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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

May 31, 2002

Frans N. Mustert, Chairman  
Tourism Expenditure Review Committee  
P. O. Box 125  
Columbia, South Carolina 29214-0120

**Re: Informal Opinion**

Dear Mr. Mustert:

You have asked whether the Tourism Review Committee "has oversight authority over certain Accommodations Tax disbursements as outlined under Chapter 4 of Title 6." It is my opinion that it does.

Your question entails a complex statutory scheme involving the Accommodations Tax. Such statutory scheme is summarized in your letter as follows:

Section 6-4-35 of the Accommodations Tax statute provides for the establishment of a nine member Tourism Expenditure Review Committee, appointed as follows: six members appointed by the Governor through various agency recommendations, one appointed by the Speaker of the House, one appointed by the President Pro Tempore of the Senate, and the Director of Parks, Recreation and Tourism, or his designee, ex officio. Section 6-4-35(B)(1)(a) provides for the duties and powers of the committee.

Section 6-4-10 of the Accommodations Tax statute deals with the special funds for tourism and the breakout of the funds. The Tourism Expenditure Review Committee serves as the oversight authority on all questionable tourism-related expenditures, and all reports required to be filed pursuant to Section 6-4-25(D)(3) must be forwarded to the committee for review to determine if they are in compliance with the Accommodations Tax statute. This is considered to be the "65% Tourism-Related Expenditure Fund", as outlined in Section 6-4-10(4)(a). If the committee finds the expenditure to be in non-compliance, the committee may withhold the amount of the expenditure found to be in non-compliance from the local government has failed to file the reports required to be filed pursuant to Section 6-4-25(D)(3), then the committee may impose penalties for non-reporting, and withhold funds from future disbursements.

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Section 6-4-10(3) of the Accommodations Tax statute deals with the special fund for advertising and promotion, or the "30% Advertising and Promotion Fund". This fund must be used for the advertising and promotions of tourism, and must be given to an organization (or organizations) which has an existing on-going tourism promotion program. The county/municipality selects this organization. Before the beginning of each fiscal year, the organization receiving funds from the Accommodations Tax must submit a budget of planned expenditures to the county/municipality for approval. At the end of the fiscal year, an organization receiving funds shall render an accounting of the expenditure to the municipality or county which distributed them.

Section 6-4-25(E) provides for the eleven regional tourism agencies to annually submit reports on their budgets and expenditure to Accommodations Tax funds to the Accommodations Tax Oversight Committee, which is the Tourism Expenditure Review Committee. Section 6-4-20(F) provides for these regions to receive two percent of the State's Accommodations Tax funds to administer multi-county tourism programs in the state.

The question has arisen as to whether or not the Tourism Expenditure Review Committee has any oversight authority over the 30% funds outlined in 6-4-10(3), and the eleven regional tourism agencies as outlined in Section 6-4-20(F), or is the committee held strictly to oversight authority over the 65% funds as outlined in Section 6-4-10(4)(a)? In all cases, however, reports are to be filed with the Tourism Expenditure Review Committee (Oversight Committee) by these organizations in accordance with Section 6-4-25(D) and (E).

#### Law / Analysis

Several principles of statutory construction are pertinent to your inquiry. The cardinal rule of statutory interpretation is to ascertain and give effect to the legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Most often, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mut. Ins. Co., 256 S.C. 577, 183 S.E.2d 451 (1971). The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

Section 6-4-25(D)(3) requires that municipalities and counties submit to the Accommodations Tax Oversight Committee a "... list of how funds from the accommodations tax are spent, except for the first twenty-five thousand dollars and five percent of the balance in Section 6-4-10(2) allocated to

the general fund.” (Emphasis added). As referenced above, § 6-4-35(B)(1)(a) states that “[t]he Tourism Expenditure Review Committee shall serve as the oversight authority on all questionable tourism-related expenditures and to that end, all reports filed pursuant to Section 6-4-25(1)(3) must be forwarded to the [Tourism Expenditure Review] Committee for review to determine if they are in compliance with this chapter.” (Emphasis added).

