municipal Corporations § 18 (3d ed. 1881).

Notwithstanding Alabama's established precedent requiring treatment of public corporations as separate entities, there is some basis for treating the property of a public corporation as that of its associated municipality. Most notably, in Opinion of the Justices No. 45, 235 Ala.

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485, 179 So. 535 (1938), six Justices concluded that property owned by a public-housing authority was exempt from ad valorem taxation pursuant to Art. IV, § 91, Ala. Const. 1901, which provides, in pertinent part, that "[t]he legislature shall not tax the property, real or personal, of the state, counties, or other municipal corporations" The Justices in that case characterized the public-housing authority as "a corporation brought into existence upon the order of a city government, public in nature, and charged with the duty of performing an important element of the police power of the city under whose sanction it shall come into existence." 235 Ala. at 486, 179 So. at 536. Upon that reasoning, the Justices concluded that the public-housing authority was "an administrative agency of a city, and its property is therefore for certain purposes that of a municipal corporation and is entitled to the tax exemption of section 91, Constitution." Id.

In Thomas v. Alabama Municipal Electric Authority, 432 So. 2d 470 (Ala. 1983), however, this Court declined to extend the reasoning of Opinion of the Justices No. 45. In Thomas, a municipal electric authority organized under the provisions of § 11-50A-1 et seq., Ala. Code 1975,

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citing Opinion of the Justices No. 45, asserted that its property was likewise protected from taxation pursuant to § 91. In concluding that the municipal electric authority was not entitled to the exemption from property taxes accorded state, county, or municipal property under § 91, the Thomas Court distinguished Opinion of the Justices No. 45, stating that, unlike the public-housing authority at issue in that case, the municipal electric authority was "a public corporation of the State, organized at the direction of the Legislature, and [did] not act as the agent of municipalities in the exercise of their police powers." 432 So. 2d at 480. Furthermore, the Thomas Court reiterated the doctrine that "[a] public corporation is a separate entity from the State and from any local political subdivision thereof." Id. at 481. Indeed, in the wake of Thomas, this Court has continued to conclude that public corporations established by cities for the purpose of supplying their inhabitants with important municipal services -- water service, for example -- are separate and independent entities from the cities they serve. See, e.g., Williams v. Water Works & Gas Bd. of Ashville, 519 So. 2d 470, 471-72 (Ala. 1987),

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and Water Works Bd. of Leeds v. Huffstutler, 292 Ala. 669, 299 So. 2d 268 (1974).

Nor do we find the cases of Hamrick Construction Corp. v. Rainsville Housing Authority, 447 So. 2d 1295 (Ala. 1984) ("Hamrick I"), and Rainsville Housing Authority v. Hamrick Construction Corp., 456 So. 2d 38 (Ala. 1984) ("Hamrick II"), particularly instructive in addressing the first question presented. In Hamrick I we affirmed the judgment of a trial court quashing garnishments and executions against a housing authority organized pursuant to Alabama's Housing Authorities Law, § 24-1-20 et seq., Ala. Code 1975. Section 24-1-40 of the Housing Authorities Law, however, expressly exempts all property of a housing authority "from levy and sale by virtue of an execution, or other process, to the same extent as now enjoyed by the properties of towns, cities and counties of Alabama," and, therefore, the direct application of § 6-10-10 was not at issue. Furthermore, Hamrick II concerned whether housing-authority officers were subject to a writ of mandamus to compel payment of the judgment entered against the housing authority -- a question not now before this Court.

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In light of the foregoing, we conclude that the initial question presented to us is best answered by applying the well-established separate-entity doctrine to the plain language of § 6-10-10. See City of Prichard v. Balzer, 95 So. 3d 1, 3-4 (Ala. 2012) (noting that, if the language of a statute is clear, there is no room for judicial construction). We note that the phrase "belonging to" as used in § 6-10-10 plainly refers to ownership of property. See Black's Law Dictionary 190 (11th ed. 2019) (defining "belong" as "[t]o be the property of a person or thing"). Accordingly, we conclude that the exemptions provided by § 6-10-10 apply to property owned by counties and municipal corporations, and not to property legal ownership of which is vested in a separate public corporation not otherwise qualifying as a municipal corporation, notwithstanding the fact that such an entity may be a public or quasi-public corporation incorporated for the purposes of assisting a municipality in providing important public services. We, therefore, answer the first question -- "Can a property owned by a solid waste disposal authority 'belong to' a county or municipality for purposes of section 6-10-10?" -- in the negative. In light of our answer to the first

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question, the second and third questions certified to this Court require no answer, and we, therefore, decline to answer them.

We next turn the fourth and fifth questions propounded by the Eleventh Circuit Court of Appeals, which seek clarification as to whether Alabama continues to recognize the common-law doctrine exempting property owned by public or quasi-public corporations and used for public purposes from execution. The common-law doctrine generally prohibiting execution on property used for public purposes was stated in Gardner v. Mobile & Northwestern R.R., 102 Ala. 635, 15 So. 271 (1894), as follows:

"As a general rule, the property of all private corporations is as subject to legal process for the satisfaction of debt as is the property of natural persons. An exception obtains, however, when the corporation is created to serve public purposes, charged with public duties, and is in the exercise of its franchise and in the performance of its duties. Then, on considerations of public policy, without regard to the nature or quality of the estate or interest of the corporation, according to the weight of authority, such property as is necessary to enable it to discharge its duties to the public and effectuate the objects of its incorporation is not subject to execution at law. The only remedy of a judgment creditor is to obtain the appointment of a receiver, and the sequestration of its income or earnings."

