REL: May 29, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180939

Joel Kennamer

v.

City of Guntersville et al.

Appeal from Marshall Circuit Court
(CV-19-900208)

MENDHEIM, Justice.

Joel Kennamer appeals from the Marshall Circuit Court's dismissal of his complaint seeking a declaratory judgment, a preliminary injunction, and a permanent injunction against the City of Guntersville ("the City"), the City's mayor

Leigh Dollar, each member of the Guntersville City Council[1] (the City, Mayor Dollar, and the city council members are hereinafter collectively referred to as "the City defendants"), and Lakeside Investments, LLC ("Lakeside"). We affirm.

I. Facts

Kennamer's complaint sought to prevent the City from leasing certain City property to Lakeside. The complaint describes two parcels of property belonging to the City that collectively compose what is known as "Guntersville City Harbor." Kennamer's complaint refers to the property as "Parcel One" and "Parcel Two" (hereinafter referred to collectively as "the development property").[2] Kennamer

[1]The members of the Guntersville City Council named in Kennamer's complaint were: Sanchez Watkins, Phillip Kelley, John Myers, Carson Ray, Donald Myers, Rudy Cornelius, and Randall E. Whitaker.

[2]Both the City defendants and Lakeside argue that the descriptions in the complaint of the development property contains significant errors, including the actual boundaries of the two parcels as well as from whom the City obtained portions of the development property. See, e.g., Lakeside's brief, pp. 5-7. Because we must construe doubts about the facts in favor of Kennamer, and because the defendants maintain that Kennamer's alleged errors "are inconsequential considering the pertinent legal arguments," id. at 5, we will use Kennamer's terminology when referring to separate portions of the development property.

alleged that Parcel One historically had "been used for purposes of a public park or other recreational facilities." Kennamer asserted that the City had erected a pavilion on Parcel One for public use and that residents used Parcel One for public fishing, fishing tournaments, truck and tractor shows, and public festivals and events. Kennamer averred that a portion of Parcel One was being used for police storage and an impound facility.

As for Parcel Two, Kennamer alleged that on July 18, 2000, the City filed in the Marshall Probate Court a "Petition for Condemnation" of property belonging to CSX Transportation, Inc. ("CSX"), "for the purpose of constructing [a] public boat dock and a public recreational park." The petition for condemnation does, in fact, state: "The petitioner, City of Guntersville, has deemed and determined that the acquisition of the real estate hereinafter described is in the public interest and necessary for public use for the construction and maintenance, a public dock and a public recreation park."[3] On

[3]Along with their motions to dismiss, the City defendants and Lakeside submitted various materials pertaining to the properties at issue -- including petitions, deeds, publication notices, and court pleadings -- that the circuit court expressly considered in ruling on their motions to dismiss Kennamer's complaint. All parties agree that those documents

April 2, 2003, the probate court entered an order condemning Parcel Two "for the use of constructing a public boat dock and a public recreational park area and such other uses as set out in the original Complaint." CSX appealed that order to the Marshall Circuit Court. On November 2, 2004, while the case was pending on appeal, the parties entered into a settlement agreement that was approved by the circuit court. The settlement provided that the City would allocate additional funds to CSX in payment for Parcel Two and, in exchange, the City was "awarded and granted all right, title and interest" in Parcel Two. The court-approved settlement acknowledged that Parcel Two was "condemned for the uses and purposes stated and sought in the Petition for Order of Condemnation."

On March 8, 2018, the City filed a declaratory-judgment action in the Marshall Circuit Court against CSX. In its complaint, the City acknowledged the language in the

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were referenced in Kennamer's complaint. "A trial court does not treat a Rule 12(b)(6) motion as a summary-judgment motion by considering authenticated documents that are attached to the motion to dismiss if '"'the document[s are] referred to in the complaint and [are] central to the plaintiff[s'] claim[s].'"'" Newson v. Protective Indus. Ins. Co. of Alabama, 890 So. 2d 81, 87 (Ala. 2003) (quoting Donoghue v. American Nat'l Ins. Co., 838 So. 2d 1032, 1035 (Ala. 2002), quoting in turn other cases).

November 2, 2004, settlement agreement referencing the use of Parcel Two for the purposes stated in the petition for condemnation -- which had stated it was to be used to construct "a public boat dock and a public recreation park area." The City asked the circuit court to "clarify the Consent Settlement to appropriately and properly reflect that [the City], as the fee simple owner of [Parcel Two], can put [Parcel Two] to any lawful use, without restriction, the City determines to be in the public interest." CSX did not file an answer or otherwise make an appearance in the action, and the City subsequently filed a motion for a default judgment. On May 1, 2018, the circuit court entered a default judgment in favor of the City and against CSX, stating that the City "is the fee simple owner" of Parcel Two and that, as such, the City "may use [Parcel Two] for any lawful use, without restriction, which the City of Guntersville determines to be in the public interest."

