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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

September 23, 2003

Frans N. Mustert, Chairman
Tourism Expenditure Review Committee
P. O. Box 125
Columbia, South Carolina 29214-0120

Dear Mr. Mustert:

You note that the Tourism Expenditure Review Committee has received a request from a citizen regarding the proper use of state accommodations tax funds. By way of background, your questions are as follows:

[i]s it appropriate for a city council to commit future accommodations tax funds without proper annual review and recommendations from the local accommodations tax advisory committee, as addressed in Section 6-4-25 in the S.C. Code of Laws?

In light of this action, can a city council commit future funds for any purpose other than retirement of bond indebtedness where the accommodations tax funds were specifically earmarked when the debt was incurred, as addressed in 6-4-15 of the S.C. Code of Laws.

It is our understanding that the City of Beaufort spent \$40,000 "up front as seed money and a leading contribution to technical enhancements to the USCB [University of South Carolina at Beaufort] Performing Arts Center (PAC) in Beaufort." The City now seeks reimbursement for this expenditure by gaining approval "to the City of Beaufort to receive \$8,000 per year for 5 years for a total of \$40,000 from the Accommodations Tax receipts." See, Letter from Ross A. Jones, Assistant City Manager of Beaufort to Frans N. Mustert, dated September 9, 2003. Mr. Jones' letter further states as follows:

[a] presentation was made to the City's Tourism Advisory Committee requesting their recommendation to the City Council for the 5 year funding plan for the project. According to the Chairman of the committee the person appearing in support of the project was a substitute for the person most involved and prepared the application. The presenter was unable to answer some of the committee's questions, and they were uncomfortable about providing the limited Accommodations Tax funds at this time. When all the recommendations were presented to City Council at their meeting

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on June 10, 2002 Council voted unanimously [to] hold \$8,000 of this year's Accommodations Tax receipts for use towards this project. Council also voted to commit \$8,000 per year for 4 additional years to the Performance Arts Center project, subject to the Oversight Committee's approval of the withholding/reimbursement feature.

The City of Beaufort has used the methodology of up front funding and multi-year reimbursement for a previous tourism project. In 1993 the City received approval under this same section of law to be reimbursed \$4,300 per year for 7 years, up to a total of \$30,000 for improved and additional public restrooms in our Henry C. Chambers Waterfront Park. The City advanced its funds to complete the project and was reimbursed from Accommodations Tax funds.

Your questions concern the applicability of § 6-4-25 and 6-4-15 to the foregoing factual situation. You wish to know whether the City of Beaufort can expend Accommodations Tax funds over a 5 year period at \$8,000 per year without receiving a recommendation thereupon by the local advisory committee each year. In addition, you question whether the City must have earmarked the expenditure of such funds at the time the debt was created.

Law / Analysis

S.C. Code Ann. Section 6-4-25 requires that a municipality or county receiving a certain amount of revenue from an accommodations tax must appoint an advisory committee to make recommendations on the expenditure of revenue from the accommodations tax. The advisory Committee consists of seven members with a majority of the committee members being selected from the hospitality industry of the municipality or county receiving the revenue. Sections 6-4-25(B) and (C) provide as follows:

- (B) A municipality or county and its advisory committee shall adopt guidelines to fit the needs and time schedules of the area. The guidelines must include the requirements for application for funds from the special fund used for tourism-related expenditures. A recipient's application must be reviewed by an advisory committee before it receives funds from a county or municipality.
- (C) Advisory committees shall submit written recommendations to a municipality or county at least once annually. The recommendations must be considered by the municipality or county in conjunction with the requirements of this chapter.

(emphasis added).

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Section 6-4-15 provides certain limitations upon the use of accommodations tax revenues to finance bonds and further provides as follows:

[a] municipality or county may issue bonds, enter into other financial obligations, or create reserves to secure obligations to finance all or a portion of the cost of constructing facilities for civic activities, the arts, and cultural events which fulfill the purpose of this chapter. The annual debt service of indebtedness incurred to finance the facilities or lease payments for the use of the facilities may be provided from the funds received by a municipality or county from the accommodations tax in an amount not to exceed the amount received by the municipality or county after deduction of the accommodations tax funds dedicated to the general fund and the advertising and promotion fund. However, none of the revenue received by a municipality or county from the accommodations tax may be used to retire outstanding bonded indebtedness unless accommodations tax revenue was obligated for that purpose when the debt was incurred.

(emphasis added).

Several principles of statutory construction are pertinent to your questions. 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 Mut. 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 Chas., 295 S.C. 408, 368 S.E.2d 899 (1988). Courts must apply the 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). It is also a well recognized rule of statutory interpretation that "the enumeration of particular things excludes the idea of something else not mentioned. Pa. Natl. Mut. Cas. Ins. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984).

In Op. S. C. Atty. Gen., Op. No. 89-17 (February 27, 1989), this Office concluded that the recommendations of the advisory committee referenced in § 6-4-25 "are advisory in character and are not imperative or conclusive." Moreover, the information we have been provided in the letter of Mr. Jones, Assistant City Manager, indicates that a "presentation was made to the City's Tourism Advisory Committee requesting their recommendation to City Council for the 5 year funding plan for the project." Section 6-4-25(C) requires the City to consider the Advisory Committee's recommendations. Here, the City's Advisory Committee has apparently already considered the project in toto and made its recommendations to the City that the expenditure in question not be approved. The City after consideration of the Advisory Committee's recommendation decided to proceed with these expenditures anyway. Accordingly the requirements of § 6-4-25 appear to have been met.

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In our view, the mandate that the Advisory Committee submit written recommendations to the City "at least once annually" does not alter this conclusion. Such provision, in our opinion, does not require that this particular project be reviewed each year by the Advisory Committee in the sense that Advisory Committee input would be required prior to each expenditure of \$8,000. A single review and recommendation would meet the requirement of § 6-4-25.

As to your remaining question, we note that § 6-4-15 requires only that "none of the revenue received by a municipality or county from the accommodations tax may be used to retire outstanding bonded indebtedness unless accommodations tax revenue was obligated for that purpose when the debt was incurred." (emphasis added). There is no indication that "bonded indebtedness" was involved here. As we understand it, the City was simply being reimbursed for its own general fund expenditures on behalf of the Performing Arts facility. Nothing in § 6-4-15 states that accommodations tax revenue may not be used unless obligated when the debt was incurred if "bonded indebtedness" is not involved. Moreover, § 6-4-15 appears to apply to indebtedness in general; debt would not be created where the City expended appropriated funds. See, Op. S.C. Atty. Gen., August 29, 2003. In any event, the fact that the General Assembly enumerated only "outstanding bonded indebtedness" in terms of the requirement that Accommodations Tax funds must have been obligated at the time the debt was incurred, indicates that such requirement was not necessary with respect to other financial transactions entered into by the City.

Here, the reimbursement to the City with Accommodations Tax revenues appears to have been for a "tourism-related expenditure" consistent with § 6-4-10.¹ Accordingly, it would appear that § 6-4-15 has not been contravened.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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¹ We note that there is authority in South Carolina that where a multi-contract involves legislative functions or governmental powers of a municipal corporation, the contract is not binding on successor boards or councils. See, Piedmont Public Serv. Dist. v. Cowart, 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1996). However, that issue is one separate and apart from the expenditure of funds under the Act governing the Accommodations Tax, and we do not reach it here.