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HENRY MCMASTER
ATTORNEY GENERAL

February 3, 2006

Kelly Knight Byrd, Esquire
General Counsel, Town of Summerville
Post Office Box 280
Summerville, SC 29484

Dear Ms. Byrd:

From your letter, we understand you represent the Town of Summerville (the "Town") as its Town Attorney. In your letter, you state: "The Mayor and Town Council have requested that I seek the opinion of the Attorney General's Office concerning the use of local hospitality tax revenues by a municipality pursuant to South Carolina Code Section 6-1-730." You inform us that the Town, which is located in three counties, recently implemented a hospitality tax. You indicate the Town poses the following question:

> Section 6-1-730(B) refers to additional purposes including police, fire protection, emergency medical services and emergency-preparedness operations for which a County may use the hospitality tax revenues if that County collects over $900,000.00 in accommodations tax. At best, the Town collects about $170,000.00 in accommodations taxes and about $90,000.00 in local accommodations taxes; however, the statute specifically states "counties." Could the Town stack the three counties' accommodations tax revenues as part of that $900,000.00, and therefore, use the revenues from the hospitality tax for these additional purposes?
>
> Further, if the Town is permitted to use the hospitality tax revenues to fund the additional purposes in those counties collecting more than $900,000 in accommodations tax, may the Town use those funds for the additional services only in the county in which they were collected or may they use those funds in any location within the Town?

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Request Letter

After a review of the relevant statutory authority and in light of the legislative intent of the Local Hospitality Tax Act, in our opinion, the Town may not stack the accommodations tax revenues for the three counties in which it is located for the purpose of meeting the accommodations tax requirement enabling it to use its local hospitality tax proceeds for the additional purposes listed in section 6-1-730(B). However, we find the Town may use its hospitality tax proceeds for the additional purposes listed in section 6-1-730(B) if at least one of the counties in which it is located annually collects at least $900,000 in state accommodations tax. Additionally, we find if the accommodations tax requirement is satisfied by at least one of the counties, section 6-1-730(B) does not require those funds for the additional services be used in that county, but may be used in any location within the Town.

Law/Analysis

The Local Hospitality Tax Act (the "Act"), sections 6-1-700 et seq. of the South Carolina Code (2004), allows counties and municipalities to impose a tax on "the sale of prepared meals and beverages sold in establishments or sales of prepared meals and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer, or wine." S.C. Code Ann. § 6-1-710 (2004). Section 6-1-730 of the South Carolina Code (2004), the statute requiring interpretation, dictates how the proceeds from the imposition of the hospitality tax may be used. Neither the courts of this State, nor this Office, have evaluated this provision with regard to a situation in which the municipality is located in more than one county. Thus, we address this issue for the first time keeping in mind the rules of statutory construction.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the Legislature." Johnston v. South Carolina Dep't of Labor, Licensing, and Regulation, 365 S.C. 293, 296, 617 S.E.2d 363, 364 (2005). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Kiriakides v. United Artists Commc'n, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994). Courts must apply the plain meaning of a statute when its language is unambiguous and conveys a clear meaning. Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). However, when a statute is ambiguous it must be construed according to settled rules of construction. Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 331 (2001). "In interpreting a statute, the terms must be construed in context and their meaning determined by looking at the other terms used in the statute." Gilstrap v. South Carolina Budget and Control Bd., 310 S.C. 210, 214, 423 S.E.2d 101, 103 (1992). If possible, courts will construe a statute so as to escape an absurd result. State v. Gordon, 356 S.C. 143, 153, 588 S.E.2d 105, 110 (2003).

Initially, we examine the plain language of section 6-1-730.

> (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;
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> (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
>
> (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 hospitality tax authorized in this article may 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).

Subsection (B) of this statute only references "a county" and does not appear to contemplate a situation involving more than one county. Under the plain and ordinary meaning of the language contained in this statute, a county must meet the accommodations tax revenue requirement before the proceeds from hospitality taxes may be used for the listed alternative expenditures. Thus, the statute only refers to one county and does not specifically allow a municipality located in multiple counties to sum the accommodations tax revenues for all such counties for purposes of meeting the accommodations tax requirement.

However, under the plain language of the statute, it could be read to allow a municipality located in multiple counties to satisfy the requirement if a county in which it is located satisfies the accommodations tax requirement. In our opinion, this interpretation comports with the legislative intent of the statute.

To determine the legislative intent of this provision of the Act, we look to the Act as a whole. As we stated previously, the Act allows counties and municipalities to impose a hospitality tax on certain meals and beverages served in restaurant and restaurant type establishments. S.C. Code Ann. § 6-1-710. Further, the Act requires the revenue generated from hospitality taxes to be kept separate

and primarily used for tourism related expenditures. S.C. Code Ann. § 6-1-710. Specifically, section 6-1-730(A) states the expenditures are to be used "exclusively" for what appear to expenses related to the promotion and facilitation of tourism. Thus, 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.

