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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

April 2, 2003

The Honorable Vida Miller
Member, House of Representatives
335-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Miller:

You have requested from this Office an opinion providing the scope of the phrase "tourism related expenditures" as defined in the Accommodations Tax statute. S.C. Code Ann. § 6-4-10(4)(b). Specifically you ask:

> 1. Does the definition of the *promotion of the arts and cultural events* include performing art groups such as theatre and drama, choral, dance companies, festivals and historical related events?
>
> 2. Does the *construction, maintenance, and operation of facilities for civic and cultural activities* include buildings owned by a nonprofit entity to be used by performing artists as defined in the above question?

Within the limitations expressed below, the answer to both your questions is in the affirmative.

Law / Analysis

The Accommodations tax statute, S.C. Code Ann., § 6-4-10, provides for the allocation of funds received by a municipality or a county that collects more than fifty thousand dollars from the local accommodations tax. The first twenty-five thousand dollars is allocated to the general fund of the municipality or county. The statute allows a portion of the balance plus interest to be disbursed to a special fund to be used for "tourism related expenditures. Subsection (4)(b) provides a list of eight items to be included as "tourism related expenditures." Items two and three are as follows:

> 2. promotion of the arts and cultural events;

> 3. construction, maintenance, and operation of facilities for civic and cultural activities including construction and maintenance of access and other nearby roads and utilities for the facilities.

S.C. Code Ann. § 6-4-10(4)(b).

Several principles of statutory construction are pertinent to your first inquiry. The cardinal rule of statutory interpretation is to ascertain and give effect to the legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Most often, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Ins. Co., 256 S.C. 577, 183 S.E.2d 451 (1971). The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). Courts must apply clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

Webster's New World Dictionary provides that art includes painting, sculpture. architecture, music, literature, drama, the dance, etc. The word "cultural" is defined as "of the training and refinement of the mind, interests, tastes, skills, arts, etc." Webster's New World Dictionary. It seems evident that "the arts and cultural events" would include performing art groups, festivals, and historical related events. In fact, this Office has previously opined that a festival is a "promotion of the arts and cultural events." Op. S.C. Atty. Gen., November 18, 1996. This Office has also opined that it is reasonable to conclude that the expenditure of accommodation tax funds to protect the facade of a building with historical value is a tourism-related expenditure. See Op. S.C. Atty. Gen Dated August 2, 1988. Accordingly, it is the opinion of this Office that expenditures for the promotion of "performing art groups such as theatre and drama, choral, dance companies, festivals and historical ... events" would fall within the meaning of "... arts and cultural events" as set out in S.C. Code Ann. §6-4-10(4)(b)(2).

Moreover, the statute defines the term "tourism related expenditures" to "include" the items listed in Section 6-4-10(b)(4). While the word "include" is sometimes construed to be a limitation, it is generally accepted to be a word of enlargement. "[T]he term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle." Federal Land Bank v. Bismarck Lumber Co., 314 U.S. 95, 62 S.Ct. 1, 86 L.Ed. 65 (1941). In a previous opinion related to the expenditure of accommodation tax funds, we stated that "[i]t is evident that the General Assembly intended the word 'include' to be illustrative .... [h]ad the intent been otherwise, there would have been no need to insert the word." See Op. S.C. Atty. Gen Dated August 2, 1988. Given this determination, the General Assembly's general intent in providing that the funds must be "... used for tourism-related expenditures" must be taken into account in responding to your query.

Relative to Section 6-4-10, the General Assembly has chosen to define "tourism" as "... the action and activities of people taking trips outside their home communities *for any purpose*, except daily commuting to and from work (Emphasis added)." Obviously, the General Assembly has broadly defined tourism. This broad definition is indicative of an intent that "tourism-related expenditures" also be broadly interpreted. Accordingly, it is certainly reasonable to conclude that the promotion of performing art groups, festivals, and historical events would be related to the "... activities of people taking trips outside their home communities for any purpose... ." Further, Section 6-4-10(4)(b) provides that "[t]he funds must not be used as an additional source of revenue to provide services normally provided by the county or municipality but to promote tourism and enlarge its economic benefits through advertising, promotion, and providing those facilities and services which enhance the ability of the county or municipality to attract and provide for tourists." Again, this provision seems to indicate the intention of the General Assembly that "tourism-related expenditures" be given an expansive reading, allowing the counties or municipalities flexibility in their efforts to "... attract and provide for tourists." In Thompson v. Horry County, 294 S.C. 81, 362 S.E.2d 646 (Ct.App.1987), the Court of Appeals reviewed the application of S.C. Code Ann. § 12-35-720(1), the predecessor to Section 6-4-10, and stated that "... it makes sense to give counties some flexibility as to how and where they spend accommodations tax revenues." While some amendments have been made since the Thompson opinion was issued, it is our view that the cited portion remains relevant to any interpretation of Section 6-4-10 as it currently exists.

As to your second question, it is a fundamental rule that the expenditure of public funds must be for a public purpose. This Office has consistently recognized that "[p]ublic funds may be appropriated to a private nonprofit, nonsectarian organization if the funds are to be expended in the promotion of a valid public purpose. See Op. S.C. Atty Gen., dated July 12, 1984. This opinion is based on and supported by decisions of our Supreme Court. In Bolt v. Cobb, 225 S.C. 408, 82 S.E.2d 789 (1954), the Court recognized the validity of the appropriation of public funds for the performance of a public function through the agency of a nonprofit, nonsectarian entity, such as organizations which provide health services, welfare services, and other public purposes for which appropriations are made. Moreover, in Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986), the Court established the following four part test to determine the constitutionality of a statute for financing industrial development:

> The Court should first determine the ultimate goal or benefit to the public intended by the project. Second, the Court should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be considered. Fourth, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree.

In the August 2, 1988 opinion referenced above, this Office concluded that an expenditure of accommodation tax revenues by the City of Charleston for the protection of the facade of a privately owned building was a "tourism related expenditure" and was primarily related to a public purpose. The opinion concluded that the expenditure met the standard established by the Court in Nichols

even though there would be some benefit to the private owner as the historical nature of the building promoted tourism thereby principally benefitting the public. See also Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43.(1975). Further, in an opinion dated October 9, 1989, this Office concluded that the expenditure of Accommodations Tax monies to a non-profit corporation was permissible as a "tourism-related expenditure," so long as the organization involved was "non-sectarian in nature and nonprofit and ... perform[ed] a service which the political subdivision is authorized to perform."

Additionally, the Accommodations Tax statute does not appear to prohibit disbursing funds to nonprofit, nonsectarian organizations for the purpose of constructing, maintaining, or operating facilities that are used for civic and cultural activities. Nor does it seem that the Constitution would prohibit such a disbursement. An opinion of this Office dated, April 17, 1985, noted that the South Carolina Supreme Court has approved the expenditure of public funds to procure public services from a non-profit corporation in cases such as Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (1976); Elliott v. McNair, 123 S.C. 272, 115 S.E. 596 (1967); and Haesloop v. City of Charleston, 123 S.C. 272, 115 S.E. 596 (1923). Specifically, this Office noted that the case of Bolt v. Cobb, supra, holds that county funds can be used to build a hospital to be leased to a nonprofit, nonsectarian corporation, at no cost to the corporation, without infringing any constitutional provisions. The Court stated that the county was merely using the instrumentality of such a corporation to accomplish a legitimate purpose. See Op. Atty. Gen., January 6, 1970.

Conclusion

Of course, the ultimate decision of whether to disburse Accommodations Tax funds to a nonprofit, nonsectarian organization for the purpose of constructing, maintaining, or operating facilities that are used for civic and cultural activities rests with the municipality or county. This Office has opined that "the courts should not and will not interfere in the administration of the internal affairs of the counties and cities unless there is a manifest disregard or abuse of power or discretion. Op. S.C. Atty. Gen., March 20, 1964. Accordingly, it is our opinion that a municipality possesses the discretion, pursuant to the state Constitution and the Accommodations Tax statute, to disburse funds to a nonprofit, nonsectarian organization to be used in furtherance of "tourism-related expenditures" such as you describe in your letter.

Sincerely,

Robert D. Cook
Assistant Deputy Attorney General

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