



ALAN WILSON
ATTORNEY GENERAL

September 3, 2015

Edward W. Riggs, Sr. Chairman
South Carolina Tourism Expenditure Review Committee
P.O. Box 125
Columbia, SC 29214-0120

Dear Chairman Riggs:

Attorney General Alan Wilson has referred your letter dated May 14, 2015 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 (as quoted from your letter):

Is the Tourism Expenditure Review Committee obliged to review expenditures of state accommodations tax funds by tourism promotion organizations which have received distributions from municipalities and counties from the special fund for tourism created by S.C. Code § 6-4-10(3)[the 30% funds]?

...

TERC has taken the position that although it may have the authority to do so, reviews of specific expenditures by such organizations are not mandated by the statute and may be left up to the municipalities and counties distributing monies from the 30% Fund [as found in S.C. Code § 6-4-10(3)]. The TERC's position in this regard is based upon three factors.

[1] First, the last [] sentences of § 6-4-10(3) require that municipalities and counties

- (1) approve a "budget of planned expenditures" of monies from the 30% Fund by the recipient organization on an annual basis and
- (2) that recipient organizations provide to municipalities and counties an accounting at the end of a fiscal year for the expenditures made by the recipient organizations from the 30% funds that have been distributed to them.

By contrast, there are no such requirements associated with expenditures from the 65% Fund. See § 6-4-10(4). In TERC's view, this language evinces legislative intent that local governments should play the primary oversight role with respect to specific expenditures of accommodations tax revenues from the 30% Fund.

[2] Second, under § 6-4-35(b)(2), TERC is empowered to investigate and research facts on a written complaint regarding tourism-related expenditures, which is defined by § 6-4-10(4)(b) to include expenditures for "advertising and promoting tourism." Therefore should a specific expenditure of monies from the 30% Fund be questionable, that matter may always be brought before TERC by a municipality, a county, or other interested party.

[3] Third, the TERC is a committee made up of eleven persons (eight appointed by the governor – of which seven must be associated with various interest groups and stakeholders, one appointed by the Speaker of the House, one appointed by the President Pro Tem of the Senate, and the Director of PRT who serves ex officio). The members are not compensated, although they may raw mileage, subsistence and per diem. TERC has one part-time staff person. All expenses associated with the operation of TERC are deducted from accommodations tax revenues. See 12-36-2630(3). The TERC members must meet

and review annual reports of eighty-three different municipalities and counties. The number of expenditures from the 65% Fund that are reported by municipalities and counties – based on last year's reporting – may be as few as one (1) and as many as forty-five (45), with an average number of reported expenditures being twenty-three (23). This translates into a review of over one thousand nine hundred (1,900) specific expenditures from the 65% Fund on an annual basis. In TERC's view, the limited resources provided by the legislature from the conduct of TERC's business suggests a legislative intent that TERC focus on the specific expenditures made from the 65% FUND – which are not made by organizations that are required to meet the strict eligibility standards and comply with the annual budget approval and accounting for recipients of monies from the 30% Fund set out in §6-4-10(3).

Law/Analysis:

By way of background, South Carolina law imposes a statewide sales tax on accommodations for “transients” equal to seven percent 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 (1976 Code, as amended). South Carolina law also authorizes a local governing body (meaning a county or municipality pursuant to South Carolina Code § 6-1-510(2)) to impose by ordinance a “Local Accommodations Tax” up to 3% on accommodations. S.C. Code Ann. § 6-1-520.¹ The Local Accommodations Tax is levied on up to 3% of 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(1); 6-1-520. The local governing body must transfer all of the revenue from the Local Accommodations Tax (along with interest) into a separate fund and must allocate the revenue “exclusively” for tourism-related needs, as specified by the statute. S.C. Code Ann. §§ 6-1-520(B), 6-1-530. Two percent of the seven percent statewide sales tax on accommodations must be given by the S.C. Department of Revenue to the political subdivisions of the State as Local Accommodations Tax revenue to be spent as Local Accommodation Tax revenue as specified by Chapter 4 of Title 6. S.C. Code Ann. §§ 12-36-2630(3), 12-2-10.

