

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2010-CP-40-3001

Tourism Expenditure Review Committee, ...Appellant,

v.

City of Myrtle Beach, ...Respondent.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE 212011

COUNTY OF RICHLAND

CASE NO: 2010CP4003001

IN THE COURT OF COMMON PLEAS

Willoughby & Hoefer, P.A.

Tourism Expenditure Review Committee

vs.

City Of Myrtle Beach

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 19 July 2011, to attorneys of record or to parties (when appearing pro se) as follows:

John Marion S. Hoefer

ATTORNEY(S) FOR THE PLAINTIFF(S)Michael Warner Battle
Curtis Lee Coltrane_____
ATTORNEY(S) FOR THE DEFENDANT(S)*Jeanette W. McBride*

Clerk of Court**SCANNED**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tourism Expenditure Review Committee,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-40-3001

FINAL ORDER
(Non-jury Trial)

RICHLAND COUNTY
FILED
2011 JUL 15 AM 10:29
JEANETTE W. McBRIDE
Clerk, S.C.

The above captioned lawsuit came before the court for a non-jury trial for declaratory judgment on the proper interpretation of S.C. Code Ann. § 6-4-10(4)(b) and how that statute was being applied by Defendant City of Myrtle Beach (City). The trial was conducted on July 11, 2011 in the Richland County Courthouse. Present at the trial were John M.S. Hoefer, Esq. and Chad N. Johnston, Esq. of Willoughby & Hoefer, P.A. who represented the Plaintiff Tourism Expenditure Review Committee (TERC). Also present was Michael W. Battle, Esq. of Battle & Vaught, PA who represented the City. Michael W. Shelton, CFGO, Budget & Evaluation Director for the City of Myrtle Beach was the only witness who testified at the trial. During the trial exhibits were introduced by both TERC and the City.

At the outset of the trial TERC entered an objection to the introduction of any testimony or exhibits being offered in connection with the interpretation of S.C. Code Ann. § 6-4-10(4)(b). TERC's objection was based on its claim that the statute was not ambiguous and it should be construed based solely on the plain meaning of the language

R-14 WTB

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contained in the statute. TERC preserved its objection throughout the remainder of the trial. The Court ruled that such evidence was admissible and that such evidence could be properly weighed by the Court to determine its value in deciding the issues.

The City's position on the main issue is that because the City is in an area with a high concentration of tourism activity, it may allocate its A-Tax discretionary fund to law enforcement, traffic control, public facilities, and highway and street maintenance expenditures provided the expenditures are related to the additional costs associated with providing for tourism activity under the authority of S.C. Code Ann. § 6-4-10(4)(b). On the other hand, TERC claims that the A-Tax discretionary fund may only be used by the City as a source of revenue to fund additional police, fire, and parks personnel expenses for tourism activity, over and above what the City itself normally spends on police, fire, and parks personnel for such tourism activity. TERC claims the fact that the City has a high concentration of tourism activity does not in and of itself permit the City to expend its A-Tax discretionary fund on police, fire, and parks personnel for tourism activity.

The specific language which the parties ask the Court to construe in connection with the A-Tax discretionary fund (a/k/a the 65% fund) is:

(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. (parenthetical added) *S.C. Code Ann. §6-4-10(4)(a)& (b)*.

After carefully considering the arguments presented, weighing the evidence introduced and judging the credibility of the witness's testimony, I find and conclude that the City's interpretation of S.C. Code Ann. § 6-4-10(4)(b) is proper. The City's 2008-2009 allocation of 99.65% of its A-Tax discretionary funds to municipal services such as law enforcement was proper because the A-Tax statute permits the City to allocate its A-Tax discretionary fund (a/k/a the 65% fund) to law enforcement, traffic control, public facilities, and highway and street maintenance expenditures which the City can attribute to tourism activities under that code section. I find and conclude that the City's method of comparing budgets of cities with similar permanent populations to determine the amount of services that should be attributed to tourism and the amount of A-Tax discretionary funds that can be allocated to pay for such government services is proper. I find and conclude that a city may allocate its entire A-Tax discretionary fund to single eligible category of expenditures under the Accommodations Tax Act.

Findings of Fact

1. The Tourism Expenditure Review Committee (TERC) is an oversight committee created by S.C. Code Ann. §6-4-35
2. TERC serves as the oversight authority on all questionable tourism-related expenditures and to that end, all reports filed pursuant to S.C. Code Ann. § 6-4-25(D)(3) must be forwarded to TERC for review to determine if they are in compliance with this chapter.

3. The City of Myrtle Beach (City) is a duly incorporated municipality located in Horry County, South Carolina.
4. The City has a high concentration of tourism activity as contemplated under SC Code Ann. § 6-4-10(4).
5. At all times pertinent to this matter, and as required by SC Code Ann. §6-4-25(A) of the South Carolina Code (2004), the City had a seven member local advisory committee to consider and make recommendations to the Myrtle Beach City Council ("City Council") on applications for the expenditure of revenue generated from the state accommodations tax provided for under SC Code Ann. §12-36-920(A) and §12-36-2630(3) and allocated to the accommodation tax ("A-Tax") fund created under SC Code Ann. §6-4-10(4). In fiscal year 2008-2009, all applications for A-Tax funds were presented to the local advisory committee.
6. Although the local advisory committee makes recommendations on applications for the expenditure of the A-Tax fund and such recommendations must be considered by the City under SC Code Ann. §6-4-25, the ultimate decision as to the final disbursement of the A-Tax fund is vested with City Council.
7. During fiscal year 2008-2009, applications for expenditures from the fund created under SC Code Ann. §6-4-10(4) were submitted to the City's local advisory committee for their recommendations. A report of the local advisory committee's recommendations and City Council's final actions regarding these applications was made to TERC on September 30, 2009, as required by

§ 6-4-25. The report showed that: (a) staff for the City of Myrtle Beach requested that \$3,977,794, which was 84.97% of the \$4,681,464 in available A-Tax funds for fiscal year 2008-2009, be expended on "support of operating expenses for services provided above and beyond permanent population throughout the year, to include additional Police, Fire and Parks personnel"; (b) the local advisory committee recommended that \$3,065,294, which was 65.48% of the available A Tax funds, be expended to "support of operating expenses for services provided above and beyond permanent population throughout the year to include additional Police, Fire and Parks personnel"; and (c) City Council voted to use \$4,664,951, which was 99.65%, of the available A Tax funds for "[s]upport of operating expenses for services above and beyond permanent population throughout the year to include additional Police, Fire and Parks personnel."

8. By letter dated January 4, 2010, TERC notified the City that it had reviewed the City's September 30, 2009, report and questioned: (a) whether the City's expenditure of approximately \$4.6 Million on police, fire and parks personnel complied with the requirement of S.C. Code Ann. §6-4-10(4)(b) that monies in the fund created under SC Code Ann. §6-4-10(4)(a) not be used as an additional source of revenue to provide services normally provided by the City; and (b) whether, by dedicating this amount to the City's general fund and subsequently approving expenditures on various tourism-related events and projects from the City's general fund, the City was employing a procedure to authorize expenditures of local accommodations tax funds, generated under

SC Code Ann. §12-36-2630(3), which was contrary to the requirements of SC Code Ann. §6-4-25(A-C).

9. By letter dated January 7, 2010, Michael W. Shelton, Budget Director for the City, responded to TERC's January 4, 2010, letter as follows: "For FY2008-09, total expenditures for the departments in question were:

Police Department	\$20,008,175
Fire Department	11,138,096
Cultural & Leisure Services	<u>10,998,109</u>
Total	\$42,144,380

Thus in the Police Department, at 76.7% of total, tourist-related expenditures amount to more than \$15 million—far greater than the \$4.6 million of accommodations tax money spent for such services. I would also point out that we have been reviewing our reports to TERC and to the Accommodations Tax Oversight Committee, which existed prior to TERC's formation. Thus far, we have located records going as far back as the 1998-99 fiscal year. In each case, the reports show that the City spent substantial amounts of these funds for these identical purposes. The expenditures were not questioned until the 2006-07 fiscal year, at which time we provided additional information regarding our rationale for the expenditures and TERC found them to be compliant." TERC did not offer any evidence to contradict the statements made by Shelton.

10. The number of visitors to the City was estimated by the Myrtle Beach Chamber to be 13.7 million visitors annually; and (d) the permanent population of the City is estimated by the City to be approximately 30,000 residents.

11. The City spends approximately \$14 million more for its police department than the average municipality of a similar population size. According to the U.S. Census Bureau Report for 2010 the City of Myrtle Beach has a permanent population of 27,109 residents. According to 2007 a report released by the U.S. Department of Justice, the average amount spent for law enforcement for cities with a population of 27,109 was approximately \$6,099,525. For FY2008-09, the City's total expenditures for its police department were \$20,008,175.
12. Presently the City has a total of 206 officers, not including 2 sworn personnel operating as Police Chief and Captain, 52 detention/communications officers, 2 animal control officers or 13 civilian employees for a total of 275 Police Department employees. 206 sworn officers are engaged in the direct delivery or direct command and supervision of law enforcement services. The average number of sworn officers is 62.33 for municipalities with similar populations.
13. Based upon an estimate of the number of annual visitors to the Myrtle Beach area conducted by D.K. Shiflett & Associates, Ltd. for the Myrtle Beach Area Chamber of Commerce, approximately 15.2 million people visited the area in 2007. The average length of stay for leisure travelers was 5 days (3 days for business travelers) according to data presented in the Chamber's 19th Annual Statistical Abstract, available on that organization's web site. That total may amount to the equivalent of an *average* daily population of 208,000 people in addition to the area's permanent residents. In terms of orders of magnitude and taking into considerations increases in the number of tourists, this average

is fairly consistent with information prepared by a consultant to a local developer and provided to the City in 2004 in which the City of Myrtle Beach was estimated to have had an *average* daily population of about 105,000, approximately 4.3 times the size of its permanent population. Except for the large influx of tourists, the Court was not made aware of any significant differences between it and other similar sized municipalities.

14. In 2009, the City received \$4.6 million in accommodation tax funds that were allocated to special fund under S.C. Code Ann. § 6-4-10 (4). The City allocated substantially all of the \$4.6 million to law enforcement services.
15. The City compared its government service expenditures for law enforcement, with similar government service expenditures of other municipalities in South Carolina having similar sized permanent populations to determine the amount of money the City could spend for such tourism related expenditures.

Conclusions of Law

1. Because the City is an area with a high concentration of tourism activity, it may allocate its entire A-Tax discretionary fund to law enforcement, traffic control, public facilities, and highway and street maintenance expenditures provided the expenditures are related to the additional costs associated with providing for the tourism activity under the authority of S.C. Code Ann. § 6-4-10(4)(b).
2. The City's permanent population comparative method for determining the amount of A-Tax funds that could be allocated for tourist related expenditures for law enforcement, traffic control, public facilities, and highway and street

maintenance for the fiscal year 2008 – 2009 was proper under S.C. Code Ann. § 6-4-10(b)(4).

Discussion

The plain language of the S.C. Code Ann. § 6-4-10 (4).

The declaratory judgment action between the City and TERC can be resolved by construing the plain language of the S.C. Accommodations Tax Act. “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Charleston County Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). “The determination of legislative intent is a matter of law.” *Eagle Container Co. v. County of Newberry*, 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008) (quoting *Charleston County Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995)).

“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.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The best evidence of intent is in the statute itself: “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” *Id.* (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03, at 94 (5th ed.1992)).

When construing the statute in question, the opening statement of the subsection expresses the intent of the legislature in plain language: “The funds received by a county or municipality... may be used to provide additional county and municipal services....”

S.C. Code Ann. §6-4-10(4) (b). The legislature did not limit the amount of the funds that could be used for the additional government services. The legislature intended to allow areas like the City with high concentrations of tourism activity to have the discretion to spend all of their A-Tax discretionary funds on law enforcement, traffic control, public facilities, and highway and street maintenance expenditures. Common sense dictates that an area's reputation for safety is important to its ability to attract and retain tourists. Tourists have to be provided the above listed services if they are to be attracted to this State and if they are to have a quality experience that makes them want to return on future occasions. The plain language also indicates that the legislature recognizes that such government services are provided at a cost to the City and that such costs should be shared by the tourists who use the services.

The Court does not agree with TERC's claims that areas with high concentrations of tourism should not be allowed to use A-Tax funds for law enforcement, traffic control, public facilities, and highway and street maintenance expenditures. The Court does not agree with TERC's interpretation of the phrase "services normally provided by the county or municipality." TERC's interpretation creates an illogical paradox. Under TERC's reasoning areas with a high concentration of tourism could never use their A-Tax discretionary funds for tourism related government services because they normally have a high concentration of tourism activity and all expenditures would be part of the services normally provided by the City. *S.C. Code Ann. §6-4-10(b)*. Expenditures of A-Tax funds for services normally provided by the county or municipality are prohibited by the latter part of *S.C. Code Ann. §6-4-10(b)*.

Under TERC's reasoning only unusual non-reoccurring expenditures could be funded with A-Tax discretionary funds. However, the statute allows highway and street maintenance expenditures to be funded with A-Tax discretionary funds. Street maintenance, like law enforcement, cannot be classified as an unusual or non-reoccurring expenditure. Both tourists and permanent residents use the streets. There's no practical way to separate tourists' use from permanent residents' use. The City's comparison of the costs it incurs and with the costs incurred by other cities with similar sized permanent populations is a proper way to determine the amount that may be attributed to tourism activity.

Prior court precedent.

Only one South Carolina appellate court opinion has been found construing the Accommodations Tax Act. See *Thompson v. Horry County* 294 S.C. 81, 362 S.E.2d 646 (S.C.App.,1987). In that case the Court stated the Act reflected the Legislature's practical recognition of the benefits of tourism and it made sense to "give counties some flexibility as to how and where they spend accommodations tax revenues." *Id.* TERC's interpretation of the Act is contrary to *Thompson v. Horry County*. TERC claims it does not make sense to give the City the necessary flexibility as to how and where it spends accommodations tax revenues. TERC claims that it makes sense to give TERC the flexibility to determine how and where local governments spend accommodations tax revenues. TERC claims its oversight authority gives it the overriding authority to limit the use of the City's special funds to TERC's views on the best use of those funds. The Court disagrees. TERC does not have the authority to make rules or create new policy.

TERC's sole authority is to determine whether an "expenditure is in noncompliance" with the act. See S.C. Code Ann. §6-4-35(B)(1)(a).

TERC wants this Court to declare that TERC now has the discretion to base its decisions on what it considers to be "the best use of accommodations tax funds." Such a declaration would be contrary to the Court of Appeals' holding in *Thompson v. Horry County* 294 S.C. 81, 362 S.E.2d 646 (S.C.App.,1987).

TERC's longstanding prior interpretations of the Act.

In TERC's Complaint, TERC admits that it has previously permitted similar expenditures, albeit in lesser amounts, on police, fire and parks personnel. See TERC's Complaint ¶ 12. Since 1983, TERC's predecessor, SCDOR, and TERC have permitted local governments with high concentrations of tourism activity to spend the A-Tax discretionary funds on police, fire and parks personnel. See SCDOR Revenue Ruling # 98-22. SCDOR's revenue ruling adopted the position that the Act does not require that the A-Tax discretionary fund be divided in any particular way. If the expenditure meets the requirements of the law, a county or municipality can use all of its tourism-related funds on a single category of eligible expenditures. *Id.* Additional municipality and county services were expressly included in the discussion of categories of eligible expenditures under the Act. *Id.*

Good government policy favors the City's position.

As an oversight committee, TERC does not make policy, its primary job is to see that the statute enacted by the legislature is followed by the county or municipality. For example, if the City's expenditure meets the requirements of the law, the City should

have the discretion to use the special fund it receives from state accommodation taxes on a single category of eligible expenditure. See SCDOR Revenue Ruling # 98-22.

When the Accommodations Tax Act was passed in 1983, the State recognized the need for some local governments to be able to use "the funds received by a county or municipality" to offset the additional burden tourists place on the government services provided in areas with high concentrations of tourism. See S.C. Code Ann. §6-4-10(4)(b). Presently, the following counties (and municipalities within those counties) have a high concentration of tourism: Beaufort, Charleston, Georgetown, Greenville, Horry and Richland. See SCDOR Revenue Ruling #98-22. For approximately 27 years, TERC and its predecessors have recognized the right of those local governments including the City to use "the funds" for government services that provide for tourists including law enforcement. The Court was not presented with any reasons that justified reversing TERC and SCDOR's prior interpretations.

Oversight committees are external committees that oversee the operations and activities of specific local government committees such as finance, public works, health, education, etc. These committees perform an important but limited role of gathering information on the functioning of individual departments and ensuring, through their oversight and questioning of management officials, that corrupt practices do not take place.

The City's determination of expenditures attributable to tourists.

As shown above, the City determined the expenditures attributable to tourists by comparing its operating budget with those of cities with similar permanent populations in South Carolina. Mike Shelton testified the City's determination method was chosen

because of the guidelines chosen by TERC's predecessor, S.C. Department of Revenue, in SCDOR Revenue Ruling #98-22. In that revenue ruling SCDOR stated: "When considering the percentage of costs that are attributable to tourism, the Department of Revenue will consider the number of permanent residents for the county or municipality as compared to the number of tourists that visit the locality, taking into consideration the average length of stay for such tourists." *Id.*

TERC claims comparisons of the City's "permanent population" with those of other municipalities is not relevant in view of the statutory proscription against using these funds for services that are 'normally' provided." The Court disagrees. The plain meaning of the language used is that government services are to be divided into two categories: normal government services for permanent residents and government services made necessary by a high concentration of tourists. That interpretation is also consistent with Revenue Ruling # 98-22. The City's method of comparing its budgets to budgets of cities with similar sized permanent populations should be affirmed until such time as the legislature determines otherwise by amending the statute.

Conclusion

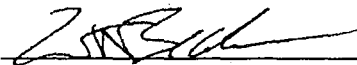
The Court finds and declares that the City properly allocated substantially all of its 2008-2009 A-Tax special funds to additional services for tourists under the facts in the present case. The Court to finds and declares that the City's method of comparing its expenditures for law enforcement, traffic control, public facilities, and highway and street maintenance expenditures with similar expenditures for other SC municipalities with similar permanent population sizes to determine the amount of A-Tax discretionary funds

that the City may allocate to such expenditures is proper and in compliance with S.C.

Code Ann. §6-4-10(b).

AND IT IS ORDERED.

July 14, 2011



Hon. William H. Seals, Jr.
Presiding Judge

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO: 2010CP4003001

IN THE COURT OF COMMON PLEAS

Tourism Expenditure Review Committee

vs.

City Of Myrtle Beach

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 15 September 2011, to attorneys of record or to parties (when appearing pro se) as follows:

John Marion S. Hoefler

Michael Warner Battle
Curtis Lee Coltrane

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeannette W. McBride

Clerk of Court

SCRPC APP-24/FORM 4

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tourism Expenditure Review Committee,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-40-3001

**Order Denying Plaintiff's Motion
to Alter or Reconsider**

FILED
2011 SEP 14 PM 12:29
JEANETTE W. McBRIDE
C.C.P. & G.S.

The above captioned lawsuit originally came before the court for a non-jury trial for declaratory judgment on the proper interpretation of S.C. Code Ann. § 6-4-10(4)(b) and how that statute was being applied by Defendant City of Myrtle Beach (City). The Court filed its final order dated July 14, 2011, and Plaintiff Tourism Expenditure Review Committee (TERC) duly filed a Motion to Alter or Amend. Both TERC and the City filed documents which fully briefed the arguments raised in the TERC's motion. After carefully considering the arguments presented by both parties, I find and conclude that the Court's Order dated July 14, 2011, was proper. The arguments raised by TERC in its motion were properly addressed in this Court's Order dated July 14, 2011.

**THEREFORE, TERC'S MOTION TO ALTER OR AMEND IS HEREBY
DENIED. AND IT IS ORDERED.**

August 31, 2011



Hon. William H. Seals, Jr.
Presiding Judge

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tourism Expenditure Review Committee,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-40-3001

CERTIFICATE OF SERVICE

20 SEP 14 PM 12:27
FILED
JEANETTE W. McBRIDE
C.P. & G.S.

I, Sherri Benninga, Paralegal for Battle & Vaught, P.A., hereby certify that I have this
September 12, 2011 have served a copy of the **Order Denying Plaintiff's Motion to Alter or
Reconsider** upon all counsel of record in this action, by depositing the same in the United
States mail, first-class postage pre-paid, to the following address(es):

Chad N. Johnston
John M.S. Hoefer
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, SC 29202



Sherri Benninga Paralegal
to Michael W. Battle
BATTLE & VAUGHT, P.A.
1200 Main Street
PO Box 530
Conway, SC 29528

September 12, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP4003001

Tourism Expenditure Review Committee

vs.

City Of Myrtle Beach

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other:

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 14 April 2011, to attorneys of record or to parties (when appearing pro se) as follows:

John Marion S. Hoefer

Michael Warner Battle
Curtis Lee Coltrane

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4

Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tourism Expenditure Review Committee,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-3001

ORDER

RICHLAND COUNTY
FILED
2011 APR 14 AM 10:34
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before the Court on the October 19, 2010, Motion ("Motion") of the Town of Hilton Head Island, South Carolina ("Town") seeking to intervene in the above-captioned action for a declaratory judgment filed by Plaintiff Tourism Expenditure Review Committee ("TERC") against Defendant City of Myrtle Beach ("COMB"). Town's Motion was accompanied by a proposed Answer and Counterclaim to TERC's Summons and Complaint. A hearing on the Motion was held before this Court on March 16, 2011. At the hearing, TERC submitted a return in opposition to Town's Motion. After considering the parties' filings and the arguments of counsel, the Court agrees with TERC, and for the reasons set forth herein, denies Town's Motion to Intervene.

BACKGROUND

Under section 6-4-35 of the South Carolina Code (Supp. 2009), TERC oversees expenditures of accommodations tax (A-Tax) revenues (generated in South Carolina by the additional two percent (2%) sales tax applied to lodging in the State under section 12-36-2630 of the South Carolina Code) to ensure compliance with sections 6-4-5 *et seq.* of the South Carolina

Code (2004 & Supp. 2009). All municipalities and counties which are: (1) located in county areas where more than fifty thousand dollars (\$50,000) in A-Tax revenues are collected annually; and (2) which annually receive in excess of fifty thousand dollars (\$50,000) in A-Tax revenue distributions, are considered to have a "high concentration of tourism activity" and are credited with A-Tax funds in accordance with section 6-4-5 and are required to allocate these funds among the local government entity's general fund and two special funds in specified amounts and percentages. See S.C. Code Ann. § 6-4-10 (Supp. 2009). After portions of the A-Tax proceeds are allocated to the local government entity's general fund and a special fund for advertising and promotion of tourism, the remaining 65% of the A-Tax funds are to be allocated to a special fund to be used for "tourism-related expenditures" (the "65% Fund"). § 6-4-10(4)(a). For counties and municipalities with a high concentration of tourism activity, the 65% Fund may be used to "provide additional county and municipal services including, but not limited to, law enforcement, traffic control, public facilities, and highways and street maintenance." § 6-4-10(b). However, the 65% Fund proceeds "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." Id.

Counties and municipalities receiving A-Tax funds are also required to file a report with TERC, no later than October 1 of each year. These reports detail how A-Tax funds received by a city or county have been spent, whether or not the expenditures were recommended for approval by the local advisory committee,¹ and a list of the members of the local advisory committees.

¹ The local advisory committee consists of seven members, the majority of whom must be appointed from the hospitality industry, including two representatives of the lodging industry, S.C. Code Ann.

TERC, in turn, reviews these reports to determine if the disbursements comply with the statute as contemplated by section 6-4-35(B)(1)(a). If, after that review is conducted, TERC finds an expenditure to be questionable, the affected city or county is notified of that in writing and offered an opportunity to submit any additional information which it desires TERC to consider in making a determination of whether a questioned expenditure complies with the requirement of the statute. Id. After considering any such additional information, the Committee makes a final determination of compliance, or non-compliance, which is also communicated to the affected city or county. In the event that TERC determines that an expenditure is non-compliant, it certifies that determination to the State Treasurer who, in turn, withholds the amount of the non-compliant expenditure from subsequent distributions of A-Tax revenues to the city or county. Id.

TERC and COMB have unique and contradictory understandings of section 6-4-10(4)(b) and its application to the City's A-Tax expenditures with respect to the circumstances under which the COMB may properly disburse proceeds of the 65% Fund on police, fire and parks personnel. Rather than exercise its statutory right to certify certain A-Tax fund disbursements of the COMB to the State Treasurer as non-compliant based on its interpretation of the controlling statutes, TERC filed this action for a declaratory judgment against the COMB. Town filed this Motion seeking to intervene in the action under Rule 24(b), of the South Carolina Rules of Civil Procedure ("SCRCP").

STANDARD OF REVIEW

The party seeking intervention has the burden of showing the court that, not only does it have an interest in the property or transaction which is the subject of the action, or a shared

§ 6-4-25 (2004), and its function is to review applications for disbursements of the A-Tax revenues received by the city or county and make recommendations thereon.

question of law or fact, but also that the representation by the existing party is inadequate. S.C. Tax Comm'n v. Union County Treasurer, 295 S.C. 257, 260, 368 S.E.2d 72, 74 (Ct. App. 1988) (citations omitted). When the prospective intervenor “and an existing party have the same interests or ultimate objective in the litigation a presumption arises that its interests are adequately represented and the application should be denied unless a showing of inadequate representation is made by demonstration of adversity of interest, collusion, or nonfeasance.” Id. (citations omitted).

I. Town has not satisfied its burden under Rule 24 because there is no case or controversy.

Initially, the Court notes that counsel for the Town acknowledged at the hearing that its Motion was based solely on Rule 24(b) permissive intervention; therefore, this Court will not address Town’s ability to intervene as a matter of right under Rule 24(a). A party may move for permissive intervention under Rule 24(b):

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Town limited its contention of a conditional right to intervene under Rule 24(b) and section 15-53-30 of the South Carolina Code (Supp. 2010), to a claim based on a commonality of interest with COMB of TERC’s interpretation of section 6-4-10(4)(b).²

² The Court notes that intervention based on an applicant’s interest, and the corresponding ability to protect that interest in the litigation, is a consideration in a motion to intervene as a matter of right under Rule 24(a), which Town is not arguing in this case. Regardless of the confusion as

"To warrant intervention under Rule 24(b) an applicant should ordinarily show he is charged with a public duty requiring him to intervene, or he has a claim or defense involving a question of law or fact in common with the main action. A mere general interest in the subject matter of the litigation is not sufficient." S.C. Tax Comm'n at 262, 368 S.E.2d at 75 (citing Moore's Federal Practice Section 24.10[2]). Town points to no statutory language which confers a conditional right to intervene under Rule 24(b)(1); therefore, it is left to contend that its claim or defense and the subject of this declaratory judgment action have a question of law or fact in common under Rule 24(b)(2). The Court of Appeals discussed a prospective intervenor under Rule 24(b)(2) in the following manner:

Like permissive joinder, Rule 24(b) intervention is premised upon the theory that when claims or defenses have a question of law or fact common to each other, sound administrative procedures encourage the disposition of all of the claims or defenses in one action rather than a multiplicity of actions. See, TPI Corp. v. Merchandise Mart of South Carolina, Inc., 61 F.R.D. 684 (D.S.C. 1974) (emphasis supplied). The typical situation for which the Rule was designed is one where the prospective intervenor might institute or be called upon to defend a separate

S9e72afdc02ea1 proceeding that would substantially duplicate the

one in question. With this analogy to permissive joinder, it seems clear the better rule is that permissive intervention should be

allowed only where the prospective intervenor has a cause of to which argument Town advances, the Court finds Town has not satisfied its burden to intervene under Rule 24.

action or defense it could bring or assert. Viewed in this light, the [prospective intervenor] could not become a party to suit where its claim or defense would be identical to the S9e72afda02ea1 [party already] in the instant action.

S.C. Tax Comm'n at 263-64, 368 S.E.2d at 75-76.

Town fails the test outlined in South Carolina Tax Commission above. TERC asserts, and Town does not contend otherwise, that it has never questioned a disbursement of A-Tax funds by the Town to its general fund on the basis that the disbursement was non-compliant with section 6-4-10(4)(b) due to the Town's comparison of expenditures for municipal services with those of another municipality, or Town's use of all of the disbursed 65% Fund to defray the cost of municipal services. These two situations are precisely the actions of COMB, with which TERC disagrees, which gave rise to the instant declaratory judgment action. Therefore, there exists no case or controversy³ which Town could bring relating to the issues raised in this action, and South Carolina Tax Commission dictates that the Town has not satisfied its burden under Rule 24(b). Furthermore, the Town's proposed Answer and Counterclaim is substantively identical to the COMB's, while the Town's proposed statutory interpretation of section 6-4-10(4)(b) would reach the exact same result sought by COMB. Consequently, because its claim or defense would be identical to COMB, this Court finds COMB is adequately representing the Town's interests.

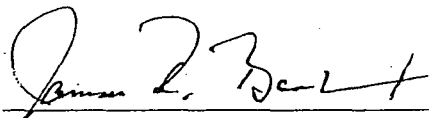
³ "A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy." Lennon v. S.C. Coastal Council, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct. App.1998). "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." Byrd v. Irmo High Sch., 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996). "To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." Graham v. State Farm Mut. Auto. Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845-46 (1995).

CONCLUSION

For the reasons stated above, the Court find the Town has not satisfied its burden to intervene under Rule 24 because it does not have a case or controversy against TERC.

IT IS THEREFORE HEREBY ORDERED that Town's Motion to Intervene in the above-captioned declaratory judgment action is **DENIED**, and that this matter shall proceed as captioned.

AND IT IS SO ORDERED.



James R. Barber, III
Presiding Judge

Columbia, South Carolina
This 11th day of April, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Tourism Expenditure Review Committee,)

Plaintiff,)

vs.)

