



ALAN WILSON
ATTORNEY GENERAL

March 07, 2022

The Honorable Todd M. Harrelson
Mayor
City of Loris
P.O. Box 548
Loris, SC 29569-0548

Dear Mayor Harrelson:

Attorney General Alan Wilson has referred your letter to the Opinions section. The letter states the following:

The members of the Loris City Council are seeking a formal opinion from you regarding an issue relating to the proper expenditure of funds generated by the Local Hospitality Tax.

Background: The City of Loris, located in Horry County, has a city owned recreational facility located on Heritage Road consisting of a children's park, baseball fields and a concessions area. In addition, the city, through an agreement with the Horry County School District, maintains and operates baseball fields on a school owned tract of land adjacent to the city owned facility. These facilities serve both city residents and residents from the unincorporated areas of Horry County. Over the last few years, the city has worked to promote sports tourism and regularly hosts travel baseball and softball tournaments sanctioned by such organizations as "Top Gun" and others. The city currently has the opportunity to purchase a parcel containing approximately thirty-five (35) acres, more or less, located across Heritage Road and adjacent to the recreational facility operated by the City of Loris. If purchased, the property will be held for future expansion of the city's recreational facility and to create retention ponds to assist in eliminating flooding in areas of the city. The future expanded recreational facility will serve our local youth recreational leagues but will also make the City of Loris more attractive to travel ball teams, accommodate more tournaments and is expected to increase the overall sports tourism industry for the city.

As in many cities with limited budgets, we are attempting to determine the proper sources of funds to be used to purchase the above described parcel. Thus, we are seeking an opinion from you on the following issue:

Issue #1: May revenue generated by the Local Hospitality Tax established by the City of Loris through Ordinance 03-21 pursuant to S.C. Code §6-1-720 et. seq. be used, in whole or in part, to purchase a vacant land tract for potential future expansion of the city's recreational facility to increase sports tourism and for the construction of retention ponds to assist in eliminating flooding in areas of the city.

Issue #2: May revenue generated by the Local Hospitality Tax established by the City of Loris through Ordinance 03-21 pursuant to S.C. Code §6-1-720 et. seq. be used, in whole or in part, for present and/or future construction, development and expansion of the city's recreational facility.

Law/Analysis

It is this Office's opinion that a court would find S.C. Code § 6-1-730(A) permits local governments to use local hospitality tax revenue to purchase land to be used for tourism-related recreational facilities and to control flooding and drainage within or on tourism-related lands or areas. Initially, it should be noted that the resolution of the questions presented would require several factual determinations which are beyond the scope of this Office's opinions. See Op. S.C. Att'y Gen., 2006 WL 1207271 (April 4, 2006) ("Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions"). However, we will assume the facts presented in the request letter are accurate in order to offer guidance.

Our prior opinions have noted that section 6-1-730 places parameters on how revenue derived from hospitality taxes collected by local governments may be spent. Subsection (A) lists the following exclusive purposes for spending this revenue:

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

(7) control and repair of flooding and drainage within or on tourism-related lands or areas; or

(8) site preparation for items in this section including, but not limited to, demolition, repair, or construction.

S.C. Code § 6-1-730. As described in the letter, the reasons for acquiring the tract of land can reasonably be categorized within purposes (A)(2), tourism-related recreational facilities, and (A)(7), control and repair of flooding and drainage within or on tourism-related lands. While the listed purposes do not expressly authorize acquiring land, the power to do so is incidental to many of the listed purposes. Because revenue is authorized to be spent on tourism-related buildings, facilities, roads, and water and sewer infrastructure, the ability to acquire the land on which these assets sit can be fairly implied. See Luther v. Wheeler, 73 S.C. 83, 52 S.E. 874, 875 (1905) (“Municipal corporations have only such powers as are granted to them by the Constitution or by statute, either expressly or by necessary implication.”).