As far as the spending by the counties and municipalities of revenue from the Local Accommodations Tax collected pursuant to the statewide accommodations tax, the statute is clear when it states:

The funds received by a municipality or a county in county areas collecting more than fifty thousand dollars from the local accommodations tax provided in Section 12-36-2630(3) [the statewide accommodations tax] must be allocated in the following manner:

- (1) The first twenty-five thousand dollars must be allocated to the general fund of the municipality or county and is exempt from all other requirements of this chapter.

¹ Please note the statutory limit differs for a county within the bounds of a municipality depending on whether the county has the consent of the municipality to impose the tax.

(2) Five percent of the balance must be allocated to the general fund of the municipality or county and is exempt from all other requirements of this chapter.

(3) Thirty percent [30%] of the balance must be allocated to a special fund and used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity. To manage and direct the expenditure of these tourism promotion funds, the municipality or county shall select one or more organizations, such as a chamber of commerce, visitor and convention bureau, or regional tourism commission, which has an existing, ongoing tourist promotion program. If no organization exists, the municipality or county shall create an organization with the same membership standard in Section 6-4-25. To be eligible for selection the organization must be organized as a nonprofit organization and shall demonstrate to the municipality or county that it has an existing, ongoing tourism promotion program or that it can develop an effective tourism promotion program. Immediately upon an allocation to the special fund, a municipality or county shall distribute the tourism promotion funds to the organizations selected or created to receive them. Before the beginning of each fiscal year, an organization receiving funds from the accommodations tax from a municipality or county shall submit for approval a budget of planned expenditures. At the end of each fiscal year, an organization receiving funds shall render an accounting of the expenditure to the municipality or county which distributed them. Fees allocated pursuant to this subsection must not be used to pledge as security for bonds and to retire bonds. Also, fees allocated pursuant to this subsection must be allocated to a special fund and used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity, and not used to pledge as security for bonds and to retire bonds.

(4)(a) The remaining balance [65%] plus earned interest received by a municipality or county must be allocated to a special fund and used for tourism-related expenditures. This section does not prohibit a municipality or county from using accommodations tax general fund revenues for tourism-related expenditures.

(b) The funds received by a county or municipality which has a high concentration of tourism activity may be used to provide additional county and municipal services including, but not limited to, law enforcement, traffic control, public facilities, and highway and street maintenance, as well as the continual promotion of tourism. The funds must not be used as an additional source of revenue to provide services normally provided by the county or municipality but to promote tourism and enlarge its economic benefits through advertising, promotion, and providing those facilities and services which enhance the ability of the county or municipality to attract and provide for tourists.

... unlike other taxes such as the Local Option Sales Tax (S.C. Code § 4-10-90 et seq.), the South Carolina Department of Revenue does not administer and collect the Local Hospitality tax. S.C. Code § 6-1-770. Customarily this Office, like the courts, will defer to the administering agency in a question of implementation. See, e.g., Op. S.C. Atty. Gen., 2014 WL 3414955 (June 13, 2014) (quoting Logan v. Leatherman, 290 S.C. 400, 351 S.E.2d 146, 148 (1986), et al.). Therefore, we will proceed with the understanding that the Department of Revenue is not the administering agency for the Local Hospitality Tax.

Op. S.C. Att’y Gen., 2015 WL 836506 (February 17, 2015). It is this Office’s understanding that other than when one documents the Local Accommodations Tax on their tax return and when the Department issues two percent of the statewide sales tax on accommodations to the local government (pursuant to S.C. Code Ann. §§ 12-36-2630(3), 12-2-10), the South Carolina Department of Revenue does not administer or review the Local Accommodations Tax anymore. S.C. Code § 12-36-920. However, Revenue Ruling #98-22 gives specific instruction for the interpretation and administration of the Local Accommodations Tax by the South Carolina Department of Revenue. S.C. Rev. Rul. 98-22, 1998 WL 34058107 (October 27, 1998, eff. December 1, 1998). The statute cited as authority for the ruling (S.C. Code § 6-4-30) was repealed in 2003.² 2003 S.C. Acts No. 96 § 3.MM (eff. June 18, 2003).³ It stated:

Section 6-4-30. Local governments covered by this chapter may expend accommodations tax revenues pursuant to this chapter, and the Department of Revenue shall:

- (1) serve as a resource to, answer questions of, and assist advisory committees and local governments in the implementation of the accommodations tax; and
- (2) arrange continuing education programs or workshops for local governmental officials and advisory committee members.