City of Myrtle Beach,)

Defendant.)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

2010 CP 4003001

(Non-Jury)

Summons

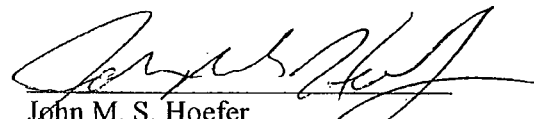
JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 MAY -6 PM 4:16

RICHLAND COUNTY
FILED

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at their offices, Post Office Box 8416, Columbia, South Carolina, 29202-8416, within thirty (30) days after service hereof, excluding the date of service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in said Complaint.


John M. S. Hofer
WILLOUGHBY & HOEFER, PA
Post Office Box 8416
Columbia, South Carolina 29202
803-252-3300

Attorneys for Plaintiff

Columbia, South Carolina
May 6, 2010

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Tourism Expenditure Review Committee,

C/A No.

Plaintiff,

(Non-Jury)

VS.

COMPLAINT

City of Myrtle Beach,

(Action for Declaratory Judgment)

Defendant.

2010 MAY -6 PM 4:17
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHMOND COUNTY
FILED

Plaintiff, the Tourism Expenditure Review Committee ("TERC"), through undersigned counsel, pursuant to S.C. Code Ann. §15-53-20 and South Carolina Rule of Civil Procedure 57, complains of Defendant, the City of Myrtle Beach ("City"), and would respectfully show as follows:

1. TERC is a committee created by and existing under the laws of the State of South Carolina, specifically S.C. Code Ann. § 6-4-35 (2004 & Supp. 2009).
2. The City is a political subdivision and municipality organized and existing under S.C. Const. art. VIII and Title 5 of the Code of Laws of South Carolina.
3. The Court has jurisdiction over this Action under S.C. Code Ann. §15-53-20 (2005) because the Plaintiff herein presents a justiciable controversy appropriate for judicial determination.
4. Venue is proper in this Court pursuant to, *inter alia*, S.C. Code Ann. § 15-7-20(1) (2005 & Supp. 2009).

5. Under S.C. Code Ann. § 12-36-920(A), a sales tax of seven percent is imposed by the state on accommodations provided to transients in South Carolina. One component of that tax is a two percent “local” accommodations tax (the “A Tax”) which, pursuant to S.C. Code Ann. § 12-36-2630(3), must be credited to cities and counties in accordance with S.C. Code Ann. §§ 6-4-5, *et seq.* (2004 and Supp. 2009).
6. In counties where more than \$50,000.00 in A Tax revenues is generated, these revenues are required to be allocated among the local government entity’s general fund and two special funds in specified amounts and percentages. *See* S.C. Code Ann. § 6-4-10 (2004). After A Tax proceeds are allocated to the local government entity’s general fund and a special fund for advertising and promotion of tourism, the remaining 65% of the total distributed is to be allocated to a special fund to be used for “tourism-related expenditures” (the “65% Fund”). *See* S.C. Code Ann. § 6-4-10(4)(a) (2004).
7. For counties or municipalities having “a high concentration of tourism activity,” A Tax proceeds allocated to the 65% Fund 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.” However, the 65% Fund proceeds “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.” S.C. Code Ann. § 6-4-10(4)(b) (2004) (emphasis added).

8. The TERC was established by the General Assembly in S.C. Code Ann. § 6-4-35 “to serve as the oversight authority on all questionable tourism-related expenditures.” In order for the TERC to be able to discharge its duties and determine whether this City’s disbursements of A Tax revenues comply with §§ 6-4-5, *et seq.*, the City is required to forward to the TERC certain reports required under § 6-4-25(D), including details of expenditures by the City from the 65% Fund and the recommendation made regarding same by the local advisory committee.
9. If, upon review of the City’s report, the TERC finds an expenditure to be noncompliant with the requirements of §§ 6-4-5 *et seq.*, it is required to so notify the State Treasurer, who must then withhold from future distributions of accommodations tax revenues to the city or county involved an amount equal to the non-compliant expenditure. *See* S.C. Code Ann. § 6-4-35(B)(1)(a). In that circumstance, the City may seek relief from the TERC’s determination in the South Carolina Administrative Law Court. *See* S.C. Code Ann. §6-4-35(B)(1)(a).
10. In years prior to 2008-2009, the City has reported to TERC that the City has used a substantial portion of the 65% Fund proceeds to defray expenses associated with its police, fires and parks personnel. The TERC has not, however, certified these expenditures to the State Treasurer as being non-compliant.

11. In 2008-2009, the City reported to TERC that it used the entirety of the 65% Fund proceeds to defray expenses associated with its police, fire and parks personnel.
12. The City and TERC each have unique and contradictory understandings of S.C. Code Ann. § 6-4-10(4)(b) and its application to the City's A Tax expenditures with respect to the circumstances under which the City may properly disburse proceeds of the 65% Fund on police, fire and parks personnel. However, TERC has chosen not to act upon its interpretation of § 6-4-10(4)(b) by finding the City's 2008-2009 expenditures non-compliant under S.C. Code Ann. §6-4-35(B)(1)(a) because it has previously permitted similar expenditures, albeit in lesser amounts, and does not believe that it would be reasonable to certify as non-compliant the City's 2008-2009 A Tax expenditures on police, fire and parks personnel.

FOR A FIRST AND SOLE CAUSE OF ACTION
(Declaratory Judgment)

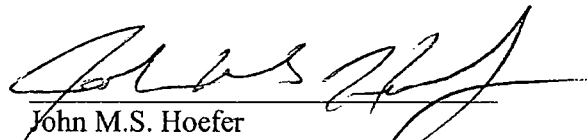
13. Each and every relevant and consistent allegation of this complaint is incorporated and included herein as fully as if repeated verbatim.
14. The Plaintiff requests a declaration that S.C. Code Ann. § 6-4-10(4)(b) means (a) that the 65% Fund may only be used by the City as a source of revenue to fund additional police, fire, and parks personnel expenses, over and above what the City *itself* normally spends on police, fire, and parks personnel, and (b) that the fact that the City has a high concentration of tourism activity does not in and of itself permit the City to expend the entire 65% Fund proceeds on police, fire, and parks personnel.

15. Such a declaration is necessary to determine the rights and liabilities of the parties.

WHEREFORE, having fully set forth its Complaint, the Plaintiff respectfully requests that this Court enter judgment as follows:

- A. Declaring that S.C. Code Ann. § 6-4-10(4)(b) allows the City to use the 65% Fund proceeds as an additional source of revenue to fund police, fire, and parks personnel expenses, over and above what the City itself normally spends on police, fire, and parks personnel, and that the fact that the City has a high concentration of tourism activity does not in and of itself permit the City to expend the entire 65% Fund proceeds on police, fire, and parks personnel; and
- B. Granting such other relief as the Court may find just and proper.

Respectfully submitted,



John M.S. Hoefer

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorney for Tourism Expenditure
Review Committee

This 18 day of April, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF Richland

Tourism Expenditure Review Committee,

Plaintiff(s)

vs.

City of Myrtle Beach,

Defendant(s)

(Please Print)

Submitted By: John M.S. Hoefer

Address: P.O. Box 8416, Columbia, SC 29202-8416

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010 CP 4003001

2010-CP -

JEANETTE W. HOEBRIDE
C.C.P. & G.S.

2010 MAY -6 PM 4:17

FILED
RICHLAND COUNTY

SC Bar #: 2549

Telephone #: 803-252-3300

Fax #: 803-771-2410

Other:

E-mail: jhoefer@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION. (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

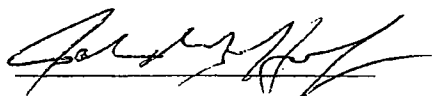
NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20__-CP-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☒ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Declaratory

Judgement

Submitting Party Signature:



Date:

May 6, 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Tourism Expenditure Review Committee,)
Plaintiff,)
)
vs.)
)
City of Myrtle Beach,)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

PROOF OF ADR OR EXEMPTION

FILE NO.:

JEANETTE W. BRIDGEMAN
C.C.P. & C.S.

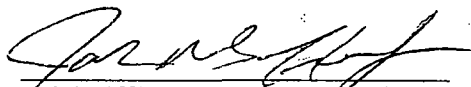
2010 MAY -6 PM 4:17

FILED
RICHLAND COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT to the Court's Standing Order for Alternative Dispute Resolution dated _____

- A. X I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption: Declaratory Judgment, Special Proceeding/Extraordinary Relief Rule 3(b) ADR Rule



Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

John M. S. Hoefer

Print Name

Print Name

803-252-3300

Phone/Fax

Phone/Fax

Date: 5-6-2010

- B. _____ 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

3. The ADR was conducted on _____, 200 _____

4. As a result of ADR, this case should be considered (please check one);
- () Fully Settled.
- () by Consent Judgment, to be filed by _____
- or () Voluntary Dismissal to be filed by _____
- () Partially Settled.
- () At an Impasse.
- () In need of further ADR I ☐ am ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____
5. Plaintiff ☐ was present ☐ was not present
 Defendant ☐ was present ☐ was not present
6. Other participants were:
- _____ Lawyer for Defendant _____
- _____ Lawyer for Plaintiff _____
- _____ Representative for Insurance Carrier _____
- _____ Guardian *ad Litem* _____
- _____ Experts _____
- _____ Others _____
7. Choice of the neutral was by:
- _____ Stipulation
- _____ Court Order
8. The total number of hours spent in ADR was: _____ hours.
9. Further comments of the neutral:
- _____
- _____
- _____
- Neutral's Signature _____
- Date: _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tourism Expenditure Review Committee,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-40-3001

**ANSWER & COUNTERCLAIM FOR
DECLARATORY JUDGMENT**

Defendant City of Myrtle Beach, answering the Summons and Complaint dated May 6, 2010, respectfully would allege and show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. The Complaint fails to state facts sufficient to constitute a cause of action against this City and should be dismissed, or judgment should be entered on the pleadings or such additional material as submitted and allowed.

FOR A SECOND DEFENSE

2. Each and every allegation of the Complaint not hereinafter specifically and expressly admitted is hereby denied.
3. Answering the allegations in paragraphs 1 - 5 of the Complaint, City admits that jurisdiction and venue are proper in this court and that the parties are correctly described.
4. Answering the allegations in paragraphs 6 and 7 of the Complaint, City denies that the remaining 65% of City's A Tax funds are restricted to "tourism related expenditures" and would further show that for municipalities like the City of Myrtle Beach which have a high

concentration of tourism, the 65% funds received by the City of Myrtle Beach may be used to provide additional municipal services including, but not limited to, law enforcement, traffic control, public facilities, and highway and street maintenance to promote tourism and enhance the ability of the municipality to attract and provide for tourists.

5. Answering the allegations in paragraphs 8 and 9 of the Complaint, City admits TERC was established by the General Assembly, but the remaining allegations call for legal conclusions which this City does not have information sufficient to form a belief as to the truth or falsity thereof and this City denies the same.

6. Answering the allegations in paragraph 12 of the Complaint, City admits TERC has chosen not to act upon its most recent interpretation of S. C. § 6-4-10(4)(b) by finding the City's 2008-2009 expenditures non-compliant under S.C. Code Ann. §6-4-35(B)(I)(a) because it has previously permitted similar expenditures, albeit in lesser amounts, and that TERC does not believe that it would be reasonable to certify as non-compliant the City's 2008-2009 A Tax expenditures on police, fire and parks personnel. The remaining allegations in paragraph 12 of the Complaint call for legal conclusions which this City does not have information sufficient to form a belief as to the truth or falsity thereof and this City denies the same.

7. Answering the allegations in paragraphs 13,14, and 15 of the Complaint, City denies the same.

FOR A THIRD DEFENSE AND BY WAY OF A COUNTERCLAIM

8. Each and every allegation set forth above is repeated and realleged herein.

9. TERC is a committee created by and existing under the laws of the State of South

Carolina, specifically S.C. Code Ann. § 6-4-35 (2004 & Supp. 2009). The City is a political subdivision and municipality organized and existing under S.C. Const. art. VIII and Title 5 of the Code of Laws of South Carolina.

10. The Court has jurisdiction over this Action under S.C. Code Ann. §15-53-20 (2005) because the matters alleged herein present a justiciable controversy appropriate for judicial determination.

11. Venue is proper in this Court pursuant to, inter alia, S.C. Code Ann. § 15-7-20(1) (2005 & Supp. 2009).

12. The City of Myrtle Beach is a municipality which has a high concentration of tourism. The City has compared its expenditures for law enforcement, traffic control, public facilities, and highway and street maintenance services with other municipalities with similar demographic features. The City has used that comparison among others to determine the amount of its expenditures that are based on the estimated percentage of costs attributable to tourists. The City is informed and believes that its method of comparing its costs to the costs of other municipalities with similar demographics is a reasonable method for determining the City's costs that are attributable to tourists.

13. The City is informed and believes the Accommodations Tax Act does not require that the Tourism-related Fund be divided in any particular way. Provided the expenditure meets the requirements of the law as set forth in the statute, a municipality can use all of its tourism-related funds on a single category of eligible expenditures.

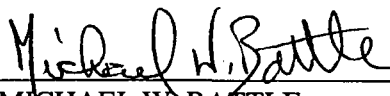
14. The City is informed and believes that TERC's oversight authority is limited to determining whether the City has complied with the act as written. TERC appears to have taken the position that it has the authority expand its oversight authority by making independent policy

interpretations even though TERC has not been granted any rulemaking authority by the S.C. General Assembly and TERC is not a state agency.

15. The City requests a declaration that the SC Accommodations Tax Act permits a municipality to use all of its tourism-related funds on a single category of eligible expenditures; that TERC's oversight authority is limited to determining whether the City has complied with the act as written; that the City's method of determining its costs attributable to tourists is acceptable under the terms of the Accommodations Tax Act; that TERC does not have rulemaking authority; and that TERC may not expand its oversight authority through policy interpretations such as the most recent interpretation it seeks to impose on the City in the above captioned lawsuit.

16. Such a declaration is necessary to determine the rights and liabilities of the City in its use of accommodations tax funds. Such a declaration will prevent the dispute from reoccurring between TERC and the City together with other municipalities with high concentrations of tourism.

WHEREFORE, having fully answered the Complaint City prays that the same be dismissed, for costs, attorney's fees and for such other relief as may be just and proper.



MICHAEL W. BATTLE
BATTLE & VAUGHT, P.A.
PO Box 530
Conway, SC 29528
(843)248-4321
Attorney for Defendant

Conway, SC
May 28, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tourism Expenditure Review Committee,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

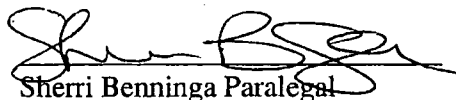
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-40-3001

CERTIFICATE OF SERVICE

I, Sherri Benninga, Paralegal for Battle & Vaught, P.A., hereby certify that I have this May 28, 2010 have served a copy of *Answer & Counterclaim for Declaratory Judgment* upon all counsel of record in this action, by depositing the same in the United States mail, first-class postage pre-paid, to the following address(es):

John M.S. Hoefer
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, SC 29202



Sherri Benninga Paralegal
to Michael W. Battle
BATTLE & VAUGHT, P.A.
1200 Main Street
PO Box 530
Conway, SC 29528

May 28, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 2010-CP-40-3001

Tourism Expenditure Review Committee,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

REPLY TO COUNTERCLAIM

FILED
2010 JUL 21 PM 4:38
JEANETTE W. McBRIDE
C.C.P. & G.S.

Defendant Tourism Expenditure Review Committee (hereinafter "Plaintiff" or "TERC"),
by and through counsel, replies to the counterclaim of Defendant City of Myrtle Beach ("The
City"), dated May 28, 2010, as follows:

FOR A FIRST DEFENSE

1. The Counterclaim fails to state facts sufficient to constitute a cause of action against
TERC.

FOR A SECOND DEFENSE

In reply to the specific numbered paragraphs of the counterclaim, Plaintiff replies,
answers, and shows as follows. To the extent that any allegation of Defendant's Counterclaim
has not been specifically admitted, modified, or responded to, Plaintiff denies such allegations.

1. Plaintiff admits the allegations contained in Paragraphs 9, 10 and 11.
2. Plaintiff admits the allegations contained in Paragraph 12 insofar as they assert that the
City is a municipality which has a high concentration of tourism. Plaintiff admits, upon
information and belief, the allegations in Paragraph 12 that the City has compared certain of its
expenditures to those of other municipalities. Plaintiff is without sufficient information to form a

WBA #1
R - 46

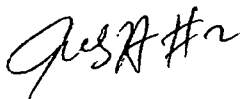
belief as to whether such municipalities have "similar demographic features" and therefore denies this allegation of the counterclaim. Plaintiff is without sufficient information to form a belief as to whether the City used such comparisons for the purpose of determining the estimated percentage of costs attributable to tourists, and therefore those allegations are denied. Plaintiff denies the allegation contained in the final sentence of Paragraph 12 that the method for determining the City's costs attributable to tourists as described in Paragraph 12 is reasonable.

3. The allegations of Paragraph 13 with respect to the requirements of S.C. Code Ann. §§ 6-4-5, *et seq.* are not statements of fact but conclusions of law to which no answer is required. To the extent that an answer is required, and these allegations are intended to assert that S.C. Code Ann. §6-4-10(4) places no conditions on the use of the proceeds of the special fund created thereunder, same are denied. Further

4. The allegations in Paragraph 14 with respect to Plaintiff's oversight authority with respect to Defendant's compliance with S.C. Code Ann. §§6-4-5 *et seq.* are not statements of fact but conclusions of law to which no answer is required. To the extent that an answer is required, these allegations are denied and Plaintiff craves reference to the aforementioned chapter of Title 6 of the Code of Law of South Carolina. Plaintiff denies the remainder of the allegations in Paragraph 14.

5. The allegations in Paragraph 15 with respect to the TERC's oversight authority are not statements of fact but conclusions of law to which no answer is required. To the extent that an answer is required, these allegations are denied. Plaintiff denies the remainder of the allegations in Paragraph 15.

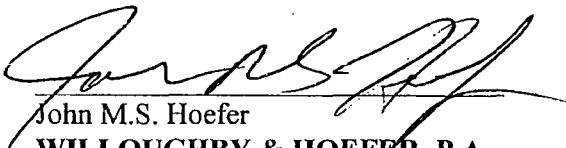
6. Plaintiff denies the allegations in Paragraph 16.

A handwritten signature in black ink, appearing to read "J. S. H. #2", is located at the bottom center of the page.

WHEREFORE Plaintiff, having fully replied and answered the counterclaims of Defendant, respectfully prays the Court for the following relief:

1. For the relief sought in Plaintiff's Complaint;
2. That Defendant's counterclaim be dismissed and the relief sought therein be denied in its entirety; and
3. For such other and further relief as to the Court may seem just and proper.

Respectfully Submitted,



John M.S. Hoefer

WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
803-252-3300

Attorney for Tourism Expenditure Review
Committee

This 21 day of Aug 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)

) Case No.: 2010-CP-40-3001
)

Tourism Expenditure Review Committee,
)

) Plaintiff,
)

) vs.
)

) City of Myrtle Beach,
)

) Defendant.
)

CERTIFICATE OF SERVICE

2010 JUL 21 PM 4:38
JANETTE W. McBRIDE
C.C.P. & G.S.

FILED
CLERK OF COURT

This is to certify that I have caused to be served this day one (1) copy of the **REPLY TO COUNTERCLAIM** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Michael W. Battle, Esquire
Battle & Vaught, P.A.
Post Office Box 530
Conway, South Carolina 29526

Cindy C. Mills
Cindy C. Mills

Columbia, South Carolina
This 21st day of July, 2010.

ALFORD, WILKINS & COLTRANE, P. C.
ATTORNEYS AT LAW

Post Office Drawer 8008
Hilton Head Island, SC 29938-8008
Telephone: (843) 842-5500
Facsimile: (843) 842-8400
www.alfordandwilkins.com

RECEIVED

OCT 22 2010

Willoughby & Hoefer, P.A.

Curtis L. Coltrane
Email: curtis@alfordandwilkins.com
(Not for Confidential Communications)

Gregory M. Alford*
John W. Wilkins
Curtis L. Coltrane+
Scott M. Wild
Mitchell J. Thoreson
*Also Member Georgia Bar
+Also Member Virginia Bar

October 19, 2010

Hon. Jeanette W. McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, SC 29202

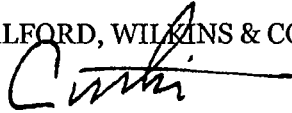
RE: TERC v. City of Myrtle Beach
Case Number 2010-CP-40-3001
AWC File THH10-0009

Dear Ms. McBride:

Enclosed, you will find an Original and a copy of a Notice of Motion and Motion to Intervene, A Motion Information Form and a Certificate of Mailing. I also enclose a filing fee for this motion in the amount of Twenty Five Dollars. At this time, I would ask that the Originals be filed in your case file for this matter, and that the copies be clocked in and returned to me in the envelope that is provided.

I thank you for your help with this matter, and look forward to hearing from you soon. I am,
Sincerely,

ALFORD, WILKINS & COLTRANE, P. C.


Curtis L. Coltrane

CLC/c

enc.: as stated
cc: John M. S. Hoefer, Esq. ✓
Michael W. Battle, Esq.
Stephen G. Riley, CM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CASE NUMBER 2010-CP-40-3001
	)	
TOURISM EXPENDITURE REVIEW,	)	
COMMITTEE,	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF MAILING
vs.	)	
	)	
THE CITY OF MYRTLE BEACH,	)	
	)	
Defendant.	)	

The undersigned Catherine M. Nort certifies that on this date served a copy of the Notice of Motion and Motion to Intervene and Motion Information Form and Cover Sheet, by depositing the same in the United States Mail, with First Class Postage affixed thereto, as follows:

1.	John M. S. Hoefer, Esq. WILLOUGHBY & HOEFER, P. A. Post Office Box 8416 Columbia, SC 29202-8416	2.	Michael W. Battle, Esq. BATTLE & VAUGHT, P. A. Post Office Box 530 Conway, SC 29528

ALFORD, WILKINS & COLTRANE, P. C.

By: Catherine M. Nort
Catherine M. Nort, Legal Assistant

Sworn to Before Me This 19
Day of October, 2010.

Amanda C. DuBose
Notary Public for South Carolina
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tourism Expenditure Review Committee,
☐ Plaintiff

v.

The City Of Myrtle Beach,
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2010-CP-40-3001

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
John M. S. Hoefer, Bar No.
Address:
Post Office Box 8416, Columbia, SC 29202-8416
phone: (803) 252-3300 fax:
e-mail: other:

Defendant's Attorney:
Michael W. Battle, Bar No.
Address:
Post Office Box 530, Conway, SC 29528
phone: (843) 248-4321 fax:
e-mail: other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: To Intervene

Estimated Time Needed: 15 Minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: 25.00**

- ☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ **MOTION FEE COLLECTED:** _____
☐ **CONTESTED - AMOUNT DUE:** _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CASE NUMBER 2010-CP-40-3001
	)	
TOURISM EXPENDITURE REVIEW,	)	
COMMITTEE,	)	
	)	
Plaintiff,	)	
	)	NOTICE OF MOTION AND MOTION
vs.	)	TO INTERVENE
	)	
THE CITY OF MYRTLE BEACH,	)	
	)	
Defendant.	)	

TO: JOHN M. S. HOEFER, ESQ., ATTORNEY FOR THE TOURISM EXPENDITURE REVIEW COMMITTEE AND MICHAEL W. BATTLE, ESQ., ATTORNEY FOR THE CITY OF MYRTLE BEACH:

Please take notice that The Town of Hilton Head Island, South Carolina, by and through its undersigned attorneys, shall move before the Presiding Judge of the Richland County Court of Common Pleas, at the Richland County Judicial Center, 1701 Main Street, Columbia, SC, 29201, at 10:00 o'clock, A. M., on the Tenth Day following the service hereof, or as soon thereafter as counsel may be heard, as follows:

For an Order, pursuant to Rule 24(b), S. C. R. C. P., permitting The Town of Hilton Head Island, South Carolina, to intervene in the above referenced case. The above referenced case is one in which both the Plaintiff and the Defendant seek an interpretation of S. C. Code Ann. § 6-4-10(4)(b)(Supp. 2010).

The Town of Hilton Head Island, South Carolina, is a municipality that collects Accommodations Taxes, and is also a municipality with a high concentration of tourism activity as that term is used in S. C. Code Ann. § 6-4-10(4)(b)(Supp. 2010).

The Parties to this action advance differing interpretations of S. C. Code Ann. § 6-4-

10(4)(b)(Supp. 2010). The Town of Hilton Head Island, South Carolina, collects and distributes Accommodations Taxes, and thus has an interest in the outcome of this litigation. The disposition of this action without The Town of Hilton Head Island, South Carolina, being a party may impair or impede the ability of The Town of Hilton Head Island, South Carolina, to protect its interest under the relevant statutes. The questions of law presented in this case are common to the existing parties and to The Town of Hilton Head Island, South Carolina.

The Parties to this case seek a declaratory judgment pursuant to S. C. Code Ann. § 15-53-10, *et seq.*, (Supp. 2010). S. C. Code Ann. § 15-53-30 (Supp. 2010), provides:

Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

As was shown above, The Town of Hilton Head Island, South Carolina, is interested in this action as its rights under S. C. Code Ann. § 6-4-10(4)(b)(Supp. 2010), may be affected by the outcome of this case.

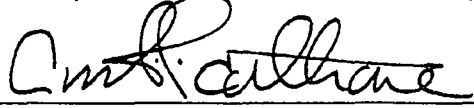
The Town of Hilton Head Island, South Carolina, does not believe that permitting it to intervene will unduly delay the cause, or prejudice the rights of the existing Parties. The proposed Answer and Counterclaim of The Town of Hilton Head Island, South Carolina, is attached hereto.

The undersigned certifies pursuant to Rule 11, S. C. R. C. P., that prior to filing this motion, he communicated with Counsel for the Tourism Expenditure Review Committee and the City of Myrtle Beach and attempted in good faith to resolve the matter set forth in

the motion.

Based upon the foregoing, The Town of Hilton Head Island, South Carolina, requests that this Honorable Court grant its Motion to Intervene.

ALFORD, WILKINS & COLTRANE, P. C.

By: 

Curtis L. Coltrane
S. C. Bar Number 1344
Post Office Drawer 8008
Hilton Head Island, SC 29938
(843) 842-5500

Hilton Head Island, South Carolina

This 28 Day of October, 2010.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CASE NUMBER 2010-CP-40-3001
	)	
TOURISM EXPENDITURE REVIEW,	)	
COMMITTEE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
THE CITY OF MYRTLE BEACH,	)	ANSWER AND COUNTERCLAIM OF
	)	OF THE INTERVENER/DEFENDANT
Defendant.	)	THE TOWN OF HILTON HEAD
	)	ISLAND, SOUTH CAROLINA
and	)	
	)	
THE TOWN OF HILTON HEAD	)	
ISLAND, SOUTH CAROLINA,	)	
	)	
<u>Intervener/Defendant.</u>	)	

The Town of Hilton Head Island, South Carolina (hereinafter, the "Town"), Answering the Complaint of the Tourism Expenditure Review Committee, and Counterclaiming against the Tourism Expenditure Review Committee (hereinafter, the "TERC"), alleges as follows unto this Honorable Court:

BY WAY OF A FIRST DEFENSE

1. Each and every allegation of the Complaint of the TERC is, unless hereinafter admitted, qualified or explained.
2. The Town admits the allegations of Paragraph 1 of the Complaint.
3. The Town admits the allegations of Paragraph 2 of the Complaint, and affirmatively alleges that the Town is a political subdivision of the State of South Carolina, and a municipality organized under the authority of S. C. Const. Art. VIII, and Title 5 of the South Carolina Code of Laws.

4. The Town admits the allegations of Paragraph 3 of the Complaint.
5. The Town admits the allegations of Paragraph 4 of the Complaint.
6. The Town admits the allegations of Paragraph 5 of the Complaint.
7. By way of response to the allegations of Paragraph 6 of the Complaint, the Town admits that S. C. Code Ann. § 6-4-10(4)(a)(Supp. 2010), reads:

The remaining balance 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.

Any other or further allegation or conclusion of law in Paragraph 6 of the Complaint is denied, and strict proof is demanded thereof.

8. By way of response to the allegations of Paragraph 7 of the Complaint, the Town admits that S. C. Code Ann. § 6-4-10(4)(b)(Supp. 2010), reads:

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.

“Tourism-related expenditures” include:

1. advertising and promotion of tourism so as to develop and increase tourist attendance through the generation of publicity;
2. promotion of the arts and cultural events;
3. 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;

4. 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;
5. public facilities such as restrooms, dressing rooms, parks, and parking lots;
6. tourist shuttle transportation;
7. control and repair of waterfront erosion;
8. operating visitor information centers.

Any other or further allegation or conclusion of law in Paragraph 7 of the Complaint is denied, and strict proof is demanded thereof.

9. By way of response to the allegations of Paragraph 8 of the Complaint, the Town admits that S. C. Code Ann. § 6-4-25(d)(Supp. 2010), reads:

Municipalities and counties annually shall submit to the South Carolina 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;
- (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.

By way of further response to Paragraph 8 of the Complaint, the Town also admits that S. C. Code Ann. § 6-4-35 (b)(1)(a)(Supp. 2010), reads:

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.

Any other or further allegation or conclusion of law in Paragraph 8 of the Complaint is denied, and strict proof is demanded thereof.

10. By way of response to Paragraph 9 of the Complaint, the Town admits that S. C. Code Ann. § 6-4-35 (b)(1)(a)(Supp. 2010), reads:

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.

Any other or further allegation or conclusion of law in Paragraph 9 of the Complaint is denied, and strict proof is demanded thereof.

11. The Town is without sufficient information to admit or deny the allegations of Paragraph 10 of the Complaint, and accordingly denies the same and demands strict proof thereof.

12. The Town is without sufficient information to admit or deny the allegations of Paragraph 11 of the Complaint, and accordingly denies the same and demands strict proof thereof.

13. By way of response to the allegations of Paragraph 12 of the Complaint, the Town admits only that TERC, through the institution of this action, now asserts a “unique” understanding of S. C. Code Ann. § 6-4-10(4)(b)(Supp. 2010), that is contradictory to the manner in which TERC has interpreted S. C. Code Ann. § 6-4-10(4)(b)(Supp. 2010), in the past with respect to expenditures made by the City of Myrtle Beach from the “65% Fund”. Any other or further allegation or conclusion of law in Paragraph 12 of the Complaint is denied, and strict proof is demanded thereof.

