

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 85-27 178

April 11, 1985

SUBJECT: Taxation and Revenue - Expenditure By a County of the Class "C" Funds From the Accommodations Tax

SYLLABUS: Class "C" funds received by a county from the accommodations tax may be expended to construct and maintain within a municipality a facility that promotes tourism. A condition for the expenditure is a conclusion or finding by the council that an expenditure for such a facility in the geographical area of the county in which the tax is collected is not practical.

TO: Honorable Joe W. Pearce, Jr.
Mayor, City of Florence

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

QUESTION: May a county spend Class "C" funds derived from the accommodations tax to fund in whole or in part the construction of a cultural or arts center that is to be located within the geographical limits of a municipality?

APPLICABLE LAW: Act 316, Acts of 1984.

DISCUSSION:

The act in a portion designated as § 12-35-720(1) provides in part that:

"* * * in the expenditure of funds, county councils are required to promote tourism and make tourism-related expenditures primarily in the geographical area of the county in which the proceeds of the tax are collected where it is practical."

It is axiomatic that we look for the intent of the General Assembly and that the same is controlling. (For cases so holding, see 17 S.C.D., Statutes, Key 181, et seq.)

Here, the designated place of expenditure is modified by the words "primary" and "practical".

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"The word 'primarily' means 'of first importance' or 'principally.' Malat v. Riddell, 383 U.S. 569, 572, 86 S.Ct. 1030, 1032, 16 L.Ed.2d 102 (1966); Webster's Third New International Dictionary 1800 (1965); 33A Words and Phrases, 209-215." Brunswick Capitol Lanes v. S. C. Alcoholic Beverage Control Commission, 273 S.C. 782, 260 S.E.2d 452, 453.

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

"Capable of being put to use or account; useful."

In Locklear v. Southeastern Stages, 193 S.C. 309, 8 S.E.2d 321, the court was concerned with the meaning of the word as used in a statute that prohibited the stopping of a vehicle on a highway when it is practical to stop the vehicle off the highway. The court stated:

"In our opinion, the word 'practical' is not to be given too literal a construction or interpretation. It does not necessarily mean that which is physically possible or mechanically practicable, but rather that which is possible of reasonable performance, including the element of reasonable safety under existing circumstances." See also Woody v. S. C. Power Co., 202 S.C. 73, 24 S.E.2d 121.

The Class "C" funds of the county are thus to be primarily expended in the geographical area where collected when in the opinion of the county the same is practical. A determination of whether an expenditure is practical necessarily is to be made by the county council and is a factual matter.

In the present inquiry, we do not have the proposed costs of the facility or the projection of revenue from the tax. It is understood, however, that at least part of the funding will be by a bond issue. The act authorizes such bond issues and the pledging of the tax for the repayment thereof. The tax is collected from persons furnishing accommodations throughout the county. There may, however, be greater concentration of persons furnishing accommodations in one area than in another.

When considering what is practical, the county council should consider, among other things, the cost of the facility, the size of the facility, its accessibility and the manner in which it promotes tourism.

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When a substantial expenditure is necessary to construct and maintain a facility, it would also be appropriate to consider the need to promote tourism for the whole county. The tax is collected from all persons within the county that furnish the taxable accommodations. It is here assumed that there is a need for only one cultural or art center for the county and that the same would promote tourism throughout the county. We do not find legislative intent to require such a center to be constructed in each area of the county in which the tax is collected. If such was required, the same could easily dilute the funds so that no suitable center could be constructed anywhere within the county.

Under such circumstances, Class "C" funds could be spent to construct and maintain the center within the city.

As a precedent to the expenditure, there should be a finding by the council that an expenditure within the geographical area of the county in which the tax is collected is not practical.

CONCLUSION:

Class "C" funds received by a county from the accommodations tax may be expended to construct and maintain within a municipality a facility that promotes tourism. A condition for the expenditure is a conclusion or finding by the council that an expenditure for such a facility in the geographical area of the county in which the tax is collected is not practical.

JLAJr:ssr