Considering our understanding of the purpose of the Act, we turn to the exception allowing proceeds from this tax to be used "for the operation and maintenance of [the six specified items] including police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities." S.C. Code Ann. § 6-1-730(B). Section 6-1-730(B) allows these expenditures only "[i]n a county in which at least nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920." Section 12-36-920 of the South Carolina Code (2000 & Supp. 2005) imposes a seven percent state-wide accommodations tax. The State collects this tax based on revenues generated from rental or other charges of sleeping accommodations. Id. A county collecting $900,000 in revenues from the state accommodations tax, in our opinion, indicates a significant amount of tourism in that county. The statute states police, fire protection, emergency medical services, and emergency-preparedness operations are "directly attendant to those facilities," referring to the six enumerated tourism-related expenditures. By including this language, the statute indicates the General Assembly's recognition of the relationship between tourism and a potential increase in the need for these services. However, these types of services presumably benefit not only the tourism industry within a municipality or county, but also the residents of that county or municipality. Therefore, we conclude, the General Assembly sought to ensure the county or municipality collecting the hospitality tax maintains a level of tourism significant enough to affect its need for these services before that county or municipality is allowed to divert funds earmarked for the promotion of tourism to support services ancillary to tourism.

Based on our interpretation of the legislative intent of the Act and the Legislature's rationale in imposing the $900,000 accommodations tax requirement, we address the issue of what benchmark must a multi-county municipality use to determine whether it satisfies the accommodations tax requirement. In our view, the Legislature did not intend for municipalities crossing county lines to be unable to gain the benefit of the additional allowed expenditures under section 6-1-730(B). Regardless of whether the municipality is located in one county or five, if one county maintains a large tourist industry, the municipality may feel the effect of that industry. Thus, in our opinion, the Legislature intended multi-county municipalities to be eligible to use their hospitality tax proceeds for those services impacted by their level of tourism. Thus, we conclude a fair reading of the statute, given the legislative intent, is to require at least one county in which the municipality is located to collect $900,000 in state accommodations tax for the municipality to be eligible to expend its hospitality tax proceeds on the alternate expenditures listed under section 6-1-730(B).

Next, we address your second question of whether those funds must be expended in the county meeting the accommodations tax requirement. Again, the statute does not mandate municipalities and counties expend hospitality tax proceeds for the additional purposes listed in the

areas in which the state accommodations taxes are generated. Therefore, we look once more to the legislative intent of the statute to make this determination.

As previously stated, we view the Legislature's intent in requiring a minium level of state accommodations tax as a method to measure tourism in the county. Presumably, if a county has a high level of tourism, a municipality that is at least in part within that county's borders will be at a minimum be affected by the tourism in that county. In addition, if one county in which a municipality is located maintains a high level of tourism, whereas the other county or counties do not, the municipality's police, fire protection and emergency medical services likely would affect the municipality as a whole, rather than just the portion located in the high tourism county. Therefore, in our opinion, if a county maintains the requisite level of state accommodations tax revenue enabling the municipality to use its hospitality tax proceeds to support its police force, fire protection services, and emergency medical services, that municipality may use those proceeds within the entire municipality.

Although dealing with an issue regarding the allocation of state accommodations taxes, we find the South Carolina Court of Appeals' decision in Thompson v. County of Horry, 294 S.C. 81, 362 S.E.2d 646 (1987) supportive of our interpretation. In that case, the Court dealt with the question of whether the Accommodations Tax Act, in part mandating the State to allocate a portion of the revenues generated by the tax back to the counties and municipalities, requires all allocations to "be returned directly to the geographic areas from which they are collected?" Id. at 84, 362 S.E.2d at 648. The Accommodations Tax Act, according to the Court, has two requirements for expenditures of state accommodations tax allocations by a county or municipality: "(1) they must be 'tourism-related' and (2) they must be made 'primarily in the geographical areas of the county in which the proceeds of the tax are collected where it is practical.'" Id. (quoting S.C. Code Ann. § 12-35-720(1)(C), codified as amended at S.C. Code Ann. § 6-4-10(4)(d) (2004)). The Court of Appeals found the statute only required the funds to be expended primarily, rather than exclusively in the areas in which they were collected. Id. at 85, 362 S.E.2d at 648. Additionally, the Court pointed out that the Legislature recognized "expenditures to promote tourism will generally enlarge the economic benefit for an entire geographic area of the county without regard to municipal boundary lines." Id. Based on these findings, the Court held the statute does not prohibit a county from spending the revenues from the tax in one area, even if those revenues were collected from another area. Id. at 85, 362 S.E.2d at 648-49.

We find the rationale the Court presented in Thompson beneficial to our interpretation of the Hospitality Tax Act. Section 6-1-730(B), unlike the statute under review in Thompson, is devoid of any indication as to what areas the municipality or county may spend the proceeds from the hospitality tax. Thus, like Thompson, the statute does not require the county or municipality to exclusively spend the proceeds from the hospitality tax in the county in which the State collected the accommodations tax. Furthermore, because the proceeds from the hospitality tax are collected within the municipality, if the municipality chooses to spend these proceeds on the alternate purposes, these proceeds will be spent in the area from which they were collected.

In conclusion, based on a plain reading of section 6-1-730(B) and in light of our understanding of the General Assembly's legislative intent with regard to this statute, we find a municipality located in more than one county may determine its eligibility to expend proceeds from the collection of its hospitality tax on police, fire protection, emergency medical services, and emergency-preparedness operations based on the county collecting the greatest amount of state accommodations tax. In addition, in our opinion, if the municipality meets the requirement to make such expenditures, the municipality is not required to do so only in the county satisfying the accommodations tax requirement, but may make such expenditures anywhere within its boundaries.

Very truly yours,

Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General