On June 6, 2018, the City published a legal notice "pursuant to Amendment No. 772 to the Constitution of Alabama of 1901, as amended (recodified as Section 94.01 of the Recompiled Constitution of Alabama of 1901)," explaining that,

at a public meeting of the city council to be held on June 18, 2018, the mayor and the city council would consider a resolution approving a "Project Development Agreement" ("the development agreement") between the City and Lakeside, together with a ground lease to Lakeside of certain City property for a development project. The public notice stated the "public benefits" from the proposed development agreement would include, among other things, "increasing sales, lodging and other tax revenues with currently unused property of the City," "promoting tourism, commerce, and industrial development within the City," and "serving as a catalyst for entertainment, commercial, retail and other developments along Lake Guntersville and elsewhere within the downtown core of the City." On June 18, 2018, the city council approved a resolution declaring: that it "own[ed] fee simple title" to property "fronting Lake Guntersville in the downtown area of the City and which, to date, the City has been unable to utilize in any material manner"; that the City authorized the development project contained in the development agreement with Lakeside (hereinafter the "City Harbor development"); and that the City approved a ground lease of property specifically

described in the resolution for use in the City Harbor development, which is "hereby determined by the City to be in the public interest and, further, is being made under and in furtherance of any power and authority authorized by Amendment 772 to the Constitution of Alabama of 1901." The resolution also declared that the ground lease "will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities." At the same meeting, the city council adopted an ordinance stating that the development property was "no longer needed for public or municipal purposes." The development agreement expressly stated that the development property would be used "for a mixed-use lakefront development containing restaurants, entertainment, retail, office space, high density multi-family residential, and other appropriate commercial uses, including parking."

On January 12, 2019, the City published another legal notice "pursuant to Amendment No. 772 to the Constitution of Alabama of 1901, as amended (recodified as Section 94.01 of the Recompiled Constitution of Alabama of 1901)," explaining that, at a public meeting of the city council to be held on

January 22, 2019, the mayor and the city council would consider a resolution approving an updated version of the development agreement with Lakeside together with a ground lease that would include additional City property for the City Harbor development. The legal notice again listed the "public benefits" to be derived from the City Harbor development. On January 22, 2019, the city council approved a resolution authorizing the lease of the development property (hereinafter "the development lease") "under and in furtherance of any power and authority authorized by Amendment 772 to the Constitution of Alabama of 1901." Like the June 18, 2018, resolution, the new resolution stated that the development lease "will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities." At the same meeting, the city council approved an ordinance declaring that the development property "is no longer needed for public or municipal purposes." The development agreement, as updated, again affirmed that the development property would be used "for a mixed-use lakefront development containing restaurants, entertainment, retail,

office space, high density multi-family residential, and other appropriate commercial uses, including parking."

On May 9, 2019, Kennamer sued the City defendants and Lakeside in the Marshall Circuit Court seeking a judgment declaring the development lease void on the basis that the City lacked the authority to lease to a third-party developer City property that had been dedicated for use as, and/or was being used as, a public park. Specifically, the complaint alleged that the development lease violated § 35-4-410, Ala. Code 1975, which requires approval of a majority of the electors in the City for alienation of property that is designated as a public park or recreational facility. Kennamer also sought a preliminary and permanent injunction against leasing the property in question.[4] The complaint asserted that Kennamer filed the action in his capacity as a resident and taxpayer of the City.

On June 13, 2019, the City defendants and Lakeside filed motions to dismiss the complaint. The motions contended that

[4]Kennamer did not argue for an injunction before the circuit court, and he does not attempt to assert in this appeal that he met the requirement for the issuance of an injunction. Therefore, the initial request for injunctive relief is not before us in this appeal.

the City had authority to execute the development lease under Art. IV, § 94.01, Ala. Const. 1901 (Off. Recomp.), also cited as Amendment No. 772, Ala. Const. 1901. The motions argued in the alternative that, even if § 94.01 did not apply, § 35-4-410 would not hinder the lease to Lakeside because the development property had never been dedicated as a public park and/or recreational facility. On July 15, 2019, Kennamer filed his response in opposition to the motions to dismiss. Kennamer argued that § 94.01 did not apply to a lease for the type of project described in the development agreement. He also contended that evidence would show that the development property had been dedicated as a public park and/or that it was being used as a public park, and thus § 35-4-410 did apply. Kennamer also argued that the City had violated § 11-47-21, Ala. Code 1975, because, he said, it had fraudulently stated that the development property was not needed for public or municipal purposes. On July 29, 2019, the circuit court held a hearing on the motions.

On August 9, 2019, the circuit court granted the motions to dismiss filed by the City defendants and Lakeside. The

judgment granting the motions explained the circuit court's reasoning:

> "The Court concludes that [Kennamer's] claims for declaratory and injunctive relief in Counts One and Two of the complaint fail to state a claim upon which relief can be granted against the City defendants and Lakeside based on § 94.01 of the Alabama Constitution ('Amendment 772'). In so ruling, the Court finds that, based on the facts alleged in [Kennamer's] complaint and otherwise properly before the Court, the City's lease of Parcels One and Two to Lakeside for the purpose of commercially developing the City Harbor project falls within the scope of Amendment 772 and was a duly authorized real estate transaction given the City's undisputed compliance with the procedural requirements exclusively set out in Amendment 772. Additionally, the Court finds that the City was not required by Ala. Code § 35-4-410 (1975) to obtain approval from a majority of its electorate before leasing the real property to Lakeside because Amendment 772 contains no such requirement and as a constitutional amendment it overrides § 35-4-410. Lastly, the Court finds that § 35-4-410 is inapplicable in any event because the real property subject to the lease at issue was not dedicated as a public park or recreational facility within the meaning of Alabama law."

On August 20, 2019, Kennamer appealed the circuit court's judgment.

