



ALAN WILSON  
ATTORNEY GENERAL

September 14, 2020

The Honorable Luke A. Rankin  
Member  
South Carolina Senate  
P.O. Box 142  
Columbia, South Carolina 29202

Dear Senator Rankin:

We recently received your request for an opinion of this Office regarding the South Carolina Local Option Tourism Development Fee Act. In your letter, you explain:

[T]he City of Myrtle Beach has contacted the Myrtle Beach Area Chamber of Commerce to propose an agreement that would (1) entitle the City to access funds from the Tourism Development Fee (TDF), and (2) would require annual renewal of the TDF. My reading of the TDF statute does not provide a mechanism to give the City TDF funds on an ongoing basis, nor does it provide a way to renew the TDF annually (by statute it is only renewed every ten years).

Accordingly, you ask us to address the following:

1. As the Destination Marketing Organization (DMO) for the City of Myrtle Beach, is the Myrtle Beach Area Chamber of Commerce (Chamber) legally authorized to allocate funds to the City for beautification under Code Section 4-10-970?
2. Is the Chamber legally authorized to divert funds from the Tourism Development Fees (TDF) it receives for anything other than as provided in Code Section 4-10-970?

#### Law/Analysis

As both of your questions pertain to how a Local Option Tourism Development Fee (“TDF”) can be used, we will address these two questions together. The Local Option Tourism Development Fee Act (the “Act”) is contained in chapter 10 of title 4 of the South Carolina Code. S.C. Code Ann. §§ 4-10-910 *et seq.* (Supp. 2019). According to section 4-10-930 of the South Carolina Code (Supp. 2019), “[s]ubject to the requirements of this article, a municipality may impose in the

municipality a fee not to exceed one percent for not more than ten years for the purposes provided in Section 4-10-970 . . . .” Section 4-10-940(E) of the South Carolina Code (Supp. 2019) provides:

The revenues of the fee imposed pursuant to this article must be remitted to the Department of Revenue and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues and interest quarterly based on point of collection to the treasurer of the municipality in which the fee is imposed and the revenues must be used only for the purposes provided in Section 4-10-970.

(emphasis added).

Section 4-10-970 of the South Carolina Code (Supp. 2019) allows TDFs collected to be used for:

(A)(1) Except as provided in item (2) of this subsection, all revenues and interest of the fee must be used exclusively for tourism advertisement and promotion directed at non-South Carolina residents.

(2) Revenues received in the second and subsequent years of imposition must be used as provided in item (1) except that up to twenty percent may be retained by the municipality and used as follows:

(a) at least twenty percent of the amount retained must be used to provide a credit against the property tax liability imposed by the municipality on parcels of owner-occupied residential property located in the municipality classified for property taxes pursuant to Section 12-43-220(c). The credit is an amount determined by multiplying the appraised value of the residence by a fraction in which the numerator is the total estimated revenue retained by the municipality allocated to the credit and the denominator is the total of the appraised value of all such property in the municipality as of January first of the applicable property tax year. For purposes of this calculation, appraised value is as defined in Section 12-37-3130(3) reduced by the limitation provided pursuant to Section 12-37-3140(B);

(b) the balance for tourism-related capital projects. No capital project is eligible to be funded directly or indirectly with fee revenues unless the project consists of construction of new or

renovation of existing tourism-related facilities intended to grow or maintain the overnight tourism market in the municipality; and

(c) the credit allowed pursuant to subitem (a) of this item applies after all other credits have been applied. To the extent that the credit amount allowed by this item exceeds the municipal property tax liability, the excess credit is added to the amount set aside for use as provided in subitem (b) of this item. If no projects are funded pursuant to subitem (b) of this item, the excess credit must be used to provide a credit against the municipal tax liability of all taxable property in the municipality ineligible for the credit allowed by subitem (a) of this item. This credit must be calculated in the same manner as the credit provided in subitem (a), *mutatis mutandis*.