Please note that the General Assembly placed additional constraints on the use of revenues for flooding and drainage projects under subsection (A)(7).

If applying the provisions of subsection (A)(7), then the revenues must be expended exclusively on public works projects designed to eliminate or mitigate the adverse effects of recurrent nuisance flooding, including that which is attributable to sea-level rise, or other recurrent flooding. Such adverse effects include road closures and other transportation disruptions, stormwater drainage issues, and compromised public infrastructure. The public works projects must be within or on tourism-related lands or areas. Revenues must not be used to pay claims or otherwise settle litigation that may arise from time to time due to the harmful impacts of nuisance or other flooding.

S.C. Code Ann. § 6-1-730(C). As the letter states the tract of land being considered is “more or less, located across Heritage Road and adjacent to the recreational facility” that is promoted and used for tourism-related recreation, a court may well find that proposed retention ponds on the site “control and repair of flooding and drainage within or on tourism-related lands or areas,” as required by subsection (A)(7), and will be “within or on tourism-related lands or areas” when the recreation facilities are constructed, as required by subsection (C). The City should determine whether its proposed flooding and drainage control project otherwise fully complies with the additional requirements described in subsection (C).

Next, the letter asks if local hospitality tax revenue may be spent “for present and/or future construction, development and expansion of the city's recreational facility.” Subsection (A)(8)

states that such revenue may be used for “site preparation for items in this section including, but not limited to, demolition, repair, or construction.” Because the letter states that the city’s recreational facilities are promoted and used for tourism-related recreation, a court would likely find that subsection (A)(8) authorizes the use of local hospitality tax revenue for site preparation including demolition, repair, or construction of such facilities.

Although it is this Office’s opinion that the expressed purposes for which the city would acquire the tract of land appear consistent with section 6-1-730(A), we must caution that the letter presents additional issues to consider. First, the letter describes both city owned recreational facilities and also baseball fields that are located on a tract of land owned by Horry County School District serve the city and county residents. The letter then goes on to describe the city’s efforts to promote recreational tourism by hosting travel baseball and softball tournaments. It is unclear how prominently, if at all, school district facilities would factor into any planned expansion or upgrades, but if they are incorporated into any such plans and local hospitality tax revenue is used, the city should make legislative findings addressing whether those facilities will be available for tourism-related recreational purposes. Cf. Op. S.C. Att’y Gen., 2006 WL 3877521 (December 20, 2006) (Opining local hospitality tax revenue could not be used to improve school district recreational facilities where “such facilities are solely used by the students and staff of the school, rather than by tourists.”).

Second, the letter asks if local hospitality tax revenue may be spent to “purchase a vacant land tract for potential future expansion of the city’s recreational facility to increase sports tourism and for the construction of retention ponds to assist in eliminating flooding in areas of the city.” (emphasis added). As is discussed above, the described uses appear to be consistent with the purposes listed in section 6-1-730(A). The listed uses are, however, the exclusive purposes the General Assembly established for which local hospitality tax revenue must be spent. If such revenue is used to purchase the tract of land, then the city would have to eventually use the land for at least one of the listed purposes. If the city purchases the land with local hospitality tax revenue and later decides not use it for any of the listed purposes, it may subject itself to litigation.

Conclusion

As is discussed more fully above, it is this Office’s opinion that a court would find S.C. Code § 6-1-730(A) permits local governments to use local hospitality tax revenue to purchase land to be used for the purposes listed therein. The reasons given for acquiring the tract of land can reasonably be categorized within purposes (A)(2), tourism-related recreational facilities, and (A)(7), control and repair of flooding and drainage within or on tourism-related lands. Although it is this Office’s opinion that the expressed purposes for which the city would acquire the tract of land appear consistent with section 6-1-730(A), we caution against using hospitality tax revenue

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for school facilities, and we advise the city to ensure that land purchased with hospitality tax revenue be used only for the purposes provided in section 6-1-730(A).

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General