



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

February 14, 2005

B. J. Willoughby, General Counsel  
South Carolina Department of Parks, Recreation & Tourism  
1205 Pendleton Street  
Columbia, South Carolina 29201

Dear Ms. Willoughby:

You have inquired as to whether the South Carolina Department of Parks, Recreation and Tourism (SC PRT) possesses the authority to request direct payment from the special tourism infrastructure fund (fund) for the expenses incurred by SC PRT during certification as required by the Tourism Infrastructure Admissions Tax Act (the Act), codified at Section 12-21-6510 et seq. By way of background, you state the following:

[t]he way this process actually works is that SC PRT meets with the county or municipality and provides technical assistance in completing the certification application. The county or municipality in which the tourism or recreation facility or area is located files a certification application with SC PRT. SC PRT reviews the application package for clarification. The application package is then submitted by SC PRT to SC DOR [South Carolina Department of Revenue] for certification. Upon approval by SC DOR, a portion of the admissions tax for qualified projects is paid directly to the county or municipal government, and a portion of tax is transferred to the State Treasurer for deposit into the fund administered by the Advisory Coordinating Council for Economic Development (Council) located in the South Carolina Department of Commerce.

To obtain funds from the portion of tax administered by Council, a county or municipality must complete an application for tourism infrastructure development funds. SC PRT provides technical assistance to the county or municipality with this application. The application is submitted by the county or municipality to SC PRT. Upon SC PRT's review and advisement, the application is submitted to Council for approval. No grant can be approved by Council until the certification process is completed and the entity is approved by SC DOR for benefits under the Tourism Infrastructure Tax Act.

*Request Letter*

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Furthermore, you are of the opinion that PRT is authorized to request direct payment from the fund pursuant to the authority delegated by Council to PRT. We agree with your conclusion and likewise are of the opinion that, in enacting Section 12-21-6540, the General Assembly intended that agencies to which Council has delegated responsibility to oversee and assist in the certification process – in this instance, SC PRT – also possess the authority to request direct payment for expenses from the fund for such assistance.

#### **Law/Analysis**

We advise that Section 12-21-6540 authorizes direct payment to SC PRT for services rendered pursuant to its delegated authority to assist in the certification process. S.C. Code Ann. Section 12-21-6540 provides as follows:

(A) During the benefit period, in addition to the amount described in Section 12-21-6530, an additional amount equal to one-fourth of the license tax paid on admissions to an establishment must be transferred by the department to the State Treasurer to be deposited into the fund and distributed pursuant to the approval of the council.

(B) Deposits into the fund must be separated into special accounts based on which establishment generated the admissions tax subject to this section.

(C) Counties or municipalities within five miles of the major tourism or recreation facility or major tourism or recreation area may apply to the council for grants from the fund by submitting a grant application.

(D) Upon review of the grant application, the council shall determine the amount of monies to be received by each of the eligible counties or municipalities. All monies must be used directly or indirectly for additional infrastructure improvements. If more than one grant application is being reviewed at the same time, preference must be given to grant applications for infrastructure which directly or indirectly serve the establishment that generates the admissions tax or other development occurring as a result of the creation or expansion of the major tourism or recreation facility or major tourism or recreation area. One year after the end of the benefit period, the council, after consultation with the Department of Parks, Recreation and Tourism, may use these funds for any infrastructure in the State which it determines will aid tourism.

(E) Grants may run for more than one year and may be based upon a specified dollar amount or a percentage of the monies deposited annually into the fund. After

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approval of a grant application, the council may approve the release of monies to eligible counties and municipalities.

(F) The council shall adopt guidelines to administer the fund including, but not limited to, grant application criteria for review and approval of grant applications. Expenses incurred by the council in administering the fund may be paid from the fund

In construing this and related statutes, several principles of statutory interpretation are here relevant. First and foremost, is the cardinal rule of statutory interpretation, which is to ascertain and effectuate the legislative intent, whenever possible. State v. Morgan, 352 S.C. 359, 574 S.E.2d 203 (Ct.App.2002) (citing State v. Baucom, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and such language must be construed in light of the statute's intended purpose. State v. Hudson, 336 S.C. 237, 519 S.E.2d 577 (Ct.App.1999) cert. denied as improvidently granted, State v. Hudson, 346 S.C. 139, 551 S.E.2d 253 (2001). Moreover, a statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). In construing the statutes, the words used must be given their plain and ordinary meaning without resort to a subtle or forced construction for the purpose of limiting or expanding their operation. Walton v. Walton, 282 S.E. 165, 318 S.E.2d 14 (1984).

Here, the Legislature's intent should be ascertained primarily from the plain language of the statute. Morgan at 366, 574 S.E.2d 203, 547 S.E.2d at 206. When faced with an undefined statutory term, the term must be interpreted in accordance with its usual and customary meaning. Id. When interpreting a statute, the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law should all be considered. Whitner v. State, 328 S.C. 1, 492 S.E.2d 777 (1997). The terms must be construed in context and their meaning determined by looking at the other terms used in the statute. Hudson, 336 S.C. 237, 519 S.E.2d 577.

As previously noted, Section 12-21-6540(F) provides that "[t]he council shall adopt guidelines to administer the fund including, but not limited to, grant application criteria for review and approval of grant applications. Expenses incurred by the council in administering the fund may be paid from the fund." Such statutory language clearly grants Council broad discretion to administer the fund. In your letter, you explained that Council has delegated considerable authority to SC PRT within the certification process. Pursuant to these duties, among other things, SC PRT is authorized to provide technical assistance to counties and municipalities prior to filing the certification application; to receive and to review filed certification applications; to provide advice to counties and municipalities prior to submission to SC DOR; to provide technical assistance to approved counties and municipalities seeking to obtain funds through the application process; and to review the application and advise the county or municipality prior to submission to Council for

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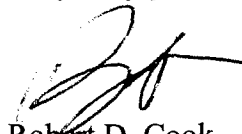
approval of funds. Thus, it appears that Council has exercised its authority pursuant to the Act and has delegated the implementation and administration of the certification process to SC PRT. It also appears, with the exception of certification approval, and final approval of distribution of funds, that SC PRT monitors and aids counties and municipalities in the certification process.

The clear intent of the legislation is that Council's expenses resulting from the administration of the fund are to be paid from the fund. It is thus reasonable to conclude that where Council has delegated the administration and implementation of certification process to PRT, its expenses in carrying out that process may likewise be paid from the fund. Powers of an administrative agency include not only those express powers, but those which may be reasonably implied therefrom. See Op. SC Atty. Gen., December 20, 1990.

#### Conclusion

It is our opinion that SC PRT possesses the authority to request reimbursement from the fund for its expenses incurred during the certification process. Section 12-21-6540 (F) expressly states that Council may be reimbursed from the fund for its expenses in administering the fund. Here, Council has delegated many of the duties and responsibilities associated with administration of the certification process to SC PRT. In our view, such administrative duties exercised by PRT are part of Council's exercise of its express authority to administer the fund. Accordingly, we agree with your conclusion that SC PRT is authorized to request reimbursement from the fund so that it may be compensated for such duties.

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General