(B) The municipality shall designate no more than two organizations within the county to receive the revenues and interest and conduct the promotional activities provided pursuant to subsection (A)(1). These organizations must be nonprofit destination marketing organizations representing a broad cross-section of tourism interests within the county. In addition, before an organization may be designated, it must certify to the imposing municipality that:

- (1) its promotional and advertising programs are based on research based outcomes;
- (2) the organization has a proven record of success in creating new and repeat visitation to the county;
- (3) it has sufficient resources to create, plan, implement, and measure the marketing program generated by the fee revenues;
- (4) it will use the funds only for the purposes provided pursuant to subsection (B)(1) of this section.

(C) Municipalities located in the same county that are imposing a fee pursuant to this article jointly may designate a regional tourism promoter located in the county to jointly promote tourism in the municipalities imposing the fee. The regional tourism promoter must be designated in the manner provided in subsection (B) and only may promote tourism to non-South Carolina residents.

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(D) At least quarterly, an organization designated by the municipality pursuant to this section shall provide a report to the municipality that includes identification of revenues received from the Local Option Tourism Development Fee during the previous quarter, as well as expenditures made from those funds during the previous quarter. Each report also shall be posted by the organization on its website.

(emphasis added).

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Id. In addition, “[t]he canon of construction “*expressio unius est exclusio alterius*” or “*inclusio unius est exclusio alterius*” holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’” Id. at 86, 533 S.E.2d at 582 (quoting Blacks Law Dictionary 602 (7th ed. 1999)).

According to the plain language used in section 4-10-970, revenue from the TDFs “must be used exclusively for tourism advertisement and promotion directed at non-South Carolina residents.” The only exception to this mandate is under subsection (A)(2), which allows up to twenty percent of the revenue from the fee to be used as a credit against property taxes on owner-occupied residential property and tourism related capital projects. By specifying what the TDFs can be used for, we believe the cannon of *expressio unius est exclusio alterius* requires us to read these purposes as excluding all other purposes. Therefore, to answer your second question, TDFs may only be used for these purposes and cannot be diverted to other uses.

You mentioned in your letter the Myrtle Beach Area Chamber of Commerce (the “Chamber”) acts at the Destination Marketing Organization for the City of Myrtle Beach. While section 4-10-970(B) allows municipalities to designate an organization to receive TDF revenue and interest, the designated organization must use these funds to “conduct the promotional activities provided pursuant to subsection (A)(1).” Therefore, we do not believe the Chamber could use revenue from the TDF for any purpose other than tourism advertisement and promotion directed at non-South Carolina residents.

In your first question, you asked about whether a TDF can be used for “beautification.” We are not clear as to what “beautification” may entail. This Office may only render opinions on issues of law and, unlike a court, cannot investigate and determine factual questions. Op. Att’y Gen., 2009 WL 2844869 (S.C.A.G. Aug. 4, 2009). Therefore, we cannot render an opinion as to whether beautification is encompassed within the purposes of the Act. However, we believe beautification generally would not be considered tourism advertisement or promotion. Furthermore, we do not believe a beautification project generally would fall under the exceptions allowed under section 4-10-970(A)(2). But, we advise you seek clarification from a court to ultimately determine based

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on the facts surrounding the beautification project whether or not they qualify under section 4-10-970.

**Conclusion**

The provisions contained in the Act make clear TDFs may only be imposed for the purposes set forth in section 4-10-970. See S.C. Code Ann. §§ 4-10-930(A) and 4-10-940(E) (both specifying the revenue be used in accordance with section 4-10-970). Therefore, we do not believe revenue received from TDFs may be used for any purpose outside of those specified in section 4-10-970.

Section 4-10-970(A)(1) states all revenues and interest from the TDFs be used for “tourism advertisement and promotion directed at non-South Carolina residents.” Section 4-10-970(A)(2) allows for twenty percent of revenues collected in the second year of the fee to be used for property tax credits on owner-occupied residential property and tourism related capital projects. We are not sure what is entailed in the “beautification” project you refer to and cannot investigate to determine whether such a project qualifies under section 4-10-970. However, we doubt beautification qualifies as “tourism advertisement and promotion” or within one of the exceptions allowed for in section 4-10-970(A)(2).

Sincerely,



Cydney Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General