2001 S.C. Acts No. 74. Therefore, we will presume the S.C. Department of Revenue does not have an official opinion regarding your question.

Thus, let us begin our review. 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

² Please note S.C. Revenue Procedure 97-8 was also cited as the authority for Revenue Ruling 98-22. S.C. Rev. Rul. 98-22, 1998 WL 34058107 (October 27, 1998, eff. December 1, 1998).

³ Though the language of the Act does not appear to repeal S.C. Code § 6-4-30, it is the Act currently cited in the code as repealing the statute.

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)). The Local Accommodation Tax statutes provide three levels of administrative review over the spending of revenue from the Local Accommodation Tax by local governments receiving Local Accommodation Tax funds. The three levels of review are:

- 1) the State Treasurer (who “administer[s]” an accommodations tax account and “correct[s] misallocations”) [pursuant to S.C. Code Ann. § 6-4-20];
- 2) the S.C. Accommodations Tax Oversight Committee (“municipalities and counties annually shall submit a list of how funds from the accommodations tax are spent”) [pursuant to S.C. Code Ann. § 6-4-25(D)-(E)]; and
- 3) the Tourism Expenditure Review Committee (which is “the oversight authority on all tourism-related expenditures”) [pursuant to S.C. Code Ann. § 6-4-35(B)].⁴

All three levels are administrative checks on the local government’s spending of the money. Regarding the first level, the State Treasurer is given the authority to “administer” the Local Accommodations Tax account along with the ability to correct misallocations. S.C. Code Ann. § 6-4-20. As far as an advisory committee, each county or municipality must appoint an advisory committee to recommend how to spend revenue from the Local Accommodations Tax if it receives more than fifty thousand dollars in revenue from the Local Accommodations Tax. However, the committee is only required to adopt guidelines and submit annual written recommendations for how to spend the funds. S.C. Code Ann. § 6-4-25. The counties and municipalities are not obligated to follow those recommendations. Id. For those counties and municipalities receiving less than fifty thousand dollars in revenue from the local accommodations tax, having an advisory committee is optional. Id. However, as a second level of review, the South Carolina Accommodations Tax Oversight Committee then regulates the advisory committee. S.C. Code Ann. § 6-4-25(D)-(E). Each county and municipality receiving Local Accommodations Tax revenue must submit from the advisory committee to the S.C. Accommodations Tax Oversight Committee:

- (1) end-of-the-year report detailing advisory committee accommodations tax recommendations;
- (2) municipality's or county's action following the recommendations;
- (3) list of how funds from the accommodations tax are spent, except for the first twenty-five thousand dollars and five percent of the balance in Section 6-4-10(2) allocated to the general fund. The list is due before October first and must include funds received and dispersed during the previous fiscal year; [and]
- (4) list of advisory committee members noting the chairman, business address if applicable, and representation of the hospitality industry including the lodging industry and cultural interests.

S.C. Code Ann. § 6-4-25(D). Thus, let us further review the legislative history regarding the S.C. Accommodations Tax Oversight Committee. Previously, the S.C. Accommodations Tax Oversight Committee was listed in S.C. Code Ann. § 6-4-30 and stated:

⁴ Actions by the Tourism Expenditure Review Committee may be appealed to the S.C. Administrative Law Court. S.C. Code Ann. § 6-4-35(B)(1).

Section 6–4–30. A South Carolina Accommodations Tax Oversight Committee is created and consists of the members of the Joint Committee on Tourism and Trade and the Chairman of the Joint Committee on Cultural Affairs. The committee must be funded with existing state resources available to the Joint Committee on Tourism and Trade. Local governments covered by this chapter may expend accommodations tax revenues pursuant to this chapter, and the committee shall:

- (1) serve as a resource to, answer questions of, and assist advisory committees and local governments in the implementation of the accommodations tax;
- (2) arrange continuing education programs or workshops for local governmental officials and advisory committee members;
- (3) serve as the oversight authority on questionable expenditures;
- (4) require that complaints relating to the accommodations tax be submitted in writing;
- (5) investigate and research facts on submitted complaints;
- (6) publish an annual report on information submitted by the local governments and regional tourism agencies in Section 6–4–20 covered by the tourism provisions of this chapter.

