



ALAN WILSON
ATTORNEY GENERAL

August 30, 2017

Christopher S. Inglese, Esquire
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Dear Mr. Inglese:

Attorney General Alan Wilson has referred your letter dated June 16, 2017 to the Opinions section for a response. The following is this Office's understanding of your questions and our opinion based on that understanding.

Issues (as quoted from your letter):

Beaufort County has ratified local ordinances Sec. 66-26 et seq. regarding Accommodations tax and Sec. 66-531 et seq. regarding Hospitality tax. The County Ordinances adopt essentially the language of the State statutes to wit:

Sec. 66-44. - Permitted uses of local (3%) accommodations tax funds.

(a) The county council is hereby authorized to utilize the funds collected from the imposition and collection of the local accommodations tax and other funds deposited into "The County of Beaufort, South Carolina, Local Accommodations Tax Account." The revenue generated by the local accommodations tax must be used exclusively for the following purposes:

- (1) Tourism-related buildings, including, but not limited to, civic centers, coliseums, and aquariums;*
- (2) Cultural, recreational, or historic facilities;*
- (3) River/beach access and renourishment;*
- (4) Highways, roads, streets, bridges and boat ramps providing access to tourist destinations;*
- (5) Advertisements and promotions related to tourism development;*
- (6) Water and sewer infrastructure to serve tourism-related demand; and*
- (7) The operation and maintenance of those items provided in (a)(1) through (a)(6) above, including police, fire protection, emergency medical services, and emergency preparedness operations directly attendant to those facilities.*
- (8) For all other proper purposes including those set forth herein.*

The same is provided for expenditures of Hospitality tax funds:

Sec. 66-534. - Permitted uses of hospitality tax funds.

(a) The county council is hereby authorized to utilize the funds collected from the imposition and collection of the hospitality tax and other funds deposited into "The County of Beaufort, South Carolina, Hospitality Tax Account." The revenue generated by the hospitality tax

must be used exclusively for the following purposes:

- (1) Tourism-related buildings, including, but not limited to, civic centers, coliseums, and aquariums;*
- (2) Tourism-related cultural, recreational, historic facilities, or land acquisition;*
- (3) River/beach access and renourishment;*
- (4) Highways, roads, streets, bridges and boat ramps providing access to tourist destinations;*
- (5) Advertisements and promotions related to tourism development;*
- (6) Water and sewer infrastructure to serve tourism-related demand; and*
- (7) The operation and maintenance of those items provided in (a)(1) through (a)(6) above, including police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities.*
- (8) For all other proper purposes including those set forth herein.*

On behalf of Beaufort County Council, and in consideration of any other relevant provisions of Title 6 Chapter 4 of the South Carolina Code of Laws, I respectfully submit the following questions for your consideration and request your office issue a legal opinion:

[1] May County Council spend Accommodations tax funds for the construction of a culinary art institute as part of the Technical College of the Lowcountry's vocational programs?

[2] May County Council spend Hospitality tax funds for the construction of a culinary art institute as part of the Technical College of the Lowcountry's vocational programs?

Would your opinion change in consideration of the following question:

[3] May County Council spend Accommodations tax funds, or Hospitality tax funds for the construction of a culinary tourism center in which the primary function is to provide an international culinary experience wherein a culinary art degree program of the Technical College of the Lowcountry is the administrative office of the culinary tourism center?

Law/Analysis:

First and foremost, this Office generally defers the interpretation of administrative questions to administrative agencies within their jurisdiction. See, e.g., Op. S.C. Att’y Gen., 2015 WL 836506 (S.C.A.G. February 17, 2015). It is this Office’s understanding that, pursuant to South Carolina Code Ann. § 6-4-20(A), the South Carolina Treasurer administers an accommodations tax account. It is also our understanding, as we stated in a prior opinion, that the South Carolina Department of Revenue does not administer and collect a Local Hospitality Tax. Op. S.C. Att’y Gen., 2015 WL 836506 (S.C.A.G. February 17, 2015). Moreover, the Department of Revenue reviews sales tax returns for those “engaged or continuing within this State in the business of furnishing accommodations to transients for consideration.” S.C. Code Ann. § 12-36-920. Thus, to the extent that the Treasurer and the Department of Revenue administer and collect the Local Accommodations Tax, we would generally defer to their interpretations of the statutes as long as such interpretations are reasonable. Id. Furthermore, we note that the South Carolina Department of Revenue issued a ruling on October 27, 1998 pertaining to Accommodation Tax funds. See S.C. Revenue Ruling No. 98-22, 1998 WL 34058107 (October 27, 1998). In the ruling the Department advised that the use of Accommodations Tax funds are prohibited as to those activities that provide “a purely local function or benefit” and limited “tourism-related