14. By way of response to allegations of Paragraph 13 of the Complaint, the Town re-alleges paragraphs 1 through 13 above, as if the same were fully repeated here.

15. By way of response to the allegations of Paragraph 14 of the Complaint, the Town admits that S. C. Code Ann. § 6-4-10(4)(b)(Supp. 2010), reads:

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.

“Tourism-related expenditures” include:

1. advertising and promotion of tourism so as to develop and increase tourist attendance through the generation of publicity;
2. promotion of the arts and cultural events;

3. 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;
4. 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;
5. public facilities such as restrooms, dressing rooms, parks, and parking lots;
6. tourist shuttle transportation;
7. control and repair of waterfront erosion;
8. operating visitor information centers.

Any other or further allegation or conclusion of law in Paragraph 14 of the Complaint is denied, and strict proof is demanded thereof.

16. The Town denies the allegations of Paragraph 15 of the Complaint, and demands strict proof thereof.

**BY WAY OF A SECOND DEFENSE AND COUNTERCLAIM FOR
DECLARATORY JUDGEMENT**

17. Each and every allegation of Paragraphs 1 through 16 above is re-alleged, as if fully repeated here.

18. TERC is a committee organized and existing under the authority of S. C. Code Ann. § 6-4-35 (Supp. 2010).

19. The City of Myrtle Beach, South Carolina (hereinafter, "Myrtle Beach"), is a political subdivision of the State of South Carolina and a municipality organized and existing under the authority of S. C. Const. Art. VIII and Title 5 of the South Carolina Code of Laws.

20. The Town is a political subdivision of the State of South Carolina and a municipality

organized and existing under the authority of S. C. Const. Art. VIII and Title 5 of the South Carolina Code of Laws.

21. This Court has jurisdiction over this matter, which seeks a declaration of the rights and status of the Parties hereto under existing statutes of the State of South Carolina, under the authority of S. C. Code Ann. § 15-53-20 (Supp. 2010).

22. Venue is proper in the Court of Common Pleas for Richland County, South Carolina, under the authority of S. C. Code Ann. § 15-7-20(1)(Supp. 2010).

23. Myrtle Beach and the Town are municipalities which have a high concentration of tourism activity. Under the express terms of S. C. Code Ann. § 6-4-10(4)(b)(3) & (4)(Supp. 2010), municipalities with a high concentration of tourism activity are authorized to utilize "65% Funds" for:

3. 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;
4. 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;

24. There is no requirement in the express language of S. C. Code Ann. § 6-4-5, *et seq.*, (Supp. 2010), and specifically S. C. Code Ann. § 6-4-10, *et seq.*, (Supp. 2010), that obligates a municipality to divide the "65% Funds" in any particular way.

25. Provided that the expenditure of "65% Funds" are "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”, there is no limitation on the amount of the “65% Funds” that a municipality can spend on those items enumerated in S. C. Code Ann. § 6-4-10(4)(b)(3) & (4)(Supp. 2010).

26. In order to spend “65% Funds” on those items enumerated in S. C. Code Ann. § 6-4-10(4)(b)(4)(Supp. 2010), a municipality, under the express language of S. C. Code Ann. § 6-4-10(4)(b)(4)(Supp. 2010), must base the expenditure on “. . . the estimated percentage of costs directly attributed to tourists;”

27. Upon information and belief, Myrtle Beach has complied with the requirements of S. C. Code Ann. § 6-4-10(4)(b)(4)(Supp. 2010), because it has based its expenditure of “65% Funds” on an estimated percentage of the costs directly attributed to tourists.

28. TERC seeks a declaration of this Court as follows:

. . . that S. C. Code Ann. § 6-4-10(4)(b) means (a) that the “65% Fund” may only be used by the City as a source of revenue to fund additional police, fire and parks personnel expenses, over and above what the City *itself* normally spends on police, fire and parks personnel, and (b) that the fact that the City has a high concentration of tourism activity does not in and of itself permit the City to expend the entire 65% Fund proceeds on police, fire, and parks personnel. (Emphasis is in the original.)

29. The declaration sought by TERC is inconsistent with the plain language of S. C. Code Ann. § 6-4-10(4)(b)(Supp. 2010).

30. The Town requests a declaration that in S. C. Code Ann. § 6-4-10(4)(b)(Supp. 2010), means:

- (a) A municipality may use the entire “65% Fund” on a single category of eligible expenditure;
- (b) A municipality may spend “65% Funds” on those items enumerated in S. C. Code Ann. § 6-4-10(4)(b)(4)(Supp. 2010), so long as the

expenditure is based on the estimated percentage of costs directly attributed to tourists.

- (c) TERC has no authority other than to enforce S. C. Code Ann. § 6-4-5, *et seq.*, (Supp. 2010), as it is written, and that TERC has no authority to impose requirements in addition to those expressly set forth in S. C. Code Ann. § 6-4-5, *et seq.*, (Supp. 2010).

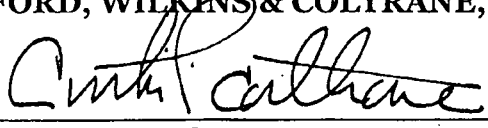
31. The Town believes that such a declaration is necessary to determine the rights and liabilities of the Town, Myrtle Beach and any other municipality or county in South Carolina that has a high concentration of tourism activity.

WHEREFORE, the Town prays that this Honorable Court inquire into the matters and things alleged herein, and that it enter its Order as follows:

1. Dismissing the Complaint of TERC;
2. Declaring:
 - (a) A municipality may use the entire "65% Fund" on a single category of eligible expenditure;
 - (b) A municipality may spend "65% Funds" on those items enumerated in S. C. Code Ann. § 6-4-10(4)(b)(4)(Supp. 2010), so long as the expenditure is based on the estimated percentage of costs directly attributed to tourists.
 - (c) TERC has no authority other than to enforce S. C. Code Ann. § 6-4-5, *et seq.*, (Supp. 2010), as it is written, and that TERC has no authority to impose requirements in addition to those expressly set forth in S. C. Code Ann. § 6-4-5, *et seq.*, (Supp. 2010).

3. For the costs and disbursements of this action; and,
4. For all other and further relief as this Honorable Court may deem just and proper.

ALFORD, WILKINS & COLTRANE, P. C.

By: 

Curtis L. Coltrane
S. C. Bar Number 1344
Post Office Drawer 8008
Hilton Head Island, SC 29938
(843) 842-5500

Hilton Head Island, South Carolina

This 9th Day of October, 2010.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-3001

VS.

**PLAINTIFF'S RETURN IN
OPPOSITION TO
MOTION TO INTERVENE**

Defendant.

BACKGROUND

Page 1 of 9

not the expenditures were recommended for approval by the local advisory committee,¹ and a list of the members of the local advisory committees. TERC, in turn, reviews these reports to determine if the disbursements comply with the statute as contemplated by section 6-4-35(B)(1)(a). If, after that review is conducted, TERC finds an expenditure to be questionable, the affected city or county is notified of that in writing and offered an opportunity to submit any additional information which it desires TERC to consider in making a determination of whether a questioned expenditure complies with the requirement of the statute. Id. After considering any such additional information, the Committee makes a final determination of compliance, or non-compliance, which is also communicated to the affected city or county. In the event that TERC determines that an expenditure is non-compliant, it certifies that determination to the State Treasurer who, in turn, withholds the amount of the non-compliant expenditure from subsequent distributions of A-Tax revenues to the city or county. Id.

FACTUAL HISTORY OF THIS ACTION

In September of 2009, the City of Myrtle Beach (COMB) submitted its annual report to TERC, pursuant to section 6-4-25, detailing its expenditures of A-Tax funds in fiscal year 2008-09. A copy of this report is attached hereto and incorporated herein by reference as Exhibit "A". In this report, the COMB detailed that the Myrtle Beach City Council had granted substantially all of the available A-Tax funds for fiscal year 2008-09, approximately \$4.6 Million, to COMB's general fund for police, fire and parks personnel expenses, and had made no grants to outside organizations. Notably, as further detailed in the report, the City Council's grant was approximately \$700,000 more than COMB requested for support of these personnel expenses.

¹ The local advisory committee consists of seven members, the majority of whom must be appointed from the hospitality industry, including two representatives of the lodging industry, S.C. Code Ann. § 6-4-25 (2004), and its function is to review applications for disbursements of the A-Tax revenues received by the city or county and make recommendations thereon.

TERC questions whether the City Council's expenditure of A-Tax funds in fiscal year 2008-09 to COMB complies with section 6-4-10(4)(b) because it is based upon an interpretation of this statutory provision by COMB which (a) relies upon a comparison of COMB's expenditures of A-Tax funds to support municipal services with expenditures for municipal services by other municipalities and (b) resulted in COMB expending all of the A-Tax funds that it disburses (\$4.6 Million in 2008-2009) on municipal services. [Compl. at 4, paragraphs 11 and 12]. Ultimately, TERC determined that, because it had previously allowed the COMB to grant a substantial portion of the available A-Tax funds to the City's general fund for use on police, fire and parks personnel, withholding the entire \$4.6 Million from the COMB would not be reasonable.² Id. Instead, TERC has determined that a declaratory judgment action would be the superior vehicle to ascertain whether or not the statute permits a use of funds in the manner COMB has used them. Now, Town has filed the Motion seeking to intervene in this action. TERC opposes the Motion.

ARGUMENT

The party seeking intervention has the burden of showing the court that, not only does it have an interest in the property or transaction which is the subject of the action, or a shared question of law or fact, but also that the representation by the existing party is inadequate. S.C. Tax Comm'n v. Union County Treasurer, 295 S.C. 257, 260, 368 S.E.2d 72, 74 (Ct. App. 1988) (citations omitted). When the prospective intervenor "and an existing party have the same interests or ultimate objective in the litigation a presumption arises that its interests are adequately represented and the application should be denied unless a showing of inadequate

² Subsequently, through a FOIA request, TERC learned that the COMB had re-granted some \$302,545 from the City's general fund to organizations for tourism-related expenditures. TERC certified this amount to the State Treasurer as non-compliant and those limited disbursements are the subject of an on-going contested case hearing before the Administrative Law Court (ALC).

representation is made by demonstration of adversity of interest, collusion, or nonfeasance.” Id. (citations omitted). Because Town cannot show it is entitled to intervene, either as a matter of right or permissively, for the reasons more fully set forth herein, the Motion should be denied.

I. Rule 24(a)

Initially, although Town simply requests this Court to permit its intervention in this matter pursuant to Rule 24(b), SCRCP, arguments contained in the Motion quote, verbatim, from Rule 24(a)’s discussion of intervention as a matter of right; therefore, out of an abundance of caution, TERC will address the Town’s ability to intervene both as a matter of right and permissively. Rule 24(a) provides:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action *and* he is so situated that the disposition of the action may as a practical matter *impair or impede his ability to protect that interest*, unless the applicant's interest is adequately represented by existing parties.

(emphasis added). There exists no statute that confers an unconditional right to intervene on Town in this situation; therefore, any claim as a matter of right must be based on subsection (2). Town expressly states that the disposition of this action absent its intervention “may impair or impede the ability of The Town of Hilton Head Island, South Carolina, to protect its interest under the relevant statutes.” [Motion, p.2].

Town has no interest that will be directly affected by the outcome of this declaratory judgment. As a declaratory judgment action, there is no discreet property or transaction that makes up TERC’s claim here. Furthermore, the Town has not alleged that State A-Tax funds

have been withheld by the State Treasurer from the Town based upon the statutory interpretation advanced by TERC. Moreover, the Town has not alleged that TERC has ever questioned a disbursement of available A-Tax funds by the Town based on TERC's statutory interpretation that is at the heart of this action. Instead, Town's interest could only be indirectly affected, as any declaratory judgment with respect to the meaning of section 6-4-10(4)(b) of the South Carolina Code (Supp. 2010) will be binding on the Town's future utilization of funds available to it only if the matter is decided adversely to COMB and results in a published appellate court decision that constitutes binding authority. Consequently, Town's desire to be a part of the litigation in this declaratory judgment action is only to affect any legal precedent that may result from the case. The Court of Appeals has stated that the desire to affect legal precedent, without more, is insufficient to serve as a basis for intervention as a matter of right. See S.C. Tax Comm'n, 295 S.C. at 260, 368 S.E.2d at 74 (citing 3B J. Moore, Moore's Federal Practice Section 24.07[2] (2d ed. 1987)) (seeking intervention in order to affect the resulting legal precedent is an insufficient basis for intervention).

However, even assuming for the sake of argument that Town's desire to affect future legal precedent is sufficient to satisfy Rule 24(a)(2)'s "interest" requirement, the burden is also on Town to prove that its interests are *not* being adequately represented by the parties already part of the litigation. S.C. Tax Comm'n at 260, 368 S.E.2d at 74 (citing Moore's Federal Practice Section 24.07[4]). Here, the Town's Motion is devoid of any contention that the COMB would not adequately represent its interests. In fact, the Town's proposed Answer and Counterclaim reads identically to that of COMB, and the proposed statutory interpretation of section 6-4-10(4)(b) by Town is indistinguishable from the counterclaim advanced by COMB. As stated previously, when the parties have the same interests or ultimate objective in the litigation, a

presumption arises that the prospective intervenor's interests are being adequately represented, absent a showing of adversity of interest, collusion, or nonfeasance. Id. (citing International Tank Terminals Ltd. v. M/V Acadia Forest, 579 F.2d 964 (5th Cir. 1978); Commonwealth of Virginia v. Westinghouse Electric Corp., 542 F.2d 214 (4th Cir. 1976); Moore's Federal Practice; 59 Am.Jur.2d Parties Section 141 (1987)). As in South Carolina Tax Commission, Town's ultimate objective in this case is identical to that of COMB's. Consequently, Town has failed to meet its burden of proving its interests are not sufficiently represented, and this Court should deny its Motion to the extent that it is based upon Rule 24(a).

II. Rule 24(b)

Similarly, Town's Motion must fail under Rule 24(b), SCRCF, as well. Rule 24(b) provides:

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. . .

. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Town claims a conditional right to intervene under Rule 24(b) and section 15-53-30 of the South Carolina Code (Supp. 2010), based on a commonality of interest with COMB of TERC's interpretation of section 6-4-10(4)(b). Section 15-53-30 provides:

Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute,

ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

"To warrant intervention under Rule 24(b) an applicant should ordinarily show he is charged with a public duty requiring him to intervene, or he has a claim or defense involving a question of law or fact in common with the main action. A mere general interest in the subject matter of the litigation is not sufficient." S.C. Tax Comm'n at 262, 368 S.E.2d at 75 (citing Moore's Federal Practice Section 24.10[2]). Town points to no statutory language, likely because none exists, which confers a conditional right to intervene under Rule 24(b)(1); therefore, it is left to contend that its claim or defense and the subject of the declaratory judgment action have a question of law or fact in common under Rule 24(b)(2). The Court of Appeals discussed a prospective intervenor under Rule 24(b)(2) in the following manner:

Like permissive **joinder**, Rule 24(b) intervention is premised upon the theory that when claims or defenses have a question of law or fact common to each other, sound administrative procedures encourage the disposition of all of the claims or defenses in one action rather than a multiplicity of actions. See, TPI Corp. v. Merchandise Mart of South Carolina, Inc., 61 F.R.D. 684 (D.S.C. 1974) (emphasis supplied). The typical situation for which the Rule was designed is one where the prospective intervenor might institute or be called upon to defend a separate proceeding that would substantially duplicate the one in question. With this analogy to permissive joinder, it seems clear the better rule is that permissive intervention should be allowed only where the prospective intervenor has a cause of action or defense it could bring or assert. Viewed in this light, the [prospective

intervenor] could not become a party to suit where its claim or defense would be identical to the [party already] in the instant action.

S.C. Tax Comm'n at 263-64, 368 S.E.2d at 75-76.

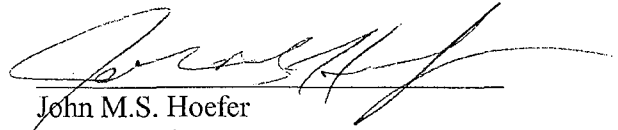
In this case, Town fails the test outlined in South Carolina Tax Commission above, because TERC has never questioned a disbursement of A-Tax funds by the Town to its general fund on the basis that the disbursement was non-compliant with section 6-4-10(4)(b) due to the Town's comparison of expenditures for municipal services with those of a another municipality or the Town's use of all of the disbursed funds to defray the costs of municipal services. Thus, Town has not asserted in the Motion that it has ever expended all of its available A-Tax funds to its general fund in order to fund municipal services and operations; this, however, is what the COMB has done and is what gave rise to TERC's filing of the instant declaratory judgment action. Stated differently, as to Town, there neither exists a case in controversy that would allow it to bring an action against TERC, nor a common defense that it could assert. Furthermore, as stated previously herein supra, the Town's proposed Answer and Counterclaim is substantively identical to the COMB's, while the Town's proposed statutory interpretation of section 6-4-10(4)(b) would reach the exact same result sought by the COMB. Consequently, because its claim or defense would be identical to that of the COMB, which is adequately representing its interests, the Town's Motion pursuant to Rule 24(b) should be denied under South Carolina Tax Commission.

CONCLUSION

For the reasons stated above, TERC respectfully requests that the Court deny Town's motion to intervene.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M.S. Hoefer", written over a horizontal line.

John M.S. Hoefer

Chad N. Johnston

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Tourism Expenditure Review
Committee

Columbia, South Carolina
This 16th day of March, 2011



City of Myrtle Beach
SOUTH CAROLINA

September 30, 2009

Ms. Damita Jeter
Tourism Expenditure Review Committee
P.O. Box 125
Columbia, SC 29214-0120

Re: Accommodations Tax Expenditure Reporting Forms

Dear Ms. Jeter,

Please find enclosed the Accommodations Tax Expenditure Reporting Forms as required by the South Carolina Code of Laws, Title 6, Chapter 4, Section 6-4-25, detailing the expenditures for the fiscal year 2008-2009. Detailed information, as requested, has been included on the forms when available.

If you have any questions with regards to this letter or information attached, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, which appears to read "Michael D. Price".

Michael D. Price
Budget & Evaluation Analyst

65% Tourism-Related Expenditures Special Fund										Side B		
Organizations Making Application to Accommodations Tax Advisory Committee												
Report all applications whether they were approved or not		Organization(s)		Cat.	B=Total Budget; N= #of Attendees; T=# of Tourists ***ALL INFORMATION PROVIDED BY APPLICANT***		Project Description		Amount Requested by Organization	Amount Rec. by Advisory Committee	Amount approved by Local Government	Amount disbursed by Local Government

Offense-Defense All American Bowl	2	Promote an All-American Bowl by providing competition for top high school football players in the nation; (B) \$329,652 (N) 7,500 (T) 1,057	35,000	10,000		
Triple Crown Sports	2	Promotion of baseball tournaments; (B) \$367,406; (N) 10,800 (T) 10,800	43,000			
City of Myrtle Beach - Beach Renourishment	6	Reach II Beach Renourishment Project in Conjunction with Army Corp. of Engineers (B) \$2,243,000	147,424	147,424		
City of Myrtle Beach - Beach Monitoring	6	Beach Maintenance/Water Quality Monitoring & Posting	62,000	62,000		
City of Myrtle Beach - Convention Center	1	Advertising/Marketing Program thru MB Conv. Ctr.; (B) \$1,251,990	753,733	753,733		
City of Myrtle Beach - General Fund	4	Support of operating expenses for services provided above and beyond permanent population throughout the year, to include additional Police, Fire and Parks personnel (B) General Fund \$51.7 Million (T) MB Chamber estimates 13.7 million visitors annually	3,977,794	3,065,294	4,664,951	4,664,951
		Totals:	5,928,835	4,664,951	4,664,951	4,664,951

*Project Name/Description should address the specific use of requested funds. A summary of the organization's request may also be attached.

**Amount approved must be based exclusively on the estimated percentage of costs directly attributed to attracting or serving tourists.

Return to:		Project Categories - All must attract or provide for tourists.	
A-Tax Expenditure Review Committee		5- Tourism Public Transportation	
PO Box 125		6- Waterfront Erosion/Control/Repair	
Columbia, SC 29214-0120		7- Operation of Visitor Information Centers	

LOCAL ACCOMMODATIONS TAX ADVISORY COMMITTEE MEMBERSHIP

Pursuant to Section 6-4-25, Code of Laws of South Carolina, there shall be a local advisory committee consisting of seven members. The majority of these members shall be selected from the hospitality industry, of which at least two must be the lodging industry, where applicable, and one member shall represent the cultural organizations. Please place an asterisk (*) to indicate the Chairperson.

List below the four designated hospitality industry representatives, two of which must be from the lodging sector of the hospitality industry:

- 1- Mary Frances Tall - Owner Sea Dip Motel, 6707 Procher Drive, 68th Ave. North - MBSC 29572
(Name) (Business Name & Address)
- 2- James Edward Patrick - Boardwalk Motel, 5001 Camelia Drive, MBSC 29577
(Name) (Business Name & Address)
- 3- David Brittain - Oceanfront Investors, PO Box 1948, MBSC 29579
(Name) (Business Name & Address)
- 4- *Mary B. Henry - Mary B. Henry, Inc., 1210 E Benna Drive, MBSC 29577
(Name) (Business Name & Address)

Please list below the designated cultural interest representative and affiliation:

- 5- Steve Marino Mills - Professional Musician 801 Burcale Rd. Courtyard 2, Unit M-3, MBSC 29577
(Name) (Business Name & Address)

Please list below the other two designated members of the committee:

- 6- James McIlrath, CPA - 1004 29th Avenue N., MBSC 29577
(Name) (Business Name & Address)
- 7- Harry Charles - Professional Attorney *Retired*, PO Box 1204, MBSC 29578
(Name) (Business Name & Address)

Please return to Tourism Expenditure Review Committee
Attn: Damita Jeter
PO Box 125
Columbia, SC 29214-0120

No later than October 15, 2008

Submitted by:	Phone:	Date:
Michael D. Price	(843) 918-1135	9/30/09
Budget Analyst		
mprice@cityofmyrtlebeach.com		
Name of County/Municipal Government:		
City of Myrtle Beach		

LOCAL ACCOMMODATIONS TAX ADVISORY COMMITTEE MEMBERSHIP (CURRENT)

Pursuant to Section 6-4-25, Code of Laws of South Carolina, there shall be a local advisory committee consisting of seven members. The majority of these members shall be selected from the hospitality industry, of which at least two must be the lodging industry, where applicable, and one member shall represent the cultural organizations. Please place an asterisk (*) to indicate the Chairperson.

List below the four designated hospitality industry representatives, two of which must be from the lodging sector of the hospitality industry:

- 1- Mary Frances Tall - Owner Sea Dip Motel, 66707 Procher Drive - MBSC 29577
(Name) (Business Name & Address)
- 2- James Edward Patrick - Boardwalk Motel, 5001 Camellia Drive, MBSC 29577
(Name) (Business Name & Address)
- 3- David Brittain - Oceanfront Investors, PO Box 1948, MBSC 29579
(Name) (Business Name & Address)
- 4- *Mary B. Henry - Mary B. Henry, Inc., 1210 E Benna Drive, MBSC 29577
(Name) (Business Name & Address)

Please list below the designated cultural interest representative and affiliation:

- 5- Steve Marino Mills - Professional Musician 600 Calhoun Road, MBSC 29577
(Name) (Business Name & Address)

Please list below the other two designated members of the committee:

- 6- Debbie Harwell, Adobe Palm Communications, PO Box 7769, MBSC 29572
(Name) (Business Name & Address)
- 7- Harry G. Charles, Former City Council Member, 6203 N. Ocean Blvd., MBSC 29572
(Name) (Business Name & Address)

Please return to Tourism Expenditure Review Committee
Attn: Damita Jeter
PO Box 125
Columbia, SC 29214-0120

No later than October 15, 2008

Submitted by: Michael D. Price Phone: (843) 918-1135 Date: 9/30/09
Budget Analyst
mprice@cityofmyrtlebeach.com
Name of County/Municipal Government: City of Myrtle Beach

and parks personnel expenses, that are in addition to those services that the particular municipality itself normally provides. By contrast, the COMB maintains an appropriate way to calculate how much of the available A-Tax Funds can be used to support its municipal services is to compare the level of services it provides for these three functions with that of other municipalities with similar permanent populations.

This Court has jurisdiction over this action under section 15-53-30 of the South Carolina Code (2005) because there exists a justiciable controversy appropriate for the Court's determination. Moreover, venue is proper in this Court pursuant to, *inter alia*, section 15-7-20(1) of the South Carolina Code (2005 & Supp. 2009).

STATUTORY BACKGROUND

Under section 12-36-920(A) of the South Carolina Code, a sales tax of seven percent is imposed by the state on accommodations provided to transients in South Carolina. One component of that tax is a two percent (2%) "local" accommodations tax (i.e., the A-Tax) which, pursuant to section 12-36-2630(3) of the South Carolina Code, must be credited to cities and counties in accordance with sections 6-4-5, *et seq.* of the South Carolina Code (2004 and Supp. 2009). Sections 6-4-5 *et seq.* govern the review, allocation and distribution of the A-Tax revenues generated by the two percent (2%) local accommodations; TERC is the legislatively created committee, under section 6-4-35 of the South Carolina Code (Supp. 2009), which oversees expenditures of A-Tax revenues by the counties and municipalities in order to ensure compliance with the various requirements of sections 6-4-5 *et seq.* The first twenty-five thousand dollars (\$25,000) of A-Tax funds allocated to a county or municipality is taken off the top and allocated to the general fund of the receiver. *See* § 6-4-10(1). Thereafter, an additional five percent (5%) of the A-Tax fund allocation is also placed in the general fund. *See* § 6-4-

#2

10(2). Thirty percent (30%) of the remaining balance is then allocated to a “special fund” under 6-4-10(3) and used for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity. Any remaining A-Tax funds (sixty-five percent (65%) of the allocation) are then allocated to a separate special fund that must be used for tourism-related expenditures, § 6-4-10(4). As noted above, it is subsection (b) of this last-mentioned provision of the statute that is at the heart of this case.²

FACTUAL HISTORY OF THIS ACTION

In September of 2009, the City of Myrtle Beach (COMB) submitted its annual report to TERC, pursuant to section 6-4-25(D), detailing its expenditures of A-Tax funds in fiscal year 2008-09. This report reflected that the COMB had expended all of the A-Tax funds it used for fiscal year 2008-09, approximately \$4.6 Million, for COMB’s general fund for police, fire and parks personnel expenses, and had made no grants to outside organizations.³ Although TERC questioned whether the \$4.6 million expenditure of A-Tax funds in fiscal year 2008-09 by the COMB complied with section 6-4-10(4)(b), TERC determined that, because it had previously

² Although not pertinent to the claims in this case, but perhaps helpful to the Court in understanding the source of the parties’ dispute, the statute also provides that all municipalities and counties which are: (1) located in county areas where more than fifty thousand dollars (\$50,000) in A-Tax revenues are collected annually; and (2) which annually receive in excess of fifty thousand dollars (\$50,000) in A-Tax revenue distributions, are required to file a report with TERC, no later than October 1 of each year. *See* § 6-4-25(D). These reports detail how A-Tax funds received by a city or county have been spent, whether or not the expenditures were recommended for approval by the local advisory committee,² and a list of the members of the local advisory committees. TERC, in turn, reviews these reports to determine if the disbursements comply with the statute as contemplated by section 6-4-35(B)(1)(a). If, after that review is conducted, TERC finds an expenditure questionable, the affected city or county is notified of that in writing and offered an opportunity to submit any additional information which it desires TERC to consider in making a determination of whether a questioned expenditure complies with the requirement of the statute. *Id.* After considering any such additional information, the Committee makes a final determination of compliance, or non-compliance, which is also communicated to the affected city or county. In the event that TERC determines that an expenditure is non-compliant, it certifies that determination to the State Treasurer who, in turn, withholds the amount of the non-compliant expenditure from subsequent distributions of A-Tax revenues to the city or county. *Id.*

³ *See*, however, fn. 4, *infra*.

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allowed the COMB to use a substantial portion of available A-Tax funds for the COMB's general fund expenses for police, fire and parks personnel costs, directing that the State Treasurer's Office withhold the entire \$4.6 Million from the COMB would not be reasonable.⁴ *Id.* Instead, TERC determined that a declaratory judgment action (which COMB initially sought at the Administrative Law Court but which was denied) to ascertain whether or not the statute permits a use of funds in the manner COMB has used them was more appropriate.

SUBSTANTIVE ISSUES

The parties to this action present two contrasting viewpoints on the interpretation of section 6-4-10(4)(b). TERC's submits to the Court that its interpretation of the statutory provisions allocating the A-Tax funds is correct based on the plain language of the statute. In pertinent part, section 6-4-10(4)(b) provides:

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

⁴ Subsequently, through a FOIA request, TERC learned that the COMB had re-granted some \$302,545 from the City's general fund to organizations for tourism-related expenditures. TERC certified this amount to the State Treasurer as non-compliant and those limited disbursements are the subject of an on-going appeal from a contested case hearing before the Administrative Law Court (ALC) in the same proceeding in which the COMB sought a declaratory judgment that the ALC refused to consider.

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facilities and services which enhance the ability of the county or municipality to attract and provide for tourists.

(*emphasis added*). Based on a plain reading of the statute, TERC contends a municipality may only utilize A-Tax funds for municipal services when the services are beyond those normally provided by the municipality. By contrast, COMB seeks to expand the authority of a municipality and effectively vitiate the purpose of the statute and TERC's oversight authority, by arguing that the statute permits a municipality with a high concentration of tourism activity to compare its cost of providing municipal services with the costs of other municipalities with similar permanent populations. The COMB's interpretation also does not limit its comparison of these costs to other municipalities with high concentrations of tourism activity, however, thus leading to an apples and oranges comparison.

Should the Court determine that it is necessary to look beyond the plain meaning of the statute, TERC submits that the enacting language from section 6-4-10's statutory predecessor is compelling. *See* fn. 1, *supra*. In *Thompson*, the Court of Appeals discussed the legislative purpose of the Accommodations Tax Act, taken from the preamble of its enacting language, which provides:

The General Assembly finds that areas of the State which have a high concentration of tourism activity *may also be required from time to time* 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 purpose of this act is not to provide an additional source of revenue for counties and*

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municipalities required 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.

Title 12, Chapter 35 (Preamble Section 1) (emphasis added). This language is substantially similar to the language currently included in section 6-4-10(4)(b). However, the additional language contained in the enabling legislation is similarly telling: the inclusion of the phrase "from time to time" suggests that that the General Assembly did not intend for counties or municipalities with high concentrations of tourism to simply rely on A-Tax funds for additional, yearly revenue. Instead, it contemplated only using A-Tax funds for the provision of those services in unique circumstances warranting their need to help promote tourism and enlarge the economic benefits of the area.

EVIDENTIARY ISSUES

TERC submits that this declaratory judgment action is a straightforward statutory interpretation question that can be decided based on the plain meaning of the statute and requires no factual development or discovery. Similarly, TERC's position is that witnesses and testimony would be unnecessary for the Court to come to a legal determination as between the parties' contradicting views.

However, TERC is informed and believes that the COMB intends to call at least one factual witness, which suggests that it believes that the statute is ambiguous. Further, TERC surmises that such a fact witness will testify as to how the COMB calculates the personnel costs of its police, parks and fire services and compares those costs with those of other municipalities.

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TERC avers that any testimony with respect to how the COMB implements its interpretation of section 6-4-10(4)'s requirements is irrelevant to the Court's inquiry into the plain meaning of the statute presented in this declaratory judgment action. Moreover, any documentation presented to the Court by the COMB reflecting the costs of services in other municipalities is inadmissible hearsay that does not qualify for any of the exceptions thereto. However, if the Court is inclined to consider this evidence and testimony, TERC submits that the legislative history of the statute resolves any such ambiguity in favor of TERC's interpretation.

ANTICIPATED MOTIONS, OBJECTIONS

TERC expects to object to the above-described factual witness and materials related to the COMB's comparison of municipal services on the basis of the rules of statutory construction, relevancy, and hearsay. As discussed above, TERC contends the statutory interpretation issue is squarely before the Court on the basis of the plain meaning of the statute and therefore does not require additional testimony and/or evidence. TERC maintains that how the COMB calculates or compares the cost of its municipal services to other municipalities is irrelevant to the issue at hand; therefore, TERC intends to oppose the COMB's attempt to introduce evidence to that effect.

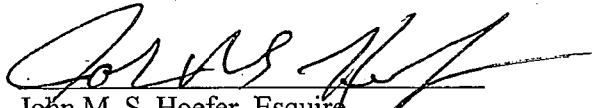
RELIEF SOUGHT BY PLAINTIFF

TERC respectfully requests a declaration from the Court that section 6-4-10(4)(b) means: (1) that the 65% Fund may only be used by the COMB as a source of revenue to fund additional police, fire, and parks personnel expenses, over and above what the City *itself* normally spends on police, fire, and parks personnel; and (2) that the fact that the City has a high concentration of tourism activity does not in and of itself permit the City to expend the entire 65% Fund proceeds on police, fire, and parks personnel.

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[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,



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Attorneys for Tourism Expenditure
Review Committee

Columbia, South Carolina
July 11, 2011

#8

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tourism Expenditure Review Committee,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-40-3001

**DEFENDANT CITY OF MYRTLE
BEACH'S CASE BRIEF**

Statement of Issue

The main issue before this Court is the proper interpretation of S.C. Code Ann. § 6-4-10(4)(b) and the main question is whether the City of Myrtle Beach (City) may allocate its A-Tax discretionary fund (a/k/a the 65% fund) to law enforcement, traffic control, public facilities, and highway and street maintenance expenditures which the City attributes to tourists under that code section.

Statement of Case

The City's position is that because the City is an area with a high concentration of tourism activity, it may allocate its A-Tax discretionary fund to law enforcement, traffic control, public facilities, and highway and street maintenance expenditures provided the expenditures are related to the additional costs associated with providing for the tourism activity under the authority of S.C. Code Ann. § 6-4-10(4)(b). On the other hand, TERC claims that the A-Tax discretionary fund may only be used by the City as a source of revenue to fund additional police, fire, and parks personnel expenses for tourism activity,

over and above what the City itself normally spends on police, fire, and parks personnel for such tourism activity. TERC claims the fact that the City has a high concentration of tourism activity does not in and of itself permit the City to expend its A-Tax discretionary fund on police, fire, and parks personnel for tourism activity.

The specific language which the parties ask the Court to construe in connection with the A-Tax discretionary fund (a/k/a the 65% fund) is:

(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. (parenthetical added) *S.C. Code Ann. §6-4-10(4)(a) & (b).*

Statement of Facts.

1. The Tourism Expenditure Review Committee (TERC) is an oversight committee created by S.C. Code Ann. §6-4-35. Its members are appointed volunteers who have no permanent staff or rulemaking authority. They meet intermittently throughout the year.
2. TERC serves as the oversight authority on all questionable tourism-related expenditures and to that end, all reports filed pursuant to S.C. Ann. § 6-4-25(D)(3) must be forwarded to the committee for review to determine if they are in compliance with this chapter.

3. The City of Myrtle Beach (City) is a duly incorporated municipality located in Horry County, South Carolina.
4. The City has a high concentration of tourism activity as contemplated under SC Code Ann. § 6-4-10(4).
5. At all times pertinent to this matter, and as required by SC Code Ann. §6-4-25(A) of the South Carolina Code (2004), the City has had a seven member local advisory committee to consider and make recommendations to the Myrtle Beach City Council ("City Council") on applications for the expenditure of revenue generated from the state accommodations tax provided for under SC Code Ann. §12-36-920(A) and §12-36-2630(3) and allocated to the accommodation tax ("A-Tax") fund created under SC Code Ann. §6-4-10(4). All applications for A-Tax funds are presented to the local advisory committee.
6. Although the local advisory committee makes recommendations on applications for the expenditure of the A-Tax fund which must be considered by the City under SC Code Ann. §6-4-25, the ultimate decision as to the final disbursement of the A-Tax fund is vested with City Council.
7. During fiscal year 2008-2009, applications for expenditures from the fund created under SC Code Ann. §6-4-10(4) were submitted to the City's local advisory committee for their recommendations. A report of the local advisory committee's recommendations and City Council's final actions regarding these applications was made to TERC on September 30, 2009, as required by § 6-4-25. The report showed that: (a) staff for the City of Myrtle Beach

requested that \$3,977,794, which was 84.97% of the \$4,681,464 in available A-Tax funds for fiscal year 2008-2009, be expended on "support of operating expenses for services provided above and beyond permanent population throughout the year, to include additional Police, Fire and Parks personnel"; (b) the local advisory committee recommended that \$3,065,294, which was 65.48% of the available A Tax funds, be expended to "support of operating expenses for services provided above and beyond permanent population throughout the year to include additional Police, Fire and Parks personnel"; and (c) City Council voted to use \$4,664,951, which was 99.65%, of the available A Tax funds for "[s]upport of operating expenses for services above and beyond permanent population throughout the year to include additional Police, Fire and Parks personnel."

8. By letter dated January 4, 2010, TERC notified the City that it had reviewed the City's September 30, 2009, report and questioned: (a) whether the City's expenditure of approximately \$4.6 Million on police, fire and parks personnel complied with the requirement of S.C. Code Ann. §6-4-10(4)(b) that monies in the fund created under SC Code Ann. §6-4-10(4)(a) not be used as an additional source of revenue to provide services normally provided by the City; and (b) whether, by dedicating this amount to the City's general fund and subsequently approving expenditures on various tourism-related events and projects from the City's general fund, the City was employing a procedure to authorize expenditures of local accommodations tax funds, generated under

SC Code Ann. §12-36-2630(3), which was contrary to the requirements of SC Code Ann. §6-4-25(A-C).

9. By letter dated January 7, 2010, Michael Shelton, Budget Director for the City responded to TERC's January 4, 2010, letter as follows: "For FY2008-09, total expenditures for the departments in question were:

Police Department	\$20,008,175
Fire Department	11,138,096
Cultural & Leisure Services	<u>10,998,109</u>
Total	\$42,144,380

Thus in the Police Department, at 76.7% of total, tourist-related expenditures amount to more than \$15 million—far greater than the \$4.6 million of accommodations tax money spent for such services. I would also point out that we have been reviewing our reports to TERC and to the Accommodations Tax Oversight Committee, which existed prior to TERC's formation. Thus far, we have located records going as far back as the 1998-99 fiscal year. In each case, the reports show that the City spent substantial amounts of these funds for these identical purposes. The expenditures were not questioned until the 2006-07 fiscal year, at which time we provided additional information regarding our rationale for the expenditures and TERC found them to be compliant."

10. The number of visitors to the City was estimated by the Myrtle Beach Chamber to be 13.7 million visitors annually; and (d) the permanent population of the City is estimated by the City to be approximately 30,000 residents.

11. The City spends approximately \$14 million more for its police department than the average municipality of a similar population size. See *Local Police Departments, 2007, U.S. Department of Justice*. According to the U.S. Census Bureau Report for 2010 the City of Myrtle Beach has a permanent population of 27,109 residents. According to 2007 a report released by the U.S. Department of Justice, the average amount spent for law enforcement for cities with a population of 27,109 was approximately \$6,099,525. See *Local Police Departments, 2007, U.S. Department of Justice*. For FY2008-09, the City's total expenditures for its police department were \$20,008,175.
12. Presently the City has a total of 206 officers, not including 2 sworn personnel operating as Police Chief and Captain, 52 detention/communications officers, 2 animal control officers or 13 civilian employees for a total of 275 Police Department employees. 206 sworn officers are engaged in the direct delivery or direct command and supervision of law enforcement services. The average number of sworn officers is 62.33 for municipalities with similar populations. *Local Police Departments, 2007, U.S. Department of Justice*.
13. Based upon an estimate of the number of annual visitors to the Myrtle Beach area conducted by D.K. Shiflett & Associates, Ltd. for the Myrtle Beach Area Chamber of Commerce, approximately 15.2 million people visited the area in 2007. The average length of stay for leisure travelers was 5 days (3 days for business travelers) according to data presented in the Chamber's 19th Annual Statistical Abstract, available on that organization's web site. That total may amount to the equivalent of an average daily population of 208,000 people in

addition to the area's permanent residents. In terms of orders of magnitude and taking into considerations increases in the number of tourists, this average is fairly consistent with information prepared by a consultant to a local developer and provided to the City in 2004 in which the City of Myrtle Beach was estimated to have had an *average* daily population of about 105,000, approximately 4.3 times the size of its permanent population. Except for the large influx of tourists, the City is not aware of any significant differences between it and other similar sized municipalities.

14. In 2009, the City received \$4.6 million in accommodation tax funds that were allocated to special fund under S.C. Code Ann. § 6-4-10 (4). The City allocated substantially all of the \$4.6 million to law enforcement services. When the City's \$14 million extra law enforcement expenditures are compared with the special fund of \$4.6 million the City receives from accommodations taxes, the special fund covers approximately 32% of the total amount of the extra \$14 million the City spent in fiscal year 2008-2009 to provide additional law enforcement services for tourists.
15. The City compares its government service expenditures for law enforcement, traffic control, public facilities, and highway and street maintenance with similar government service expenditures of other municipalities in South Carolina having similar sized permanent populations to determine the amount of money the City spends for such tourism related expenditures. Such a comparison was one basis for the Cities determination that its use of A-Tax

funds for fiscal year 2008 – 2009 was proper under S.C. Code Ann. § 6-4-10(b)(4).

Discussion

The plain language of the S.C. Code Ann. § 6-4-10 (4) favors the City.

The declaratory judgment action between the City and TERC can be resolved by construing the plain language of the S.C. Accommodations Tax Act. “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.”

Charleston County Sch. Dist. v. State Budget & Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). “The determination of legislative intent is a matter of law.” *Eagle Container Co. v. County of Newberry*, 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008) (quoting *Charleston County Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995)).

“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.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The best evidence of intent is in the statute itself: “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” *Id.* (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03, at 94 (5th ed.1992)).

When construing the statute in question, the opening statement of the subsection expresses the intent of the legislature in plain language: “The funds received by a county or municipality... may be used to provide additional county and municipal services....”

S.C. Code Ann. §6-4-10(4) (b). The legislature did not limit the amount of the funds that could be used for the additional government services. The limits on A-Tax funds are contained in the first three subsections of S.C. Code Ann. §6-4-10 (1) (the 1st \$25,000 goes to the general fund) (2) the first five per cent of the balance of the A-Tax fund is allocated to the City's general fund; (3) (the 2nd thirty percent of the fund is allocated to a selected non-profit entity for advertising); and (4) (the remaining sixty five per cent is allocated to the discretionary special fund in question).

The legislature intended to allow areas like the City with high concentrations of tourism activity to have the discretion to spend all of their A-Tax discretionary funds on law enforcement, traffic control, public facilities, and highway and street maintenance expenditures. Common sense dictates that an area's reputation for safety is important to its ability to attract and retain tourists. The plain language of the statute indicates the legislature's recognition that tourists have to be provided the above listed services if they are to be attracted to this State and if they are to have a quality experience that makes them want to return on future occasions. The plain language also indicates that the legislature recognizes that such government services are provided at a cost to the City that should be shared with the tourists who use the services.

The purpose of S.C. Code Ann. § 6-4-10 (4) is to lighten the tax burden on City taxpayers when providing those government services for tourists. Tourists should bear their fair share of the burden of providing law enforcement, traffic control, public facilities, and highway and street maintenance expenditures to accommodate their needs. The statute tacitly recognizes that a municipality with a permanent population of

approximately 30 thousand residents annually hosting 13.7 million tourists needs some of the tax money generated by those tourists to be a good host.

In S.C. Code Ann. § 6-4-10 (4) there exists a parallel between the expenditures permitted for areas with high concentrations of tourists and "tourism related expenditures" permitted all local governments in the statute. All local governments are permitted to spend the A-Tax 65% discretionary fund for tourism related expenditure. "Tourism-related expenditures" are defined to include *inter alia*: "4. 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." *Id.*

The City contends that in the present case its expenditures would also qualify as tourism related expenditures even if it were not in an area with a high concentration of tourism. As shown from the facts stated above the City has estimated that it's A-Tax allocations for law enforcement expenditures alone far exceed any estimates of its estimated percentage of expenditures directly attributed to tourists. Those estimates are based on what other similarly populated municipalities in South Carolina spend on law enforcement and on the average law enforcement expenditures for similarly populated municipalities as determined by the US Department of Justice. The City contends that the definition of tourism related expenditures further shows the legislature's intent to allow local governments to use A-Tax funds for government services that provide for tourists.

On the other hand TERC claims that areas with high concentrations of tourism should not be allowed to use A-Tax funds for on law enforcement, traffic control, public

facilities, and highway and street maintenance expenditures. In a letter dated January 27, 2009, questioning the City's expenditures for law enforcement, TERC stated:

The TERC questions whether this expenditure is lawful in view of S.C. Code Ann. §6-4-10(b), which states that the City may not utilize accommodations tax funds as an additional source of revenue to provide services *normally* provided by the City. The TERC is of the view that the services for which the accommodations tax funds were used are those services that the City normally provides given its emphasis on attracting and providing for visitors. Thus unlike a municipality which finds it necessary to provide additional services simply as a result of the presence of tourists, the City routinely provides services at this level. The TERC does not believe comparisons of the City's "permanent population" with those of other municipalities is relevant in view of the statutory proscription against using these funds for services that are "normally" provided.

See Letter Lanneau Siegling to Michael Price dated January 27, 2009(Exhibit).

TERC has distorted the meaning of the phrase "services normally provided by the county or municipality." In the process, TERC has created an illogical paradox. Under TERC's reasoning areas with a high concentration of tourism could never use their A-Tax discretionary funds for tourism related government services because they normally have a high concentration of tourism activity and such expenditures would be part of the services normally provided by the City. S.C. Code Ann. §6-4-10(b). Expenditures of A-Tax funds for services normally provided by the county or municipality are prohibited by the latter part of S.C. Code Ann. §6-4-10(b).

Under TERC's reasoning Beaufort County, Charleston County, Georgetown County, Greenville County, Horry County and Richland County are prohibited from using A-Tax discretionary funds on law enforcement, traffic control, public facilities, and highway and street maintenance expenditures. TERC has determined that those counties and the municipalities in them are the only areas that may be considered as areas with a

high concentration of tourism activity because they are the only areas that collect over \$900,000 annually in accommodations tax revenues. SCDOR Revenue Ruling # 98-22 & FAQ's - *S.C. Tourism Expenditure Committee's Official Website*. Under TERC's logic, if an area qualifies as an area with a high concentration of tourism activity under the first part of §6-4-10(b), the area is disqualified automatically from using the special fund for additional government services under the second part of §6-4-10(b). TERC's logic is based upon its belief that areas with high concentrations of tourism activity normally spend funds on law enforcement, traffic control, public facilities, and highway and street maintenance expenditures that can be attributed directly to tourist activities.

The City contends there is nothing in the statute that supports TERC's position and TERC's position is contrary to the plain meaning of the statute.

Prior court precedent favors the City's position.

Only one South Carolina appellate court opinion has been found construing the Accommodations Tax Act. See *Thompson v. Horry County* 294 S.C. 81, 362 S.E.2d 646 (S.C.App.,1987). In that case the court stated the Act reflected the Legislature's practical recognition of the benefits of tourism and it made sense to "give counties some flexibility as to how and where they spend accommodations tax revenues." *Id.* TERC's interpretation of the Act is contrary to *Thompson v. Horry County*. TERC claims it does not make sense to give the City the necessary flexibility as to how and where it spends accommodations tax revenues. TERC claims that it makes sense to give TERC the flexibility to determine how and where local governments spend accommodations tax revenues.

TERC claims its oversight authority gives it an overriding authority to limit the use of the City's special funds to TERC's views on the best use of those funds. For example, in TERC's response to the question, may counties and municipalities continue to fund the lighting of interstate and highway exits through state accommodations taxes, TERC answered:

"Although the Committee (TERC) has in the past found the purchase and installation of lighting of interstate and highway exits and the installation of landscaping an acceptable expenditure, the Committee feels as though that the maintenance and operating costs of these assets might not be the best use of accommodations tax funds. Normally, this is something considered a "normal expense" of the municipality or county. Although the Committee is not recommending funds be withheld at this time, we would like for entities to consider this for the future and notify the Committee of steps being taken to fund the lights from some source other than state accommodations tax funds." (parenthetical added) See FAQ's - *S.C. Tourism Expenditure Committee's Official Website*.

The above answer exceeds TERC's statutory authority as an oversight committee and it takes away local government flexibility. TERC does not have the authority to make rules or create new policy. TERC's sole authority is to determine whether an "expenditure is in noncompliance" with the act. See S.C. Code Ann. §6-4-35(B)(1)(a).

TERC wants this Court to declare that TERC now has the discretion to base its decisions on what it considers at that moment to be "the best use of accommodations tax funds." In other words, TERC wants this Court to declare that special fund expenditures that are not in compliance with TERC's current committee's view of "the best use of accommodations tax funds" may be disallowed at the sole discretion of TERC. Such a declaration would be contrary to the Court of Appeals' holding in *Thompson v. Horry County* 294 S.C. 81, 362 S.E.2d 646 (S.C.App.,1987).

TERC's longstanding prior interpretations of the Act favor the City's position.

In TERC's Complaint, TERC freely admits it has chosen not to act upon its prior interpretations of § 6-4-10(4)(b) by finding the City's 2008-2009 expenditures non-compliant under S.C. Code Ann. §6-4-35(B)(I)(a). TERC admits that it has previously permitted similar expenditures, albeit in lesser amounts, on police, fire and parks personnel. See TERC's Complaint ¶ 12. Since 1983, TERC's predecessor, SCDOR, and TERC have permitted local governments with high concentrations of tourism activity to spend the A-Tax discretionary funds on police, fire and parks personnel. SCDOR Revenue Ruling # 98-22 & FAQ's - *S.C. Tourism Expenditure Committee's Official Website*. Both have also adopted the position that the Act does not require that the A-Tax discretionary fund be divided in any particular way. Both have stated that provided the expenditure meets the requirements of the law, a county or municipality can use all of its tourism-related funds on a single category of eligible expenditures. *Id.* Additional municipality and county services were expressly included in the discussion of categories of eligible expenditures under the Act. *Id.*

TERC has now changed that interpretation because it claims that if areas like the City are allowed to allocate all of their discretionary funds to one single eligible category of expenditures, TERC will be prevented from performing its function as an oversight committee. In other words, TERC's oversight could be bypassed by areas with high concentrations of tourism simply by allocating all discretionary funds to additional government services attributed to tourists.

TERC claims that if it does not have the discretion to control A-tax expenditures, then TERC has no purpose and should be disbanded. TERC has missed the point of the statute. The City's allocation of its special fund to law enforcement undergoes the same

TERC scrutiny as any other tourist related expenditure from the A-Tax special fund. The fact that substantially all of the City's A-Tax special fund was used for one qualifying expenditure does not violate the provisions in the Accommodations Tax Act. See SC Code Ann. § 6-4-10(b) & SCDOR Revenue Ruling # 98-22. The City has complied with the statute. TERC's statutorily designated role when reviewing the City's A-Tax report for fiscal year 2008-2009 is to make sure the City followed the A-Tax statutes when it allocated \$4.6 million for law enforcement, traffic control, public facilities, and highway and street maintenance expenditures that were attributed directly to tourist activities. Once TERC makes that determination, it makes its report to the State Treasurer and its job is finished.

Good government policy favors the City's position.

As an oversight committee TERC does not make policy, its primary job is to see that statute enacted by the legislature is followed by the county or municipality. For example, if the City's expenditure meets the requirements of the law, the City should have the discretion to use the special fund it receives from state accommodation taxes on a single category of eligible expenditure. See SCDOR Revenue Ruling # 98-22.

When the Accommodations Tax Act was passed in 1983, the State recognized the need for some local governments to be able to use "the funds received by a county or municipality" to offset the additional burden tourists place on the government services provided in areas with high concentrations of tourism. See S.C. Code Ann. §6-4-10(4)(b). Presently, the following counties (and municipalities within those counties) have a high concentration of tourism: Beaufort, Charleston, Georgetown, Greenville, Horry and Richland. SCDOR Revenue Ruling #98-22. For approximately 27 years,

TERC and its predecessors recognized the right of those local governments including the City to use "the funds" for government services that provide for tourists including law enforcement. See *A Brief History of the South Carolina Accommodations Tax Bill*. (Copy Attached.)

In 1998, SCDOR issued a revenue ruling which stated the statute does not require that the Tourism-related fund be divided in any particular way. A county or municipality can use all of its Tourism-related Funds on a single category of eligible expenditure provided the expenditure meets the requirements of the act. See SCDOR Revenue Ruling # 98-22.

Oversight committees are external committees that oversee the operations and activities of specific local government committees such as finance, public works, health, education, etc. These committees perform an important role in gathering information on the functioning of individual departments and ensuring, through their oversight and questioning of management officials, that corrupt practices do not take place. See *Urban Governance Toolkit Series Copyright © 2004 Un-Habitat*. TERC was not given rulemaking authority and it cannot change the law through changing its interpretation of the law.

TERC wants more power over the use of A-Tax funds by local governments. See *comments of Frans Mustert*. TERC has filed the above captioned declaratory judgment action to get this Court to give them that power. However, what TERC seeks is contrary to the plain language of the statute, existing case law and good government policy. In addition, the City contends that TERC is seeking power from the wrong source. This Court only has the authority to interpret statutes. It does not have the power to rewrite

those statutes. If the legislature intends for TERC to have more power, TERC's remedy should come from the legislature and not this Court.

The City's determination of expenditures attributable to tourists is correct.

As shown above, the City determined the expenditures attributable to tourists by comparing its operating budget with those of similarly sized cities in South Carolina. The City's determination method was chosen at the because of the guidelines chosen by TERC's predecessor, S.C. Department of Revenue. *See SCDOR Revenue Ruling #98-22.* In that revenue ruling SCDOR stated: "When considering the percentage of costs that are attributable to tourism, the Department of Revenue will consider the number of permanent residents for the county or municipality as compared to the number of tourists that visit the locality, taking into consideration the average length of stay for such tourists." *Id.*

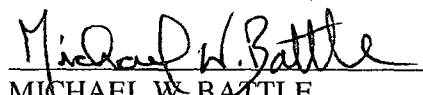
In the letter dated January 27, 2009, TERC stated: "The TERC does not believe comparisons of the City 's "permanent population" with those of other municipalities is relevant in view of the statutory proscription against using these funds for services that are 'normally' provided." TERC has yet to state any other guidelines on how the costs directly attributable to tourists should be determined.

The statute and the case law appear to leave the method of determination to the discretion of the local government. However, SCDOR's Revenue Ruling #98-22 provides acceptable guidelines to the City for determining costs attributable to tourists. The Cities method of comparing its budgets to budgets of cities with similar sized permanent populations should be affirmed until such time as the legislature determines otherwise by amending the statute.

Conclusion

The City of Myrtle Beach asks this Court to find and declare that the City properly allocated substantially all of its 2008-2009 A-Tax special funds to additional services for tourists under the facts in the present case. Further, the City asks this Court to find and declare that the City's method of comparing its expenditures for law enforcement with law enforcement expenditures for other municipalities of similar permanent population size is proper and in compliance with S.C. Code Ann. §6-4-10(b).

July____, 2011
Conway, SC


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July 18, 2011

VIA ELECTRONIC AND U.S. MAIL

The Honorable William H. Seals, Jr.
208 West Dozier Street
Marion, South Carolina 29571

RE: City of Myrtle Beach, Petitioner vs. Tourism Expenditure Review Committee,
C/A No.: 2010-CP-40-3001

Dear Judge Seals:

I am writing to the Court on behalf of the Plaintiff Tourism Expenditure Review Committee (TERC) regarding the proposed order of the Defendant City of Myrtle Beach (COMB) in the above-captioned matter. The purpose of this letter is to address matters contained in the proposed order which TERC believes to be at variance with the evidence presented at the July 11, 2011 trial or TERC's positions asserted in this matter.¹

TERC would point out the following matters in the proposed order for the Court's consideration:

1. Page 6, ¶10 – the estimated figures provided in this paragraph for visitors to the COMB and the COMB's permanent population are different from the estimated numbers provided for these same categories in ¶¶11 and 13 on page 7 of the proposed order. There is no explanation provided for these discrepancies, however.
2. Page 7, ¶12 – the information contained in the final sentence of this paragraph, specifically that "[t]he average number of sworn officers is 62.33 for municipalities with similar populations" is information that was not presented to the Court in any form and therefore not properly in the proposed order.

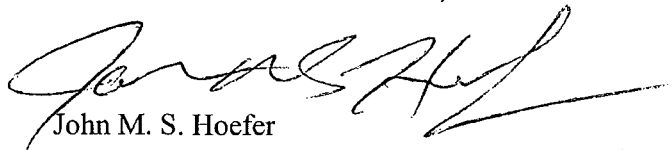
¹ TERC offers its observations prior to the Court's execution of an order in this matter and does not intend for this letter to serve as or take the place of any Rule 59(e), SCRCP Motion to Alter or Amend, which TERC may seek to advance if warranted after entry of an order.

3. Page 7-8, ¶13 – this entire paragraph is based upon information that was not presented to the Court, including reference to an estimate calculated by D.K. Shiflett & Associates, Ltd., as well as another “consultant to a local developer”.²
4. Page 10, First full paragraph, First full sentence – the first sentence of the first full paragraph states that “[t]he Court does not agree with TERC’s claims that areas with high concentrations of tourism should not be allowed to use A-Tax funds for law enforcement, traffic control, public facilities, and highway and street maintenance expenditures.” This misstates TERC’s position in this case and the assertion that this is TERC’s claim is incorrect. The plain language of section 6-4-10(4)(b) of the South Carolina Code (2004) unequivocally contradicts this statement, and TERC has not contended otherwise. TERC respectfully directs the Court’s attention to its Complaint, Trial Brief, and arguments to the Court at trial, all of which assert that A-Tax revenues may only go to municipalities with high concentrations of tourism for services to the extent that they are in addition to those services that the particular municipality itself normally provides.
5. Page 12, First full paragraph, First full sentence - the first sentence of the first full paragraph attributes a quote to TERC that does not cite its origin, and appears in neither TERC’s Complaint nor Trial brief.

I very much appreciate the Court’s attention to and consideration of this matter. If Your Honor should have any questions, or need additional information, please do not hesitate to contact me. With best regards, I am

Respectfully,

WILLOUGHBY & HOEFER, P.A.



John M. S. Hoefer

cc: Michael W. Battle (via U.S. Mail)

² Although these matters were referred to in the COMB’s “Case Brief”, they were not introduced as evidence to the Court and are therefore not properly a part of the proposed order.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tourism Expenditure Review Committee,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-3001

NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND

JEANETTE W. McBRIDE
S.C.P. & G.S.

2011 AUG - 1 PM 4:48

RICHLAND COUNTY
FILED

Pursuant to Rules 6(d) and 59(e) of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Tourism Expenditure Review Committee ("TERC") hereby provides notice and moves that the Court alter or amend its order in the above-captioned matter, filed July 19, 2011 ("Order") and received by TERC on July 21, 2011. As will be set forth more fully herein, TERC respectfully submits that the Order erroneously looks beyond the plain meaning of the statutory provision at issue in order to find that Petitioner City of Myrtle Beach's ("COMB") method of comparing the level of personnel services it provides with the levels of personnel services of other municipalities of similar permanent populations is an appropriate method for determining the amount of State accommodations tax ("A-Tax") funds that can be used to support municipal services in the COMB.

GROUND FOR THE MOTION

- I. The Order provides that it is based upon the plain meaning of the statute; however, the Order improperly relies upon testimony and other extrinsic evidence (to which TERC objected) to substantiate and support its rulings.
- II. The Order misinterprets South Carolina Department of Revenue Ruling #98-22.

III. The Order misinterprets the holding of the Court of Appeals in the case *Thompson v. Horry County*, 294 S.C. 81, 362 S.E.2d 646 (Ct. App. 1987).

IV. The Order sanctions the COMB's fiscal year 2008-2009 disbursement of A-Tax funds, which is an issue that was not, and jurisdictionally could not be, before the Court.

DISCUSSION

I. The Order fails to give effect to the plain meaning of the statutory language and improperly relies on extrinsic evidence that should have been excluded in view of TERC's proper objections.

TERC respectfully asserts that, notwithstanding the Order's ruling to the contrary, the Order is not based upon the plain language of section 6-4-10(4)(b) of the South Carolina Code (2004). By contrast, TERC's position in this case is based on the plain meaning of section 6-4-10(4)(b), i.e., that the statutory language is not ambiguous, and therefore the Court should not to look beyond the four corners of the statute to render the declaratory judgment sought by TERC.¹ TERC asserts that a municipality with a high concentration of tourism activity may only use A-Tax funds for those municipal services which are in addition to the services normally provided by the municipality. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *McClanahan v. Richland County Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002) (citation omitted).

¹ As noted below, the COMB also contended to the Court that the statutory provision was not ambiguous – even though it felt compelled to offer extrinsic evidence as to the meaning of that language.

“The legislature’s intent should be ascertained primarily from the plain language of the statute.”

Bass v. Isochem, 365 S.C. 454, 470, 617 S.E.2d 369, 377 (Ct. App. 2005).

Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). 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.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm’n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992). The language must also be read in a sense which “harmonizes with its subject matter and accords with its general purpose.” *Mun. Ass’n of S. Carolina v. AT & T Communications of S. States, Inc.*, 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004) (quoting *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)).

Although the terms “additional” and “normal” are not defined within the context of county or municipality service level expenditures, it is appropriate for this Court to interpret the terms based on their usual meaning. “When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning.” *Strother v. Lexington County Recreation Comm’n*, 332 S.C. 54, 62, 504 S.E.2d 117, 122 (1998) (citation omitted); *see also Santee Cooper Resort v. South Carolina Pub. Serv. Comm’n*, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989) (“Words used in a statute should be taken in their ordinary and popular significance unless there is something in the statute requiring a different interpretation.”).

Section 6-4-10(4)(b) clearly provides that A-Tax Funds may only be used to provide *additional* services not *normally* provided by the municipality. By contrast, the Order's construction, which follows the COMB's suggested reading of section 6-4-10(4)(b), would permit a county or municipality to use A-Tax Funds as an additional source of revenue. However, in order to harmonize and give effect to the expressed intent of the legislature, these terms can only mean that the COMB may use A-Tax funds to supplement the funds that it ordinarily expends on municipal services.

This point is further confirmed by the General Assembly's use of the specific article "the" rather than a more general article like "a". See § 6-4-10(4)(b) ("The funds must not be used as an additional source of revenue to provide services normally provided by *the* county or municipality") (emphasis added). Therefore, the plain meaning of the language used by the General Assembly specifically refutes the COMB's contention that it is appropriate to look to the cost of services provided by *other* municipalities with similar permanent populations in order to determine the amount of its municipal services expenditures which are attributable to tourists. The General Assembly is presumed to know and intend the consequences of the legislation that it passes and courts are not at liberty to hold that the General Assembly has included futile and superfluous language. See *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964) (stating that in seeking intention of legislature, a court must presume General Assembly intended by its action to accomplish something and not to do a futile thing). Consequently, the General Assembly's inclusion of the introspective, specific article "the" supports TERC's position that a municipality is required to consider its own personnel service expenditure levels to determine which uses of A-Tax funds for municipal services are appropriate and does not

allow for a comparison of service level expenditures among differing municipalities.²

By contrast, the Order's construction of section 6-4-10(4)(b) not only improperly requires a disregard of specific language and implication of other, more general language, the Order also looks for extrinsic evidence beyond the statutory language and therefore cannot be based on its plain meaning as the Order concludes. Further, the Order reads additional provisions into the statute, namely, that municipalities with high concentrations of tourism are authorized to compare their expenditures with other municipalities in order to determine the appropriateness of utilizing A-Tax funds. *Contra Independence Ins. Co. v. Indep. Life & Acc. Ins. Co.*, 218 S.C. 22, 34, 61 S.E.2d 399, 405 (1950) ("The purpose of construction is to ascertain the legislative intent from the words used; and, if these are susceptible to any sensible meaning, *the court cannot add to them other words which would give them a different meaning without making, instead of construing, the statute.*") (emphasis added) (quoting *Banks v. Columbia Ry., G. & E. Co.*, 113 S.C. 99, 101 S.E. 285 (1919)). TERC submits that it is not appropriate to look outside the statute when the plain language clearly dictates otherwise. *State v. Hudson*, 336 S.C. 237, 246-47, 519 S.E.2d 577, 582 (Ct. App. 1999) ("If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation and the court has no right to look for or impose another meaning.") (citing *Paschal*, 317 S.C. at 436, 454 S.E.2d at 892). Furthermore, comparing the level of services a municipality would be providing if it had the same permanent population as another county or municipality not situated in an area with a high concentration of tourism activity is inapt since it assumes that two municipalities are similar. The statute treats municipalities with high concentrations of tourism differently from those that do not, a fact of which the COMB is taking advantage, yet the construction of section

² This assertion is also supported by South Carolina Revenue Ruling #98-22, relied upon by the Order, which will be discussed in more detail, *infra*.

6-4-10(4)(b) in the Order allows COMB to use a municipality *without* a high concentration of tourism as its comparison point. This is an apples and oranges comparison that effectively permits a municipality to supplant a portion of the municipal tax revenues needed for services normally provided by a municipality with state A-Tax revenues. This leads to an absurd result prohibited by the rules of statutory construction. *See Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (declining to give effect to a party's interpretation of a statute that would lead to an absurd result).

Moreover, as a result of the Order, the limitations on the use of A-Tax funds in Section 6-4-10 are rendered a nullity for COMB and any other municipality with a high concentration of tourism as it is clear that the ability to transfer all of the A-Tax Funds in a given year to such a municipality's general fund for normal operating purposes will leave no incentive to provide funding for "tourism-related expenditures" by way of the statutorily prescribed method. *See* § 6-4-10 (providing specific guidelines for the use of A-Tax Funds received by a county or municipality collecting more than fifty thousand dollars from local accommodations tax). A statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention should be rejected. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) ("[a] statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citation omitted)).

Additionally, the Order is contrary to the plain language of section 6-4-10(4)(b) because it is devoid of analysis of the second sentence of section 6-4-10(4)(b). The language of this sentence specifically raised in TERC's pleadings and Trial Brief, served as the basis for the declaratory judgment sought by TERC in this action. Instead of addressing this part of the

statutory provision that was at issue in the case, the Order focuses only upon the language of the first sentence of section 6-4-10(4)(b), and supports its ruling by reference to extrinsic matter, in order to reach its conclusion that the General Assembly intended to allow municipalities to use A-Tax funds to offset the costs of municipal services they normally provide. In so doing, the Order overlooks the remaining plain language of section 6-4-10(4)(b), which places a distinct caveat on a municipality's use of A-Tax funds for those services. Specifically, section 6-4-10(4)(b), in its entirety, provides:

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.

(Emphasis added).

Notably, although it recites the statute in its introduction, the Order does not discuss the plain language of the second sentence of the section, which provides that A-Tax “funds must not be used as an additional source of revenue to provide services normally provided by the county or municipality.” TERC respectfully asserts that an order declaring the meaning of section 6-4-

10(4)(b) is inadequate in the absence of a discussion regarding the import of the clear legislative caveat contained in its second sentence, and the interplay between those two portions of the same section. That conflict, as evidenced by the two distinct interpretations of section 6-4-10(4)(b) presented by the parties in this action, is at the heart of this declaratory judgment action. The Order fails to reach the heart of the dispute.³

Furthermore, because the result reached by the Order is not anchored in the plain language of section 6-4-10(4)(b), in order to look outside of the statute, the Court must first find that the plain language of the statute is ambiguous. *Stringer v. State Farm Mut. Auto. Ins. Co.*, 386 S.C. 188, 193, 687 S.E.2d 58, 60 (Ct. App. 2009), reh'g denied (Jan. 20, 2010), cert. denied (May 6, 2011) (discussing a trial court's error, in the context of an insurance contract, in construing a contract without first finding an ambiguity existed). The Order made no such finding of an ambiguity; therefore, consideration of materials outside of the record, and construction of the statute in favor of the COMB, was an error.

Additionally, the materials relied upon in the Order are not relevant to an interpretation of the statute and constitute inadmissible hearsay, properly objected to by TERC. In relying on these materials,⁴ the Order contradicts its holding that the decision is based solely on the plain

³ In this regard, the Order may be a function of a misperception of the claim made by TERC. Specifically, the Order misapprehends TERC's position in this case when it states that "[t]he Court does not agree with TERC's claims that areas with high concentrations of tourism should not be allowed to use A-Tax funds for law enforcement, traffic control, public facilities, and highway and street maintenance expenditures." Neither TERC's pleadings, its Trial Brief, nor its argument during the trial of this case asserted such a position. To the contrary, each of these have conformed to the plain reading of section 6-4-10(4)(b): A-Tax revenues may be used by municipalities with high concentrations of tourism for municipal services, but only to the extent that they are in addition to those services that the particular municipality itself normally provides. Thus, TERC respectfully asserts that its position is not accurately portrayed in the above-quoted statement included in the Order.

⁴ In addition to the studies listed below, the Order also repeatedly relies on Revenue Ruling #98-22, which belies the Order's insistence that its decision is based on the plain meaning of the

meaning of the statute. At trial, TERC objected to the COMB's introduction of documents and studies on multiple grounds. First, because the action was filed and accepted in this Court's jurisdiction as a declaratory judgment action, construing the language of section 6-4-10(4)(b), TERC argued that the materials and testimony proposed by the COMB were not relevant to the Court's analysis. Secondly, because the studies and other documents⁵ referenced in the Order were out of court statements proffered for the truth of the matters asserted therein, TERC objected to them on the grounds of hearsay. Despite the fact that the materials do not fit within a hearsay exception, and despite their having been proffered by the COMB solely as reference, as proposed by the COMB, the facts and figures contained in the studies are now included in the Order as findings of fact. Once more, if the Order is based on the plain language of the statute, then these materials should have been excluded as impermissible extrinsic evidence; regardless, however, these materials are inadmissible hearsay and cannot serve as substantiation for the Order.

Nevertheless, should the Court disagree with TERC's own plain language interpretation and decide, after finding an ambiguity, to look beyond the plain language of the statute, TERC submits that the preamble of the enabling language of section 6-4-10(4)(b), which was argued to the Court but not included in the analysis of the Order, is evidence of the General Assembly's clear intent in section 6-4-10(4)(b). "If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself. *Georgia-Carolina Bail Bonds, Inc. v. County of Aiken*, 354 S.C. 18, 25, 579 S.E.2d 334, 337-38 (Ct. App. 2003) (citing *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct. App.

statute.

⁵ As example, paragraphs 12 and 13, on pages 7 and 8, cite information and studies that were not presented to the Court in any form and therefore should not be a part of the Order's findings.

2002); *see also Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) (“[W]here a statute is ambiguous, the Court must construe the terms of the statute.”). An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999). In construing a statute, the court looks to the language as a whole in light of its manifest purpose. *State v. Dawkins*, 352 S.C. 162, 573 S.E.2d 783 (2002). The statutory predecessor to section 6-4-5 *et seq.*, section 12-35-710 *et seq.* (1984), discussed in *Thompson v. Henry*, 294 S.C. at 82-85, 362 S.E.2d at 647-49, included a preamble in its enacting language that provided:

The General Assembly finds that areas of the State which have a high concentration of tourism activity *may also be required from time to time* 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 purpose of this act is not to provide an additional source of revenue for counties and municipalities required 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.

Act No. 316, Acts and Joint Resolutions of the General Assembly of South Carolina, Regular Session, 1984, 63 Stat. at Large 1570 (1984) (emphasis supplied). As can be seen, this language is substantially similar to the language currently included in section 6-4-10(4)(b). However, the additional language contained in the enabling legislation is telling: the inclusion of the phrase

“from time to time” reflects the General Assembly’s intent that municipalities with high concentrations of tourism not be allowed to simply rely on A-Tax Funds for additional, yearly revenue supplanting normal municipal revenue disbursements. Instead, it contemplated only using A-Tax Funds for the provision of those services in unique circumstances warranting their need to help promote tourism and enlarge the economic benefits of the area.⁶ This is further evidence that the COMB’s construction of section 6-4-10 is contrary to the legislative intent and should not be sanctioned.

In sum, the ruling in the Order is found to be based upon the plain meaning of section 6-4-10(4)(b); however, this ruling fails to analyze the obvious interplay between that section’s two sentences. In addition, instead of resting its decision on the four corners of the statute, the Order improperly relies upon extrinsic evidence that is either irrelevant, hearsay or both in order to reach its conclusion. TERC respectfully asserts that the Order’s stated basis for its decision, and the substantiation given for that decision, are incompatible. For those reasons, as well as those listed below, TERC requests the Court reconsider the Order and alter and amend the judgment to grant the declaration sought by TERC.

⁶ Contrary to the Order’s suggestion that “[u]nder TERC’s reasoning areas with a high concentration of tourism could never use their A-Tax discretionary funds for tourism related government services because they normally have a high concentration of tourism activity and all expenditures would be part of the services normally provided by the City,” TERC’s interpretation is perfectly in line with the General Assembly’s intent, evidenced by the preamble to the enabling legislation. TERC concedes that areas of high concentration of tourism activity may use A-Tax Funds for municipal services; however, such uses should be non-recurring exceptions, rather than the rule, *see* Title 12, Chapter 35 (Preamble Section 1) (“from time to time”), and not yearly expenditures, funding for which the county or municipality is looking to supplant with non-qualifying State A-Tax revenues, *see* Preamble Section 1 (“[t]he purpose of this act is not to provide an additional source of revenue for . . . services normally provided by the county or municipality”). Counties or municipalities could then use A-Tax Funds to help offset the additional municipal services costs for such non-recurring, eligible events, which would both promote tourism and enlarge the economic benefits of the area.

II. The Order misinterprets South Carolina Department of Revenue Ruling #98-22.

The Order fails to give full weight to the analysis of Revenue Ruling #98-22, and therefore misapplies the import of the 13 year old, non-binding ruling.⁷ As discussed above, and contrary to the position stated in the Order, TERC does not dispute the fact that section 6-4-10(4)(b) permits a municipality with a high concentration of tourism to expend A-Tax revenues on municipal services to the extent that the expenditures are for services in addition to those services that the particular municipality itself normally provides. Moreover, TERC acknowledges that Revenue Ruling #98-22 suggests that a municipality with a high concentration of tourism may compare the number of its permanent residents with the number of tourists that visit the locality in order to determine the cost of providing municipal services that are directly attributable to tourists. TERC also acknowledges that it has, at times since its inception in 2001, relied upon Revenue Ruling #98-22 when evaluating questionable tourism-related expenditures under section 6-4-35. However, nowhere in Revenue Ruling #98-22 does it suggest that it is appropriate for a municipality with a high concentration of tourism to look to *other* municipalities with similar permanent populations in order to determine the municipal costs attributable to tourists.

Furthermore, a Department of Revenue Ruling is, at most, an advisory opinion, and this Court is not required to follow it. *See* Revenue Ruling #98-22, Scope, p.1 (“A Revenue Ruling is the Department of Revenue’s official *advisory opinion* . . .); *see also* Revenue Ruling #05-2, p. 2 (“A Revenue Ruling does not have the force or effect of law. It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another

⁷ Administration of state A-Tax funds was formerly under the oversight of the South Carolina Department of Revenue; however, all oversight duties and accompanying interpretation of the governing statute was transferred to TERC by 2001 Act No. 74, § 3.A of the General Assembly.

Departmental advisory opinion.”). Additionally, although the Department of Revenue and TERC have held differing views over the interpretation of section 6-4-5 *et seq.*,⁸ this Court is under no obligation to give its previous positions deference where they were contrary to the plain language of the statute. *Cf. Media Gen. Communications, Inc. v. S. Carolina Dept. of Revenue*, 388 S.C. 138, 149-50, 694 S.E.2d 525, 530-31 (2010) (“An agency’s long-standing interpretation of a statute is usually entitled to be given deference and should not be overruled by a reviewing court in the absence of cogent reasons, but the interpretation will not be sustained if it contradicts a statute’s plain language.”) (citing *Etiwan Fertilizer Co. v. South Carolina Tax Comm’n*, 217 S.C. 354, 359, 60 S.E.2d 682, 684 (1950)); *see also Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) (“We recognize the Court generally gives deference to an administrative agency’s interpretation of an applicable statute or its own regulation. Nevertheless, where, as here, the plain language of the statute is contrary to the agency’s interpretation, the Court will reject the agency’s interpretation.”) (citation omitted). Similarly, TERC, having interpreted a statute to mean one thing in the past, is under no obligation to continue interpreting a statute the same way going forward, as long as its interpretation is not contrary to the plain language of the statute. *See Chevron U.S.A.*, 467 U.S. at 863-64 (stating that an agency, in order to come to an informed decision, “must consider varying interpretations and the wisdom of its policy on a continuing basis.”).

The impetus for the filing of this declaratory judgment action is the contrary interpretations of TERC and the COMB with respect to how a municipality may calculate what

⁸ As argued by TERC at trial, because its interpretation of section 6-4-10 has changed, TERC did not assert, as is its right according to case law, that its interpretation was entitled to deference by the Court. *Cf. Chevron U.S.A., Inc. v. Natural Res. Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984) (“The fact that the agency has from time to time changed its interpretation of the term ‘source’ does not, as respondents argue, lead us to conclude that no deference should be accorded the agency’s interpretation of the statute.”).

municipal services are considered normal, while limiting the use of A-Tax Funds as an additional source of revenue for those services already provided by the municipality. The Order cites Revenue Ruling #98-22 in support of the conclusion that COMB may compare the personnel costs of providing certain municipal services to the costs of other municipalities with similar permanent populations. However, as stated above, the comparison methodology adopted in the Order does not appear in Revenue Ruling #98-22. There exists no support for this comparison in either the plain language of section 6-4-5 *et seq.*, or Revenue Ruling #98-22.

Instead, Revenue Ruling #98-22 *does* provide examples of determining the costs of municipal services attributable to tourism that actually supports TERC's interpretation of the plain meaning of the statute. Revenue Ruling #98-22 states that a municipality must show that the amount expended on costs for additional municipal services are based upon the estimated percentage of the municipality's total costs incurred in providing the service in question *that are directly attributable to tourists*. Exhibit "B", #98-22. One means suggested by Revenue Ruling #98-22 for making such a showing is to determine the difference in costs incurred during the tourist season and the non-tourist season. #98-22 at 7. Keeping in line with TERC's construction of the statute above, the comparison suggested to municipalities by Revenue Ruling #98-22 is entirely introspective, and does not suggest that a municipality to look to other areas without a high concentration of tourism to determine what is *normally* provided by *the* municipality. See § 6-4-10(4)(b). Consequently, Revenue Ruling #98-22, when read in its entirety, clearly supports the positions advanced by TERC and does not support the outcome reached by the Order.

III. The Order misinterprets the holding of the Court of Appeals in the case *Thompson v. Horry County*, 294 S.C. 81, 362 S.E.2d 646 (Ct. App. 1987).

The Order cites the Court of Appeals' decision in *Thompson v. Horry County* in support of its conclusion that a municipality should be allowed to compare the costs of providing its municipal services with those of another municipality with a similar permanent population. However, the Order misconstrues the clear holding of *Thompson v. Horry County*. In *Thompson*, the Court analyzed the predecessor version of sections 6-4-5 *et seq.* to determine the reasonable geographic area in which a municipality could spend available A-Tax Funds. The Court of Appeals clearly stated, and thus limited the scope and applicability of the opinion, that the only issue before it related to the geographical area in which a county or municipality could spend A-Tax revenues. 294 S.C. at 84, 362 S.E.2d at 648 ("In this case, the second requirement[—that expenditures must be made primarily in the geographical areas of the county in which the proceeds of the tax are collected where it is practical—]is in issue."). Furthermore, under the former version of the statute, discussed in *Thompson*, there existed a clause with respect to the "C" Fund – the predecessor to the 65% Fund at issue in this case under section 6-4-10(4) – which provided that counties or municipalities were required only to be "substantially in compliance" with the requirements of the statutory section. Moreover, rather than a legislatively created body like TERC that was statutorily authorized to oversee the compliance with the A-Tax requirements, that same code section contemplated that "[a]ny person or political subdivision which determines that the expenditure of accommodations tax proceeds by the county is not substantially in compliance with the provisions of this paragraph may seek relief to obtain compliance in the Court of Common Pleas of the county concerned." S.C. Code Ann. § 12-35-710 *et seq.* (1984) (amended 2001) (removing "substantial compliance" language, as well as the

private right of action bestowing jurisdiction on the circuit court). Thus, once amended, the General Assembly saw fit to give oversight authority over A-Tax Funds to TERC, and removed the geographic “flexibility” discussed by the Court of Appeals in *Thompson*.

Consequently, the import of *Thompson* beyond the scope of the issue before the Court of Appeals should be limited, and the Order’s use of *Thompson* as substantiation for its decision in this declaratory judgment action is in error. TERC does not contend, contrary to what is stated in the Order, that the COMB does not have flexibility as to how it spends A-Tax revenues. Furthermore, TERC is merely executing the oversight authority bestowed upon it by the General Assembly under section 6-4-35 of the South Carolina Code (2004) in evaluating questionable tourism-related expenditures. Consequently, the Order’s reliance on *Thompson* is misplaced, and TERC respectfully request the Court reconsider its decision to rely upon it.⁹

IV. The Order impermissibly expands the Court’s jurisdiction to sanction the COMB’s fiscal year 2008-2009 disbursement, an issue that was not, and could not be, in front of the Court.

In its conclusion, the Order states that “[t]he Court finds and declares that the City properly allocated substantially all of its 2008-2009 A-Tax special funds to additional services for tourists under the facts in the present case.” Order at 14. The issue of the COMB’s 2008-2009 disbursement of A-Tax Funds was not an issue before the Court in this declaratory judgment action.¹⁰ Furthermore, the propriety of the COMB’s 2008-2009 allocation is beyond

⁹ TERC would also note that the Order, in the first full paragraph, first full sentence of page 12, attributes a quote to TERC, but does not cite its origin. The quotation does not appear in TERC’s Complaint or Trial brief, nor was it argued to the Court at Trial; therefore, it should be stricken from the Order.

¹⁰ In its Answer and Counterclaim, the COMB did not request this Court declare its 2008-2009 disbursement proper. Moreover, TERC timely objected to the COMB’s counterclaim(s) and moved to dismiss in accordance with Rule 12(b)(6), SCRCP, which had been raised as a specific

the jurisdiction of this Court. The Administrative Law Court has sole subject matter jurisdiction to pass on issues related to a county or municipality's disbursement of A-Tax Funds under sections 6-4-5 *et seq.* See S.C. Const. art. I, § 22; the South Carolina Administrative Procedures Act, S.C. Code Ann. §§ 1-23-10 *et seq.*; § 6-4-35(B)(1)(a); and Rules 2(e) and 11, of the Rules of Procedure for the Administrative Law Court.¹¹

Importantly, this declaratory judgment action came about due to TERC's own reasonableness in deciding that, because it had previously allowed the COMB to grant a substantial portion of the available A-Tax Funds to the COMB's general fund for use on police, fire and parks personnel, withholding the entire \$4.6 Million in A-Tax Funds available to the COMB in fiscal year 2008-2009 would not be reasonable. Had TERC been so-inclined, it could have certified the entire amount to the State Treasurer to be withheld, as is TERC's prerogative under 6-4-35(B)(1)(a).¹² At that point, the COMB would have had to file a request for a contested case proceeding¹³ with the Administrative Law Court, which would have exclusive

defense in TERC's reply.

¹¹ Although the last cited statutory provision refers to an "appeal" from an action of the TERC, it has been held that the TERC lacks authority to conduct contested cases and, thus, that its jurisdiction over matters arising out of determination of the TERC is contested case jurisdiction. See, e.g., Order of the Honorable Marvin F. Kittrell, May 5, 2005, Docket No. 04-AL-30-0382-CC.

¹² It is undisputed that TERC did not certify the entire fiscal year 2008-2009 A-Tax Fund disbursement of the COMB.

¹³ TERC would also remind the Court that this very scenario played out with respect to some of the COMB's 2008-2009 disbursements. Through a FOIA request, TERC learned that the COMB had re-granted some \$302,545 of its available 2008-2009 A-Tax Funds from the City's general fund to organizations for tourism-related expenditures. TERC certified this amount to the State Treasurer as non-compliant and those limited disbursements are the subject of an on-going appeal from a contested case hearing before the Administrative Law Court.

jurisdiction to pass on TERC's determination, something the Order erroneously purports to do.¹⁴ Specifically, section 6-4-35(B)(1)(a) provides in pertinent part: "[a]n appeal from an action of [TERC] under this subitem lies with the Administrative Law Judge Division." Thus, while a decision by this Court with respect to the meaning of section 6-4-10(4)(b) was within the Court's jurisdiction for a declaratory judgment action filed pursuant to section 15-53-20 of the South Carolina Code (2005), this Court is without jurisdiction to pass on the propriety of a municipality's disbursement of those A-Tax funds.

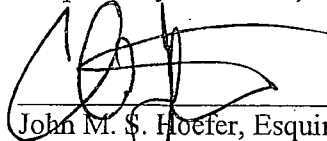
CONCLUSION

TERC respectfully submits that the Order erroneously concludes that it is based upon the plain meaning of the statute. Furthermore, consideration of the extrinsic evidence offered by the COMB – in itself improper on the grounds of relevance and hearsay – is inconsistent with the Order's conclusion in this regard. The analysis of the order contravenes the rules of statutory construction, even assuming that statutory construction was needed and ignores the best extrinsic evidence of legislative intent that is found in the preamble of the Act 316 that is now codified as section 6-4-10. Additionally, the Order misinterprets both South Carolina Revenue Ruling #98-22 and the Court of Appeals' decision in *Thompson v. Horry County*. Finally, TERC contends the Order impermissibly expands the Court's jurisdiction to sanction the COMB's fiscal year 2008-2009 disbursement, an issue that was not, and could not be, in front of the Court in this

¹⁴ Additionally, as further evidence that the COMB's desired construction would lead to the absurd result of rendering TERC and its statutory authority a nullity, the COMB's witness, Michael Shelton, acknowledged at trial that hereafter, if following the COMB's interpretation, any county or municipality with a high concentration of tourism could simply bypass section 6-4-10's restrictions by disbursing all available A-Tax Funds to its general fund. See *Kiriakides*, 312 S.C. at 275, 440 S.E.2d at 366 (declining to give effect to a party's interpretation of a statute that would lead to an absurd result). The General Assembly saw fit to create and give TERC this statutory authority; the Order, which follows the COMB's proposed construction of the statute, would sanction the COMB's (and every other county or municipality with a high concentration of tourism) bypass of the General Assembly's intent.

declaratory judgment action. Consequently, TERC respectfully requests the Court to alter or amend the Order in accordance with the foregoing.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "John M. S. Hoefler", written over a horizontal line.

John M. S. Hoefler, Esquire

Chad N. Johnston, Esquire

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Tourism Expenditure
Review Committee

Columbia, South Carolina
August 1, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tourism Expenditure Review Committee,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-3001

CERTIFICATE OF SERVICE

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 AUG -1 PM 4:48

FILED

RICHLAND COUNTY

This is to certify that I have caused to be served this day one (1) copy of the Motion to Alter or Amend by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Michael W. Battle, Esquire
Battle Vaught & Howe, P.A.
Post Office Box 530
Conway, South Carolina 29528

The Honorable William H. Seals, Jr.
208 West Dozier Street
Marion, South Carolina 29571

Breanna Mobley

Breanna I. Mobley

Columbia, South Carolina
This 1st day of August, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tourism Expenditure Review Committee,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-40-3001

**Response to Plaintiff's Motion
to Alter or Amend**

RESPONSE TO GROUNDS FOR THE MOTION

Summary of Response

I. TERC claims the Order improperly relies upon testimony and other extrinsic evidence (to which TERC objected) to substantiate and support its rulings.

City's response:

The Court properly stated its plain language interpretation of the statute without reference to extrinsic evidence in the Order. However, the Order also shows how a factual application of the Court's interpretation of the statute is consistent with the statutes stated legislative purpose, prior case law, prior state agency interpretations of the statute and good government policy. While a factual application may not be required, it is helpful in demonstrating that the Court's interpretation is not plainly absurd.

II. TERC claims the Order misinterprets South Carolina Department of Revenue Ruling #98-22.

City's response:

The Court's order properly interprets Revenue Ruling #98-22 in light of the year round tourist economy for areas with high concentrations of tourist activity.

III. TERC claims the Order misinterprets the holding of the Court of Appeals in the case *Thompson v. Horry County*, 294 S.C. 81,362 S.E.2d 646 (Ct. App. 1987).

City's response:

The holding of Thompson v. Horry County suggests a practical application of the Accommodations Tax Act is prudent. The Order properly interprets what is implicit in that case.

IV. TERC claims COMB's fiscal year 2008-2009 disbursement of A-Tax funds was not, and jurisdictionally could not be, before the Court.

City's response:

TERC does not properly acknowledge the City's counterclaim. The method of calculation that was used in the City's 2008-2009 disbursement of A-Tax funds was raised in the City's counterclaim for declaratory judgment. The purpose of the Declaratory Judgment Act is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and it is to be liberally construed and administered. The Administrative Law Court's jurisdiction is limited to appeals from TERC's notification to the State Treasurer of noncompliance. The present declaratory judgment is not an appeal from a TERC notification of noncompliance to the State Treasurer.

DISCUSSION

TERC's motion to alter or amend asks the Court to reconsider matters that have already been ruled on by the Court. TERC's motion does not raise any new issues that were overlooked or issues on which the Court failed to rule. The Court's Order was correct.