1991 S.C. Acts 147 (eff. July 1, 1991). As stated above, South Carolina Code § 6-4-30 was repealed in 2003.⁵ 2003 S.C. Acts No. 96 § 3.MM (eff. June 18, 2003). We did not find any legislative background to help us concerning the Oversight Committee other than it serves as another check on the spending of Local Accommodation Tax funds.

Lastly, the Tourism Expenditure Review Committee was established by statute as “the oversight authority on all questionable tourism-related expenditures...” concerning the allocation of accommodations tax revenues by counties and municipalities. S.C. Code Ann. § 6-4-35. The statute authorizes the Tourism Expenditure Review Committee by stating:

- (B)(1)(a) The Tourism Expenditure Review Committee shall 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.
- (b) If the committee determines that a municipality or county has failed to file the reports required pursuant to Section 6-4-25(D)(3), it may impose a fee of five hundred dollars a month or part of a month for each month the report is

⁵ Please see Footnote # 3.

not filed, but not more than five thousand dollars. The committee shall certify the penalty to the State Treasurer, who shall withhold the amount of the penalty from subsequent distributions otherwise due the municipality or county. An appeal from an action of the committee under this subitem lies with the Administrative Law Judge Division.

(c) Allocations withheld must be reallocated proportionately to all other recipients.

(2) The committee has jurisdiction to investigate and research facts on written complaints submitted to it with regard to the appropriate tourism-related expenditures and resolve these complaints as provided in item (1) of this subsection.

(3) The committee shall forward copies of information submitted by the local governments and regional tourism agencies pursuant to Section 6-4-25 arising under the tourism provisions of this chapter to the Department of Parks, Recreation and Tourism, which shall publish an annual report on the information submitted.

S.C. Code Ann. § 6-4-35(B) (emphasis added). As our Supreme Court has stated concerning the Tourism Expenditure Review Committee:

The legislature specifically provided for a local advisory committee and, more importantly for purposes of this appeal, a statewide oversight body—the Tourism Expenditure Review Committee (TERC)—to ensure counties and municipalities comply with the basic requirements set forth in the Act. S.C. Code Ann. § 6-4-35. Counties and municipalities are required to submit annual reports, which TERC reviews to determine if the expenditures comply with the Act. S.C. Code Ann. §§ 6-4-25(D); -35(B)(1)(a). In its annual report, the county or municipality must submit a “list of how funds from the accommodations tax are spent” and “must include funds received and dispersed [sic] during the previous fiscal year.” S.C. Code Ann. § 6-4-25(D)(3).

The legislature granted TERC the authority to challenge a local government's expenditure of 65% Funds. TERC must notify the county or municipality, which may provide “further supporting information” regarding its expenditure for TERC to consider in its compliance determination. S.C. Code Ann. § 6-4-35(B)(1)(a). Significantly, for TERC to pursue a challenge, the Act further provides:

If [TERC] 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 [TERC] under this subitem lies with the Administrative Law Judge Division.

S.C. Code Ann. § 6-4-35(B)(1) (emphasis added).

Tourism Expenditure Review Committee v. City of Myrtle Beach, 403 S.C. 76, 79-80, 742 S.E.2d 371, 373 (2013) (emphasis added).

Moreover, we stated in a 2015 opinion concerning the Local Accommodations Tax:

In Thompson [v. Horry County], 294 S.C. 81, 362 S.E.2d 646 (1987)], 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. Let us examine [] how the South Carolina Accommodations Tax defines tourism-related expenditures in its statute. It includes in “tourism-related expenditures” the following:

- (i) advertising and promotion of tourism so as to develop and increase tourist attendance through the generation of publicity;*
 - (ii) promotion of the arts and cultural events;*
 - (iii) construction, maintenance, and operation of facilities for civic and cultural activities including construction and maintenance of access and other nearby roads and utilities for the facilities;*
 - (iv) the criminal justice system, law enforcement, fire protection, solid waste collection, and health facilities when required to serve tourists and tourist facilities.*
- This is based on the estimated percentage of costs directly attributed to tourists;*
- (v) public facilities such as restrooms, dressing rooms, parks, and parking lots;*
 - (vi) tourist shuttle transportation;*
 - (vii) control and repair of waterfront erosion, including beach renourishment;*
 - (viii) operating visitor information centers.*

S.C. Code § 6-4-10(4)(b) (1976 Code, as amended). The statute also 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 § 6-4-5(4) (1976 Code, as amended).

A 2003 opinion written by this Office also cited the Thompson case. Op. S.C. Atty. Gen., 2003 WL 21043497 (April 2, 2003). While that opinion discussed the definition of tourism pursuant to the Accommodations Tax (S.C. Code § 6-4-5(4)), its analysis may also be helpful in answering your question. Id. It states:

Relative to Section 6-4-10, the General Assembly has chosen to define “tourism” as “... the action and activities of people taking trips outside their home communities for any purpose, except daily commuting to and from work (Emphasis added).” Obviously, the General Assembly has broadly defined tourism. This broad definition is indicative of an intent that “tourism-related expenditures” also be broadly interpreted. Accordingly, it is certainly reasonable to conclude that the promotion of performing art groups, festivals, and historical events would be related to the “... activities of people taking trips outside their home communities for any purpose....” Further, Section 6-4-10(4)(b) provides that “[t]he funds must not be used as an additional

source of revenue to provide services normally provided by the county or municipality but to promote tourism and enlarge its economic benefits through advertising, promotion, and providing those facilities and services which enhance the ability of the county or municipality to attract and provide for tourists." Again, this provision seems to indicate the intention of the General Assembly that "tourism-related expenditures" be given an expansive reading, allowing the counties or municipalities flexibility in their efforts to "... attract and provide for tourists." In Thompson v. Horry County, 294 S.C. 81, 362 S.E.2d 646 (Ct.App.1987), the Court of Appeals reviewed the application of S.C. Code Ann. § 12-35-720(1), the predecessor to Section 6-4-10, and stated that "... it makes sense to give counties some flexibility as to how and where they spend accommodations tax revenues." While some amendments have been made since the Thompson opinion was issued, it is our view that the cited portion remains relevant to any interpretation of Section 6-4-10 as it currently exists.

Op. S.C. Atty. Gen., 2003 WL 21043497 (April 2, 2003)(emphasis added). Furthermore, as our State's Supreme Court has previously, stated in regards to the Accommodations Tax implemented by a municipality, the ability to discern how to best promote tourism was delegated to the municipality by the Legislature. City of Myrtle Beach v. Tourism Expenditure Review Committee, 2005 WL 3308567 (SCALC 2005). One principle cited in the Myrtle Beach case was:

[the Latin principle] of ita[] [l]ex scripta est ('so the law is written') in Beaty v. Richardson, 56 S.C. 173, 180, 34 S.E. 73, 76 (1899), stating that "the legislature must have intended to mean what it has plainly expressed, and consequently there is no room for construction...Where the words of a statute are plainly expressive of an intent, not rendered dubious by the context, the interpretation must conform to and carry out that intent. It matters not, in such a case, what the consequences may be."

City of Myrtle Beach at 8.

Op. S.C. Att'y Gen., 2015 WL 836506 (February 17, 2015). We also think the language at the end of Thompson is useful in answering your question. The court clarifies that it "do[es] not mean to suggest that a county has unbridled discretion in spending [12-35-720](C) funds.⁶ Clearly, it must follow the statutory guidelines which govern such expenditures." Thompson v. County of Horry, 294 S.C. 81, 85, 362 S.E.2d 646, 649 (Ct.App. 1987).

The Local Accommodations Tax requires 30% of the tax collected to be placed toward a special fund for advertising and the promotion of tourism.⁷ S.C. Code § 6-4-10. Previously, as you included with your letter, this Office issued an opinion in 2002 to your office. In the 2002 opinion this Office concluded that the Tourism Expenditure Review Committee has the authority to review funds used pursuant to S.C. Code § 6-4-10(3) (the 30% Fund) as well as pursuant to S.C. Code Ann. § 6-4-10(4) (the 65% Fund). Op. S.C.

⁶ S.C. Code § 12-35-720 is the predecessor to §6-4-10. Op. S.C. Att'y Gen., 2003 WL 21043497 (April 2, 2003).

⁷ This part only applies to counties and municipalities collecting more than fifty thousand dollars from the Local Accommodations Tax.

Att’y Gen., 2002 WL 1340427 (May 31, 2002). You also acknowledged in your letter that while the Tourism Expenditure Review Committee may have authority to review specific expenditures of organizations in S.C. Code Ann. § 6-4-10(3) (the 30% Fund), you do not believe the statute requires the Tourism Expenditure Review Committee to do so. As creatures of statute, both the S.C. Accommodations Tax Oversight Committee and the Tourism Expenditure Review Committee only have the powers expressly conferred or necessarily implied to it in order to accomplish their statutory duties. S.C. Coastal Conservation League v. S.C. DHEC, 363 S.C. 67, 610 S.E.2d 482 (2005); Op. S.C. Att’y Gen., 2014 WL 2619140 (May 30, 2014) (citing Captain's Quarters Motor Inn v. S.C. Coastal Council, 306 S.C. 488, 413 S.E.2d 13 (1991)). Examining S.C. Code Ann. § 6-4-35 on its face, (B)(1) gives the Tourism Expenditure Review Committee authority over all questionable expenditures related to tourism and requires review of how all Local Accommodations Tax funds are spent. S.C. Code Ann. § 6-4-35(B). Conversely, (B)(2) gives separate authorization “to investigate and research facts” based on written complaints submitted to the Committee. Id. By distinguishing the two powers with separate paragraphs and numbers, we feel this clearly indicates the investigation of complaints is a separate power from the oversight of all questionable expenditures and review of all Local Accommodations Tax funds spent. Furthermore, as we have noted in prior opinions of this Office, “the title or caption of an act may be properly considered to aid in the construction of a statute and to show the intent of the Legislature.” Op. S.C. Att’y Gen., 2004 WL 2451474 (Oct. 15, 2004) (citing Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972)). The title of the Committee reads the “Tourism Expenditures Review Committee” which inherently implies it serves to review expenditures involving tourism.

Conclusion: Based on all of the above reasons, this Office believes a court will determine while the Tourism Expenditure Review Committee does not have exclusive authority, they do have an obligation to review expenditures of Local Accommodations Tax funds, including the 30% funds (S.C. Code Ann. § 6-4-10(3)). In reviewing the factors listed in your letter as to why the statute does not require the Tourism Expenditure Review Committee to review such expenditures, we believe a court will determine those factors do not diminish the Committee’s statutory obligations. In regards to your first factor (that local governments are the primary authority to review expenditures for 30% funds pursuant to South Carolina Code Ann. § 6-4-10(3) because the 65% funds do not have the language in the statute requiring oversight by local government), we think the Tourism Expenditure Review Committee’s review is separate and distinct from review by a local government and that such review is supplemental to the Tourism Expenditure Review Committee’s obligation to review under the law. Moreover, South Carolina Code Ann. § 6-4-10(4) (the 65% funds) appears to leave the allocations in the hands of the local government, whereas South Carolina Code Ann. § 6-4-10(3) (the 30% funds) authorizes local government to allocate the funds to private organizations who then expend the funds. South Carolina Code Ann. § 6-4-10(3) (the 30% funds) merely authorizes the local government to review such expenditure of funds it is already in position to review in S.C. Code Ann. § 6-4-10(4) (the 65% funds). Regarding the second factor you mention, we believe a court will determine based on legislative intent that investigating a complaint is an aspect of the Tourism Expenditure Review Committee’s oversight authority, not an exception to it. Lastly, in regards to your concern over having the personnel and resources, we are merely interpreting the law in our answer and would leave any funding and resources issues in the hands of the Legislature.⁸ This Office is only issuing 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. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such

⁸ Please note the size of the Tourism Expenditure Review Committee was increased statutorily in 2003 from nine to eleven members. 2003 S.C. Acts 38.

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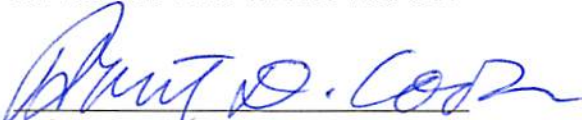
determinations. S.C. Code § 15-53-20. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General