



ALAN WILSON  
ATTORNEY GENERAL

March 27, 2014

The Honorable Harvey S. Peeler, Jr.  
Senator, District No. 14  
P. O. Box 142  
Columbia, South Carolina 29202

Dear Senator Peeler:

Attorney General Alan Wilson has referred your letter dated February 25, 2014 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Issue:** May Gaffney City Council use funds from the local hospitality tax collected pursuant to South Carolina Code Section 6-1-720 et seq. to repair roads (e.g., fixing pot holes and resurfacing roads)?<sup>1</sup>

**Short Answer:** This Office believes a court will find it depends on whether the roads to be repaired provide access to tourist destinations. However, what constitutes a tourist destination in the City of Gaffney and how people access such a place is a question of fact outside the scope of an opinion by this Office.

**Law/Analysis:**

South Carolina Code Section 6-1-720 states that:

(A) A local governing body may impose, by ordinance, a local hospitality tax not to exceed two percent of the charges for food and beverages. However, an ordinance imposing the local hospitality tax must be adopted by a positive majority vote. The governing body of a county may not impose a local hospitality tax in excess of one percent within the boundaries of a municipality without the consent, by resolution, of the appropriate municipal governing body.

(B) All proceeds from a local hospitality tax must be kept in a separate fund segregated from the imposing entity's general fund. All interest generated by the local hospitality tax fund must be credited to the local hospitality tax fund.

South Carolina Code Section 6-1-730 states that:

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<sup>1</sup> As you stated in your letter, S. Bill 912 is currently pending. That Bill expands S.C. Code § 6-1-730(A)(4) to say: "highways, roads, streets, and bridges providing access to tourist destinations or destinations contributing to tourist activities."

(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 **fifty 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.**

S.C. Code § 6-1-730 (1976 Code, as amended) (emphasis added).

As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the legislature 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). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). 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)). Therefore, we will not look to other statutes to determine the meaning of the statute but will look to a clear and unambiguous meaning.

As your letter acknowledges, "tourist destination" is not defined by statute or otherwise.<sup>2</sup> Since the statute appears clear and unambiguous, this Office will not look to other statutes to determine the meaning of "tourist destination." As stated above, this Office looks at the plain meaning of the words,

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<sup>2</sup> Please note "tourism related expenditures" is defined in S.C. Code § 6-4-10 but that concerns the local accommodation tax found in § 6-1-530 et seq. See, e.g., Ops. S.C. Atty. Gen., 2000 WL 1803611 (September 28, 2000); 2011 WL 6959374 (December 5, 2011).

rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). Therefore, let us look to the plain and ordinary meaning of the words. The American Heritage College Dictionary defines “tourist” as “one who travels for pleasure.” The American Heritage College Dictionary 1431 (3<sup>rd</sup> ed., Houghton Mifflin Co. 1997). “Destination” is defined as:

1. The place to which one is going or directed.
2. The ultimate purpose for which something is created or intended....

Id. at 378. “Access” is defined as:

1. A means of approaching, entering, exiting, or making use of; a passage.
2. The act of approaching.
3. The right to approach, enter, exit, or make use of.
4. Increase by addition.
5. An outburst or onset ....

**Id. at 8. Where people go for pleasure in the City of Gaffney and how they access such places is a question of fact outside the scope of an opinion by this Office. Determining whether an individual project would comply with the intent of S.C. Code § 6-1-730 is a question of fact, which would be better answered by a court. Op. S.C. Atty. Gen., 2006 WL 3877521 (December 20, 2006). 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)).**

Moreover, this Office has previously stated concerning the local hospitality tax found in S.C. Code Section 6-1-700 et seq.:

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 5120764 (November 4, 2008).

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For purposes of your question, we are assuming based on the plain meaning of the statute that revenue used for “highways, roads, streets, and bridges providing access to tourist destinations” would include the maintenance thereof. S.C. Code § 6-1-730(A)(4), (B). How much revenue may be used on maintenance depends on the total revenue the County collects pursuant to the hospitality tax. S.C. Code § 6-1-730(B). If the County collects less than nine hundred thousand dollars in annual revenue from its hospitality tax, up to fifty percent of its revenue from the hospitality tax may be used for the maintenance of the highways, roads, streets, and bridges (or any of the other purposes in S.C. Code § 6-1-730(A)). *Id.* If the County collects nine hundred thousand dollars or more in annual revenue from its hospitality tax, it may use any percent it chooses, as outlined in S.C. Code § 6-1-730(B)(1). See *Op. S.C. Atty. Gen.*, 2010 WL 2678689 (June 10, 2010) (opining that Clarendon County may use its hospitality tax revenue for the maintenance and operation of a building used for tourism). Therefore, this Office believes a court will find maintenance (as listed in S.C. Code § 6-1-730(B)(1)) of “highways, roads, streets, bridges providing access to tourist destinations” (found in S.C. Code § 6-1-730(A)(4)) would include fixing pot holes and resurfacing roads based on a plain meaning of the statutes.

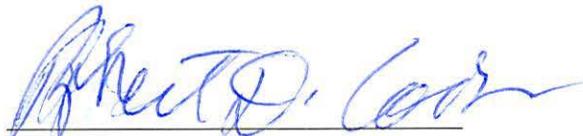
**Conclusion: Thus, this Office believes a court will find Gaffney City Council may use funds from the local hospitality tax collected pursuant to South Carolina Code Section 6-1-720 et seq. to maintain and repair roads (e.g., fixing pot holes and resurfacing roads) as long as the roads provide access to tourist destinations. What constitutes a tourist destination and whether a particular road provides access to such a tourist destination are questions of facts outside the scope of an opinion. For an answer regarding any factual scenarios this Office would recommend seeking a declaratory judgment from the court on this matter, as only a court of law can interpret statutes and make factual determinations. As far as the percent of revenue from its hospitality tax that may be used on such repairs and maintenance depends on the amount of the County’s revenue from the hospitality tax. However, this is only a legal opinion based on the current law at this time. Until a court or the legislature 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. If it is later determined otherwise or if you have any additional questions or issues, please let us know.**

Sincerely,



Anita S. Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General