1. Plain meaning of the statute.

Absent ambiguity, the court will look to the plain meaning of the words used to determine their effect. The plain meaning rule is subject to this caveat:

However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention. If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect.

See City of Rock Hill v. Harris 391 S.C. 149, 705 S.E.2d 53 (S.C., 2011).

TERC had suggested that if Court believed the City's interpretation of the plain meaning of the Accommodations Tax Act, it would lead to a plainly absurd result in connection with the purpose of TERC. The factual application of the Court's interpretation, prior SCDOR

interpretations and TERC's own prior interpretations together with guidance from the court of appeals show the Court's interpretation of the plain language of the statute does not lead to a plainly absurd result.

2. *South Carolina Department of Revenue Ruling #98-22.*

TERC claims the Court did not give full weight to the analysis contained in Revenue Ruling # 98-22. TERC's argument is inconsistent. TERC first claims that SCDOR's revenue ruling is merely advisory and that TERC and SCDOR have differing views as to the meaning of the Accommodations Tax Act. TERC then claims that the revenue ruling supports its interpretation because it gives an example of tourism related expenditures by comparing extra costs incurred during tourist seasons with costs incurred during a non-tourist seasons. TERC does not acknowledge that in the same sentence SCDOR includes a separate category of other services that are required because of the high concentration of tourism. In addition, TERC does not acknowledge that the tourist season in the City is year round. The City contends that its year round tourist season makes it impossible for it to estimate tourist related expenditures based upon an internal analysis of seasons. The City contends that the following SCDOR statement in the revenue ruling is more applicable to the City tourist economy:

When considering the percentage of costs that are attributable to tourism, the Department of Revenue will consider the number of permanent residents for the county or municipality as compared to the number of tourists that visit the locality, taking into consideration the average length of stay for such tourists. *See SCDOR Revenue Ruling #98-22 at page 8.*

3. *Thompson -vs- Horry County*

The City admits that *Thompson v. Horry County* is not directly on point with the facts of the present case. However, it is the only appellate court case which interprets any version of the Accommodations Tax Act. In that case the Court of Appeals recommended a practical, common

sense approach of the application of the act to local government actions. The City contends the Court of Appeals' recommended approach is still good law and that the City's approach is based upon a common sense practical interpretation of the act. Courts favor construing a statute according to its language, giving to the language a plain, common-sense interpretation to the words used their ordinary meaning. See *State V. Standard Oil Co. Of New Jersey. Same V. Shell Oil Co. Same V. Texas Co. Same V. Sinclair Refining Co* 195 S.C. 267, 10 S.E.2d 778 (S.C. 1940.)

4. *COMB's fiscal year 2008-2009 disbursement of A-Tax funds.*

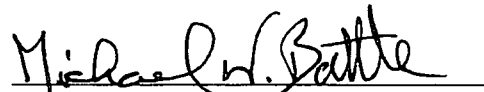
All issues decided by the Court were raised either in TERC's complaint or the City's counterclaim. As TERC points out the present case is an action for a declaratory judgment. See *S.C.Code Ann. § 15-53-30 (2005)* (a party whose rights, status, and other legal relations are affected by a statute may seek a court's determination of any question of construction or validity of the statute and obtain a declaration of the party's rights, status, or other legal relations thereunder); *S.C.Code Ann. § 15-53-130 (2005)* (purpose of the Declaratory Judgment Act is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and it is to be liberally construed and administered); *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 307 S.C. 449, 415 S.E.2d 801 (1992) (the Supreme Court can render a declaratory judgment when a justiciable controversy setting legal rights of parties exists).

The present case is not an appeal from TERC's certification of the City's A-TAX noncompliance to the State Treasurer under subitem SC Code Ann § 6-4-35(B)(1)(b). The Administrative Law Court's jurisdiction is limited to deciding such appeals. The reason the present declaratory judgment was brought in this Court is because of the Administrative Law

Court's limited jurisdiction. The City had originally filed a declaratory judgment action raising similar issues with the Administrative Law Court but on motion of TERC the action was dismissed for lack of jurisdiction.

CONCLUSION

For the forgoing reasons, the City requests that the Court deny TERC's motion to alter or amend.

A handwritten signature in black ink, reading "Michael W. Battle", is written over a horizontal line.

MICHAEL W. BATTLE
BATTLE & VAUGHT, P.A.
PO Box 530
Conway, SC 29528
(843)248-4321
Attorney for Defendant City of Myrtle Beach

Conway, SC
August 8, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tourism Expenditure Review Committee,
Plaintiff,

vs.

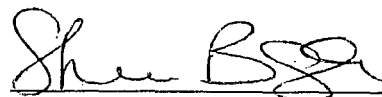
City of Myrtle Beach,
Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-40-3001

CERTIFICATE OF SERVICE

I, Sherri Benninga, Paralegal for Battle & Vaught, P.A., hereby certify that I have this August 8, 2011 have served a copy of the **Response to Plaintiff's Motion to Alter or Amend** upon all counsel of record in this action, by depositing the same in the United States mail, first-class postage pre-paid, to the following address(es):

Chad N. Johnston
John M.S. Hoefer
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, SC 29202



Sherri Benninga Paralegal
to Michael W. Battle
BATTLE & VAUGHT, P.A.
1200 Main Street
PO Box 530
Conway, SC 29528

August 8, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tourism Expenditure Review Committee,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-3001

**REPLY TO RETURN TO
PLAINTIFF TOURISM EXPENDITURE
REVIEW COMMITTEE'S
MOTION TO ALTER OR AMEND**

2011 AUG 25 PM 3:55
JEANETTE W. HARRIS
CLERK
S.C.

RICHLAND COUNTY
FILED

Plaintiff Tourism Expenditure Review Committee ("TERC") hereby submits its reply to the return to its motion to alter or amend the order ("Order") filed pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure ("SCRCP") in the above-captioned matter.¹ As will be set forth more fully herein, TERC submits that the COMB's return either does not address, or fails by its content to overcome, the issues raised by TERC's motion. Therefore, TERC respectfully requests the Court to alter or amend the Order in accordance with its submitted motion.²

DISCUSSION

I. Plain language interpretation of the Order.

In its motion to alter or amend the Order, TERC asserted that, notwithstanding the Order's ruling to the contrary, the Order is not based upon the plain language of section 6-4-10(4)(b) of the South Carolina Code (2004). Although the Order purports to be based on the

¹ The within reply is submitted pursuant to a schedule adopted by the Court.

² TERC intends this reply to serve only as a response to the COMB's return, rather than a repetition of its previously-submitted motion, which TERC considers to be a comprehensive argument with respect to its positions in this declaratory judgment action. Consequently, TERC hereby incorporates by reference the arguments made in its motion filed August 1, 2011.

plain meaning of the statute, it nevertheless relies on extrinsic evidence for substantiation of its holdings. TERC contends that this is a legal contradiction that cannot stand: either a decision is based on the plain language, and substantiation for that decision is rooted solely in the words of the statute; or, a Court makes a finding that the statute is unclear and endeavors to fulfill the General Assembly's intent by looking to extrinsic evidence. TERC asserts that it is not appropriate to look outside the statute when the plain language clearly dictates otherwise. *State v. Hudson*, 336 S.C. 237, 246-47, 519 S.E.2d 577, 582 (Ct. App. 1999) ("If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation and the court has no right to look for or impose another meaning.") (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995)); see also *Contra Independence Ins. Co. v. Indep. Life & Acc. Ins. Co.*, 218 S.C. 22, 34, 61 S.E.2d 399, 405 (1950) ("The purpose of construction is to ascertain the legislative intent from the words used; and, if these are susceptible to any sensible meaning, *the court cannot add to them other words which would give them a different meaning without making, instead of construing, the statute.*") (emphasis added) (quoting *Banks v. Columbia Ry., G. & E. Co.*, 113 S.C. 99, 101 S.E. 285 (1919)).

Furthermore, in order to look outside of the plain meaning of the statute, a Court is first required to make a finding that the statute is ambiguous. *Stringer v. State Farm Mut. Auto. Ins. Co.*, 386 S.C. 188, 193, 687 S.E.2d 58, 60 (Ct. App. 2009), reh'g denied (Jan. 20, 2010), cert. denied (May 6, 2011) (discussing a trial court's error, in the context of an insurance contract, in construing a contract without first finding an ambiguity existed). The Order makes no such finding of an ambiguity; therefore, consideration of materials outside of the record, and construction of the statute in favor of the COMB, was an error.

The COMB's return attempts to explain away the Order's patent contradiction by stating that the extrinsic materials offered by the COMB, and cited as substantiation in the Order, were merely "factual applications" of the Order's plain meaning ruling. However, the Order clearly provides the discussion of extrinsic materials as support for its "plain meaning"³ holding, not as an application of that holding to a set of facts. This discrepancy remains unexplained by the COMB. Additionally, the COMB's return fails to acknowledge the glaring lack of analysis of the entire second part of section 6-4-10(4)(b), which served as the basis for the declaratory judgment sought by TERC in this action and places a distinct condition upon a municipality's use of A-Tax funds for municipal services they normally provide. TERC respectfully asserts that an order declaring the meaning of section 6-4-10(4)(b), purportedly based on the plain language of that statute, is inadequate in the absence of a discussion regarding the import of the clear legislative condition contained in its second sentence, and the interplay between those two portions of the same section.

II. South Carolina Department of Revenue Ruling #98-22.

TERC's motion to alter or amend next asserted that the Order fails to give full weight to the analysis of Revenue Ruling #98-22, and therefore misapplies the import of the 13 year old ruling. In its return, the COMB does not dispute TERC's contentions that Revenue Rulings are advisory,⁴ and therefore not binding on this Court, or that Revenue Ruling #98-22, when read in

³ As provided in its motion, TERC contends the Order's construction of section 6-4-10(4)(b) not only improperly disregards specific language in the statute in favor of other, more general language, the Order also looks for extrinsic evidence beyond the statutory language and therefore cannot be based on its plain meaning as the Order concludes. Further, the Order reads additional provisions into the statute, namely, that municipalities with high concentrations of tourism are authorized to compare their expenditures with other municipalities in order to determine the appropriateness of utilizing A-Tax funds.

⁴ See Revenue Ruling #05-2, p. 2 ("A Revenue Ruling does not have the force or effect of law. It is the Department's position until superseded or modified by a change in statute, regulation,

its entirety, supports TERC's interpretation of section 6-4-10(4)(b). Instead, the COMB points to one isolated sentence for the proposition that the ruling "is more applicable to the City tourist economy." COMB Return at 3. The sentence put forward by the COMB provides:

When considering the percentage of costs that are attributable to tourism, the Department of Revenue will consider the number of permanent residents for the county or municipality as compared to the number of tourists that visit the locality, taking into consideration the average length of stay for such tourists.

Revenue Ruling #98-22 at 7. However, as contended by TERC in its motion, both the plain language of section 6-4-10(4)(b) and Revenue Ruling #98-22 use the specific article "the" rather than a more general article like "a" when referencing the number of tourists visiting, or municipal services provided by the municipality in question. *See* § 6-4-10(4)(b) ("The funds must not be used as an additional source of revenue to provide services normally provided by *the* county or municipality") (emphasis added); Revenue Ruling #98-22, *infra*. The comparison suggested to municipalities by Revenue Ruling #98-22, as advocated by the COMB in its return, is entirely introspective, and does not suggest that a municipality may look to other areas without a high concentration of tourism. Comparing the number of tourists that visit a municipality, or the level of services a municipality would be providing if it had the same permanent population as another county or municipality not situated in an area with a high concentration of tourism activity is inapt since it assumes that the two municipalities are similar, when they clearly are not.

court decision, or another Departmental advisory opinion."'). See TERC Motion to alter or amend at 12-13.

III. *Thompson v. Horry County*, 294 S.C. 81, 362 S.E.2d 646 (Ct. App. 1987).

TERC's motion next asserted that the Order misconstrues the clear holding of *Thompson v. Horry County* in order to provide further substantiation, outside of the plain language of the statute, for the Order's holding. 294 S.C. 81, 362 S.E.2d 646 (Ct. App. 1987). As explained in the motion, in *Thompson*, the Court of Appeals analyzed the predecessor version of sections 6-4-5 *et seq.*, and specifically analyzed a section and requirement that no longer appear in the current version of the A-Tax statute.⁵ 294 S.C. at 84, 362 S.E.2d at 648 ("In this case, the second requirement[—that expenditures must be made primarily in the geographical areas of the county in which the proceeds of the tax are collected where it is practical—]is in issue."). Therefore, although TERC acknowledges that *Thompson* is the only current reported case involving our State's A-Tax statutes, it does not support the ruling in this action because of its stated subject matter and limited holding. The COMB similarly acknowledges that *Thompson* "is not directly on point" but nevertheless requests the Court take a similar "common sense practical interpretation of the act" based on the Court's unrelated holding in *Thompson*. COMB Return at 3, 4. TERC would submit that a "common sense practical interpretation" is not a rule of law or holding that this Court can, or is bound to apply following *Thompson*. On the contrary, TERC would assert that just because a decision deals with the same general subject matter, does not bind a court to follow its holdings in cases with wholly different issues. Consequently, the import of *Thompson* in this case beyond the scope of the issue before the Court of Appeals

⁵ Under the former version of the statute, discussed in *Thompson*, there existed a clause with respect to the "C" Fund – the predecessor to the 65% Fund at issue in this case under section 6-4-10(4) – which provided that counties or municipalities were required only to be "substantially in compliance" with the geographic requirements of the statutory section, and that jurisdiction for "substantial compliance" challenges, for which there existed a private right of action, was in circuit court. See S.C. Code Ann. § 12-35-710 *et seq.* (1984) (amended 2001) (removing "substantial compliance" language, as well as the private right of action bestowing jurisdiction on the circuit court).

should be limited, and the Order's use of *Thompson* as substantiation for its decision in this declaratory judgment action is in error. TERC respectfully request the Court reconsider its reliance upon it.

IV. The Court is without jurisdiction to sanction the COMB's fiscal year 2008-2009 disbursement.

Finally, TERC asserted in its motion that this Court is without jurisdiction to sanction the COMB's fiscal year 2008-2009 disbursement, an issue that was not, and could not be, in front of the Court. In its conclusion, the Order states that "[t]he Court finds and declares that the City properly allocated substantially all of its 2008-2009 A-Tax special funds to additional services for tourists under the facts in the present case." Order at 14. The issue of the COMB's 2008-2009 disbursement of A-Tax Funds was not an issue before the Court in this declaratory judgment action.⁶ In response, the COMB generically states that "[a]ll issues decided by the Court were raised either in TERC's complaint or the City's counterclaim." COMB Return at 4. However, the COMB does not point to any specific evidence that it raised this issue to the Court in its pleadings or arguments before the Court, likely because it never has. Instead, this issue first appeared in the Order and is therefore an improper holding of this Court.

Furthermore, the propriety of the COMB's 2008-2009 allocation is beyond the jurisdiction of this Court. The Administrative Law Court has sole subject matter jurisdiction to pass on issues related to a county or municipality's disbursement of A-Tax Funds under sections 6-4-5 *et seq.* See S.C. Const. art. I, § 22; the South Carolina Administrative Procedures Act, S.C. Code Ann. §§ 1-23-10 *et seq.*; § 6-4-35(B)(1)(a); and Rules 2(e) and 11, of the Rules of

⁶ In its Answer and Counterclaim, the COMB did not request this Court declare its 2008-2009 disbursement proper. Moreover, TERC timely objected to the COMB's counterclaim(s) and moved to dismiss in accordance with Rule 12(b)(6), SCRCPP, which had been raised as a specific defense in TERC's reply.

Procedure for the Administrative Law Court.

The COMB's argument that it can, of its own initiative, institute a declaratory judgment action in order to gain a court's approval of its A-Tax disbursements in a given year ignores the fundamental judicial principle that an action in a court must present a justiciable controversy. *See Power v. McNair*, 255 S.C. 150, 153, 177 S.E.2d 551, 553 (1970) ("In order to maintain an action under the [declaratory judgment] statute, there must exist a justiciable controversy."). Because TERC is the sole body legislatively delegated the capability of finding a county or municipality's A-Tax Fund disbursements non-compliant, *see* 6-4-35(B)(1)(a), absent a finding of non-compliance by TERC, *there exists no case or controversy*. Here, it is undisputed that TERC did *not* certify the entire fiscal year 2008-2009 A-Tax Fund disbursement of the COMB; therefore, there exists no justiciable controversy with respect to the COMB's 2008-2009 disbursement and this Court is without jurisdiction to pass upon it.

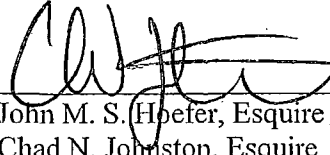
While a decision by this Court with respect to the meaning of section 6-4-10(4)(b) was within the Court's jurisdiction for a declaratory judgment action filed pursuant to section 15-53-20 of the South Carolina Code (2005), the propriety of the COMB's 2008-2009 disbursement was not raised to the Court by the COMB, and, absent such a finding by TERC, this Court is without jurisdiction to pass on a municipality's disbursement of A-Tax Funds. Consequently, TERC respectfully requests the Court reconsider its holding to that effect.

CONCLUSION

In accordance with the foregoing and its previously submitted motion to alter or amend, TERC respectfully requests the Court reconsider the holdings in the Order.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. S. Hofer", written over a horizontal line.

John M. S. Hofer, Esquire

Chad N. Johnston, Esquire

WILLOUGHBY & HOEFER, P.A.

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Attorneys for Tourism Expenditure
Review Committee

August 25, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tourism Expenditure Review Committee,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-3001

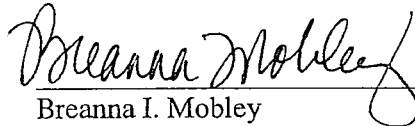
CERTIFICATE OF SERVICE

FILED
2011 AUG 25 PM 3:55
JEANETTE W. HARRIDE
Clerk of Court
C.O.S. & G.S.

This is to certify that I have caused to be served this day one (1) copy of the Reply in Support of its Motion to Alter or Amend a Judgment by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Michael W. Battle, Esquire
Battle Vaught & Howe, P.A.
Post Office Box 530
Conway, South Carolina 29528

The Honorable William H. Seals, Jr.
208 West Dozier Street
Marion, South Carolina 29571


Breanna I. Mobley

Columbia, South Carolina
This 25th day of August, 2011.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2010-CP-40-3001

RECEIVED

SEP 29 2011

SC Court of Appeals

Tourism Expenditure Review Committee, ...Appellant,

v.

City of Myrtle Beach, ...Respondent.

NOTICE OF APPEAL

Pursuant to Rule 203 of the South Carolina Appellate Court Rules ("SCACR"), Appellant Tourism Expenditure Review Committee ("TERC") appeals the orders of the Honorable William H. Seals, Jr. in the above-referenced case. The Circuit Court's initial order was filed July 15, 2011. A copy of this order is attached hereto as Exhibit "A". TERC timely filed a Rule 59(e), of the South Carolina Rules of Civil Procedure ("SCRCP"), motion for reconsideration of the Court's order on August 1, 2011. Thereafter, a form order denying TERC's motion was filed by the Court on September 15, 2011, notice of which TERC received on September 19, 2011. A copy of this order is attached hereto as Exhibit "B". Pursuant to Rule 73, SCRCP, and Rule 203, SCACR, TERC files the within notice of appeal.

[SIGNATURE PAGE FOLLOWS]

State of South Carolina) In The Court of Common Pleas
County of Richland) Fifth Judicial Circuit
2010-CP-40-3001

Tourism Expenditure Review)
Committee,)

Plaintiff,)

vs.)

City of Myrtle Beach,)

Defendant.)

Transcript of Record

July 11, 2011
Columbia, South Carolina

B E F O R E:

The Honorable William H. Seals, Jr., Judge

A P P E A R A N C E S:

John Marion S. Hoefer, Esquire
Chad N. Johnston, Esquire
Attorneys for the Plaintiff

Michael W. Battle, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR
Circuit Court Reporter

I N D E X

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Michael Shelton	
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1 THE COURT: All right, I can't get away from Myrtle
2 Beach, it seems like. All right, and you are Mr. Hoefer?

3 MR. HOEFER: Yes, Your Honor. Please the court? I
4 am John Hoefer; with me is Chad Johnston. We're with the
5 firm of Willoughby and Hoefer here in Columbia, and we
6 represent the Tourism Expenditure Review Committee.

7 THE COURT: All right and, Mr. Battle, if we could
8 have ---

9 MR. BATTLE: My name is Mike Battle, and I'm here with
10 Mike Shelton. He is going to be a witness to represent the
11 City of Myrtle Beach.

12 THE COURT: All right. Anything you need to place on
13 the record, Mr. Hoefer?

14 MR. HOEFER: No, Your Honor. As we indicated in our
15 trial brief, we do have some issues about the potential for
16 Mr. Shelton's testimony, but we're ready to proceed.

17 I'll be glad to make an opening statement. I'll be
18 candid with the court. We think this is very narrow issue,
19 and my opening statement would really be the argument I
20 would make on the statute.

21 THE COURT: All right, if you'd like to go ahead and
22 do that, I'd be glad to hear from you.

23 MR. HOEFER: Thank you. May it please the court?
24 Again, I am John Hoefer. I represent the Tourism
25 Expenditure Review Committee.

1 Your Honor, just a bit of a brief background. The
2 statute that is at issue here had been around in one form
3 or another since 1984. However, it has not been the
4 subject of much litigation. There's one reported case that
5 we cited to the court in our pretrial brief. That's
6 *Thompson vs. Horry County*, and I do have a copy for the
7 court. To my knowledge, that's the only reported opinion
8 addressing the statute. And we believe that this opinion
9 will give some bit of guidance to the court.

10 But we think that this is an issue of a novel
11 impression. And we both in conversations prior -- just so
12 the court will be aware, no matter which way the court
13 rules, we think this will end up going on up for further
14 review.

15 Just a little bit about the Tourism Expenditure Review
16 Committee. It's eleven people appointed by the governor,
17 speaker, president *pro tem* of the senate, some nominated
18 from various interest groups. For example, the Municipal
19 Association, Association Counties, Hospitality Association,
20 Tourism -- Regional Tourism Council, and things of that
21 nature. And what they do is they review annually the
22 reports submitted by counties with municipalities of their
23 expenditures of accommodations tax funds under Sections
24 6-4-5 et seq. of the code.

25 Background of this case is fairly straightforward,

1 provided by the county or municipality, but to
2 promote tourism and enlarge its economic benefits
3 through advertising, promotion, and providing
4 those facilities and services which enhance the
5 ability of the county or municipality to attract
6 and provide for tourists.

7 And the dispute really, Your Honor, centers around
8 actually just one word, the word is T-H-E, the, or the,
9 depending on where you're from.

10 The Tourism Expenditure Review Committee reads that
11 sentence to mean that if you are a municipality with a high
12 concentration of tourism activity, you can spend money on
13 additional municipal services. But they, they can't be
14 used for -- as an additional source of revenue, provide
15 services normally provided by staff municipality, and that
16 is at the heart of this dispute.

17 Not wanting to put words in Mr. Battle's mouth, but I
18 believe the city's position is that when you read that
19 statute, it allowed them to spend money on additional
20 municipal services if they have costs that exceed the cost
21 for those services that would be required by a city of
22 similar permanent population.

23 That's just not what the statute says. The statute
24 said they can't be:

25 Must not be used as an additional source of

1 revenue to provide services normally provided by
2 the municipality.

3 That's the City of Myrtle Beach.

4 Now, the City of Myrtle Beach argues that, well, you
5 know, under that reasoning, we can't ever use the money for
6 additional municipal services, and that, too, is not
7 correct. That's not the TERC's position, and the TERC is
8 an acronym for Tourism Expenditure Review Committee, Your
9 Honor. What the Tourism Expenditure Review Committee
10 simply believes is that the plain language of the statute
11 has to be enforced. They can't read into the statute that
12 it's okay for a municipality -- in this case City of Myrtle
13 Beach -- to compare their costs for certain municipal
14 services with other municipalities of a similar permanent
15 population and decide gee, everything over and above that
16 we can take from the tourism fund, the a-tax funds.

17 We think the plain meaning is there. And to do what
18 the City of Myrtle Beach wants the court to do in its
19 counterclaim would require that you read into the statute
20 language that is not there.

21 Now, if, however, the court were to agree with the
22 City of Myrtle Beach -- because I believe by offering the
23 witness, which I will come to that point that in a second.
24 By offering the witness, they're telling you we need
25 extrinsic evidence to understand this statute. And that

1 means they're telling you it's ambiguous. We don't think
2 it's ambiguous.

3 Again, we don't rely on the traditional rule the court
4 should defer to the agency because, quite frankly, the
5 agency, there's turnover with people. It wasn't created
6 until 2000. Some of the bases for earlier rulings were
7 determinations made by the Department of Revenue. Mr.
8 Battle, I think, has submitted to the court in his brief
9 Revenue Ruling 98-22 in support of his position. And
10 people change and interpretations of statutes can change.
11 Even if they interpreted it a different way before, that
12 doesn't mean that that's necessarily correct. And, more to
13 the point, they just want to get it right. They need an
14 answer to this question so they can determine how to
15 conduct their business going forward.

16 But if you were to agree that the statute's ambiguous
17 and that it required some interpretation, which we don't
18 think it does, the Thompson vs. Henry -- or Horry County
19 case that I just handed up to Your Honor references the
20 original statute. And I have for the court and counsel a
21 copy of that original enactment. And the preamble of this
22 original enactment contains what we believe to be a
23 legislative history, and the preamble is in Section 1 and
24 it's the findings, and it says:

25 The General Assembly finds that areas of the

1 state which have a high concentration of tourism
2 activity may also be required from time to time
3 to provide additional county municipal services
4 included, but not limited to, law enforcement,
5 traffic control, public utilities, highway/street
6 maintenance, as well as the continual promotion
7 of tourism.

8 That is the original statute that is referenced in
9 *Thompson vs. Horry County*. We think it's plain by the
10 preamble that the legislature never intended for what is
11 now Section 6-4-10(4)(b) to be a source of revenue to allow
12 the city to just defray its normal cost of doing business.
13 It was intended from time to time if the city had
14 additional costs attributable to tourism over and above
15 what the city itself won't expend.

16 I believe the court can take notice of the fact that
17 Myrtle Beach as a tourism destination. The city exists and
18 the businesses that exist there are there primarily because
19 of that. But if you read this statute the way that the
20 City of Myrtle Beach contends that it should be read, what
21 you would be saying is the General Assembly intended that a
22 city with a high concentration of tourism activity can just
23 take all the money and put it in their general fund every
24 year. That's part of the reason why the Tourism
25 Expenditure Review Committee decided that they needed to

1 get an answer to the question.

2 In prior years, Myrtle Beach was using a substantial
3 portion of it, but not all of it. In this particular year
4 that was at issue, they used all of it. Again, the Tourism
5 Expenditure Review Committee didn't think it would be
6 reasonable, given the, what I would call, Your Honor, the
7 uneven sort of treatment that had been given to the statute
8 historically, to put the City of Myrtle Beach in a box,
9 which they could have done. They could have just said
10 state treasurer, it doesn't comply. Withhold the whole 4.6
11 million off, and they'd have been off to the races. My
12 client didn't think that would be the responsible thing to
13 do to the city and their budget. That's why we're here
14 asking for declaratory judgment.

15 But we think the preamble, if Your Honor is inclined
16 to go beyond the plain language of the statute, we think
17 the preamble of the original act cited in *Thompson vs.*
18 *Horry County* reflects that it was never the legislature's
19 intention that a municipality with high concentrations of
20 tourism activity be permitted to put this money in the
21 general fund, all of it, every year.

22 Now, I told Your Honor I'd come back to high
23 concentration of tourism activity even though that's not an
24 issue of dispute in this case. I do need to explain
25 basically what that means by a series of interpretations,

1 some of them out of the very revenue ruling that I just
2 mentioned to Your Honor, 98-22.

3 What that essentially means is if a city or a county
4 collected more than \$900,000 in accommodations tax revenue,
5 it's deemed to be a city or county with a high
6 concentration of tourism activity. The Tourism Expenditure
7 Review Committee doesn't dispute that Myrtle Beach is a
8 high concentration of tourism activity area. However, we
9 think that the statute, when you look at sub -- well,
10 actually subparagraph B, the city has made the argument,
11 well, if you read subsection (b)(4) which says that:

12 Tourism-related expenditures include criminal
13 justice system, law enforcement, fire protection,
14 solid waste collection, health facilities when
15 required to serve tourists and tourist
16 facilities.

17 I believe this is for the first time today that I
18 don't think it's in their pleading, but they argue that
19 even under that section they can spend this money, and we
20 don't agree. We think it's absolutely clear this money can
21 only be spent for additional municipal services by a city
22 with a high concentration of tourism. And that
23 subparagraph (b)(4) only applies to facilities.

24 I draw the court's attention to subparagraph (b)(4),
25 which talks about services. Paragraph (4)(b)(4) talks

1 about facilities. We're not here talking about facilities
2 today; that's not at issue. We're solely talking about
3 services.

4 The services, according to the report that the city
5 submitted to the TERC, were personnel expenses for police,
6 parks, and fire personnel. That's what the money was sent
7 -- spent for. No dispute that that's a legitimate
8 municipal expense. No dispute that under subparagraph
9 (4)(b) there are circumstances in which that money could be
10 used for those purposes. But that circumstance is limited,
11 and that limitation is they can only be used as an
12 additional source of revenue to provide those services if
13 they are not services normally provided by the city. And
14 to look at what is normally provided by the City of Myrtle
15 Beach, you have to look at the City of Myrtle Beach, not
16 some other municipality.

17 Even if you could read this into the statute the way
18 the City of Myrtle Beach suggests should be done, you don't
19 even then get an apples to oranges comparison. And that's
20 why the city is now arguing what I just mentioned to the
21 court about section (4)(b)(4) because if you compare Myrtle
22 Beach's expenditures to a city of like permanent
23 population, you almost cannot be comparing it to another
24 city with a high concentration of tourism activity. It
25 just won't work; it's apples to oranges.