102 Ala. at 645, 15 So. at 273-74.

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Although the statement in Gardner was made with regard to a quasi-public corporation, the doctrine likewise applies to property held by public corporations. See Martin v. Holtville High Sch. Bldg., 226 Ala. 45, 145 So. 491 (1933) (holding that public-school building was not subject to sale under mechanic's and materialmen's lien statute); McNeal Pipe & Foundry Co. v. Bullock, 38 F. 565, 565-66 (S.D. Ala. 1889) (holding that property of waterworks company, operating as a public or quasi-public corporation, was not subject to seizure and sale). Indeed, commentators have recognized similar iterations of the rule expressed in Gardner:

"Ordinarily, the property of a public or quasi-public corporation devoted to public or governmental purposes, as distinguished from private or quasi-private purposes, is not subject to seizure under an execution.

"It is considered general doctrine needing no statutory sanction that the land and property of the state or its agencies or political subdivisions is not subject to seizure under general execution in the absence of a statute expressly granting such a right As a matter of public policy, general statutory provisions making property subject to execution have been construed to apply only to the property of private persons and corporations, and not to that of public corporations or bodies politic."

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33 C.J.S. Executions § 42 (2009); see also 53 Am. Jur. 2d Mechanics' Liens § 36 (2017) ("The general view has been that a mechanic's lien cannot be acquired against a public service or quasi-public corporation whose purposes and objects are distinctively public."); 10 Carol A. Jones, Fletcher Encyclopedia of Corporations § 4776 (2019 rev. ed.) ("The rights of individual creditors of [public-service corporations] must yield to the paramount interest of the whole public. And so where there are no statutory provisions to the contrary, a creditor of such a corporation cannot subject to attachment, execution or other legal process such of its property as it needs in the performance of its corporate functions and in carrying out of its franchise obligations towards the public." (footnotes omitted)).

We further note that no statute has abrogated, either expressly or implicitly, the common-law rule prohibiting execution on property owned by a public or quasi-public corporation and used for a public purpose. "The common law is the law of Alabama unless it is repealed by statute." Borden v. Malone, [Ms. 1190327, Nov. 25, 2020] __ So. 3d __, __ (Ala. 2020); see also § 1-3-1, Ala. Code 1975 ("The common law of England, so far as it is not inconsistent with the Constitution, laws and institutions of

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this state, shall, together with such institutions and laws, be the rule of decisions, and shall continue in force, except as from time to time it may be altered or repealed by the Legislature."). Indeed, this Court has declared that the common-law doctrine exists "independently of [current code section § 6-10-10]," Russell & Johnson v. Town of Oneonta, 199 Ala. 64, 65, 73 So. 986, 986 (1917), and our decisions have continued to reference the common-law exemption to execution, see, e.g., Safeco Ins. Co. of Am. v. Graybar Elec. Co., 59 So. 3d 649, 655 (Ala. 2010) (citing Martin, supra, and noting that the mechanic's and materialmen's lien statute does not apply to property used for a public purpose), and Hamrick I, 447 So. 2d at 1299 (noting the "long-standing principle of exemption of public property" from execution).

Accordingly, based on the foregoing, we conclude that the common-law doctrine prohibiting execution on property used for public purposes remains the law of Alabama; that the doctrine coexists with statutes adopting similar principles, such as § 6-10-10 and § 24-1-40; and that the doctrine applies to public corporations, including public corporations

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organized under the Act. On the basis of these conclusions, we answer the fourth and fifth questions in the affirmative.

Finally, in addressing the question as to what standards are to be employed in applying the common-law exemption set forth above to the property of a public corporation, we note that the key inquiry is whether the property at issue is owned or used for public purposes, see Mayor and Aldermen of Birmingham v. Rumsey & Co., 63 Ala. 352, 356 (1879) (stating that "property, owned or used by the corporation for public purposes ... can not be taken in execution for debts of the city"), and 33 C.J.S. Executions § 42, or, more specifically, "is necessary to enable [the public corporation] to discharge its duties to the public." Gardner, 102 Ala. at 645, 15 So. at 273-74. We note that the term "public purpose" is generally afforded "a broad expansive definition" and that "'[g]enerally speaking ... it has for its objective the promotion of public health, safety, morals, security, prosperity, contentment, and the general welfare of the community.'" Opinion of the Justices No. 269, 384 So. 2d 1051, 1053 (Ala. 1980) (quoting Clifford v. City of Cheyenne, 487 P.2d 1325, 1329 (Wyo. 1971)).

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QUESTIONS 1, 4, AND 5 ANSWERED; QUESTIONS 2 AND 3
DECLINED.

Parker, C.J., and Bolin and Mendheim, JJ., concur.

Shaw, Wise, Bryan, and Sellers, JJ., concur in the result.

Mitchell, J., recuses himself.