II. Standard of Review

> "This Court must review de novo the propriety of a dismissal for failure to state a claim and must resolve all doubts in favor of the plaintiff:

> "'It is a well-established principle of law in this state that a complaint, like all other pleadings, should be liberally construed, Rule 8(f), Ala. R. Civ. P., and that a dismissal for failure to state a claim is properly granted only when it appears beyond a doubt that the plaintiff can prove no set of facts entitling him to relief. Winn-Dixie Montgomery, Inc. v. Henderson, 371 So. 2d 899 (Ala. 1979)....
>
> "'Where a 12(b)(6) motion has been granted and this Court is called upon to review the dismissal of the complaint, we must examine the allegations contained therein and construe them so as to resolve all doubts concerning the sufficiency of the complaint in favor of the plaintiff. First National Bank v. Gilbert Imported Hardwoods, Inc., 398 So. 2d 258 (Ala. 1981). In so doing, this Court does not consider whether the plaintiff will ultimately prevail, only whether he has stated a claim under which he may possibly prevail. Karagan v. City of Mobile, 420 So. 2d 57 (Ala. 1982).'
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> "Fontenot v. Bramlett, 470 So. 2d 669, 671 (Ala. 1985)."

Bay Lines, Inc. v. Stoughton Trailers, Inc., 838 So. 2d 1013, 1017-18 (Ala. 2002).

III. Analysis

Disposition of this appeal primarily turns on interpreting Art. IV, § 94.01, Ala. Const. 1901 (Off. Recomp.). Indeed, Kennamer argues that, absent the

authorization in § 94.01 of the development lease to Lakeside, both § 35-4-410 and § 11-47-21 would prohibit the City from executing the development lease. See, e.g., Kennamer's brief, p. 31 (arguing that, "[s]ince the lease does not fall within the provisions of Ala. Const. §94.01, the City Defendants do not have any authority to lease or alienate property that is still being used for public or municipal purposes").

In pertinent part, § 94.01 provides:

> "(a) The governing body of any county, and the governing body of any municipality located therein, for which a local constitutional amendment has not been adopted authorizing any of the following, shall have full and continuing power to do any of the following:
>
> > "(1) Use public funds to purchase, lease, or otherwise acquire real property, buildings, plants, factories, facilities, machinery, and equipment of any kind, or to utilize the properties heretofore purchased or otherwise acquired, and improve and develop the properties for use as sites for industry of any kind or as industrial park projects, including, but not limited to, grading and the construction of roads, drainage, sewers, sewage and waste disposal systems, parking areas, and utilities to serve the sites or projects.
> >
> > "(2) Lease, sell, grant, exchange, or otherwise convey, on terms approved by the governing body of the county or the municipality, as applicable, all or any part of any real property, buildings,

plants, factories, facilities, machinery, and equipment of any kind or industrial park project to any individual, firm, corporation, or other business entity, public or private, including any industrial development board or other public corporation or authority heretofore or hereafter created by the county or the municipality, for the purpose of constructing, developing, equipping, and operating industrial, commercial, research, or service facilities of any kind.

"(3) Lend its credit to or grant public funds and things of value in aid of or to any individual, firm, corporation, or other business entity, public or private, for the purpose of promoting the economic and industrial development of the county or the municipality.

"(4) Become indebted and issue bonds, warrants which may be payable from funds to be realized in future years, notes, or other obligations, or evidences of indebtedness to a principal amount not exceeding 50 percent of the assessed value of taxable property therein as determined for state taxation, in order to secure funds for the purchase, construction, lease, or acquisition of any of the property described in subdivision (1) or to be used in furtherance of any of the other powers or authorities granted in this [Section]. The obligations or evidences of indebtedness may be issued upon the full faith and credit of the county or any municipality or may be limited as to the source of their payment.

"....

"(b) In carrying out the purpose of this [Section], neither the county nor any municipality located therein shall be subject to Section 93 or 94 of this Constitution. Each public corporation heretofore created by the county or by any municipality located therein, including specifically any industrial development board incorporated under Article 4 of Chapter 54 of Title 11 of the Code of Alabama 1975, and any industrial development authority incorporated or reincorporated under Chapter 92A of Title 11 of the Code of Alabama 1975, and the Shoals Economic Development Authority enacted under Act No. 95-512, 1995 Regular Session, are validated and the powers granted to the board or authority under its respective enabling legislation are validated notwithstanding any other provision of law or of this Constitution. The powers granted by this [Section] may be exercised as an alternative to, or cumulative with, and in no way restrictive of, powers otherwise granted by law to the county, or to any municipality, or to any agency, board, or authority created pursuant to the laws of this state.

"(c) Neither the county nor any municipality located therein shall lend its credit to or grant any public funds or thing of value to or in aid of any private entity under the authority of this [Section] unless prior thereto both of the following are satisfied:

"(1) The action proposed to be taken by the county or municipality is approved at a public meeting of the governing body of the county or municipality, as the case may be, by a resolution containing a determination by the governing body that the expenditure of public funds for the purpose specified will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

> "(2) At least seven days prior to the public meeting, a notice is published in the newspaper having the largest circulation in the county or municipality, as the case may be, describing in reasonable detail the action proposed to be taken, a description of the public benefits sought to be achieved by the action, and identifying each individual, firm, corporation, or other business entity to whom or for whose benefit the county or the municipality proposes to lend its credit or grant public funds or thing of value.
>
> "....
>
> "(d) This [Section] shall have prospective application only. Any local constitutional amendments previously adopted and any local law enacted pursuant to such amendment shall remain in full force and effect."

Kennamer does not dispute that the City fulfilled the procedural requirements of § 94.01, which are enumerated in subsection (c), i.e., (1) the City gave sufficient advanced public notice of the public meetings at which it considered the development lease and the development agreement, and (2) at those meetings the city council approved resolutions determining that the development lease "will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities." § 94.01(c)(1).

Instead of any procedural objection, Kennamer contends that the development lease does not fulfill any purpose permitted under § 94.01(a)(2). In pertinent part, § 94.01(a)(2) authorizes the City to "[l]ease ... all or any part of any real property ... to any ... corporation, or other business entity, public or private, ... for the purpose of constructing, developing, equipping, and operating industrial, commercial, research, or service facilities of any kind." Kennamer contends that the City Harbor development "falls outside of the scope and meaning of Ala. Const. § 94.01" because the development agreement specifies that the development property will be used for "constructing and operating restaurants, entertainment, retail businesses and condos." Kennamer's brief, pp. 21, 25. Kennamer argues that the City Harbor development will consist of "retail" businesses, that § 94.01 "did not include the term 'retail,'" and that such businesses "do not fall within the definition of 'commercial' so as to allow the lease under Ala. Const. § 94.01."[5] Id. at pp. 21, 25.

[5]In his reply brief, Kennamer additionally argues that "operating a condominium development" also does not fall within purposes listed in § 94.01(a)(2) of "industrial, commercial, research, or service facilities of any kind."

In contending that the term "retail" is not included within the term "commercial" in § 94.01(a)(2), Kennamer relies on two cases: McDonald's Corp. v. DeVenney, 415 So. 2d 1075 (Ala. 1982), and Brown v. Longiotti, 420 So. 2d 71 (Ala. 1982). In McDonald's Corp., a group of private-business owners in Elmore County filed a declaratory-judgment action against

> "McDonald's Corporation, Aronov Realty Company, K-Mart Corporation, and the Industrial Development Board of Elmore County, regarding the validity of two proposed bond issues established pursuant to Code 1975, §§ 11-20-30 to -50 (1977 County Board Act). The bond issues were authorized by the Industrial Development Board of Elmore County. The two projects involve retail facilities. One project is a McDonald's Restaurant and the other is a retail shopping center comprised of various retail mercantile stores including a K-Mart Store.
>
> "The issue on appeal is the same issue that was before the trial court -- whether the two projects are within the definition of 'project' under the 1977 County Board Act. The trial court held that the Act does not include as a 'project' the 'planned expansion of retail facilities.'"

Kennamer's reply brief, p. 6. However, Kennamer did not present this argument to the circuit court, nor did he offer it in his initial appellate brief. Therefore, we will not consider this argument. See, e.g., Melton v. Harbor Pointe, LLC, 57 So. 3d 695, 696 n.1 (Ala. 2010) (noting that "this Court will not consider arguments made for the first time in a reply brief").

McDonald's Corp., 415 So. 2d at 1077. Section § 11-20-30(5), Ala. Code 1975, defines a "project" under the 1977 County Board Act, in part, as:

> "Any land and any building or other improvement thereon and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by the following or by any combination of two or more thereof:
>
> > "a. Any industry for the manufacturing, processing or assembling of any agricultural, manufactured or mineral products;
> >
> > "b. Any commercial enterprise in storing, warehousing, distributing or selling any product of agriculture, mining or industry; and
> >
> > "c. Any enterprise for the purpose of research, but does not include facilities designed for the sale or distribution to the public of electricity, gas, water or telephones or other services commonly classified as public utilities."

After quoting this definition, the McDonald's Corp. Court stated:

> "Obviously, subsections a. and c. do not apply; thus, the question before this Court is whether the Legislature intended for retail enterprises such as McDonald's or K-Mart to be considered as '[a]ny commercial enterprise in storing, warehousing, distributing or selling any product of agriculture, mining or industry.'"

McDonald's Corp., 415 So. 2d at 1078.

The Court chose to examine the meaning of the 1977 County Board Act in the context of three other acts passed by the legislature during the same relative period as the 1977 County Board Act -- the Cater Act, the Wallace Act, and the 1961 County Act -- because the Court believed that "all four acts have a common purpose and the means provided to effectuate this purpose are identical." McDonald's Corp., 415 So. 2d at 1078. The Court then explained:

> "All of these acts express a similar intent and purpose, that is, to give a municipality or county the power to offer inducements to industrial, manufacturing, commercial, and research enterprises to either locate in Alabama or expand existing facilities in this state. These acts authorize municipalities and counties to acquire industrial, manufacturing, commercial, and research projects and to issue bonds to finance the cost of such acquisitions. Each of the four acts grants this authority to a different body. ...
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> "This Court is of the opinion that the intent of the Legislature in the passage of the 1977 County Board Act, as well as the Cater Act, the Wallace Act, and the 1961 County Act, was not to give retail business establishments desiring to expand their operations within the state such as McDonald's and K-Mart, ready access to lower cost financing than other retail businesses; the legislative intent was to induce, attract, and persuade businesses of a non-retail nature, particularly industrial, mining, manufacturing, and research enterprises, to locate

here or to expand existing facilities in this state."

McDonald's Corp., 415 So. 2d at 1079 (emphasis added). In support of its conclusion that the 1977 County Board Act did not intend to include "retail" businesses within its definition of a "project," the McDonald's Corp. Court cited several other acts passed by the legislature "which specifically provide inducements for retail enterprises such as McDonald's and K-Mart." Id. The McDonald's Corp. Court then concluded:

> "Clearly, these acts show that the Legislature has enacted legislation designed to include retail enterprises. Appellants' contention that retail establishments similar to McDonald's and K-Mart were intended by the Legislature to be included in the definition of 'project' in the [1977] County Board Act is a persuasive argument because a retail establishment could fall under the broad term 'commercial enterprise' as that term is used in the County Board Act, if that term is viewed independently from the rest of the statute and the history of the legislation. However, we must view the statute in a manner which best comports with the intent of the Legislature. Thus, we must interpret the term 'commercial enterprise' as it is used in the statute by reference to the entire statute and we must examine the history of the legislation, which shows the County Board Act to be a part of the legislative plan to bring industry into this state. The Legislature could have specifically included the word 'retail' in its definition of 'project' but it did not."

McDonald's Corp., 415 So. 2d at 1080.

In Brown v. Longiotti, a group of retail-business owners sued the City of Hamilton and other defendants

> "to challenge the city's plan to construct a retail shopping center and to issue industrial revenue bonds to finance its acquisition and construction. Under the terms of the plan, the land would be developed by the city and then leased to Samuel Longiotti who would in turn lease the property to K-Mart. The bonds that the city proposes to issue are tax-exempt."

Brown, 420 So. 2d at 71-72. The circuit court granted a motion to dismiss the action on the basis that Amendment No. 84, Ala. Const. 1901 (recodified as Ala. Const. 1901, Local Amendments, Marion County § 4), granted the City of Hamilton the authority to issue the bonds.

In pertinent part, Amendment No. 84 provides:

> "Any provision of the Constitution or laws of the state of Alabama to the contrary notwithstanding, any municipality in Marion county, or any one or more of them, shall have full and continuing power and authority, without any election or approval other than the approval of its governing body, to do any one or more of the following:
>
> > "1. To purchase, construct, lease, or otherwise acquire real property, plants, buildings, factories, works, facilities, machinery and equipment of any kind.
> >
> > "2. To lease, sell for cash or on credit, exchange, or give and convey any such property described in subdivision 1

> above, to any person, firm, association or corporation.
>
> "3. To promote local industrial, commercial or agricultural development and the location of new industries or businesses therein.
>
> "4. To become a stockholder in any corporation, association or company.
>
> "5. To lend its credit or to grant public moneys and things of value in aid of, or to, any individual, firm, association, or corporation whatsoever."

(Emphasis added.)

The Brown Court concluded that "the bond offering for locating a retail store in the municipality of Hamilton is inconsistent with the intent and object of amendment 84." Brown, 420 So. 2d at 74. To explain its reasoning, the Court then quoted extensively from McDonald's Corp., finding that "the reasoning employed in McDonald's Corp. v. DeVenney is applicable to amendment 84." Brown, 420 So. 2d at 75. Specifically, the Brown Court quoted the portion of McDonald's Corp. that concluded that the legislature's intent in enacting the 1977 County Board Act, the Cater Act, the Wallace Act, and the 1961 County Act "'was not to give retail business establishments desiring to expand their operations within the

state such as McDonald's and K-Mart, ready access to lower cost financing than other retail businesses.'"[6] Brown, 420 So. 2d at 75 (quoting McDonald's Corp., 415 So. 2d 1079).

Kennamer contends that the interpretation of the term "commercial" in § 94.01 should mirror the conclusions of the McDonald's Corp. and Brown Courts. That is, the term "commercial" should not be interpreted to include "retail" establishments such as those planned for the City Harbor development.

> "[H]ad retail purposes been intended to be authorized by Ala. Const. § 94.01 it would have clearly said so. The fact that it is not expressly included means that the stated purposes (restaurants, entertainment, retail stores and multi-unit housing) in the ordinances approved by the City Defendants do not fall within the meaning and intent of Ala. Const. 94.01. Without such expressed provision, it is clear that the legislature and/or the citizens of this State did not give local governments the authority to lease municipal-owned public property to a private, for profit company to build bars, restaurants, retail stores and condos. The City Defendants simply did

[6]The Brown Court also concluded that the sale of tax-free bonds by the City of Hamilton "would not serve a significant 'public purpose,' but, instead would primarily benefit the individual lessee through lower rentals." Brown, 420 So. 2d at 75. Kennamer does not argue that the development lease would not serve a "public purpose" as that phrase is discussed in Brown; thus, we do not deem that portion of Brown to be relevant to this case.

> not have the authority to lease the property to the Developer for such retail purposes."

Kennamer's brief, pp. 29-30.

We cannot agree with Kennamer's argument. Simply put, § 94.01 is different than the law at issue in McDonald's Corp. and Brown; it is more broadly worded to suit a broader purpose. Consequently, a straightforward reading of § 94.01 does not yield the same result reached in McDonald's Corp. and Brown.

> "'The fundamental principle of statutory construction is that words in a statute must be given their plain meaning.' Mobile Infirmary Med. Ctr. v. Hodgen, 884 So. 2d 801, 814 (Ala. 2003). 'When a court construes a statute, "[w]ords used in [the] statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says."' Ex parte Berryhill, 801 So. 2d 7, 10 (Ala. 2001) (quoting IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992))."

Trott v. Brinks, Inc., 972 So. 2d 81, 85 (Ala. 2007).