expenditure” to those activities that are “used to attract or provide for tourists ... [and not] for an item that would normally be provided by the county or municipality.” S.C. Revenue Ruling No. 98-22, 1998 WL 34058107 (October 27, 1998). Additionally, the ruling concluded that Accommodations Tax funds may promote events that affect tourism but may not be used to support local programs that benefit the local population without tourists benefitting from the programs. Id. The Ruling concluded that tourism funds could not be used to pay for local art and music programs but could be used for cultural and civil activities in addition to visitor centers as long as they were used to attract and provide for tourists without providing “a purely local function.” Id.

Let us examine the statutes regarding the Local Accommodations Tax and the Local Hospitality Tax.¹ Regarding the Local Accommodations Tax, the Act requires that:

- (A) The revenue generated by the **local accommodations tax** must be used exclusively for the following purposes:
 - (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, renourishment, or other tourism-related lands and water access;
 - (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.
- (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 local accommodations tax authorized in this article may also 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.
- (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 accommodations tax authorized pursuant to this article may be used for the additional purposes provided in item (1) of this subsection.

S.C. Code Ann. § 6-1-530 (emphasis added). As you reference in your letter, the Local Hospitality Tax (S.C. Code Ann. § 6-1-730) may be used for almost the identical purposes as the Local Accommodations Tax (S.C. Code Ann. § 6-1-530, as listed above) except that § 6-1-730 limits the third purpose to “(3) beach access and renourishment” instead of “(3) beach access, renourishment, or other tourism-related lands and water access;” as in South Carolina Code Ann. § 6-1-530.

¹ When this opinion references the “Local Accommodations Tax,” we are referring to the “Local Accommodations Tax Act” in S.C. Code Ann. § 6-1-500 et seq. When this opinion refers to the “Local Hospitality Tax,” we are referring to the “Local Hospitality Tax Act” in S.C. Code Ann. § 6-1-700 et seq. Moreover, for purposes of this opinion we have not been provided the information as to the amounts of revenue, etc. for the county and presume they comply within the applicable statutes.

As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the General Assembly and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). The dominant factor concerning statutory construction is the intent of the Legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)).

While this Office keeps the literal reading of these statutes in mind, in answering your questions we must bring to your attention the funding source for these taxes. As you are likely aware, "[a] local governing body may impose, by ordinance, a local hospitality tax not to exceed two percent of the charges for food and beverages." S.C. Code Ann. § 6-1-720. Thus, a Local Hospitality Tax is a tax on food and beverages. Id. Contrastingly, "[a] local governing body may impose, by ordinance, a local accommodations tax, not to exceed three percent." S.C. Code Ann. § 6-1-520. The statute defines a local accommodations tax as "a tax on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in Section 12-36-920(A) and which is imposed on every person engaged or continuing within the jurisdiction of the imposing local governmental body in the business of furnishing accommodations to transients for consideration." S.C. Code Ann. § 6-1-510. Thus, a Local Accommodations Tax is a tax on the fees for the furnishing of accommodations to "transients." Id. As you are also likely aware, South Carolina imposes a statewide sales tax "equal to seven percent is imposed on the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration." S.C. Code Ann. § 12-36-920. Thus, we advise keeping all expenditures consistent with the overall purpose and basis for the tax as expressed by the General Assembly.

[1] May County Council spend Accommodations tax funds for the construction of a culinary art institute as part of the Technical College of the Lowcountry's vocational programs?

Regarding your first question and keeping in mind that the Local Accommodations Tax is a tax on the fees for the furnishing of accommodations to "transients," we believe a court would find that funds from the Local Accommodations Tax must exclusively be used for the purposes listed within S.C. Code Ann. § 6-1-530 (i.e. "(1) tourism-related buildings including, but not limited to, civic centers, coliseums, and aquariums; (2) tourism-related cultural, recreational, or historic facilities; et seq."). Chapter 4 of Title 6 defines "travel" and "tourism" as "the action and activities of people taking trips outside their home communities for any purpose, except daily commuting to and from work." S.C. Code Ann. § 6-4-5(4). This Office has previously opined regarding the Accommodations Tax that "the General Assembly has broadly defined tourism ... [which is] indicative of an intent that 'tourism-related expenditures' also be broadly interpreted." Op. S.C. Att'y Gen., 2015 WL 5462169 (S.C.A.G. September 3, 2015) (quoting Op. S.C. Att'y Gen., 2003 WL 21043497 (S.C.A.G. April 2, 2003)). The county must be prepared to

show how the funds will benefit tourism and this Office believes a court will find the funds should benefit tourism at least implicitly through “transients” coming to stay because of the culinary art institute in order to fulfill this compliance. Moreover, the South Carolina Court of Appeals has ruled regarding the Accommodations Tax that:

The Accommodations Tax Act was enacted to raise revenue for the purpose of promoting tourism and providing for facilities and services which enhance the ability of counties and municipalities to attract and provide for tourists. Section 1, Act No. 316, Acts and Joint Resolutions of the General Assembly of South Carolina, Regular Session, 1984, 63 Stat. at Large 1570 (1984). To generate revenues, the Act imposes an accommodations tax on the transient use of hotel, motel, and campground facilities. The Tax Commission annually returns a portion of the tax receipts to the county or municipality from which they were collected.

...

In our view, the statute reflects a practical recognition by the Legislature that expenditures which promote tourism will generally enlarge the economic benefits for an entire geographic area of the county without regard to municipal boundary lines. Thus, for example, a festival held within the city limits will bring economic benefits to motels and campgrounds along highways coming into the city. Conversely, a visitor information center in an unincorporated area of the county will bring economic benefits to the entire geographic area by promoting tourist services and facilities in nearby incorporated areas. For this reason, it makes sense to give counties some flexibility as to how and where they spend accommodations tax revenues.

This reading of the statute is reinforced by the further provision that suit may be brought to challenge expenditures if the county is not “substantially in compliance” with its provisions. A standard of “substantial” compliance, rather than “strict” compliance, acknowledges that the county must have some discretion in deciding how to spend (C) funds. As long as it substantially complies with the two requirements of Section 12-35-720(1) in the overall expenditure of funds, there is no warrant for judicial interference with its decisions.

Thompson v. Horry Cty., 294 S.C. 81, 85, 362 S.E.2d 646, 648 (Ct. App. 1987). Additionally the Administrative Law Court has ruled that Accommodations Tax funds may be given to “for-profit” entities pursuant to S.C. Code Ann. § 6-4-10(4). City of Myrtle Beach v. Tourism Expenditure Review Committee, 2005 WL 3308567 (S.C. Admin.LawJudge Div. 2005).

Nevertheless, the General Assembly has granted the local advisory committee authority to recommend expenditures of the revenue from Accommodations Taxes and the local government’s actions following the recommendation. S.C. Code § 6-4-25. Furthermore, the law states regarding the Tourism Expenditure Review Committee that it:

[S]hall serve as the oversight authority on all questionable tourism-related expenditures and to that end, all reports 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 this chapter. The municipality or county must be notified if an expenditure is questioned, and the committee may consider any further supporting

information the municipality or county may provide. If the committee finds an expenditure to be in noncompliance, it shall certify the noncompliance to the State Treasurer, who shall withhold the amount of the expenditure found in noncompliance from subsequent distributions in accommodations tax revenue otherwise due the municipality or county. An appeal from an action of the committee under this subitem lies with the Administrative Law Judge Division.

S.C. Code § 6-4-35(B)(1)(a). The Advisory Committee serves to recommend how Accommodations Tax funds should be spent by local governing bodies. S.C. Code Ann. § 6-4-25. The Tourism Expenditure Review Committee serves as the oversight authority on any questionable tourism-related expenditures of Accommodations Tax funds. S.C. Code Ann. §§ 6-4-35.

[2] May County Council spend Hospitality tax funds for the construction of a culinary art institute as part of the Technical College of the Lowcountry's vocational programs?

Regarding the Local Hospitality Tax and “with respect to capital projects,” the law defines a “tourist” as “a person who does not reside in but rather enters temporarily, for reasons of recreation or leisure, the jurisdictional boundaries of a municipality for a municipal project or the immediate area of the project for a county project.” S.C. Code Ann. § 6-1-760 (1976 Code, as amended). Regarding a Local Hospitality Tax, this Office has previously opined that:

[A]n athletic house and improvements to an athletic field at a public school would likely be used for the students and staff of the school, rather than for tourists to the area. Op. S.C. Atty. Gen., 2006 WL 3877521 (December 20, 2006). Moreover, there are other cases that may be of assistance in guiding you as to how a court may rule on your question. For example, the West Virginia Supreme Court [...] upheld [sic] a movie theatre deemed a tourist recreational activity destination. See Fountain Place Cinema 8, LLC, v. Morris, 227 W.Va. 249, 707 S.E.2d 859 (2011). Thus, we believe a court will find there must be a direct and casual connection between tourism and the promotion thereof for Local Hospitality Funds to be used in whole or part to pay for a recreational facility.

