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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 28, 2000

Dale R. Samuels, Esquire
Florence County Attorney
City-County Complex
180 North Irby Street MSC-G
Florence, South Carolina 29501

RE: Informal Opinion

Dear Mr. Samuels,

By your letter of September 20, 2000, you have requested an opinion from this Office on the legality of the Florence County Council's funding of a magistrate's position from revenue generated by the Local Accommodations Tax.

The impetus for your question comes from the recent Magistrates Courts Reform Act of 2000 (2000 Acts and Joint Resolutions No. 226). Section 12 of this Act amends S.C. Code Section 22-8-40 to read, in part, "for counties which collect accommodations tax revenues of five hundred thousand to nine hundred ninety-nine thousand, nine hundred ninety-nine dollars, one additional magistrate may be appointed." You point out that the Accommodations Tax that is the basis for the appointment of additional magistrate is the Accommodations Tax of Title 12. Florence County proposes to use the revenue from the Local Accommodations Tax, authorized by Title 6.

Florence County's use of the Local Accommodations Tax revenue is governed by S. C. Code Ann. § 6-1-530:

(A) The revenue generated by the local accommodations tax must be used exclusively for the following purposes:

- (1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums;
- (2) tourism-related cultural, recreational, or historic facilities;
- (3) beach access and renourishment;
- (4) highways, roads, streets, and bridges providing access to tourist destinations;

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- (5) advertisements and promotions related to tourism development; or
- (6) water and sewer infrastructure to serve tourism-related demand.

(B) In a county in which at least nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, the revenues of the local accommodations tax authorized in this article may also be used for the operation and maintenance of those items provided in (A)(1) through (6) including *police*, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities. (Emphasis added)

The County of Florence proposes to fund the magistrate's position under the language in Subsection (B) authorizing use of the revenue for a county's "police" activities.

You have opined that "in enacting the Magistrates Court Reform Act of 2000, and by linking the amount of Accommodations Tax generated with the addition of a magistrate position therein, the General Assembly made the necessary legislative finding to permit the use of Local Accommodations Tax revenues by the counties to pay for that additional position." We agree with your logic that because the General Assembly connected the number of magistrates with the amount of accommodations tax revenue, the Legislature recognized the relationship between increased tourism and the resulting need for additional magistrates. Unfortunately, we cannot agree that the association made in the Magistrates Courts Reform Act is sufficient to justify what we believe is a forced reading of the statute.

A few basic principles of statutory interpretation are relevant to your inquiry. First and foremost, is the long-recognized tenet that in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Secondly, however, the statute's words must be given their plain and ordinary meaning without resort to subtle or forced construction either to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). As you note, it may have been the intent of the General Assembly in coupling the accommodations tax to the number of magistrates to imply that the revenue could be used to fund the position. But assuming the General Assembly actually intended that the Magistrates Courts Reform Act be used in an interpretation of the Accommodations Tax statutes of Title 12, there is no indication that the General Assembly intended this to apply to the Local Accommodations Tax of Title 6, as well. This is especially doubtful considering that the language of the two use statutes for state and local accommodations taxes differ considerably.

To illustrate, South Carolina Code § 6-4-10 governs the allocation of Title 12 accommodations tax revenues. Some of the money is allocated to the county's general fund, but a portion must be allocated to a special fund for the promotion of tourism. "Tourism related expenditures" are defined to include "*the criminal justice system, law enforcement, fire protection...*" S.C. CODE ANN. § 6-4-10 (4)(b)(emphasis added). Arguably, if the county were proposing to spend

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accommodations tax revenue under this statute, a court would uphold the expenditure as proper. "Criminal justice system" and "law enforcement" are much more expansive phrases and are more likely to include a magistrate position in their scope. For example, a magistrate does have some law enforcement authority under S.C. Code Ann. §§ 22-5-120, 22-5-130, and 22-5-140, which give magistrates the power to make arrests, and § 23-31-240, which permits magistrates to carry a firearm when performing official duties. On the other hand, too close an association between a magistrate and law enforcement destroys the notion of our Federal Constitution's mandate that only detached, neutral magistrates issue warrants. Furthermore, this Office has repeatedly opined that the magistrates courts, as part of the unified judicial system, are distinct from traditional law enforcement entities. See e.g., Op. Atty. Gen. No. 2987 (magistrate not law enforcement officer within meaning of law enforcement training act); Op. Atty. Gen. No. 3562 (constables in magistrates courts not included in meaning of police).

If some room for disagreement exists whether the use of the terms "law enforcement" includes a magistrate, then certainly the use of the term "police" in the Local Accommodations Tax statute is much more restrictive. In our opinion, interpreting this word to include funding a magistrate's position would force an impermissibly expansive reading of the statute. Of course, only a court could make such a determination with finality, but it is the opinion of this Office that the funding of a magistrate's position from Local Accommodations Tax revenue would contravene S. C. Code Ann. § 6-1-530.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General