1 It's saying, well, you know, what we can do is look at
2 -- well, let's just use for example, and I'm not trying to
3 hold the city to this, but let's just use, for example, the
4 City of Greenwood, which is a city I think they've used
5 before.

6 Well, what -- it wouldn't make any sense for the
7 legislature to say yeah, it's okay for you to compare your
8 expenditures, and let's just say it's for police only
9 because that's the example they seize on in their brief.
10 What sense would it make for the legislature to say yes,
11 you can compare your expenses to the City of Greenwood to
12 determine whether or not you're spending this money on
13 services that you don't normally provide?

14 Well, the City of Greenwood is not a high
15 concentration of tourism activity area. It's nothing like
16 Myrtle Beach, and I think that sort of illustrates the flaw
17 in the city's reasoning, respectfully. You have to go so
18 many steps beyond what the statute says to get to where
19 they want to get.

20 We don't think that the statute requires construction.
21 We think the plain-meaning rule applies, and we think the
22 court ought to apply the plain-meaning rule and grant the
23 relief that the Tourism Expenditure Review Committee has
24 requested in its complaint and reiterated in its trial
25 brief. That's all I have, Your Honor.

1 THE COURT: All right, thank you. One second. One
2 second.

3 (A PAUSE.)

4 THE COURT: Mr. Battle.

5 MR. BATTLE: Your Honor, I won't be long.

6 First, what made sense for twenty-seven years no
7 longer makes sense to TERC, and we'll get to that in a
8 moment. But TERC and the South Carolina Department of
9 Revenue have interpreted the statute as the City of Myrtle
10 Beach has interpreted the statute up until 2008 and 2009,
11 at which point the City of Myrtle Beach, which had been
12 giving as much as 84 percent of its budget to police
13 protection and parks and recreation, they decided that that
14 year they needed to give 99.9 percent and give a -- 0.1
15 percent was held as a reserve fund.

16 TERC comes up with the idea that if cities like the
17 City of Myrtle Beach and areas like Beaufort County,
18 Charleston, Georgetown County, Greenville County, Horry
19 County, and Richland County, which are all areas designated
20 as areas of high concentration, if they all start doing
21 that to avoid having the scrutiny of TERC -- or a
22 nitpicking of TERC as we would call it -- then what purpose
23 do we have? And we've got to fight this.

24 They in the past have said -- and what we have tried
25 to do is follow their rules, the revenue rules -- and said

1 okay, if there's a single eligible qualifying expenditure,
2 then you can do that. And the city council has the final
3 say over how that money goes, as in the *Thompson vs. Horry*
4 County. They have the flexibility to make the ultimate
5 decision.

6 TERC is an oversight committee, and their job is
7 simply to make sure that the statute is complied with. And
8 we say it's a statute that they have interpreted for twenty
9 -- they or their predecessors have interpreted this way for
10 approximately twenty-seven years. And so that's what's
11 come up at this particular point in time.

12 We will, we are going to call a witness. Now, the
13 reason we're calling a witness is, one, we want to make
14 sure there's a case of controversy and we don't get kicked
15 out on a mootness issue.

16 And we have brought a counterclaim basically saying
17 that the 2008-2009 expenditure was proper. We want the
18 court to declare that. And we also want the court to
19 declare that the method by which we determined to say that
20 this was additional money spent for tourism and
21 tourist-related expenditure type thing, we want to make
22 sure there's a record in there so that you understand how
23 the procedure works and what has happened. And that's the
24 reason we're not just going based on oral arguments on the
25 statute.

1 We do think that the statute is clear to us, but there
2 is always room for ambiguity, and so you have a choice to
3 decide how you want to have this thing interpreted. And
4 you'll have as much information as we think is appropriate
5 for you to determine what's the best way to decide what 20
6 -- 6-4-10(b)(4) means.

7 But as far as the issue of tourism-related
8 expenditures as that definition is concerned, we agree that
9 the purpose of this declaratory judgment is to deal with
10 high areas of concentrated -- high areas of tourism
11 concentration. I think that's correct. Anyway, and we're
12 not trying to do it under the definition of law
13 enforcement. There is some dispute as to whether or not it
14 applies to facilities or not.

15 We don't agree with TERC's position on that issue, but
16 that issue is not before the court. I simply put that in
17 the brief. That's to show you a parallel that the
18 legislature was sensitive to the fact that safety is very
19 important to tourism. That the reputation of the community
20 and being able to provide that safety and that
21 understanding and the quality experience for those tourists
22 is very important. And that the legislature recognized,
23 and that is the reason why they have allowed us the
24 flexibility to go ahead and put that money into those
25 services if they can be attributed to tourism or tourist

1 activities.

2 THE COURT: All right, anything further from the
3 plaintiff?.

4 MR. HOEFER: Just, just briefly, Your Honor. With
5 respect to the presentation of the witnesses, this is
6 partly a substantive statement I'd like to make and then
7 partly a housekeeping statement that Mr. Battle and I have
8 already discussed.

9 Mr. Battle points out that their counterclaim, they
10 ask this court to not only make a declaration on statutory
11 issues. But also declare the city's method of determining
12 its costs attributable to tourists is acceptable, that TERC
13 doesn't have rule-making authority, and that TERC can't
14 expand its oversight authority.

15 We don't think any of those last three mentioned items
16 are proper for declaratory judgment. That's not asking the
17 court to declare a statue -- the -- how the city goes about
18 reviewing and submitting the information to TERC for review
19 is within TERC's jurisdiction.

20 TERC has made note, as I told the court before, the
21 \$4.6 million was allowed to go through. TERC has not done
22 anything about that. If it did, it would never show up in
23 this court. It would be at the Administrative Law Court as
24 a contested case. So, we don't think the testimony is
25 needed for that reason.

1 However, I know since it's nonjury and Mr. Battle does
2 have a witness here, that is a chance that his witness
3 might be heard, and we do have some objections. Again, we
4 don't think -- it's a plain meaning issue. So, extrinsic
5 evidence cannot be relevant to the court's inquiry in this
6 declaratory judgment. So, we would have an objection for
7 that reason.

8 A large number of documents are cited, many of which
9 are not statements by the plaintiff in this case. They
10 would be hearsay, and so we, we would have objections on
11 those grounds as well. Rather, however, than jumping up
12 and down every time Mr. Shelton, the city's witness, gets
13 into something like that, what I would just simply ask is
14 since it's nonjury, that the court recognizes that we do
15 have those objections. And then depending on how Your
16 Honor rules, we can deal with the objections in an order,
17 proposed orders from the parties.

18 THE COURT: All right.

19 MR. HOEFER: If that would be acceptable to the court.

20 THE COURT: That will be fine.

21 MR. HOEFER: Mr. Battle mentioned what's been --
22 what's made sense for twenty-seven years doesn't make sense
23 anymore. And, Your Honor, I think you can look at the
24 statute. It's 6-4-5 et seq. TERC has only been in
25 existence for a little less than eleven years. They didn't

1 make those determinations before, and the determines were
2 made by the Department of Revenue. The legislature
3 repealed Section 6-4-30 which had previously given the
4 Department of Revenue some oversight responsibility.

5 We do not dispute -- and we shouldn't spend any time
6 in testimony talking about it -- we don't dispute that TERC
7 has not been consistent in how it in its eleven years has
8 viewed the statutory language vis-a-vis how the Department
9 of Revenue did it and vis-a-vis how TERC is viewing the
10 language of today. They just want a determination from the
11 court as to what it means so they know what to do going
12 forward without putting the City of Myrtle Beach to the
13 pain of having 4.6 million or some greater amount of money
14 withheld in the future. We don't think any testimony on
15 that point would be appropriate.

16 Mr. Battle mentioned the flexibility assigned to
17 cities under the Thompson vs. Henry case -- excuse me,
18 *Thompson vs. Horry County*. I keep getting one of the
19 lawyers in the case confused with the case name. Your
20 Honor, that flexibility attends language in the statute
21 that says that to the extent practicable, a city or county
22 has to spend money in the geographic location where it was
23 raised. That the case doesn't say and the statute doesn't
24 say they have flexibility in how they spend their money
25 vis-a-vis what expressed statutory language says.

1 In fact, under this version of the statute that was
2 considered by the Court of Appeals in *Thompson vs. Horry*
3 *County*, that section said: And they only needed to
4 substantially comply. All of that's been taken out of the
5 statute, substantial compliance.

6 They have to comply with what the statute says. We're
7 just trying to get an answer about what it says. That's
8 all I have, Your Honor.

9 THE COURT: All right, anything further?

10 MR. BATTLE: We have no objection to his continuing
11 objection.

12 THE COURT: All right.

13 MR. BATTLE: That's fine. Call Mr. Mike Shelton.

14 MICHAEL SHELTON, BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 CLERK OF COURT: Please have a seat in the witness
17 stand, and state your full name for the record.

18 WITNESS: My full name Michael William Shelton.

19 DIRECT EXAMINATION BY MR. BATTLE:

20 Q. I'll set up camp right here. Looks like that's what
21 the lawyers do anyway.

22 Michael, would you tell the court what your position
23 is with the City of Myrtle Beach and what it is you do with
24 the City of Myrtle Beach?

25 A. I'm the director of Budget and Evaluation for the

1 city, and those responsibilities include all the financial
2 planning, preparing the annual budget, everything that's
3 related to financial planning for the city.

4 Q. Do you oversee expenditures, accommodations taxes?

5 A. Yes.

6 Q. That's part of your job?

7 A. That's part of my job.

8 Q. I'm afraid you're going to have to get a little closer
9 to ---

10 A. All right.

11 Q. --- the microphone because your voice is soft.

12 A. How's this?

13 Q. That's better. It's much better.

14 Now, what I want to do is kind of click off a series
15 of facts in order to speed this case along. Do you know
16 who the Tourism Expenditure Review Committee is?

17 A. Yes, sir.

18 Q. And what is their role, or what, what is your
19 understanding of what their role or position they've taken
20 in regards to how they have anything to say about what the
21 City of Myrtle Beach spends its money on?

22 A. As I understand it, they are the agency that's
23 designated with the responsibility to review expenditures
24 that cities, counties, anybody receiving accommodations tax
25 money makes in a given year, and to determine whether those

1 are in compliance or not.

2 Q. You're going to have to lean forward, Mike. I'm
3 sorry.

4 A. Okay.

5 Q. There you go. There you go.

6 Now, with regard to the money that they have oversight
7 authority on, is it all the accommodations tax, or is it
8 just a portion of it?

9 A. I...

10 Q. Local versus state.

11 A. Local versus state? It's the state-wide accommodation
12 tax.

13 Q. Right, and so what I'm talking about is what
14 percentage of the accommodations tax does the Tourism
15 Expenditure Review Committee oversee?

16 A. We report to them on all of it.

17 Q. All of it?

18 A. All of the state-wide accommodation tax.

19 Q. State wide, but you have some local accommodations tax
20 that doesn't get reported.

21 A. That's right.

22 Q. Okay. So, we're just talking about the state fund.

23 A. Right.

24 Q. Now, and the City of Myrtle Beach is a municipality.

25 A. That's correct.

1 Q. And it has been determined to have a high
2 concentration of tourism activity. Is that correct?

3 A. Yes.

4 Q. All right. Now, let's talk about the budget for 2008
5 and 2009, and start off with the fact that the tourism --
6 does the City of Myrtle Beach have a local advisory
7 committee?

8 A. Yes, it has.

9 Q. Walk the court through, if you would. If I make
10 application to the City of Myrtle Beach for some tourism
11 accommodation tax fund, and I come up to you and let's say
12 I'm a city staff member and I want some police money. How
13 would I go about doing that? Would you explain those steps
14 to the court?

15 A. Okay. The procedure would be that in September or
16 October of each year, the city announces that it will
17 accept applications for accommodations tax funding for
18 tourism related to funding. Anybody who has requests of
19 the city for tourism-related funding is able to complete an
20 application. There is a standard application for them.

21 They complete that application, submit it to office.
22 Then it's reviewed by the local committee, Accommodation
23 Tax Advisory Committee, and that includes the City of
24 Myrtle Beach. We apply for funds on the same form as, you
25 know, any other agency would use.

1 Q. So, so, let me, let me make sure I understand. If I
2 was John Smith's Fireworks and I put in an application, my
3 application would be treated and looked at in the same way
4 or reviewed with the same review committee as the local
5 advisory committee?

6 A. That's correct.

7 Q. Okay. Continue, please.

8 A. Once all those applications are received, they are
9 submitted to members of the local committee. Those members
10 convene in November to review the applications. Typically
11 they'll meet first, discuss the applications, then
12 subsequently bring in the applicants. Give them a chance
13 to make presentations regarding their requests. And the
14 committee will hear the presentations, and then thereafter
15 will vote on its recommendations and forward those
16 recommendations to the city council.

17 Q. All right. Now, with regard to the recommendations
18 that they make to city council, what position has Tourism
19 Expenditure Review Committee taken in the past as to who
20 has the ultimate decision-making authority?

21 A. Has Tourism Expenditure Review Committee taken one?
22 Well...

23 Q. Yeah.

24 MR. HOEFER: Your Honor, I do need to object to this
25 one. He's asking him to say what Tourism Expenditure

1 Review Committee thinks.

2 BY MR. BATTLE:

3 Q. Well, I mean, have -- who, who has ultimate
4 decision-making authority with regard to those
5 recommendations?

6 A. Well, the city council is the legislative body. The
7 expenditure or the local accommodations tax committee is by
8 statute an advisory committee.

9 Q. Okay. So, what I'm, what I'm saying is is that
10 Tourism Expenditure Review Committee has never questioned
11 the fact that the city council has final authority over how
12 those funds are spent.

13 A. Not to my knowledge.

14 Q. As long as they comply with the statute.

15 A. Right.

16 Q. Now, with regard to the 2008-2009 statute, if you --
17 you might want to refresh your memory just to get these
18 facts down. How much did staff for the City of Myrtle
19 Beach request?

20 A. 3,977,794.

21 Q. And that was approximately what percentage of the
22 a-tax fund that was allocated to the city that year?

23 A. It was nearly 85 percent: 84.97 percent.

24 Q. Okay, and how much did the local advisory committee
25 advise that should be spent or allocated to the additional

1 service or municipal services?

2 A. The advisory committee recommended 3,650,294.

3 Q. All right, and what percentage of that was -- of that
4 would be of the a-tax fund?

5 A. That was 65.48 percent.

6 Q. And how much does the city council ultimately vote to
7 put into or spend for municipal services that they
8 attributed to tourism?

9 A. 4,664,951.

10 Q. Okay.

11 A. And that was 99.65 percent of the total.

12 Q. And in that vote, did they direct that the money be
13 used for additional services?

14 A. Yes, for police.

15 Q. Okay.

16 A. And fire services.

17 Q. Now, on January the 4th, 2010, did the Tourism
18 Expenditure Review Committee notify you by a letter that it
19 had reviewed the expenditure?

20 A. Yes.

21 Q. Okay. Do you have a copy of that letter?

22 A. I believe I have. Yes, I have. Well, I have a letter
23 dated January 27, 2009.

24 Q. There should be one January the 4th.

25 MR. BATTLE: May I approach the witness?

1 THE COURT: Sure.

2 (COUNSEL AND WITNESS CONFER.)

3 BY MR. BATTLE:

4 A. Okay, yes. There is a letter dated January 4th.

5 MR. BATTLE: Okay, we'd like to offer that letter.

6 Q. And did you respond to that letter on January the 7th?

7 A. Yes, I did.

8 Q. Do you have that letter with you?

9 A. Yes, sir, I have.

10 Q. Okay, and did Tourism Expenditure Review Committee
11 then respond to you again on January the 27th?

12 A. Yes.

13 Q. And do you to have those letters with you?

14 A. I have.

15 Q. And that's part of your records?

16 A. Yes.

17 MR. BATTLE: We'd like to offer these into evidence.

18 THE COURT: Any objections?

19 MR. HOEFER: None other than the previously stated
20 ones, Your Honor.

21 THE COURT: All right.

22 (LETTER MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
23 NUMBER 1.)

24 (LETTER MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
25 NUMBER 2.)

1 (LETTER MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
2 NUMBER 3.)

3 COURT REPORTER: And that's 1, 2, and 3.

4 BY MR. BATTLE:

5 Q. Now, in the -- your letter, what did you explain to
6 TERC? I know the letter speaks for itself, but just state
7 briefly.

8 A. Well, in answer to TERC's question regarding the
9 city's compliance under 6-4-10(4)(b), essentially what I
10 did was to respond to what I think is correctly classified
11 as a methodological question regarding how the city
12 determined that amount of money that would have been
13 eligible for expenditure for city services. And we relied
14 upon Revenue Ruling Number 1922, which is the same ruling
15 which has been cited previously by both attorneys, I
16 believe.

17 Q. That's the South Carolina Department of Revenue's
18 ruling?

19 A. Department of Revenue's ruling. And specifically
20 there's, there are two paragraphs in that ruling that state
21 as follows:

22 Examples of qualifying expenditures under this
23 category.

24 And that's referring to the category that applies to
25 those jurisdictions that have a high concentration of

1 tourism. It says:

2 Examples of qualifying expenditures under this
3 category would include salaries for extra police
4 during the peak tourist season, money spent to
5 hire additional garbage service, and around
6 tourist facilities during the tourist season, or
7 to provide other services that are required
8 because of the high concentration of tourism.

9 When considering the percentage of costs that are
10 attributable to tourism, the Department of
11 Revenue will consider the number of permanent
12 residents for the county or municipality as
13 compared to the number of tourists that visit the
14 locality, taking into consideration the average
15 length of stay for such tourists.

16 Q. And that methodology that you refer to, is that the
17 one that was used by the City of Myrtle Beach?

18 A. Yes, it is.

19 Q. All right. Now, you have compared the City of Myrtle
20 Beach's expenditures to other communities. Could you give
21 us some examples of the communities that you've compared
22 expenditures to?

23 A. I don't have that list in front of me at the moment,
24 but I think that it included other communities such as --
25 well, they were similar in size ---

1 Q. Right.

2 A. --- to Myrtle Beach which, if I remember correctly,
3 included things like Anderson -- gee, any, any, you know,
4 practically everything else that we could find in a city
5 that had a range of about 10,000 to 28 or 30,000 in
6 population. That -- you know, the typical breakdown is 10
7 to 25 and then 25 to 50, and so we tried to pick cities
8 that were as close us as possible in terms of the permanent
9 population data.

10 Q. So, you compared the amount that you spent for police
11 protection and law enforcement, and how much was that?

12 A. The amount that we spent on police service alone that
13 year was 20,800,875.

14 Q. And what was the average of these other communities?
15 How much would they spend?

16 A. Most of them were in the range of 5, \$6 million.

17 Q. And so your estimate is -- how much were you spending
18 on tourism, tourists?

19 A. According to that methodology, 76.70 percent, you
20 know, would be attributable to tourism.

21 Q. How much money, dollars?

22 A. Dollar wise, something over 15 million. I don't, I
23 don't have the actual drawn out calculation, but 15 million
24 is the figure we cite in this letter.

25 Q. How much accommodation tax money did you allocate to

1 offset that \$15 million expenditure?

2 A. That was the \$4.6 million figure that we referred to
3 earlier, 4,664,951.

4 Q. Okay. Now, have you done any studies what average
5 police officers and costs are for populations similar to
6 the City of Myrtle Beach since that time? Talking about
7 the Department of Justice's survey.

8 A. Not that we conducted but, but we have reviewed the
9 Department of Justice's numbers.

10 MR. BATTLE: Now, Your Honor, for the same of judicial
11 economy, I'm going to ask that you take judicial notice.
12 This is a local police department study conducted by the
13 United States Department of Justice; it was done in 2007.
14 I provided a copy to Mr. Hoefer. I'm sure he has the same
15 objection to it, but I will offer that into evidence and
16 ask the court to take judicial notice of it.

17 MR. HOEFER: Your Honor, I do, I do have the objection
18 that it is hearsay clearly. But the additional objection
19 that I have is that -- trying to think exactly how I want
20 to phrase this. I beg the court's indulgence.

21 It is hearsay, as I said before, but we don't think
22 that this is a document that was identified by the
23 plaintiff -- I mean, by the defendant in the response to
24 discovery that they were going to use. I have the
25 discovery, the original discovery requests and the response

1 from the City of Myrtle Beach. That document wasn't
2 identified. So, we would object on that ground, too. If
3 I'm incorrect, Mr. Battle can correct me, but I don't think
4 that document was identified as anything pertinent to this
5 case.

6 THE COURT: Any response, Mr. Battle?

7 MR. BATTLE: Just basically I came across that
8 document preparing for this trial, and I sent Mr. Hoefer --
9 we had originally talked about stipulated facts, and it was
10 mentioned extensively in the stipulated facts. I emailed
11 him a copy last night and also provided him a copy this
12 morning. It is a matter of public record, and I simply ask
13 the court to take judicial notice of it and give it
14 whatever value it's worth.

15 THE COURT: All right.

16 MR. HOEFER: Your Honor, my mind has come back to me
17 now, and I apologize. But also we don't think it's a
18 matter that the court can take notice of under the, under
19 the rules of evidence. I think the pertinent rule is Rule
20 201. We don't think this is the type of thing the court
21 can take notice of. It's an out-of-court statement that's
22 going to be offered for the proof of the matter asserted.

23 But this is not a fact that can be judicially noticed
24 because it clearly says it's a study. So, we think it
25 could be subject to reasonable dispute. It's not generally

1 known within this jurisdiction and territory. I believe
2 this is a United States Department of Justice, Bureau of
3 Justice statistics report. I don't see any way that the
4 court can in this process ascertain whether or not any of
5 the facts in here are, are accurate and ready -- readily
6 determined.

7 So, in addition to objection to hearsay ongoing, I do
8 have the original response of the plaintiff to the
9 discovery request. If it's necessary, I'll be glad to put
10 it on the record, but this document was not identified. I
11 think Mr. Battle has already acknowledged. He ---

12 MR. BATTLE: It wasn't identified in answers to
13 interrogatories.

14 MR. HOEFER: It wasn't provided.

15 MR. BATTLE: But last week I sent him stipulations of
16 fact, and it was contained in there. I mean, he's had some
17 notice of it.

18 MR. HOEFER: Well, and, and again it was referenced in
19 a proposed stipulation of fact that the parties could agree
20 upon. But the document wasn't supplied, but it hasn't been
21 identified in the discovery responses. And I do
22 acknowledge he made mention in the stipulation of fact. We
23 couldn't agree on stipulating any facts.

24 THE COURT: Do you need time to review it now?

25 MR. HOEFER: Well, Your Honor, it's -- what I would

1 like to do, if the court is considering Mr. Battle's
2 request, is an opportunity to comment later. I just
3 haven't had the chance -- he acknowledges he supplied it to
4 me last night and gave me a copy of it this morning.

5 MR. BATTLE: I have no objection.

6 MR. HOEFER: I haven't had time to look at it.

7 THE COURT: All right, I'll give you time to look at
8 it.

9 MR. HOEFER: All right. Thank you, Your Honor.

10 THE COURT: If you'll continue.

11 MR. BATTLE: Go ahead and mark it?

12 THE COURT: Go ahead and mark it, and I'm going to at
13 this time overrule the objection.

14 (REPORT BY UNITED STATES DEPARTMENT OF JUSTICE MARKED
15 INTO EVIDENCE AS DEFENDANT'S EXHIBIT NUMBER 4.)

16 COURT REPORTER: And that's Exhibit Number 4.

17 MR. BATTLE: And, Your Honor, since this is in
18 evidence, the only purpose of this is not to try to get you
19 to read the whole document or anything. It's just to
20 simply show that the average across the country is very
21 similar to the average in, in South Carolina. And that our
22 use of other municipalities with similar populations is
23 consistent and, therefore, not pulled out of the air.
24 That's the primary purpose of it.

25 It's not -- we will concede that we did not use this

1 in our determination back when we determined that the 99.9
2 percent could be used for police protection and services.
3 What we used the money for, what we based our determination
4 on is we compared ourselves to Anderson, Aiken, Greenwood,
5 and four or five other similar sized populations and saw
6 what they were spending for police protection and police
7 personnel. And we, and so we did the same. And what this
8 simply does is it just bolsters that we're being reasonable
9 in what we're spending on police protection.

10 THE COURT: All right.

11 MR. BATTLE: I'll hand this up to the court because I
12 don't want to deal with it anymore.

13 THE COURT: All right.

14 BY MR. BATTLE:

15 Q. Now, in response to your letter you wrote -- well,
16 let's, let's go ahead and also introduce at this time
17 Revenue Ruling 98-22. Do you have that?

18 A. Yes.

19 MR. BATTLE: We'd offer -- this is authority and we
20 would like to go ahead and introduce this into evidence.

21 MR. HOEFER: Same objection, Your Honor.

22 THE COURT: All right, sir. Continue.

23 (COPY OF REVENUE RULING 98-22 MARKED INTO EVIDENCE AS
24 DEFENDANT'S EXHIBIT NUMBER 5.)

25 COURT REPORTER: Defendant's Exhibit 5.

1 BY MR. BATTLE:

2 Q. Now, with regard to your letter of January 7th, and I
3 apologize for jumping around. You spent \$20,008,175 -- 20
4 million plus some change -- on the police department. How
5 much did you spend on your fire department?

6 A. 11,138,096.

7 Q. And how much did you spend on your culture and leisure
8 services?

9 A. 10,998,109.

10 Q. Okay, and so did you compare any of those with those
11 other counties or areas?

12 A. We did compare fire. I'm not sure about culture and
13 leisure services. I think there may have been some
14 benchmark data that we had from a study done by the
15 University of South Carolina that we used to give ourselves
16 comfort, though.

17 Q. So, do the other areas -- so you feel comfortable in
18 stating -- or you're, I guess, stating that the other
19 areas spend substantially less than \$42 million on their
20 police department, fire department, culture and leisure
21 services?

22 A. Yes.

23 Q. What is the number of visitors that is estimated to
24 visit the City of Myrtle Beach by the -- in your opinion,
25 and what do you base that number on?

1 A. We rely on estimates that come from the Myrtle Beach
2 Chamber of Commerce or from special studies they have done.
3 I believe there's a study done by a group called D.K.
4 Shiflett and Associates.

5 In 2007, we had identified the number of visitors we
6 had as 15.2 million people. And according to their
7 information, the average stay was five days for leisure
8 travelers and three days for business travelers.

9 Q. All right, sir. What is the estimated permanent
10 population of the City of Myrtle Beach?

11 A. You know, we used about 30,000 while we were
12 estimating census numbers. Turns out now the 2010 census,
13 I believe, said that our population is, I believe, 27,000
14 and some change. I -- it seems like it was 27,109 or
15 something like that.

16 Q. That's correct. How many police officers does the
17 City of Myrtle Beach employ?

18 A. We have 206 officers. That doesn't include two people
19 who are, you know, administrative. Namely the police chief
20 and the captain.

21 Q. All right. Just break down how those police officers
22 are spread out through the administration organization.

23 A. Okay.

24 Q. You're not including the chief or the captain.

25 A. Right.

1 Q. So, let's talk about the rest of them.

2 A. It also doesn't include fifty-two detention officers
3 who also have some communications duties. It does not
4 include two animal control officers or thirteen civilian
5 employees.

6 Q. Okay.

7 A. Those are -- those 206 officers are actually sworn
8 officers engaged in the direct delivery of service or
9 command of people who are ---

10 Q. Those are ---

11 A. --- involved.

12 Q. --- police working on the street with the crowds?

13 A. That's correct, and their direct supervisors.

14 Q. Yeah. Okay. What, do you know what -- do you have
15 any idea what the average number is for municipalities for
16 similar populations?

17 A. According to the Department of Justice study, that
18 number is about 62.3.

19 Q. 62.33?

20 A. Yeah, that average number.

21 Q. Okay. So, you have approximately 150 more police
22 officers -- I'm sorry, 140 more police officers than the
23 average municipality with a population of similar size of
24 Myrtle Beach?

25 A. That's correct.

1 Q. Okay. What do you think the average population of the
2 City of Myrtle Beach is if you include the tourists on that
3 particular -- any particular day?

4 A. We have studied that as well. A few years ago, we
5 engaged in a study back-and-forth with Coastal Carolina and
6 a developer who was proposing annexation. And the figures
7 that we came up with were that we had an average population
8 of about 104,000. We estimated our peak population to be,
9 to be quite a bit more than that.

10 The, the average daily population, according to the
11 calculation that we made, over the course of a year, peak,
12 you know, kind of smoothing out the peaks and everything,
13 was about 208,000 people even, even during the month of
14 January.

15 I think I may have misstated about the 104,000.
16 That's, that's the number we expect that we have in town
17 during a -- one of the lower months because we have large
18 populations of people who come down from the Northeast and
19 rent accommodations during the winter months. Snowbirds as
20 we ---

21 Q. How long have you been with the city?

22 A. --- call them. How long have I been with the city?
23 Twenty-five years, a little over twenty-five years.

24 Q. When did you first come?

25 A. December 1985.

1 Q. 1985?

2 A. Yes, sir.

3 Q. Back in 1985, did you have more fluctuation of the
4 tourist seasons? Did you have peak tourist seasons and
5 then off, off-peak tourist seasons back then?

6 A. Yeah. We still -- we had actually probably more
7 fluctuation then than we have now because during the summer
8 months, the population swelled considerably. We didn't
9 have nearly as much traffic in the, what we call the
10 shoulder seasons, which are the spring and fall seasons or
11 in the winter season. Now we have, you know, golf courses,
12 theaters, and so forth that operate year round. We are
13 able to attract people who, who come down and stay with us,
14 you know, during those off-peak months. And so that's, the
15 shoulder seasons are really where we've seen the most
16 growth, I'd say, over the past ten to twenty years.

17 Q. So, the -- is there any way that you know the City of
18 Myrtle Beach can hire police for just the summer or during
19 any short period of time?

20 A. You can do that, but you can't -- you know, if you try
21 to hire up just for the peak months, you, you don't have --
22 you end up having those people year round anyway because of
23 the time that it takes to train them to be able to actually
24 put an officer on the street.

25 And so, you know, there was at one time a program that

1 we employed for other departments in which we, you know,
2 hired people during the summer months specifically for
3 temporary employment. It's a little bit different when
4 you're trying to put police officers on the street who can
5 do the job enforcing day to day. So, you have to handle
6 that a little bit differently.