Section 94.01(a)(2) authorizes a county or municipality to "[l]ease, sell, grant, exchange, or otherwise convey ... all or any part of any real property ... to any ... corporation, or other business entity, public or private, ... for the purpose of constructing, developing, equipping, and

operating industrial, commercial, research, or service facilities of any kind." (Emphasis added.) The ordinary understanding of the phrase "commercial ... facilities of any kind" plainly includes retail establishments. Section 94.01 was ratified in December 2004. At that time, Black's Law Dictionary defined the term "commerce" as: "The exchange of goods and services, esp. on a large scale involving transportation between cities, states, and nations." Black's Law Dictionary 285 (8th ed. 2004). "Retail" was defined as: "The sale of goods or commodities to ultimate consumers, as opposed to the sale for further distribution of processing." Id. at 1341.[7] The common understanding was, and is, that "commercial" activity concerns transactions involving goods in general, while "retail" activity concerns the sale of goods directly to consumers. In other words, retail business is a

[7]The seventh and eighth editions of Black's Law Dictionary do not contain definitions for the term "commercial." The sixth edition defines "commercial" as: "Relates to or is connected with trade and traffic or commerce in general; is occupied with business and commerce." Black's Law Dictionary 270 (6th ed. 1990). The first definition of "commercial" in the current edition is: "Of, relating to, or involving the buying and selling of goods." Black's Law Dictionary 336 (11th ed. 2019). The definition of "retail" has remained essentially the same through all of the aforementioned editions of Black's Law Dictionary.

subset of "commercial" business. That the term "commercial" in § 94.01 is not to be construed in a specific, exclusive sense is confirmed by the use of the phrase "facilities of any kind." That phrase counsels for interpreting the term "commercial" broadly and inclusively to encompass all varieties of commerce, which obviously would include retail facilities.

In contrast, the term "commercial" used in § 11-20-30 -- the provision of the 1977 County Board Act at issue in McDonald's Corp. -- and used in Amendment No. 84 -- the provision at issue in Brown -- is not accompanied by the phrase "of any kind." Section 11-20-30(5)(b) concludes in the definition of "project" "[a]ny commercial enterprise in storing, warehousing, distributing or selling any product of agriculture, mining or industry." "[A]ny commercial enterprise" is limited to enterprises related to "agriculture, mining or industry." Amendment No. 84 authorizes municipalities in Marion County "[t]o promote local industrial, commercial or agricultural development and the location of new industries or businesses therein." It does

not indicate that the term "commercial" should be given its broadest meaning as is indicated in the text of § 94.01.[8]

Beyond the clear difference in the wording of § 94.01 and the provisions at issue in McDonald's Corp. and Brown, the purpose of § 94.01 also stands in contrast to the purpose of § 11-20-30 of the 1977 County Board Act discussed in McDonald's Corp. and Amendment No. 84 at issue in Brown. As we noted earlier in this analysis, the McDonald's Corp. Court concluded that the legislature's purpose in enacting the 1977 County Board Act -- as well as the Wallace Act, the Cater Act, and the 1961 County Act -- was "to induce, attract, and persuade businesses of a non-retail nature, particularly industrial, mining, manufacturing, and research enterprises, to locate here or to expand existing facilities in this state." McDonald's Corp., 415 So. 2d at 1079. The McDonald's Corp. Court contrasted those acts with other acts that

[8]We would observe, however, that nothing in the text of Amendment No. 84 indicates that the term "commercial" should be given a specifically restricted meaning. The Brown Court's conclusion that the term "retail" was not included in the understanding of "commercial" in Amendment No. 84 appears to depend entirely upon its conclusion that Amendment No. 84 was similar to the 1977 County Board Act, the Cater Act, the Wallace Act, and the 1961 County Act -- a conclusion for which the Brown Court offered no explanation.

specifically concerned retail businesses. The Brown Court concluded that Amendment No. 84, which was ratified in 1950, had a similar purpose for municipalities in Marion County. See Brown, 420 So. 2d at 75.

However, the provisions addressed in McDonald's Corp. and Brown represent just part of the legal landscape of economic-development legislation for Alabama counties and municipalities. The backdrop for such legislation was § 94 of the Alabama Constitution of 1901, which, in pertinent part, provides:

> "(a) The Legislature shall not have power to authorize 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, or to become a stockholder in any corporation, association, or company, by issuing bonds or otherwise."

§ 94, Ala. Const. 1901.

Over time, § 94 had the effect of limiting the ability of counties and municipalities to promote economic development. Consequently, the legislature came up with the idea of empowering local governments to create separate entities that could assist those governments with attracting business opportunities.

> "In 1949, the Alabama Legislature adopted the Cater Act, § 11-54-80 et seq., Ala. Code 1975, to promote and to develop industry in Alabama. The Cater Act authorizes municipalities to incorporate industrial development boards (IDBs). §§ 11-54-81 through -85, Ala. Code 1975. The Act authorizes IDBs to acquire projects composed of real and personal property and to lease, to sell, to exchange, to donate, or to convey its projects or properties. §§ 11-54-87(a)(4), (a)(5), and (a)(6). ..."

Dobbs v. Shelby Cty. Econ. & Indus. Dev. Auth., 749 So. 2d 425, 428 (Ala. 1999). After the legislature adopted the Cater Act, the governor asked this Court for an advisory opinion as to whether the creation of industrial development boards violated § 94. The resulting opinion advised that

> "[t]he restriction in Section 94 applies only to a 'county, city, town, or other subdivision of this state.' An industrial development board is a public corporation and is a separate entity from a county, city, or town. It is not the alter ego or agent of the municipality in which it is organized. It is also not a subdivision of the state."

Smith v. Industrial Dev. Bd. of Andalusia, 455 So. 2d 839, 840 (Ala. 1984) (summarizing Opinion of the Justices No. 120, 254 Ala. 506, 49 So.2d 175 (1950)). With the specter of constitutional infirmity out of the way, the legislature followed the enactment of the Cater Act with several other "industrial-development statutes":

"In 1951, the legislature passed the Wallace Act, § 11-54-20 et seq., Ala. Code 1975. The Wallace Act authorizes the municipalities themselves to perform the same acts and services as the IDBs. McDonald's Corp. v. DeVenney, 415 So. 2d 1075 (Ala. 1982). However, the Wallace Act requires that the principal of and interest on bonds issued by a municipality must be paid from the revenues derived from leasing the property. § 11-54-24. ...

"In order to give counties the same economic opportunities as municipalities, the legislature adopted the 1961 County Board Act, §§ 11-20-1 through -13, Ala. Code 1975. The 1961 County Board Act authorizes counties to acquire and to improve land (projects), to lease the projects, and to issue 'revenue bonds' to defray the costs of acquiring and constructing the projects. § 11-20-3. However, before a county may issue any bonds, the county must lease the property. ...

"The legislature next adopted the 1977 County Board Act, which authorizes counties to incorporate industrial development boards. § 11-20-30 et seq., Ala. Code 1975. The 1977 County Board Act grants the IDBs incorporated by counties the same powers, rights, and duties as the IDBs incorporated by municipalities. §§ 11-20-37, 11-20-38, and 11-20-41. ...

"In 1989, the legislature adopted the County Industrial Development Authorities Act, § 11-92A-1 et seq., Ala. Code 1975, for the creation and empowerment of industrial development authorities (IDAs). Existing industrial development authorities and industrial development boards are authorized to reincorporate under §§ 11-92A-6 and -7 to cure irregularities or otherwise to obtain the benefits of the Act. The Act also authorizes the incorporation of new industrial development authorities. §§ 11-92A-3 through -6. The 1989 Act grants to IDAs the power to acquire real property

> for the purpose of establishing industrial parks, to improve such industrial parks, and to lease or to sell projects consisting of land, improvements, or both in the industrial parks to any persons. § 11-92A-12(18). ..."

Dobbs, 749 So. 2d at 428-29. Dobbs itself concerned the Tax Incentive Reform Act of 1992 (TIRA), codified at §§ 40-9B-1 through -8, Ala. Code 1975, which was

> "intended to promote industrial growth in Alabama by permitting municipalities, counties, and PIAs [Public Industrial Authorities] to abate municipal, county, and state noneducational ad valorem taxes, construction-related 'transaction' taxes, mortgage taxes, and recording taxes for a 'maximum exemption period' of 10 years when such taxes would otherwise be levied or collected 'with respect to private use industrial property.' §§ 40-9B-4 and -5, Ala. Code 1975."

Dobbs, 749 So. 2d at 428. Each of these legislative acts expanded the authority of counties and municipalities for the purpose of promoting economic development in their respective regions.

One particularly interesting landmark in this landscape of economic-development legislation is noted in Smith v. Industrial Development Board of Andalusia, supra:

> "The issues presented by this appeal concern the constitutionality of Act No. 83-199, amending § 11-54-80, Ala. Code 1975, known as the Cater Act. The Cater Act authorizes the incorporation of industrial development boards, and gives them the

> power to assume certain 'projects' designated by the legislature as promoting a public purpose. Ala. Code 1975, § 11-54-81(a). Act No. 83-199 amends the Cater Act to include in the list of projects '[a]ny commercial enterprise ... providing hotel, motor inn services ... including food or lodging services or both.' Ala. Code 1975, § 11-54-80(3)."

455 So. 2d at 840 (emphasis added). This amendment to the Cater Act was enacted the year after this Court's decision in McDonald's Corp. The Smith Court concluded that the amendment did not run afoul of § 94 because it was directed to industrial development boards. More generally, the amendment to the Cater Act at issue in Smith indicated an updated and expanded understanding of what could constitute a "commercial enterprise" that local-government industrial development boards could promote in their regions.

Moreover, this legal landscape is not confined to ordinary legislation: Amendment No. 84, ratified in 1950 and examined in Brown, constituted the first in a large number of local constitutional amendments to the Alabama Constitution concerning economic development. Several of those local amendments mirrored the language in Amendment No. 84 that empowered municipalities in Marion County "[t]o promote local industrial, commercial or agricultural development and the

location of new industries or businesses therein."[9] However, some other local constitutional amendments -- ratified several years later than most of the local amendments that parroted Amendment No. 84 -- mirror the language in § 94.01 that empowers counties and municipalities to "[l]ease,... all or any part of any real property ... to any ... corporation ... for the purpose of ... developing ... commercial ...

[9]By this Court's survey, at least 26 local constitutional amendments parrot the language of Amendment No. 84: Autauga County, Amendment No. 183 (1961); Bibb County, Amendment No. 312 (1972); Blount County, Amendment No. 95 (1952); Chilton County, Amendment No. 679 (2000); Clarke County, Amendment No. 217 (1963); Covington County, Amendment No. 725 (2002); Etowah County, Amendment No. 761 (2004); Fayette County, Amendment No. 94 (1952); Franklin County, Amendment No. 186 (1961); Geneva County, Amendment No. 263 (1966); Greene County, Amendment No. 188 (1961); Hale County, No. 313 (1972); Henry County, Amendment No. 729 (2002); Lamar County, Amendment No. 189 (1961); Lawrence County, Amendment No. 190 (1961); Marengo County, Amendment No. 308 (1969); Pickens County, Amendment No. 302 (1969); St. Clair County, Amendment No. 197 (1961); Sumter County, Amendment No. 250 (1965); Amendment No. 104 (1954) for the municipalities of Haleyville and Double Springs; Amendment No. 155 (1960) for the municipality of Uniontown; Amendment No. 221 (1963) for the City of York in Sumter County; Amendment No. 244 (1965) for the Town of Lester in Limestone County; Amendment No. 251 (1965) for the municipality of Livingston in Sumter County; Amendment No. 256 (1965) for the municipalities of Addison and Lynn in Winston County; and Amendment No. 277 (1967) for the Town of Carbon Hill in Walker County.