Moreover, in a 2010 opinion, this Office analyzed whether we thought Clarendon County could use a portion of money collected pursuant to its Local Hospitality Tax to operate and maintain its tourism facility. Op. S.C. Atty. Gen., 2010 WL 2678689 (June 10, 2010). In that opinion, the county relied on South Carolina Code Section 6-1-730 for its authority to do so. Id. This Office analyzed the statute based on rules of statutory interpretation and concluded that as long as the building was tourism-related, funds from the county's hospitality tax could be used for the building. Id.

Furthermore, in 2006, this Office wrote an opinion concluding a municipality may use funds from its hospitality tax for the purposes in Section 6-1-730(B) as long as at least one of the counties where the municipality is located collects the requisite amount. Op. S.C. Atty. Gen., 2006 WL 422564 (February 3, 2006). In that opinion, we discussed how the Local Hospitality Tax appears to be a “mechanism to generate revenue for the promotion of tourism and funds that mechanism by a revenue source which presumably would be affected by an increase in tourism.” Id.

We also referenced Thompson v. Horry County in support of the interpretation that a municipality may use funds from its hospitality tax within the entire municipality. Id. (citing Thompson v. Horry County, 294 S.C. 81, 362 S.E.2d 646 (1987)).

While the Thompson case dealt with the Accommodations Tax, the Court's conclusion is helpful in determining how the Court may interpret your question regarding the Local Hospitality Tax. In Thompson, the Court concluded state Accommodations Tax funds must be used for "tourism-related" expenditures and used primarily in the area of the county where the tax is collected where practical. Id.

Op. S.C. Att'y Gen., 2015 WL 836506 (S.C.A.G. Feb. 17, 2015). This Office has previously opined regarding whether an individual project would comply with the intent of the Local Hospitality Tax is a question of fact that is outside the scope of an opinion. See Op. S.C. Att'y Gen., 2014 WL 1511521 (S.C.A.G. Mar. 27, 2014). This Office also previously opined regarding the Local Accommodations Tax that:

In reading the provisions contained in the [Local Hospitality] Act as a whole, we understand that the Legislature intended to use hospitality tax revenues to fund projects and infrastructure that promote and further tourism. As we stated in a 2006 opinion discussing the Act, "in our view, the Act creates a mechanism to generate revenue for the promotion of tourism and funds that mechanism by a revenue source which presumably would be affected by an increase in tourism." Op. S.C. Atty. Gen., February 3, 2006.

Op. S.C. Atty. Gen., 2008 WL 5120764 (November 4, 2008). As the 2006 opinion also stated concerning the Hospitality Act:

...the Act allows counties and municipalities to impose a hospitality tax on certain meals and beverages served in restaurant and restaurant type establishments. S.C. Code Ann. § 6-1-710. Further, the Act requires the revenue generated from hospitality taxes to be kept separate and primarily used for tourism related expenditures. S.C. Code Ann. § 6-1-710. Specifically, section 6-1-730(A) states the expenditures are to be used "exclusively" for what appear to [be] expenses related to the promotion and facilitation of tourism. Thus, in our view, the Act creates a mechanism to generate revenue for the promotion of tourism and funds that mechanism by a revenue source which presumably would be affected by an increase in tourism.

Op. S.C. Atty. Gen., [2006 WL 422564 (February 3, 2006).]

Op. S.C. Att'y Gen., 2014 WL 1511521 (S.C.A.G. March 27, 2014). Thus, we would answer your questions likewise in that what is and is not a tourist destination is a question of fact. This Office issues legal, not factual opinions. Op. S.C. Atty. Gen., 1996 WL 599391 (September 6, 1996) (citing Op. S.C. Atty. Gen., 1983 WL 182076 (December 12, 1983)).

[3] May County Council spend Accommodations tax funds, or Hospitality tax funds for the construction of a culinary tourism center in which the primary function is to provide an international culinary experience wherein a culinary art degree program of the Technical College of the Lowcountry is the administrative office of the culinary tourism center?

