

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_

February 27, 1989

SUBJECT: Taxation and Revenue - Expenditure of the accommodations tax.

SYLLABI: (1) Class "C" funds from the accommodations tax may be expended to upgrade leisure trails, observation towers and platforms when the same are available for use by the general public, including tourists.

(2) The recommendations by the committee created pursuant to Section 12-35-720(c) are advisory in character and are not imperative or conclusive.

TO: Dennis James Rhoad, Esq.  
Attorney for the Town of Kiawah Island

FROM: Joe L. Allen, Jr. *JA*  
Chief Deputy Attorney General

QUESTIONS: (1) Can Class "C" funds be expended by the Town of Kiawah Island to upgrade leisure trails, observation towers and platforms?

(2) Is the recommendation of the committee created pursuant to Section 12-35-720(c) advisory or mandatory?

APPLICABLE LAW: Section 12-35-720, South Carolina Code of Laws.

DISCUSSION - Question 1:

It is assumed for purposes of this opinion that (a) the leisure trails traverse parts of the island for scenic and other purposes, (b) the observation towers and platforms are structures where a person may obtain a better view of scenic sights and (c) the trails, towers and platforms are open and available to all.

Under such an assumption, the expenditure in our view would be appropriate for the following reasons:

"The term 'tourism-related expenditures' includes the following

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types of expenditures: advertising and promotion of tourism so as to develop and increase tourist attendance through the generation of publicity; promotion of the arts and cultural events; construction, maintenance, and operation of facilities for civic and cultural activities including construction and maintenance of access and other nearby roads and utilities for such facilities; the criminal justice system, law enforcement, fire protection, solid waste collection, and health facilities when required to serve tourists and tourist facilities; public facilities such as restrooms, dressing rooms, parks, and parking lots; tourist shuttle transportation; control and repair of waterfront erosion; and operating visitor information centers . . . "

It should be noted that this Section defines the term "tourism-related expenditures" to "include" the listed items. While the word is sometimes construed to be a limitation, it is generally accepted to be a word of enlargement.

". . . the term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle." Federal Land Bank v. Bismarck Lumber Co., 314 U.S. 95, 62 S.Ct. 1, 96 L.Ed.2d 65. (For other cases, see Volume 20A, Words and Phrases, "Include".)

It is evident that the General Assembly intended the word "include" to be illustrative. Had the intent been otherwise, there would have been no need to insert the word. Whether the expenditure for the leisure trails, observation towers and platforms is a tourism-related expenditure is a matter that in large measure rests with the governing body of the city.

". . . the courts will not interfere with the exercise of discretionary powers by a municipal body except in cases of fraud or clear abuse of power .

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. . . " City of Greenville v. Bozeman,  
254 S.C. 306, 175 S.E.2d 211.

Under such, it is only logical to conclude that leisure trails, observation towers and platforms would serve to promote tourism.

CONCLUSION:

Class "C" funds from the accommodations tax may be expended to upgrade leisure trails, observation towers and platforms when the same are available for use by the general public, including tourists.

DISCUSSION - Question 2:

Section 12-35-720 allocates the funds from the accommodations tax.

Class "A" funds go directly into the general fund of the county or municipality. Class "B" funds are managed and expended through certain designated organizations subject, however, to approval by the county or municipality. Class "C" funds are allocated to a special fund for tourism related expenditures by the municipality or county.

The Section further provides in part that:

"A municipality or county receiving revenue from the accommodations tax shall appoint an advisory committee to make recommendations on the expenditure of revenue generated from the accommodations tax. . . ."

The inquiry is whether recommendations by this committee must be followed.

"Advisory" is defined in Webster's New Collegiate Dictionary to mean:

"having or exercising power to advise; pertaining to or containing advice; as an adversary council or capacity."

It is defined in Black's Law Dictionary to mean:

"Counselling, suggesting, or advising, but not imperative or conclusive. . ."

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(See also 2A, Words & Phrases,  
"Advisory".)

The word should be given its plain and ordinary meaning.

"In construing a statute, words used should be given their ordinary and popular significance." Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E.2d 837.

Under such, the committee's recommendations are advisory and not mandatory.

CONCLUSION:

The recommendations by the committee created pursuant to Section 12-35-720(c) are advisory in character and are not imperative or conclusive.

JLAJr:wcg