facilities of any kind."[10] Other local constitutional amendments mention "commercial facilities" with different language than either Amendment No. 84 or § 94.01.[11] Some local amendments do not mention "commercial facilities," listing instead "industrial, transportation, distribution, warehouse or research facilities, and of office and other facilities auxiliary to the foregoing."[12] Finally, some local

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[10]By this Court's survey, at least eight local amendments employ the same pertinent language used in § 94.01(a)(2): Barbour County, Amendment No. 757 (2004); Butler County, Amendment No. 719 (2002); Coffee County, Amendment No. 723 (2002); Crenshaw County, Amendment No. 748 (2004); Lee County, Amendment No. 642 (1999); Montgomery County, Amendment No. 713 (2002); Russell County, Amendment No. 737 (2002); and Tallapoosa County, Amendment No. 739 (2002).

[11]Amendment No. 245 (1965) empowers Madison County and the City of Huntsville in part "to lease, sell, exchange or otherwise convey all or any part of" a "project" -- meaning "industrial, commercial and agricultural projects, including real and personal property, plants, buildings, factories, works, facilities, machinery and equipment of any kind whatsoever" -- "to any person, firm or corporation." Amendment No. 303 (1969) mirrors the language in Amendment No. 245 for Morgan County and the cities of Hartselle and Decatur.

[12]Amendment No. 429 (1982) is the most prominent of these amendments, which initially addressed the counties of Bullock, Coffee, Coosa, Dallas, Etowah, Geneva, Houston, Jefferson, Lawrence, Macon, Marengo, Mobile, Morgan, Talladega, Madison, Shelby, and Tuscaloosa. Amendment No. 759 (2004) amended Amendment No. 429 to include Baldwin County. Amendment No. 415 (1982), for Calhoun County, mirrors the language in Amendment No. 429. A few of the counties listed in Amendment No. 429 have other local constitutional amendments addressing

constitutional amendments more generally authorize the legislature to create "a public corporation empowered or intended to assist or aid in any way" the particular county "or any municipality therein in promoting industry, trade, and economic development" of the county and its municipalities.[13]

In sum, before the ratification of § 94.01, which applies to the governing bodies of all the counties and municipalities in Alabama, the legal landscape concerning economic development for local governments in Alabama was a patchwork of legislative acts and local constitutional amendments that provided varying degrees of empowerment to the respective counties and municipalities for which the acts and amendments were enacted or ratified. Section 94.01(d) expressly acknowledges these earlier local constitutional amendments and laws: "This amendment shall have prospective application only. Any local constitutional amendments previously adopted and any local law enacted pursuant to such amendment shall remain in full force and effect." At the same time, § 94.01

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economic development: Coffee County, Madison County, and Morgan County.

[13]Amendments No. 678, 682, and 701, all ratified in December 2000, for Chambers, Clay, and Randolph Counties, respectively, employ the language quoted in the text above.

also indicates that it is meant to increase some of the powers previously granted to counties and municipalities for economic development: "The powers granted by this amendment may be exercised as an alternative to, or cumulative with, and in no way restrictive of, powers otherwise granted by law to the county, or to any municipality, or to any agency, board, or authority created pursuant to the laws of this state." § 94.01(b). No local constitutional amendments pertaining to economic development have been ratified since § 94.01 was ratified, indicating that § 94.01 has proven to be sufficient for empowering governing bodies in counties and municipalities for attracting economic development to their respective regions.

In short, the decisions in McDonald's Corp. and Brown addressed only a portion of the statutory and constitutional law concerning the powers of county and municipality governing bodies with respect to the promotion of economic development. As Smith indicates, the legislature quickly responded to this Court's decision in McDonald's Corp. by expanding the scope of the Cater Act with respect to what constituted a "commercial enterprise." Local constitutional amendments also continued

to be adopted after Brown, some of those amendments being forerunners of the language eventually adopted statewide through § 94.01 and others employing the encompassing phrase "economic development." All of this, considered together with the fact that § 94.01(a)(2) is worded more broadly than the act at issue in McDonald's Corp. and the local amendment at issue in Brown, leads to the conclusion that those decisions do not provide the proper lens for interpreting § 94.01 for purposes of this case. Instead, as we have already stated, "commercial ... facilities of any kind" in § 94.01(a)(2) clearly includes retail businesses such as those that will be part of the City Harbor development. Accordingly, the City defendants had the authority under § 94.01 to lease the development property to Lakeside.

"When the Constitution and a statute are in conflict, the Constitution controls." Parker v. Amerson, 519 So. 2d 442, 446 (Ala. 1987). Moreover, Kennamer concedes that if § 94.01 applies, the City had the authority to enter into the development lease. Therefore, because we have determined that the circuit court was correct that § 94.01 permits the development lease of the development property for the City

Harbor development, Kennamer's arguments concerning § 35-4-410 and § 11-47-21 are irrelevant because the City's authority under § 94.01 is controlling. Accordingly, the circuit court's judgment dismissing Kennamer's action is affirmed.

AFFIRMED.

Parker, C.J., and Bolin, Shaw, Wise, Sellers, Stewart, and Mitchell, JJ., concur.

Bryan, J., concurs in the result.