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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

February 27, 1998

Edgar Dyer, University Counsel  
Coastal Carolina University  
Post Office Box 1954  
Conway, South Carolina 29526

RE: Informal Opinion

Dear Mr. Dyer:

Your opinion request has been forwarded to me for reply. You have asked whether a public university must pay a county "hospitality tax." Specifically, must Coastal Carolina pay the Horry County Hospitality Fee on theatrical performances, athletic events, food services, and the like?

Coastal Carolina University is an institution of higher learning of the State of South Carolina. S.C. Code Ann. § 59-136-100. The University is governed by a board of trustees. The board of trustees is constituted a body corporate and politic under the name of the board of trustees for Coastal Carolina University. S.C. Code Ann. § 59-136-130. This section of the statute also lays out the numerous powers of the board of trustees.

The Horry County Hospitality Fee was established by Ordinance No. 105-96, as amended. This Ordinance establishes a uniform service charge equal to one and one-half percent (1.5%) within the geographic confines of Horry County, with an additional hospitality fee equal to one percent (1.0%) within the unincorporated areas of Horry County only. These fees shall be imposed on:

- (1) 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, lodging, or sleeping accommodations are furnished to transients for a consideration within the

*Request Letter*

Mr. Dyer  
Page 2  
February 27, 1998

County to which sales tax imposed by the State of South Carolina pursuant to Section 12-36-920 of the South Carolina Code applies;

(2) those paid admissions to places of amusement within the County to which the admissions tax imposed by the State of South Carolina pursuant to Section 12-21-2420, et seq. of the South Carolina Code, applies; and

(3) the gross proceeds derived from the sale of prepared food and beverages sold for immediate consumption either on or off premises; or maintain licenses for the on-premises consumption of alcohol, beer or wine.

Under Section 1(B) of the Ordinance, the payment of the hospitality fee is the liability of the consumer of the services. The hospitality fee shall be paid at that time of the delivery of services to which the hospitality fee applies, shall be collected by the provider of the services, and shall be held in trust by the provider until remitted as provided in the ordinance.

As you can see, the Ordinance specifies that the Horry County Hospitality Fee is not the liability of the provider of the services, but is the liability of the consumer of the services. The provider of the services merely collects the Hospitality Fee from the consumer and holds it in trust until remitted to the proper authority. Thus, unless Coastal Carolina is the consumer, the University would not actually be "paying" the Hospitality Fee, but merely collecting the fee.

Turning to your questions, in regards to theatrical performances and athletic events, the Ordinance calls for the Hospitality Fee to be imposed on those paid admissions to which the admissions tax imposed by the State pursuant to Section 12-21-2420 applies. Therefore, to determine the applicability of the Hospitality Fee, this section of the Code must be analyzed.

Pursuant to Section 12-21-2420, a license tax of five percent must be levied, assessed, collected, and paid upon paid admissions to places of amusement within this State. However, the statute does include several exemptions from this tax. One of these exemptions is that no tax may be charged or collected on admissions charged by any eleemosynary and nonprofit corporation or organization organized exclusively for religious, charitable, scientific, or educational purposes; or the presentation of performing artists by an accredited college or university; provided, that the license tax levied and

Mr. Dyer  
Page 3  
February 27, 1998

assessed shall be collected and paid upon all paid admissions to all athletic events of any institute of learning above the high school level. S.C. Code Ann. § 12-21-2420(4).<sup>1</sup>

As provided by the statute, the State admissions tax and, accordingly, the Horry County Hospitality Fee may not be charged or collected on admissions charged for the presentation of performing artists by an accredited college or university. Therefore, those theatrical performances meeting the description of "presentation of performing artists" by Coastal Carolina would not be subject to the Horry County Hospitality Fee and the University would not be required to collect the Hospitality Fee upon these events.

Athletic events are specifically made subject to the State admissions tax and, accordingly, the Horry County Hospitality Fee. Therefore, Coastal Carolina would be required to collect the Hospitality Fee upon these events.

In regards to food services, the Ordinance calls for the Hospitality Fee to be imposed on the gross proceeds derived from the sale of prepared food and beverages sold for immediate consumption either on or off premises; or maintain licenses for the on-premise consumption of alcohol, beer or wine. The Ordinance does not exempt Coastal Carolina from this provision.<sup>2</sup>

I am not familiar with the particular manner in which Coastal Carolina provides food services. As with most Universities, I would assume that there is a variety of ways students, faculty, and visitors may obtain food from the University (board plans, etc.) In some cases, the University may be the consumer and in others, the provider.<sup>3</sup> Since I am

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<sup>1</sup> In an opinion dated June 22, 1970, this Office concluded that the University of South Carolina is not an eleemosynary or nonprofit corporation. Therefore, USC did not fall under the exemption found in Section 12-21-2420(4) for "eleemosynary or nonprofit corporations or organizations organized exclusively for religious, charitable, scientific or educational purposes." The statute was subsequently amended to exempt "the presentation of performing artists by an accredited college or university."

<sup>2</sup> State agencies are not exempt from all forms of taxation. For example, sales to or purchases by the State are subject to the sales and use tax, unless otherwise exempt. See Op. Atty. Gen. dated February 14, 1963; S.C. Revenue Ruling No. 92-15 (copy enclosed).

<sup>3</sup> I have enclosed a copy of S.C. Revenue Ruling No. 93-9. While not directly on point with your question, this ruling provides a comprehensive explanation of how the State sales and use tax applies to meals sold or furnished by certain educational and medical institutions.

Mr. Dyer  
Page 4  
February 27, 1998

unfamiliar with the particular facts involved, I cannot comment with absolute certainty as to the application of the Ordinance in all cases. However, at a minimum, it would appear that if Coastal Carolina is engaged in the sale of food and beverages in a manner consistent with that specified in the Ordinance, this provision of the Ordinance would be applicable. Thus, if such is the case, the University would be required to collect payment of this fee from the consumer for the delivery of such services.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General