



HENRY MCMASTER
ATTORNEY GENERAL

November 4, 2008

Larry C. Smith, Esquire
Richland County Attorney
Post Office Box 192
Columbia, South Carolina 29202

Dear Mr. Smith:

We understand from your letter that you desire an opinion of this Office on behalf of the Richland County Council ("County Council") concerning Richland County's (the "County's") ability to use hospitality tax revenue to fund a transit system in the County. You explain as follows:

Members of Council are considering funding sources for operating transit, and believe there is a close connection to tourism. Buses move tourist from the airport to the center city and to other destination points.

Law/Analysis

The Local Hospitality Tax Act (the "Act"), governing the imposition of hospitality taxes by local governing bodies, is found in sections 6-1-700 et seq. of the South Carolina Code (2004 & Supp. 2007). Section 6-1-730 of the South Carolina Code (2004 & Supp. 2007) governs the use of revenue produced from the imposition of a local hospitality tax and provides as follows:

(A) 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, or historic facilities;
- (3) beach access and renourishment;
- (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 hospitality tax authorized in this article may 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 twenty percent of the revenue in the preceding fiscal year of the local hospitality tax authorized pursuant to this article may be used for the additional purposes provided in item (1) of this subsection.

(emphasis added).

In interpreting this statute, we recognize the primary purpose of statutory construction is to ascertain the intent of the legislature. New York Times Co. v. Spartanburg County School Dist. No. 7, 374 S.C. 307, 310, 649 S.E.2d 28, 30 (2007). “The legislature’s intent should be ascertained primarily from the plain language of the statute. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute’s operation.” State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004) (citations omitted). Moreover, “[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

In reading the provisions contained in the 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. With this understanding of the Legislature’s intent in mind, we now turn section 6-1-730.

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Section 6-1-730 states that hospitality tax revenues are to be used “exclusively” for the purposes listed. In examining the list of acceptable expenditures in section 6-1-730 we do not find a specific provision allowing local governing bodies to fund a transit system with hospitality tax revenues. Furthermore, we do not believe any of the provisions under section 6-1-730 can be read to allow such funding. Subsection (1) only pertains to buildings. S.C. Code Ann. § 6-1-730(A)(1). Subsection (2) only allows funding for certain facilities. Id. § 6-1-730(A)(2). Subsection (3) applies to beach access and renourishment. Id. § 6-1-730(A)(3). Subsection (5) allows funding for advertising. Id. § 6-1-730(A)(5). Subsection (6) pertains to water and sewer infrastructure. Id. § 6-1-730(A)(6). Thus, none of these provisions can be read to provide funding for a transit system. Subsection (4) recognizes the relationship between highways, roads, streets, and bridges and tourism. Id. § 6-1-730(A)(4). However, this provision does not go so far as to allow hospitality tax revenues to be used for a transit system.

While funding a transit system may serve the purposes for the Act, we fail to find provision under section 6-1-730 allowing hospitality tax revenues to be used for a transit system. As the Legislature provided for the exclusive purposes for which hospitality tax revenues may be used, we do not believe that the Legislature intended for hospitality tax revenues to be used to fund a transit system. Accordingly, we do not believe the County may use hospitality tax revenues to fund its transit system.

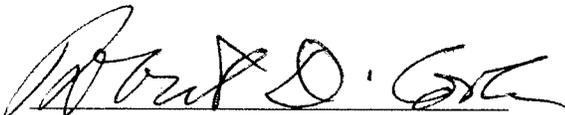
Very truly yours,

Henry McMaster
Attorney General



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REVIEWED AND APPROVED BY:



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