

W 3021 - 506

# The State of South Carolina



## Office of the Attorney General

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October 9, 1989

Janet T. Butcher, Esquire  
Staff Attorney  
Town of Hilton Head Island  
40 Palmetto Parkway  
Hilton Head Island, South Carolina 29925

Dear Ms. Butcher:

You have advised that the Town Council of Hilton Head Island, acting upon a recommendation of the Town's Accommodations Tax Advisory Committee, has voted to contribute one hundred thousand dollars (\$100,000.00) to the South Carolina coastal areas devastated by Hurricane Hugo. The recommendation of the committee provides:

Recommend to the Town Council that \$100,000 of 1989 Accommodations Tax Funds be donated to the South Carolina Coastal areas that were hardest hit by Hurricane Hugo, with \$50,000 given to the American Red Cross and \$50,000 to the Salvation Army, to be used where the maximum benefit can be made to the immediate needs of the citizens of those devastated areas, and that the checks be given to Governor Carroll Campbell for distribution to those organizations.

On behalf of the Town Council, you have inquired as to the legality of expenditure of accommodations tax revenues in this manner.

Article X, Section 5 of the State Constitution requires that "[a]ny tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied." The accommodations tax is provided for in Section 12-35-710 et seq., Code of Laws of South Carolina (1988 Cum. Supp.). A sales tax of two percent is added to those gross proceeds from the rental of transient accommodations and then is ultimately returned to this State's counties and municipalities by a formula specified in Section 12-35-730. Allocation of funds received by a county or municipality is governed by Section 12-35-720 of the Code; subsection (1) provides in part:

(A) The first twenty-five thousand dollars must be allocated to the general fund of the municipality... and shall be exempt from all other requirements of this article. (B) Twenty-five percent of the remaining balance must be allocated to a special fund and used for advertising and promotion of tourism so as to develop and increase tourist attendance through the generation of publicity. ...(C) The remaining balance received by a municipality... must be allocated to a special fund and used for tourism related expenditures.

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

While it may be argued that a municipality should spend its accommodations tax revenues within the municipality, the statute does not contain such a requirement as to municipalities as it does for counties. Express mention of some items in a statute implies exclusion of all other items not mentioned. Home Building & Loan Ass'n v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139 (1938). The only requirement appearing on the face of the statute, as to municipalities, are that (B) funds be expended for advertising and promotion of tourism and further that (C) funds be used for "tourism-related expenditures." Arguably, then, a municipality might be permitted to expend its funds outside its limits, unlike a county, to which specific restrictions are statutorily imposed.

For an expenditure of accommodations tax funds to be valid, such expenditure must be a "tourism-related expenditure," according to Section 12-35-720(1) of the Code. A "tourism-related expenditure" is defined in Section 12-35-720(1), second paragraph, as

advertising and promotion of tourism...; promotion of the arts and cultural events; construction, maintenance, and operation of facilities for civic and cultural activities including construction and maintenance of access and other nearby roads and utilities for such facilities; the criminal justice system, law enforcement, fire protection, solid waste collection, and health facilities when required to serve tourists and tourist facilities; public facilities such as restrooms, dressing rooms, parks, and parking lots; tourist shuttle transportation; control and repair of waterfront erosion; and operating visitor information centers.

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To expend accommodations tax revenues in a manner inconsistent with Section 12-35-720 would be deemed violative of that statute and could subject the Town Council to enforcement actions in the Court of Common Pleas. It is respectfully suggested that the Town Council, in its enabling ordinance or resolution, make a specific finding of fact that the accommodations tax funds will be expended for "tourism-related expenditures" in contributing the funds to coastal areas which were hardest hit by Hurricane Hugo.

In interpreting the phrase "tourism-related expenditure," this Office has examined with approval expenditures which would upgrade leisure trails, observation towers and platforms available for use by the general public ( Op. Atty. Gen. dated February 27, 1989); to acquire an easement to the facade of an historic building (August 2, 1988); to replenish sand or sand dunes on this State's public beaches (January 15, 1987); and to build a cultural or civic center (April 11, 1985). This Office suggested that a contribution to a private, for-profit corporation to promote an event was not contemplated by the accommodations tax statutes in Op. Atty. Gen. No. 85-12 dated February 11, 1985. Finally, we have cautioned that an appropriation of accommodations tax revenues which would be used entirely or substantially for personnel or similar compensation, rather than the direct promotion or advancement of tourism, would not be statutorily permissible. Op. Atty. Gen. No. 85-118, dated October 17, 1985.

A final concern must be noted. This Office has opined previously that donations may be made by political subdivisions to eleemosynary corporations, but those organizations must be non-sectarian in nature and nonprofit and it must perform a service which the political subdivision is authorized to perform. Clearly, matters involving disaster relief are among those functions about which counties and municipalities are empowered to act. See Sections 5-7-30 and 4-9-30(5) of the Code. An organization such as the Salvation Army is, however, sectarian in nature; though its efforts, particularly with respect to the aftermath of Hurricane Hugo, are laudable, former Attorney General Daniel R. McLeod advised by an opinion dated April 13, 1971 (copy enclosed) that public funds could not be given to the Salvation Army.

To summarize the foregoing, this Office advises that the Town Council of Hilton Head Island could most probably expend one hundred thousand dollars (\$100,000.00) of its share of accommodations tax funds on hurricane relief efforts by donating such funds to other areas of the State, as the statutes contain no absolute prohibition on such an expenditure. This Office suggests that the Town Council make a specific finding as to how such expenditure or donation will be for "tourism-related expenditures," keeping in mind the definition of that phrase in Section 12-35-720(1) of the Code. While

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this Office applauds the efforts of the Salvation Army and similar sectarian entities during these disaster relief efforts, we respectfully advise that, according to a previous opinion issued by former Attorney General McLeod, public funds may not be used in aid of such a sectarian entity. This Office is, by this opinion, commenting on legal aspects of such an expenditure in this limited and unique circumstance and does not address any policy considerations which may be before Town Council.

The havoc wreaked by Hurricane Hugo has devastated this State's economy, particularly along the coast where the tourism industry is a vital part of the economy. We agree with the recommendations of your Accommodations Tax Advisory Committee that such a donation "is an appropriate gesture of concern for our neighbors and will aid them in restoring the tourism industry which is so important to all of South Carolina." Expending accommodations tax revenues by the Town of Hilton Head Island will at least indirectly benefit the Town's portion of the tourism industry. We believe that if the expenditure should be judicially challenged, a court would note with approval the statewide concern for full restoration of the tourism industry and uphold the use of the accommodations tax funds by one municipality to assist with "tourism-related expenditures" incurred in another part of the State as a result of Hurricane Hugo.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/nw  
Enclosure

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions