



ALAN WILSON
ATTORNEY GENERAL

January 9, 2018

Mr. David L. Tedder, Esquire
Jasper County Attorney
Post Office Box 420
Ridgeland, SC 29936

Dear Mr. Tedder:

Attorney General Alan Wilson has referred your question dated August 17, 2017 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):

"Re: Propriety of using Local Accommodations and Hospitality Taxes towards the acquisition and equipping of patrol cars for the Sheriff's Office.

As background, Jasper County collects both local option taxes. Revenues that were presented to the local ATAX Committee for allocation for fiscal year 2017-18 were \$180,000.00 for ATAX, and \$335,000.00 for the Hospitality Tax. The request from the Sheriff's Department is therefore approximately 5.83 percent of the total local option tax revenues.

It is our understanding that expenditures from these funds is governed by sections 6-1-530 (Accommodations) and 6-1-730 (Hospitality).

...

Counties that collect less than \$900,000 in state accommodations taxes annually may use up to 50 percent of the previous year collections for the operation and maintenance of tourism related facilities and purposes, and revenues up to that amount may be used to fund police, fire protection, emergency medical services, and emergency-preparedness operations directly related to tourism related purposes and facilities.

Jasper County falls into the second category, collecting less than \$900,000 in state accommodation taxes. By mathematical calculation, it appears that up to \$257,500.00 may be available to fund police, fire protection, emergency medical services, and emergency-preparedness operations directly related to tourism related purposes and facilities.

As further background, Jasper County is the State's southernmost County, bordering the Georgia border and transected by both US Highway 17 and Interstate 95; there are approximately 38 miles of interstate with Exits at mile markers 5, 8, 22, 33 and 38. Besides serving Jasper County and its tourist related

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activities¹, these exits and Highway 17 provide access to the considerable regional tourism activities of Beaufort County and its municipalities.

My research into this matter led me to the Attorney General Opinion of December 5, 2011, to the Honorable Harvey Peeler, Jr., Senator from Cherokee County, concerning the use of local hospitality tax revenue for the purchase of a fire truck (2011 WL 6959374). That opinion addressed the specific question of whether a fire truck was a "service" that is "directly attendant" to one or more facilities listed in subsection 6-1 -730(B)(1). That opinion pointed out that "directly attendant" is not defined in the relevant statutes. It observed that it would be expected that the service and or truck (in our case, the patrol cars) "be present at," "take care of," or "remain ready to serve" a facility listed in Section 6-1 -730(A)². Subsection (A)(4) includes as a purpose for which the local hospitality fund may be used "highways, roads, streets and bridges providing access to tourist destinations." The language of section 6-5-130 (Local Accommodations Tax) is identical.

I also took note of the March 27, 2014 Attorney General Opinion to Senator Peeler which concluded that it was likely a court would conclude the expenditure of the local hospitality tax collected pursuant to section 6-1-720 would be allowable to maintain and repair roads as long as the roads provide access to tourist destinations (noting that determinations regarding tourist destinations and whether a particular road provides access. It would seem to follow that patrolling the roads providing access to tourist destination[s] would fall into the allowance provided for police operations under subsection (b)(1). In accordance with the observation made in footnote 2, the patrol area would include those areas listed in subsection 6-1-730 (4), but would not be limited to those areas.

I am also aware of the reported Administrative Law Court case of Florence County v. Tourism Expenditure Review Committee, 2004 WL 3154879, in which the use of accommodations taxes collected pursuant to Chapter 4 of Title 6 and Chapter 36 of Title 12 were at issue in the allocation without local advisory committee review of a \$230,000.00 disbursement to the Florence Sheriff's Department, an amount that was 83.6 percent of the total funds collected under the state accommodations tax. As noted in the 2011 Opinion to Senator Peeler, "...authority concerning "tourism related expenditures" of title 12 accommodations tax revenue is of limited utility because the language of section 6-1-730 varies greatly from the language of section 6-4-10(4), which governs those expenditures." To be clear, Jasper County is considering only the local option accommodations and hospitality taxes, not the state revenue subject to the special review procedures under Section 6-4-10. Nonetheless, the local advisory committee did recommend the allocation to the Jasper County Sheriff's Department, which, as noted above, is only 5.8 percent of the total revenue available.

¹ *Unincorporated Jasper County hosts multiple annual festivals and events, drawing tourists from outside the County and region, including those events in the municipalities of Hardeeville and Ridgeland, The County also has tens of thousands of acres of large hunting preserves owned and leased by hunters who come to enjoy the local bounty of wildlife available. Further, our Lowcountry region, including Beaufort County with its large tourism related economies of Hilton Head, Port Royal, old Beaufort and the Sea Islands is predominantly accessed through the Interstate and our exits with their conveniences.*

² *I also observed this opinion suggested that the service area of a fire truck must include, but need not be limited to, a facility listed in Section 6-1-730(A). Likewise, the service area for the patrol cars would include the road facilities serving these areas, but would not be limited to these areas.*

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I trust I have provided sufficient information for your consideration of this request for guidance. The amounts and relative percentages of expenditures and revenue has been provided so that if necessary, a perspective of the relatively minor amounts being considered for disbursement to the Sheriff's Department is available if required to reach a conclusion."

Law/Analysis:

As you reference in your letter, this Office issued an opinion in 2011 where we discussed whether a fire truck could qualify as the "operation and maintenance" of "police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities" pursuant to the Local Hospitality Tax in § 6-1-730. Op. S.C. Att'y Gen., 2011 WL 6959374 (S.C.A.G. December 5, 2011) (quoting S.C. Code Ann. § 6-1-730(B)). In the 2011 opinion, this Office concluded that "the service area of a fire truck purchased with local hospitality tax revenue must include, but need not be limited to, a facility listed in section 6-1-730(A)" because the requirement listed in the statute "directly attendant to those facilities" is not defined in the statute. Id.

As you also mention, this Office opined in a 2014 opinion that Local Hospitality Tax funds (collected pursuant to S.C. Code Ann. § 6-1-720) could be used to maintain and repair roads that provide access to tourist destinations without defining what was or was not a tourist destination. Op. S.C. Att'y Gen., 2014 WL 1511521 (S.C.A.G. March 27, 2014). Your letter also mentions the Florence County v. Tourism Expenditure Review Committee case where the Administrative Law Court ruled, among other things, that since the Florence County Sheriff's Department did not submit an application to the Tourism Expenditure Review Committee, the expenditure of State Accommodations Tax funds to the Sheriff's Department did not comply with the law. Florence County v. Tourism Expenditure Review Committee, 2004 WL 3154879 (SCALC June 25, 2004). As you point out in your letter, Florence County refers to the State's Accommodations Tax, which is found in South Carolina Code Ann. §§ 12-36-920, 6-1-500 et seq., and 12-36-2630. The Local Accommodations Tax is located in South Carolina Code Ann. § 6-1-500 et seq.

While the Advisory Committee serves to recommend how State Accommodations Tax funds should be spent by local governing bodies, and the Tourism Expenditure Review Committee serves as the oversight authority on any questionable tourism-related expenditures of State Accommodations Tax funds, this Office wants to clarify a few things regarding Accommodations Taxes. S.C. Code Ann. §§ 6-4-25, 6-4-35; Op. S.C. Att'y Gen., 2017 WL 3923120 (S.C.A.G. Aug. 30, 2017). Quoting from prior opinions, we stated concerning Revenue Rule 98-22 that:

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). 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

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(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.

2015 WL 5462169, at *3–4 (S.C.A.G. Sept. 3, 2015) (footnotes omitted).³ This Office also opined that:

First and foremost, this Office generally defers the interpretation of administrative questions to administrative agencies within their jurisdiction. See, e.g., Op. S.C. Att’y Gen., 2015 WL 836506 (S.C.A.G. February 17, 2015). It is this Office’s understanding that, pursuant to South Carolina Code Ann. § 6-4-20(A), the South Carolina Treasurer administers an accommodations tax account. It is also our understanding, as we stated in a prior opinion, that the South Carolina Department of Revenue does not administer and collect a Local Hospitality Tax. Op. S.C. Att’y Gen., 2015 WL 836506 (S.C.A.G. February 17, 2015). Moreover, the Department of Revenue reviews sales tax returns for those “engaged or continuing within this State in the business of furnishing accommodations to transients for consideration.” S.C. Code Ann. § 12-36-920. Thus, to the extent that the Treasurer and the Department of Revenue administer and collect the Local Accommodations Tax, we would generally defer to their interpretations of the statutes as long as such interpretations are reasonable. Id. Furthermore, we note that the South Carolina Department of Revenue issued a ruling on October 27, 1998 pertaining to Accommodation Tax funds. See S.C. Revenue Ruling No. 98-22, 1998 WL 34058107 (October 27, 1998). In the ruling the Department advised that the use of Accommodations Tax funds are prohibited as to those activities that provide “a purely local function or benefit” and limited “tourism-related expenditure” to those activities that are “used to attract or provide for tourists ... [and not] for an item that would normally be provided by the county or municipality.” S.C. Revenue Ruling No. 98-22, 1998 WL 34058107 (October 27, 1998). Additionally, the ruling concluded that Accommodations Tax funds may promote events that affect tourism but may not be used to support local programs that benefit the local population without tourists benefiting from the programs. Id. The Ruling concluded that tourism funds could not be used to pay for local art and music programs but could be used for cultural and civil activities in addition to visitor centers as long as they were used to attract and provide for tourists without providing “a purely local function.” Id.

2017 WL 3923120, at *2–3 (S.C.A.G. Aug. 30, 2017). Thus, while we refer to Revenue Ruling 98-22 concerning the State Accommodations Tax, we recognize that S.C. Code Ann. § 6-4-30 has been repealed. 2003 S.C. Acts No. 96 § 3.MM (eff. June 18, 2003). Nevertheless, we believe a court will find this ruling to be instructive regarding State and Local Accommodations Tax funds, especially regarding the Department of Revenue’s interpretation of their allocation. We encourage you to read Revenue Ruling No. 98-22, 1998 WL 34058107. Therefore, to clarify this opinion and prior opinions:

³ Nevertheless, we must note that the Revenue Ruling was written regarding the State Accommodations Tax pursuant to S.C. Code Ann. § 6-4-10 et seq., though we find it instructive for Local Accommodations Tax funds, as we clarify below.

- 1) The S.C. Department of Revenue administers and collects State Accommodations Taxes pursuant to South Carolina Code § 12-36-920 and Regulation 117-307.⁴
- 2) The S.C. Department of Revenue issued a Revenue Ruling on State Accommodations Taxes pursuant to South Carolina Code § 6-4-30 which has since been repealed, though this Office believes a court may find it helpful in the interpretation of Accommodations Taxes (except where the State Accommodations Tax statutes differ from the Local Accommodation Tax statutes since the Ruling was written regarding the State Accommodations Tax). See S.C. Rev. Rul. 98-22, 1998 WL 34058107 (October 27, 1998, eff. December 1, 1998); 2003 S.C. Acts No. 96 § 3.MM (eff. June 18, 2003).

Thus, before we answer your specific question, let us review the Local Accommodations Tax Act, which states that:

(A) The revenue generated by the local accommodations 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, renourishment, or other tourism-related lands and water access;
- (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 local accommodations tax authorized in this article may also 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 accommodations tax authorized pursuant to this article may be used for the additional purposes provided in item (1) of this subsection.

S.C. Code Ann. § 6-1-530 (1976 Code, as amended). The Local Hospitality Tax Act states that:

(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

⁴ Please note we recognize that neither explicitly grants authority to the Department of Revenue over the State Accommodations Tax, we believe a court will determine the authority is implicit.

(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 Ann. § 6-1-730 (1976 Code, as amended). Your question asks whether you may use Local Hospitality Tax and Local Accommodations Tax revenue to fund “a portion of the costs of additions to the patrol car fleet” which translates, per your letter, to paying for a portion of five new patrol cars. As we stated in the 2014 opinion, what is and is not a tourist destination is really a factual question better answered by a court. Op. S.C. Att’y Gen., 2014 WL 1511521 (S.C.A.G. March 27, 2014). Moreover, as we concluded in the 2011 opinion, “the service area of a fire truck purchased with local hospitality tax revenue must include, but need not be limited to, a facility listed in section 6-1-730(A)” because the requirement listed in the statute “directly attendant to those facilities” is not defined in the statute. Op. S.C. Att’y Gen., 2011 WL 695374 (S.C.A.G. December 5, 2011). Thus regarding Local Accommodation Taxes (S.C. Code Ann. § 6-1-530) and Local Hospitality Taxes (S.C. Code Ann. § 6-1-730), this Office believes that a court will determine there must be at minimum an implied nexus between the tax funds spent on the patrol cars and the use of the cars for “operations directly attendant to those facilities” listed in the statute⁵, just as we concluded in our 2017 opinion that “we believe it will strengthen your argument for there to be at least an implicit nexus between Accommodations Tax revenues and ‘transients’ coming and staying in Beaufort in order to fulfill the purposes in S.C. Code Ann. § 6-1-530” and likewise for dining in Beaufort and using Local Hospitality Tax funds. Op. S.C. Att’y Gen., 2017 WL 3923120, at *8 (S.C.A.G. Aug. 30, 2017). The Local Accommodations Tax statute reads, “...the revenues of the local accommodations tax authorized in this article may also 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.” S.C. Code Ann. § 6-1-530 (emphasis added). This part of the statute is identical for Local Hospitality Taxes. S.C. Code Ann. § 6-1-730. Thus, as long as the county is in compliance with the applicable statutes and show a sufficient nexus between the law enforcement service “directly attendant to those facilities” and the tourist destination, we believe that a court will determine that you may use the funds accordingly.

Nevertheless, South Carolina Revenue Ruling No. 98-22, while concerning State Accommodations Taxes, states that:

Additionally, if a county or municipality wishes to use Tourism-related Funds to provide additional county or municipal services, including, but not limited to, law

⁵ Though “need not be limited to” as quoted from the 2011 opinion. Op. S.C. Att’y Gen., 2011 WL 695374 (S.C.A.G. December 5, 2011).

enforcement, traffic control, public facilities and highway and street maintenance, the expenditure must also meet the following three requirements:

- (a) the expenditure must be for items that would normally not be provided by the county (i.e., if the item would be required even if the county or municipality had no tourist activity, then Tourism-related Funds may not be used to pay for the expenditure);
- (b) the county or municipality must have a high concentration of tourism activity; and
- (c) the amount of the expenditure must be based on the estimated percentage of costs attributable to tourists.

Counties and municipalities that do not have a high concentration of tourism activity, may not use Tourism-related Funds to fund additional county or municipal services.

S.C. Rev. Rul. 98-22, 1998 WL 34058107 (October 27, 1998, eff. December 1, 1998) (emphasis added). This conclusion is directly contrary to the statutes regarding the use of Local Accommodations Tax funds and Local Hospitality Tax funds. S.C. Code Ann. § 6-1-530 (emphasis added) (“...the revenues of the local accommodations tax authorized in this article may also 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”); S.C. Code Ann. § 6-1-730 (emphasis added) (“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”).

Conclusion:

This Office believes a court will find that as long as you are in compliance with the applicable statutes and show a sufficient nexus between the law enforcement service “directly attendant to those facilities” and the tourist destination, noting that the attendance does not have to be exclusive, we believe that a court will determine that the county may use Local Accommodations Tax funds and Local Hospitality Tax funds for law enforcement services such as patrol cars. As you mention in your letter, whether the county qualifies for the use of fifty percent (50%) or the full amount of Local Accommodations Tax funds and Local Hospitality Tax funds regarding “police, fire protection, emergency medical services and emergency-preparedness operations directly attendant to those facilities” depends on the amount of Accommodations and Hospitality Tax revenue collected. S.C. Code Ann. §§ 6-1-530(B); 6-1-7730(B). Moreover, where the South Carolina Department of Revenue Ruling No. 98-22 (1998 WL 34058107 (October 27, 1998, eff. December 1, 1998)) regarding State Accommodations Taxes (S.C. Code Ann. §§ 6-4-10 et seq., 12-36-920, 12-36-2630) directly contradicts the statutes regarding the use of the Local Accommodations Tax funds (S.C. Code Ann. § 6-1-530 et seq.) and Local Hospitality Tax funds (S.C. Code Ann. § 6-1-730 et seq.), this Office believes a court will determine it is neither binding, nor should it be followed for the allocation of Local Accommodations Tax funds and Local Hospitality Tax funds. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would

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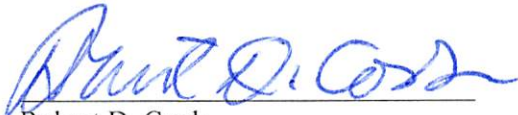
interpret the law in the matter. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See 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 (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General