

✓

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 8-11279 October 17, 1985

SUBJECT: Taxation and Revenue - Expenditure of the Accommodations Tax.

SYLLABUS: A municipality and the organization designated to manage and direct the expenditure of Class "B" funds from the accommodations tax must agree on the terms and conditions of the expenditure. The same may include payment for services rendered by the organization.

TO: Honorable George H. Spare
Hardeeville Town Administrator

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

QUESTION: May the organization designated to manage and direct the expenditure of Class "B" funds from the accommodations tax appropriate all or a portion of the funds for salaries of the personnel of the organization that will promote tourism, in example a tourism director?

APPLICABLE LAW: Section 12-35-720, Code of Laws of South Carolina, 1976.

DISCUSSION:

The accommodations tax is allocated to the cities and counties. The allocation is in three separate classes. Class "A" is the first twenty-five thousand dollars received by the municipality or county. That sum is exempt from the other requirements of the act.

The next, Class "B", is twenty-five percent of the remaining balance. It is allocated to a special fund and is to be used to advertise and promote tourism by increasing tourist attendance through the generation of publicity. The third, Class "C", is the remainder of the funds which is allocated to a special fund and used for "tourism-related expenditures".

We are here only concerned with the Class "B" funds. The statute requires that this fund be "used for advertising and

October 17, 1985

promotion of tourism so as to develop and increase tourist attendance through the generation of publicity". The organization designated to manage and direct the expenditure of these funds must have an existing ongoing tourism program or must be able to develop an effective tourism promotion program. Such requirements disclose legislative intent that the funds be expended for advertising or the promotion of tourism. That intent is controlling. (For cases so holding see 17 S.C.D., Statutes, Key 174, et seq.)

Also, we do not find that the General Assembly intended the organization to manage and direct the expenditure without reimbursement for such services. The organization must submit a "budget of planned expenditures" and the same must be approved by the municipality prior to any expenditures of the funds.

Whether the allocation within the organization's budget represents a reasonable expenditure for advertising and promotion of tourism is factual. That should be determined by the Town Council and the advisory committee provided by § 12-35-720(3).

We have no case law on the subject, however, it is doubtful that all or a substantial amount of the Class "B" funds could be allocated to the salaries of the personnel of the organization. If such were the case, there would be no direct expenditure of the funds to advertise or promote tourism. The municipality and the organization must agree on the expenditure which includes the costs for services rendered by the organization. Those costs may include compensation for the services of the organization's personnel.¹

CONCLUSION:

A municipality and the organization designated to manage and direct the expenditure of Class "B" funds from the accommodations tax must agree on the terms and conditions of the expenditure. The same may include payment for services rendered by the organization.

¹There is no case law on this question. A declaratory action would resolve any doubt concerning the expenditure. We are informed, however, that such organizations are, as a general rule, compensated for the management of the expenditure of the Class "B" funds.