

8297 Liberty



HENRY McMASTER
ATTORNEY GENERAL

December 20, 2006

J. William Taylor
Town Administrator, Town of Cheraw
Post Office Box 219
Cheraw, South Carolina 29520

Dear Mr. Taylor:

We received your letter requesting an opinion as to the use of funds generated by local hospitality tax funds. You informed us that "the Cheraw Town Council implemented a local hospitality tax earlier this year and began collecting those taxes from affected businesses on July 1, 2006." You also stated:

Recently the members of the Cheraw Town Council were approached by the local High School Athletic Booster Club, a public high school, concerning a need for funding several projects related to their athletic facilities on campus. The mayor and council are interested in, perhaps, assisting the school in their funding and wanted to find out if revenue from the local hospitality tax could be used for that purpose.

Projects being discussed by the high school include the construction of a field house at the football stadium, irrigation and turf improvements at the regular and practice football fields, soccer field, and baseball field.

Based on this information, you request an opinion as to "whether or not these proposed improvements would meet the definition of "tourism-related" uses as outlined in the State Code and would, therefore, be eligible for funding through the local hospitality fund."

Law/Analysis

The Local Hospitality Tax Act, contained in article 7, chapter 1 of title 6 of the South Carolina Code, governs the imposition of hospitality taxes by local governing bodies. Section 6-1-730 of the South Carolina Code (2004), which you referred to in your request letter, particularly deals with how revenue generated by hospitality taxes may be used. Thus, we must determine

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whether the projects proposed in your letter comply with this provision. In doing so, we keep the rules of statutory construction in mind.

As our Supreme Court recently stated:

It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the Legislature A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.

Sloan v. South Carolina Bd. of Physical Therapy Examiners, 370 S.C. 452, ___, 636 S.E.2d 598, 606-07 (2006) (citations omitted).

While addressing a different issue related to section 6-1-730 in a recent opinion, we considered the purpose of the Hospitality Act. Op. S.C. Atty. Gen., February 3, 2006. We stated: "in our view, the Act creates a mechanism to generate revenue for the promotion of tourism and funds that mechanism by a revenue source which presumably would be affected by an increase in tourism." Id. With this purpose in mind, we turn to section 6-1-730 to determine whether improvements to school athletic facilities are valid expenditures of hospitality tax funds.

Section 6-1-730 sets forth six specific purposes for which revenue generated by hospitality tax revenues may be used. This statute provides:

(A) The revenue generated by the hospitality 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;
- (5) advertisements and promotions related to tourism development; or

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(6) water and sewer infrastructure to serve tourism-related demand.

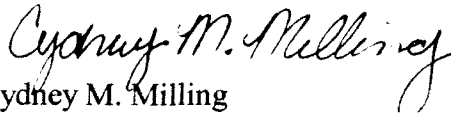
S.C. Code Ann. § 6-1-730(A) (emphasis added).

None of the six purposes specifically address the use of hospitality taxes revenue for improvements to public schools. Furthermore, the last four purposes listed do not appear to contemplate the projects mentioned in your letter. Thus, we believe only the first two purposes may possibly encompass the projects described in your letter.

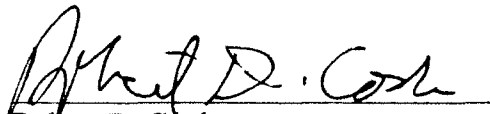
While keeping in mind our understanding of the purpose of the Hospitality Tax Act, we believe the Legislature intended for the buildings and facilities described in subsections (1) and (2) to serve local tourism. Accordingly, if a court were to consider this issue, it would likely take into account the impact the projects would have on the promotion of tourism in the Town of Cheraw. Making this determination would involve the investigation and consideration of multiple factual issues. As we stated on many occasions, only a court may resolve issues of fact. Op. S.C. Atty. Gen., October 21, 2005. Thus, whether or not the projects you refer to further tourism efforts in the Town of Cheraw is a question more appropriately considered by a court, rather than this Office.

However, in an attempt to provide you guidance, we offer our thoughts on this issue. While conceivably improvements to a public school may have some impact on tourism, we believe such an impact would be slight at best. The description of the projects in your letter indicates the funds will be used for the construction of a field house and for improvements to athletic fields. We imagine that such facilities are solely used by the students and staff of the school, rather than by tourists as would a civic center. Therefore, these projects appear to benefit the school and its students rather than tourism. Thus, with our limited understanding of the facts and circumstances surrounding the projects in question, we do not believe a court would find them appropriate for funding with hospitality revenues.

Very truly yours,


Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Assistant Deputy Attorney General