ALAN WILSON
ATTORNEY GENERAL

December 5, 2011

The Honorable Harvey S. Peeler, Jr.
Senator, District No. 14
P.O. Box 142
Columbia, South Carolina 29202

Dear Senator Peeler:

You have requested an opinion of this Office concerning whether section 6-1-730 of the South Carolina Code (2004 & Supp. 2010) would permit revenue from a local hospitality tax to be used to purchase a fire truck for a local municipality.

Section 6-1-730 provides:

> (A) The revenue generated by the hospitality tax must be used exclusively for the following purposes:
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> (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
> (6) water and sewer infrastructure to serve tourism-related demand.
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> (B) (1) 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.
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> (2) In a county in which less than nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, an amount not to exceed fifty percent of the revenue in the preceding fiscal year of the local hospitality tax authorized pursuant to this article may be used for the additional purposes provided in item (1) of this subsection.

We begin our analysis with a threshold issue: can a municipality expend local hospitality tax revenue for the purposes in section 6-1-730(B), or are those expenditures available only to counties? We have opined previously that, although subsection (B) specifically references counties, a municipality may use funds generated by the local hospitality tax for the additional purposes listed in that subsection as long as "at least one of the counties in which it is located" collects the necessary amount of accommodations tax.[1] Letter to Kelly Knight Byrd, Op. S.C. Att'y Gen. (Feb. 3, 2006).

Having dispensed with that threshold question, we turn now to the main focus of our analysis: can a fire truck be considered part of the "operation and maintenance" of one of the items listed in section 6-1-730(A)? The General Assembly explicitly included "police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities," within the ambit of permissible "operation and maintenance" expenses. Thus, if a fire truck is a "service" that is "directly attendant" to one or more facilities listed in subsection (A),[2] then the purchase of the truck would be a permissible use of local hospitality tax funds.

Fire-fighting equipment, of itself, would not typically be labeled a "service." Rather, we would normally think of it as property. Nevertheless, the clear intent of section 6-1-730(B) was to "recogni[ze] . . . the relationship between tourism and a potential increase in the need for" fire protection services, and to provide a funding stream for the satisfaction of those needs. *See* Letter to Kelly Knight Byrd, *supra.* An increase in the demand for services often carries with it a need for equipment to be used in providing those services. Without funding for the necessary fire-fighting equipment, the authority to provide fire protection service would be empty indeed. We would not construe the plain language of section 6-1-730(B) in a manner that would eliminate much of its practical effect. *See Greenville Baseball, Inc. v. Bearden*, 200 S.C. 363, 20 S.E.2d 813, 815-16 (1942) ("A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers."). Thus, because fire-fighting equipment is an integral part of the provision of fire protection service, it is the opinion of this Office that local hospitality tax revenue may be used to purchase a fire truck, as long as the other requirements of section 6-1-730 are satisfied.[3]

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[1] We note the distinction between the title 12 accommodations tax—which must be allocated according to the provisions of sections 12-36-2630, 59-21-1010, and 6-4-10 *et seq.* of the South Carolina Code—and the section 6-1-500 *et seq.* accommodations tax, which must be "used exclusively" for the purposes set forth in section 6-1-530. In this opinion, the term "accommodations tax" refers to the title 12 tax, unless we state otherwise.

[2] It is not entirely clear whether the use of the word "facility" imposes an additional limitation in this context. For example, it is not clear whether a highway leading to a tourist destination would be a "facility" within the meaning of subsection (B).

[3] *Cf.* S.C. Rev. Rul. 1998-22 (S.C. Tax Comm'n Oct. 27, 1998), *available at* 1998 WL 34058107, *8 (opining that, under certain circumstances, "police cars, fire trucks, and related equipment" can be purchased using title 12 accommodations tax funds designated for "tourism-related expenditures" because, even though the term "services" would "generally connote[] 'the performance of activities benefiting another,' this is not the exclusive use of the term." (quoting *The American Heritage Dictionary* (2d College ed. 1985))).

An important caveat, however, is that fire protection service may be funded by local hospitality tax revenue only if that service is "directly attendant" to a facility listed in section 6-1-730(A). Correspondingly, we suggest that a fire truck purchased as an integral part of the provision of such service must be used in a manner that is "directly attendant" to the same facility. Unfortunately, the term "directly attendant" is not defined in the Local Hospitality Tax Act, 6-1-700 *et seq.*

Looking to the ordinary meaning of the word "attend," at a minimum we would expect the service and/or truck to "be present at," "take care of," or "remain ready to serve" a facility listed in section 6-1-730(A). *See The American Heritage Dictionary* (3d College ed. 1997). We have opined previously, however, that fire protection service funded by local hospitality tax revenue need not limit its service area to the facility that triggers section 6-1-730(B):

> [T]he statute indicates the General Assembly's recognition of the relationship between tourism and a potential increase in the need for [police, fire protection, and emergency medical] 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. . . .
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> . . . [T]he 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.

Letter to Kelly Knight Byrd, *supra*. At the present time, it is not clear whether other criteria are necessary to a determination whether a particular service is directly attendant to a particular facility. In the absence of specific statutory or regulatory criteria, a court likely would approach the issue using a case-by-case analysis of the facts.[4]

As a final matter, we note that authority concerning "tourism-related expenditures" of title 12 accommodations tax revenue is of limited utility because the language of section 6-1-730 varies greatly from the language of section 6-4-10(4), which governs those expenditures. *Cf.* Letter to Dale R. Samuels, Op. S.C. Att'y Gen. (Sept. 28, 2000) (recognizing that the language of section 6-4-10 "differ[s] considerably" from the language of section 6-1-530).[5]

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[4] This Office has not been provided with any factual information regarding a particular fire truck. Thus, we are unable to provide you with a more detailed analysis of whether the use of such truck would qualify as "directly attendant" to a facility.

[5] Section 6-1-530(B), concerning the use of local accommodations tax revenue, is substantially the same as section 6-1-730(B).

Conclusion

In sum, local hospitality tax revenue may be applied to the "operation and maintenance" costs of a facility listed in section 6-1-730(A), subject to the requirements of subsection (B). The General Assembly has determined that fire protection services can form a part of these "operation and maintenance" costs if the services are "directly attendant" to the facility. The term "directly attendant" is not defined by statute and, at the present time, little practical guidance is available regarding the application of that test. At a minimum, we suggest the service area of a fire truck purchased with local hospitality tax revenue must include, but need not be limited to, a facility listed in section 6-1-730(A).

Very truly yours,

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REVIEWED AND APPROVED BY:

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