It is clear from these provisions that the “reports” referenced in Section 6-4-25(D)(3) concern both the so-called “30% Tourism Advertising and Promotion Fund” monies as well as the “65% Tourism-Related Expenditure Fund” as outlined in Section 6-4-10(4)(a). First of all, the statute gives oversight authority to the Tourism Expenditure Review Committee concerning “all questionable tourism-related expenditures ...” Section 6-4-10(4)(a) defines the term “tourism-related expenditures” as including “advertising and promotion of tourism.” Secondly, the statute links the phrase “tourism-related expenditures” with the reports filed pursuant to § 6-4-25(D)(3), again including reports concerning both sets of funds. Third, the only exception contained in § 6-4-25(D)(3) with respect to the reports submitted to the Accommodations Tax Oversight Committee are “the first twenty-five thousand dollars and five percent of the balance in Section 6-4-10(2) allocated to the general fund.” A cardinal rule of statutory construction is “expressio unius est exclusio alterius” or “the enumeration of particular things excludes the idea of something else not mentioned.” See, Pa. Natl. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984).

Accordingly, both the reports concerning the “30% Tourism and Promotion Fund” as well as the “65% Tourism-Related Expenditure Fund” must be submitted to the Tourism Expenditure Review Committee by the Accommodations Tax Oversight Committee. You have confirmed by your letter that such submission to your committee is being done, as you note that “in all cases ..., reports are to be filed with the Tourism Expenditure Review Committee ... by these organizations in accordance with Section 6-4-25 (D) and (E).”<sup>1</sup>

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<sup>1</sup> Section 6-4-25(E) mandates that “[t]he regional tourism agencies in Section 6-4-20 annually shall submit reports on their budgets and annual expenditure of accommodations tax funds pursuant to this chapter to the Accommodations Tax Oversight Committee.” Section 6-4-25(F) requires that “[t]wo per cent of the local accommodations tax levied pursuant to Section 12-36-2630(3) must be remitted quarterly and equally to the eleven agencies designated by law and regional organizations to administer multi-county tourism programs in the state tourism regions as identified in the promotional publications of the South Carolina Department of Parks, Recreation and Tourism. This remittance is in addition to other funds that may be allocated to the agencies by local governments.” This 2% is obviously part of the same funds which are allocated to the cities and counties pursuant to § 6-4-10. Thus, the expenditures of those funds by cities and counties [both the 65% Fund and the 30% Fund] is received by the Tourism Expenditure Review Committee and should be reviewed by that Committee in accordance with § 6-4-35(B)(1)(a).

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It is a general rule of interpretation with any statute that the Legislature is presumed to have intended by its action to accomplish something and not to have done a futile thing. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Therefore, for the Legislature to have required that all reports filed with the Accommodations Tax Review Committee – both the “65%” and the “30%” Funds – to be sent to the Tourism Expenditure Review Committee, and yet not to have intended such Committee to have review authority over both funds would be, in my opinion, futile. I do not believe that the General Assembly intended this result.

In addition, § 6-4-35(B)(1)(b) provides as follows:

[i]f the [Tourism Expenditure Review] determines that a municipality or county has failed to file the reports required pursuant to Section 6-4-25(D)(3), it may impose a fine of five hundred dollars a month or part of a month for each month the report is not filed, but not more than five thousand dollars.

Again, the Tourism Expenditure Review Committee is given jurisdiction to review all the reports filed pursuant to Section 6-4-25(D)(3) to determine if a municipality or county has “failed to file the reports required” under that provision and to fine for such failure. Clearly, such jurisdiction must, of necessity, include both the reports related to the “30% Fund” as well as the “65% Fund.” Otherwise, the provision would have little meaning.

Accordingly, it is our opinion that the Tourism Review Committee possesses review authority with respect to both the “30% Fund” as well as the “65% Fund” as discussed above. However, while this is my conclusion, because of any uncertainty, legislative clarification may be advisable.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/an