This Office believes a court will determine that whether a culinary tourism center would meet the purposes for the funds is a question of fact, but we believe a court could find that a “culinary tourism center” could serve as a purpose listed within the statutes for use of Accommodations and Hospitality Tax funds. S.C. Code Ann. § 6-1-530 (“(2) tourism-related cultural, recreational, or historic facilities;”); § 6-1-730 (“(2) tourism-related cultural, recreational, or historic facilities;”) based on our answers to your first and second questions in the promotion of tourism. Furthermore, we believe it will strengthen your argument for there to be at least an implicit nexus between Accommodations Tax revenues and “transients” coming and staying in Beaufort in order to fulfill the purposes in S.C. Code Ann. § 6-1-530. Likewise, we believe it will strengthen your argument for there to be an implicit nexus between Hospitality Tax revenues and people dining in Beaufort in order to fulfill the purposes in S.C. Code Ann. § 6-1-730. We believe not only showing one of the purposes but also showing at minimum an implicit nexus behind the purpose for the tax will strengthen a legal argument for the use of the funds.

Conclusion:

As this Office stated in a previous opinion and for purposes of this opinion, we are not going to determine what is and is not a tourist destination for purposes of the Local Hospitality and Accommodations Taxes, as that is a question of fact better answered by the local government or a court.² Regarding your questions, we believe a court will find that a technical college generally is created to serve the needs of citizens either in a specific location or for a special set of skills and is not generally regarded as tourism-related. Our answers to your specific questions are as follows:

- 1) First and foremost, any such expenditure of Local Accommodations Tax funds would need to comply with South Carolina Department of Revenue Ruling No. 98-22, 1998 WL 34058107 (October 27, 1998). It prohibits the use of Accommodations Tax funds for “a purely local function or benefit” and limited “tourism-related expenditure[s]” to those that are “used to attract or provide for tourists ... [and not] for an item that would normally be provided by the county or municipality.” Id. Thus, the Revenue Ruling does not appear to support the use of Accommodations Tax funds to construct a culinary art institute as a part of the Technical College. Additionally, the Tourism Advisory Review Committee serves as the oversight authority on any questionable tourism-related expenditures of Accommodation Tax funds. S.C. Code Ann. § 6-4-35. Lastly, we advise consulting your Advisory Committee on the use of such funds. See S.C. Code Ann. § 6-4-25.
- 2) Regarding your second question, as this Office has previously opined, we believe a court will find there must be a direct and casual connection between tourism and the promotion thereof for Local Hospitality Funds to be used in whole or in part to pay for a recreational facility. See Op. S.C. Att’y Gen., 2015 WL 836506 (S.C.A.G. Feb. 17, 2015). We believe there is a legal argument for using Local Hospitality Tax funds for a culinary art institute if the county can show a nexus between the institute and tourism sufficient to overcome the purely local benefit it would provide to the Technical College.

² See Op. S.C. Att’y Gen., 2014 WL 1511521 (S.C.A.G. Mar. 27, 2014).

- 3) This Office has previously opined that we believe a court would find that Local Hospitality Tax funds could be used for a tourism facility, and we also believe a court would do so accordingly for Local Accommodations Tax funds. See Op. S.C. Atty. Gen., 2010 WL 2678689 (June 10, 2010). Without making any factual determinations, this Office believes a court would find that a culinary tourism center could serve as a purpose listed within the statutes for use of Accommodations and Hospitality Tax funds. S.C. Code Ann. § 6-1-530 (“(2) tourism-related cultural, recreational, or historic facilities;”); § 6-1-730 (“(2) tourism-related cultural, recreational, or historic facilities;”). As stated above, we also believe it would strengthen your argument for the county to show an implicit nexus between Accommodations Tax revenues and “transients” spending the night in fulfilling the purposes in South Carolina Code Ann. § 6-1-530. Likewise, we believe it would strengthen your argument for there to be at least an implicit nexus between Hospitality Tax revenues and tourists dining in order to fulfill the purposes in South Carolina Code Ann. § 6-1-730. This Office also advises following the applicable Revenue Rulings and coordination with the Advisory Committee regarding Accommodation Tax revenue, as detailed above.

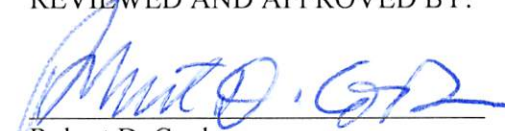
However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code Ann. § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General