7 Q. Are those police officers necessary to serve the
8 tourists?

9 A. If we ask our hoteliers and we ask our tourists, I
10 think we would hear them say yes because obviously ---

11 Q. What is your opinion?

12 A. --- our city council has made that decision. And my
13 opinion is that we need -- in the peak season particularly,
14 we need everybody we've got and then some. In fact, there
15 are certain parts of the year we have agreements with the
16 other agencies that we call upon to, to come in and help
17 provide additional services in the really extreme peak.

18 Q. All right. Now, with regard to other areas of high
19 concentration of tourism, have you looked through TERC's
20 documents to see whether or not any of those received funds
21 for their police services?

22 A. I have.

23 Q. Okay. Do they ---

24 MR. HOEFER: Please the court, what was that that you
25 handed?

1 MR. BATTLE: That's the production of documents that
2 TERC gave me, and that is the minutes and the -- I'm not
3 going to introduce that. That is the minutes and reports
4 that the various areas of high ---

5 MR. HOEFER: Thank you. Thank you. I understand.

6 BY MR. BATTLE:

7 Q. And so what I wanted to get the point made or the fact
8 established that Charleston, Beaufort, Greenville,
9 Spartanburg, Richland, and Horry County, they all do the
10 same thing that the City of Myrtle Beach does.

11 MR. HOEFER: Objection, Your Honor.

12 THE COURT: What grounds?

13 MR. HOEFER: Well, he's handed this document to the
14 witness. He's framed his question. The witness is looking
15 at the document. He doesn't know the answer. He's going
16 through the document now. We would submit what some other
17 city or municipality may do is not relevant to the line of
18 questioning.

19 I'm not sure, and Mr. Battle said he wanted to
20 establish a fact, but I'm not connecting the two dots here.
21 I don't know why those would enable the witness, those
22 documents would enable the witness to say what somebody
23 else does.

24 THE COURT: Mr. Battle, why don't you lay a proper
25 foundation.

1 MR. BATTLE: All right.

2 BY MR. BATTLE:

3 Q. What documents -- are you refreshing your memory from
4 the documents -- what documents are you looking at?

5 A. I'm looking at a series of documents that include
6 minutes from TERC meetings going from 2002 through 2010, as
7 well as some documents that apply to various jurisdictions
8 who had been reviewed by TERC.

9 Q. And my question is have you looked at other areas of
10 high concentration of tourism in those documents?

11 A. Yes.

12 Q. And do they use the money in a similar manner that the
13 City of Myrtle Beach does maybe and for lesser percentages?

14 A. From memory, I couldn't tell you about all of them,
15 but I can tell you that there are several who do. Horry
16 County is one. North Myrtle Beach is one, and those are
17 the two that obviously are the most salient to me because
18 they're right there in the same area.

19 Q. Right. So, in the minutes, did you see any objection
20 from TERC to the use those areas made of their funds?

21 A. I think there may have been a question regarding some
22 use by North Myrtle Beach. I did not see any question
23 relating to Horry County.

24 Q. And being municipal -- additional municipal, municipal
25 services?

1 A. Right.

2 Q. Is there any way to break out which policemen serve
3 tourists and which policemen serve permanent population?

4 A. Which individual officers serve ---

5 Q. Which individual officers.

6 A. I don't know of any way to do that. You know, I think
7 the only way you could do that would be if you organized
8 your department so that you were designating certain people
9 to do certain tasks that were related to -- and still
10 somebody's going to respond to the call that, that involves
11 a residential complaint or that may or may not have
12 anything to do with tourism.

13 So, you know, they're -- the officers are out on
14 street. They're going to respond to the calls that come
15 in. And I'm not sure that you can really make that, that
16 clean a break between an officer who serves tourists as
17 opposed to an officer who serves residents and businesses
18 of the community.

19 MR. BATTLE: Thank you. Please answer any questions
20 Mr. Hoefer may have.

21 WITNESS: Okay.

22 THE COURT: Mr. Hoefer.

23 MR. HOEFER: Thank you, Your Honor.

24 CROSS-EXAMINATION BY MR. HOEFER:

25 Q. Good afternoon, Mr. Shelton. I had to look at my

1 watch. You and I have met before, have we not?

2 A. We have.

3 Q. And you know that I represent the Tourism Expenditure
4 Review Committee in this matter?

5 A. I know that.

6 MR. HOEFER: Now, if it please the court, Your Honor,
7 I'm not going to go to the microphone because I think
8 everybody can hear me.

9 THE COURT: I can hear you.

10 BY MR. HOEFER:

11 Q. Mr. Shelton, I think you described your position as
12 one in which you oversee expenditures of the accommodations
13 tax. Is that correct?

14 A. That's correct.

15 MR. HOEFER: May I approach the witness, Your Honor?

16 THE COURT: Sure.

17 BY MR. HOEFER:

18 Q. Mr. Shelton, I'd like to show you a document and ask
19 you if you can identify it for me.

20 A. It's a report. It's the accommodations tax reporting
21 form from the City of Myrtle Beach. Let's see, for the
22 fiscal year ending 6/30/2009.

23 Q. Okay. Do you have a copy of that ---

24 A. I don't ---

25 Q. --- report?

1 A. I don't think I have a copy of it ---

2 Q. You don't have a copy of it with you?

3 MR. HOEFER: Your Honor, I'd like this marked for
4 identification at this point.

5 THE COURT: All right.

6 (ACCOMMODATIONS TAX REPORT MARKED AS PLAINTIFF'S 1 FOR
7 IDENTIFICATION.)

8 COURT REPORTER: Plaintiff's 1 for ID.

9 BY MR. HOEFER:

10 Q. Now, Mr. Shelton, the document that's been marked as
11 Plaintiff's 1 for Identification, that appears that it was
12 prepared by Michael D. Price?

13 A. That's correct.

14 Q. Who is Michael D. Price?

15 A. He is a the budget analyst in the employ of the city.

16 Q. And is he under your direct supervision?

17 A. Yes, he is.

18 Q. Okay. Now, in preparation for the trial today, did
19 you review the trial brief that the City of Myrtle Beach
20 submitted to the court?

21 A. I did.

22 Q. You did, okay. Do you have a copy of that?

23 A. Yes.

24 Q. Okay. Me ask you, if you would, go to...

25 MR. HOEFER: Beg the court's indulgence.

1 Q. Go to paragraph 14 of the trial brief, the city's
2 trial brief.

3 (A PAUSE.)

4 A. 14? Okay.

5 Q. I'm going to hand this document back, sir.

6 A. Okay.

7 Q. It's been Plaintiff's for Identification Number 1. In
8 paragraph 14 of the city's trial brief, Mr. Shelton.

9 A. Yes.

10 Q. Doesn't it say that the city allocated substantially
11 all of the \$4.6 million to law enforcement services?
12 Looking at the second sentence of paragraph 14.

13 A. In paragraph 14?

14 Q. Uh-huh.

15 (A PAUSE.)

16 Q. Are you having trouble finding it?

17 A. Are you talking about ---

18 Q. It's on page 7.

19 A. Item number 14 on page 7?

20 Q. Yes, sir, the second sentence.

21 A. That item on has one sentence in this.

22 Q. Yes, sir. I'm asking you -- well, why don't we cut to
23 the chase. Would you read that sentence to the court?

24 A. It says:

25 The city compares its government service

1 expenditures for law enforcement, traffic
2 control, public facilities, and highway and
3 street maintenance with ---

4 Q. That's paragraph 15, Mr. Shelton. Excuse me for
5 interrupting. Are you looking at the city's trial brief,
6 paragraph ---

7 A. I'm sorry. Maybe I have an earlier version. I don't
8 have a copy with me.

9 Q. Okay. Well, let me ask your counsel if I could get a
10 copy of that trial brief for you to look at.

11 (A PAUSE.)

12 Q. I'm sorry.

13 A. Okay.

14 Q. If you would, just read the second sentence of
15 paragraph 14 on page 7.

16 A. Such a comparison was one basis for the city's
17 determination that its use of a-tax funds for
18 fiscal year 2008-2009 was proper under SC code
19 64-10(b)(4).

20 Q. Would you flip it down for a second? Paragraph 14,
21 Mr. Shelton.

22 A. You want me to back up to ---

23 Q. I want you to go to paragraph 14 ---

24 A. Okay, this part about ---

25 Q. The second sentence, and please read that aloud for

1 the court.

2 A. The second sentence under 14 says:

3 When the city's 14 million extra law enforcement
4 expenses ---

5 Q. No, sir. The second sentence:

6 A. The city allocated substantially all of the 4.6
7 million to law enforcement services.

8 Q. Now, that's not what the report that you submitted
9 that's been identified as Plaintiff's 1 says, is it?

10 A. That document says City of Myrtle Beach. I, I assume
11 that you're talking about the line that shows 4,664,000.

12 Q. Yes, I am.

13 A. Yeah, and that says: City of Myrtle Beach General
14 Fund. And under the description column it says:

15 Supportive operating expenses for services
16 provided above and beyond permanent population
17 through the year to include additional police,
18 fire, and parks personnel.

19 Which I believe is made up substantially of police.

20 Q. But the whole 4.6 million wasn't spent on that, was
21 it?

22 A. The whole 4.6 million went to the general fund for the
23 support of those activities that I talked about.

24 Q. Well, are you testifying today that this report which
25 reflects that the money was spent on police, fire, and

1 parks personnel is inaccurate?

2 A. No, sir. I think the wording substantially is
3 correct.

4 Q. Okay.

5 A. If you want to say -- if you want to talk about what
6 it includes in total, then you can include all of those
7 items.

8 Q. Okay, and so tell me. How much was spent on fire
9 department?

10 A. You know, we did not break it out that way, but it --
11 what we would do typically in a situation like that is, is
12 to look at the allocation of the costs, 20 million of which
13 -- nearly half -- were police costs, approximately a
14 quarter of which were fire, and a quarter of which were
15 cultural and leisure services. So, if you were to allocate
16 the costs that way, that's what you would get.

17 Q. So, you think about 24 percent of that 4.6 went to
18 leisure services, and about 25 percent of that 4.6 ---

19 A. I mean ---

20 Q. --- went to fire department?

21 A. Well, what I would say is money is fungible. How do
22 you know which dollar went to one location and which to the
23 other? What I'm saying the expenditures that we turned in
24 or that we made relied upon that support.

25 Q. And, and ---

1 A. For those purposes.

2 Q. Oh, I'm sorry.

3 A. For those purposes.

4 Q. That's good, and money's fungible, so once it goes
5 into the general fund, it could be used for lots of things,
6 couldn't it?

7 A. Once you, once you move it to the general fund, then
8 it's there to support whatever activity it was put there to
9 support in the first place. I mean, if I had, if we had a
10 situation in which \$4 million went for those identified
11 purposes and those activities only cost \$3 million, then,
12 you know, you would only be able to allocate \$3 million for
13 those purposes.

14 Q. Okay. So, then the answer to the question is it is
15 possible once the money got to the general fund it might
16 not have been used for fire purposes ---

17 A. No. I'm not saying that that's possible.

18 Q. Oh. So, it was all used for that, but ---

19 A. I'm saying, I'm saying that -- you asked me about
20 money going one place to another. What I'm saying is that
21 one dollar, you're not going to track that one specific
22 dollar through the whole system. You've got to be
23 reasonable in terms of allocating costs and understanding
24 that a certain amount of money that came from a certain
25 source is being used for or is eligible to be used for a

1 given purpose. And if you have a shortfall of funds in
2 another area and, and funds from this first area are more
3 than it took to operate that first area, then you would not
4 be justified in mingling those dollars ---

5 Q. But ---

6 A. --- and using those for some other purpose.

7 Q. Okay. So, when it goes in the general fund, it could
8 be used for a variety of purposes. Is that a fair
9 statement? Are you saying ---

10 A. I think ---

11 Q. --- it's not possible?

12 A. No. I'm saying that there are ways to identify ---

13 Q. Okay.

14 A. --- that the amount of money that was transferred to
15 the general fund were used for the purpose for which it was
16 designated.

17 Q. If I could get ---

18 A. We do that as a routine matter.

19 Q. If I could get that document back from you.

20 A. This one?

21 Q. Yes, the one that's been marked as Plaintiff's ---

22 A. Sure.

23 Q. --- Number 1.

24 MR. HOEFER: Your Honor, at this time I would offer it
25 into evidence as Plaintiff's Number 1.

1 MR. BATTLE: No objection.

2 (ACCOMMODATIONS TAX REPORT MARKED INTO EVIDENCE AS
3 PLAINTIFF'S EXHIBIT NUMBER 1.)

4 COURT REPORTER: Plaintiff's 1.

5 BY MR. HOEFER:

6 Q. Now, Mr. Shelton, the amount of money that was
7 allocated, the \$4.6 million -- well, let me back up. I
8 think you testified that the city applied the tourism
9 expenditure or the accommodations tax revenue funds itself.
10 Is that not correct?

11 A. That's correct.

12 Q. And doesn't the document that's been identified as
13 Plaintiff's Exhibit Number 1, doesn't it reflect that the
14 city received more than it asked for?

15 A. Yes, it does.

16 Q. Okay, and could you tell me how much more for police,
17 fire, and parks personnel expenditure it received than was
18 requested?

19 A. The total request was 3,977,794, and the total grant
20 was 4,664,951.

21 Q. So, that's about \$700,000 roughly?

22 A. Yes.

23 Q. Okay. Thank you. Now, Mr. Battle asked you about, I
24 think, a couple of letters that may have passed back and
25 forth between the city and the Tourism Expenditure Review

1 Committee. Do you remember your discussion with Mr. Battle
2 about that?

3 A. Yes, I do.

4 MR. HOEFER: May it please the court? May I see
5 Exhibit 3?

6 MR. BATTLE: Since that is an original, I would ask
7 that you substitute yours.

8 MR. HOEFER: Okay, I just wanted to make sure it was
9 in there. Thank you.

10 MR. BATTLE: Why don't you go ahead and substitute?

11 MR. HOEFER: I don't have any problem with that if you
12 want, if that's appropriate.

13 THE COURT: Why don't we just leave it like it is.
14 It's fine with me.

15 BY MR. HOEFER:

16 Q. Now, Mr. Shelton, the document, I think this is
17 Plaintiff's Exhibit -- I mean, Defendant's Exhibit 4, the
18 local police study from the Bureau of Justice, U.S.
19 Department of Justice. You know the document I'm talking
20 about?

21 THE COURT: It's right here.

22 Q. Do you have a copy of this?

23 A. Yes.

24 THE COURT: It's right here.

25 A. I have it here.

1 Q. Plaintiff's Exhibit -- or Defendant's Exhibit 4, do
2 you have that?

3 A. I have it.

4 Q. Is there a municipality from South Carolina mentioned
5 in this report, Mr. Shelton? Well, let me back up and ask
6 you this question. Have you reviewed this document?

7 A. Not entirely, no.

8 Q. Okay. Have you reviewed it enough to know whether or
9 not a South Carolina municipality is mentioned in it?

10 A. The number of the specific cities that are -- no, I
11 haven't because what I've reviewed is some of the tables,
12 some of the text, and I did not come across anything that
13 identified cities except for the table in the very back.

14 Q. Did that table mention any South Carolina cities?

15 A. I do not see any South Carolina cities in that table.

16 Q. Now, Mr. Shelton, I want to take you back Defendant's
17 Exhibit Number 3 that we were just talking about.

18 A. Yes.

19 Q. And look at the January 27th letter that's addressed
20 to the city from the Tourism Expenditure Review Committee.
21 Do you have that in front of you?

22 A. Yes, I have it in front of me.

23 Q. Okay, and isn't it correct that in that letter, the
24 Tourism Expenditure Review Committee expressed concern to
25 the City of Myrtle Beach over its belief, the Tourism

1 Expenditure Review Committee's belief, that monies were
2 being taken out of the general fund to be used for
3 tourism-related projects? Is that correct? You either --
4 the phrase, it's paragraph 2 of that letter.

5 A. Okay, let me read paragraph 2, if you would.

6 (A PAUSE.)

7 A. Okay. Yes, that is -- it does say that the:

8 TERC is informed and believed that a variety of
9 expenditures for, quote, tourism related,
10 unquote, projects were funded out of the city's
11 general fund.

12 Q. Now, I think you testified that the city compared
13 their fire expenses with other jurisdictions. Is that
14 correct?

15 A. Uh-huh.

16 Q. Okay, but not the parks. Is that right?

17 A. To my memory.

18 Q. Okay, and I think you called it leisure services. Is
19 that correct?

20 A. That's right.

21 Q. What, what municipalities did you compare the city's
22 fire expenses to?

23 A. I don't have the study in front of me, so I couldn't
24 tell you.

25 Q. You don't know?

1 A. I, I don't keep that on the top of my head, no.

2 Q. Okay. You say you've been with the city since 1985.

3 A. That's right.

4 Q. When did the city first begin taking money out of the
5 accommodations tax revenue funds and using it for municipal
6 services?

7 A. From the outset.

8 Q. From the outset?

9 A. Yeah. I mean, there were, there were, you know,
10 tourism-related expenditures in the general fund just as
11 any other jurisdiction had.

12 Q. Well.

13 A. Might have had.

14 Q. Let me, let me refine my question a little bit more,
15 Mr. Shelton.

16 A. Okay.

17 Q. When did the City of Myrtle Beach first decide that it
18 could take all of the available accommodations tax revenue
19 and use it for municipal services? When did that happen?

20 A. I think 2009 was the first year in which council
21 decided to use all of it in that way.

22 Q. Now, I think you told Mr. Battle, and you correct me
23 if I'm wrong, that it was hard for the city to hire up
24 police for big months. Is that...

25 A. In temporary positions.

1 Q. Right. If the city has an unexpected event that's
2 going to bring tourists, does the city have resources in
3 the area, law enforcement resources that it could draw upon
4 to assist the city in dealing with that event?

5 A. You talking about specific events that might be of
6 short duration?

7 Q. Sure. Sure. Yes.

8 A. And not repeated on ---

9 Q. A nonrecurring event.

10 A. And not recurring over the course of the year?

11 Q. It -- a nonrecurring event.

12 A. Yeah. There would be situations in which we are able
13 to call on others to, to help out.

14 Q. And those others would be maybe Horry County Police
15 Department?

16 A. Might be the Horry County Police Department. Might be
17 the South Carolina Highway Patrol. Just depends on ---

18 Q. Okay.

19 A. --- what the event is.

20 Q. Okay. Now, to your knowledge, has any other city with
21 a high concentration of tourism used all their available
22 accommodations tax revenues from the 65 percent fund, the
23 section 6-4-10(4)(b) fund? To your knowledge, have any of
24 those cities with a high concentration of tourism used all
25 the funds for municipal services?

1 A. I couldn't tell you whether they use all of it. I --
2 in the, in the applications that I reviewed and the
3 documents that I reviewed, there were some that used
4 substantial amounts, but I don't know that I could say any
5 of them used all of it.

6 Q. Okay. All right. Thank you. Now, I think Mr. Battle
7 talked with you a little bit about what the Tourism
8 Expenditure Review Committee has done in the past. You got
9 a big notebook up there that, that gives you some of that
10 information?

11 A. Sure.

12 Q. And I think you said that the Myrtle Beach City
13 Council was the legislative body for Myrtle Beach. Is that
14 correct?

15 A. Yes.

16 Q. All right. City of Myrtle Beach City Council, they
17 ever change their mind about anything?

18 A. Sometimes.

19 Q. Okay and, in fact, you're aware, are you not, that one
20 of the issues that has been litigated at the administrative
21 level between City of Myrtle Beach and the Tourism
22 Expenditure Review Committee is expenditure funds on
23 so-called biker rallies?

24 A. Yes.

25 Q. And the city did, in fact, allow some of the

1 accommodations tax revenue to be used in the past to
2 support a biker rally, have they not?

3 A. Yes.

4 Q. And then the city has subsequently taken steps to
5 enact ordinances that would place limits on biker rallies,
6 has it not?

7 A. That's true.

8 Q. And the city has taken the position it no longer
9 supports large concentrations of motorcycles in the city
10 during certain times of the year. Isn't that true?

11 A. I'd say that's probably accurate, yeah.

12 Q. Okay. Should the City of Myrtle Beach not change its
13 mind about biker rallies?

14 A. No. I think that, you know, a legislative body has a
15 right to legislate, you know, in the same manner in which
16 they make determinations about accommodation tax money.
17 They can decide one year they want to use it all for one
18 purpose; the next year, they might want to use it for a
19 different purpose. You know, it's not a -- not something
20 that they're tied to year to year.

21 Q. Okay. Do you, do you believe that an agency charged
22 by the legislature with enforcing the statute, if it
23 believes that it's not enforcing the statute correctly,
24 should that agency continue to enforce the statute the same
25 way just because that's how it was done before in the face

1 of that good-faith belief?

2 A. Well, I don't know that I can answer from that
3 perspective. I think from the perspective of an agency
4 that's under the jurisdiction of one of those review
5 agencies, we look for consistency in interpretation,
6 and ---

7 Q. Sure.

8 A. -- because that's what we're basing our action on.

9 Q. Sure and, and the Tourism Expenditure Review
10 Committee, their effort to get an answer to this question,
11 it hasn't cost the City of Myrtle Beach a penny, has it?

12 A. Other than legal expenses, right.

13 Q. Well, that's between you and Mr. Battle, but my point
14 is TERC has not sought to deprive or to have the state
15 treasurer withhold any accommodations tax revenue funds
16 from the City of Myrtle Beach because of its change in how
17 it views the statute, has it?

18 A. Right. They did not request that money be withheld
19 for that purpose.

20 Q. Okay. Mr. Shelton, under the city's interpretation of
21 the stature, if the city wanted to -- let me ask you a
22 hypothetical question. Say that the city, their entire
23 police, fire, and parks personnel budget was \$4.6 million
24 and that was it. Under the city's interpretation, am I
25 correct in understanding that the city believes that it can

1 take the whole \$4.6 million and use it for police, fire,
2 and parks personnel under that scenario?

3 A. No. I would say that's not a correct understanding.

4 Q. Okay. Well, tell me why that's incorrect.

5 A. Okay. If our entire budget were \$4.6 million for all
6 of that service, we would not have, you know, \$4.6 million
7 that's all attributable to tourism. You know, if -- given
8 the same figures to work with, if 74 percent of our
9 expenditures for tourism we determined were allocable to
10 tourism according to the guidelines in 98-22, then only
11 that part of that \$4.6 million would be eligible.

12 Q. Well, let me make sure I understand this. I think you
13 have said that it's appropriate for the city to look at
14 police, fire, and parks personnel expenditures by other
15 municipalities. Is that a fair statement?

16 A. For the purpose of determining what some normal level
17 is. You know ---

18 Q. Well.

19 A. --- we look at the word normal, and we view other
20 cities in the state, and we ask, you know, don't they have
21 some level, normal level of tourist activity as well.

22 Q. And that's normal for ---

23 A. And I think they do.

24 Q. --- another city, not normal for Myrtle Beach, right?

25 A. Yeah.

1 Q. Okay. Now, Mr. Battle also asked you was there any
2 way to break out which police officers served tourists and
3 which served residents. Do you remember that question?

4 A. I remember that question.

5 Q. And I think your answer was there's not any way?

6 A. I think my answer was something that effect, yes.

7 Q. Okay. Well, let me ask you this. If a police officer
8 serves a tourist, does that service inure to the benefit of
9 a permanent resident of the City of Myrtle Beach in any
10 way?

11 A. Well, sure it does. I mean -- but, you know, if you,
12 if you go down that path, then every, you know, every
13 dollar we spend inures to the benefit of citizens, and
14 every dollar we spend inures to the benefit of tourists
15 when it comes to police service. It's a public good, and
16 that's what -- you know, it's not, it's not something that
17 you can charge for consumption the same way you can for a
18 soft drink.

19 Q. Those tourists generate other revenues for the city.

20 A. They do.

21 Q. And, in fact, I think Mr. Battle asked you about some
22 local hospitality taxes.

23 A. That's correct.

24 Q. And, in fact, doesn't state law allow the City of
25 Myrtle Beach to collect a local hospitality tax?

1 A. Yes, it does.

2 Q. And also a local accommodations tax.

3 A. Yes, it does.

4 Q. And a hospitality tax would be for food and beverage
5 in restaurants.

6 A. That's right.

7 Q. And that generates money, doesn't it?

8 A. Yes.

9 Q. How much money does that generate in a year? Let's,
10 let's start with the hospitality tax. What was the amount
11 that was generated for Myrtle Beach last year on
12 hospitality taxes?

13 A. Well, that generates about \$8 million, but that's a
14 highly restricted source, too, so.

15 Q. Could you use it for police services?

16 A. You cannot use it for police services, but you can use
17 it for, for example, for purchasing equipment that the
18 police department would use, vehicles or ---

19 Q. Well, what about local accommodations statute? Can
20 you use that for police services?

21 A. No.

22 Q. Okay.

23 MR. HOEFER: Beg the court's indulgence.

24 THE COURT: Sure.

25 (A PAUSE.)

1 MR. HOEFER: That's all we have, Your Honor.

2 Thank you, Mr. Shelton.

3 THE COURT: Any brief redirect?

4 MR. BATTLE: Just very briefly.

5 REDIRECT EXAMINATION BY MR. BATTLE:

6 Q. Two things. One, with regard to earmarks and
7 limitations on your accommodations taxes, is the
8 legislature fairly specific about how that money should be
9 spent?

10 A. You talking about the state wide or the local
11 requirements?

12 Q. I'm just talking about the acts that deal with the
13 accommodations taxes in general. Are they fairly
14 significant in their guidelines, I mean?

15 A. I think they are. I mean, they're restricted for
16 expenditure on tourism-related things, things that -- I
17 think the words in the statute are something like they
18 attract and provide for tourists.

19 Q. Now, Mr. Hoefer opened the door with regard to use of ,
20 money from your general fund for tourism expenditures.
21 That was the subject of another lawsuit, was it not?

22 A. Yes, it was.

23 Q. And the court ruled in our favor on that point.

24 A. Yes, it did.

25 Q. And that is now on appeal.

1 A. Yes, it is.

2 MR. BATTLE: Thank you.

3 THE COURT: Anything further, Mr. Hoefer.

4 MR. HOEFER: No, Your Honor. I'd be glad to make a
5 closing statement. But in the interest of time, what I
6 would ask, if the court would entertain either proposed
7 orders or briefs.

8 THE COURT: All right, tell you what I'll do. I'll
9 take it under advisement, and I will have you a ruling by
10 the end of the week.

11 MR. HOEFER: Thank you, Your Honor..

12 MR. BATTLE: Thank you then.

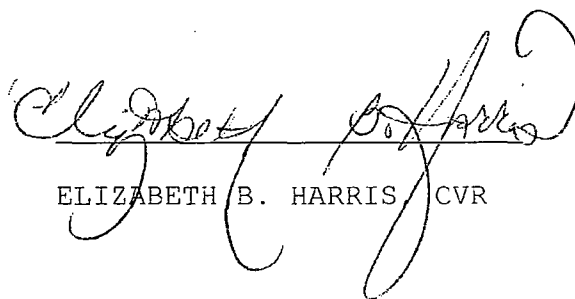
13 THE COURT: All right, thank you very much.

14 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 11TH DAY OF JULY, 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS CVR

COLUMBIA, SOUTH CAROLINA

NOVEMBER 29TH, 2011



City of Myrtle Beach
S O U T H C A R O L I N A

September 30, 2009

Ms. Damita Jeter
Tourism Expenditure Review Committee
P.O. Box 125
Columbia, SC 29214-0120

Re: Accommodations Tax Expenditure Reporting Forms

Dear Ms. Jeter,

Please find enclosed the Accommodations Tax Expenditure Reporting Forms as required by the South Carolina Code of Laws, Title 6, Chapter 4, Section 6-4-25, detailing the expenditures for the fiscal year 2008-2009. Detailed information, as requested, has been included on the forms when available.

If you have any questions with regards to this letter or information attached, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Michael D. Price".

Michael D. Price
Budget & Evaluation Analyst

ACCOMMODATIONS TAX REPORTING FORM

Side A

Name of Government:		Contact Person:	Phone #			
City of Myrtle Beach		Michael D. Price	843-918-1135			
Summary of Total Accommodations Tax Funding:						
ALLOCATION OF FISCAL YEAR REVENUES	Total Accommodations Tax Revenues for Fiscal Year Ending 06/30/2009			1	\$	6,623,959
	Less: \$25,000 to the General Fund:			2	\$	(25,000)
	Balance:			3	\$	6,598,959
	Less: 5% of balance to General Fund:			4	\$	(329,948)
	Less: 30% of balance to Special Fund: Advertising and Promotion:			5	\$	(1,979,688)
	Remaining 65% to Special Fund: Tourism Related Expenditures:			6	\$	4,289,323
	Plus: 65% Funds carried forward from prior year:			7	\$	388,701
	Plus: Interest Earned			8	\$	3,440
	Less: Expenditures:			9	\$	4,664,951
	Balance of funds carried forward to following year:			10	\$	16,514
RECONCILIATION OF 65% TOURISM RELATED SPECIAL FUND	*Returned Funds from State Treasurer's Office:					
	30% Advertising and Promotion Special Fund:					
	Organization Designated to Receive the Funds					
	Organization(s)			Amount		
	Myrtle Beach Area Chamber of Commerce			\$ 1,979,688		
Total			\$ 1,979,688			

I attest this report is a true account of the disbursement of all Accommodations Tax Revenues received during the period indicated.

Signature: Michael W. Price
Title: Budget Analyst
Date: 9/28/2008

Please turn page

65% Tourism-Related Expenditures Special Fund Organizations Making Application to Accommodations Tax Advisory Committee									
Report all applications whether they were approved, or not		B=Total Budget; N= #of Attendees; T=# of Tourists ***ALL INFORMATION PROVIDED BY APPLICANT***		Project Description	Amount Requested by Organization	Amount Rec. by Advisory Committee	Amount approved by Local Government	Amount disbursed by Local Government	
Organization(s)	Cat.								
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Art Museum	2		Promotion of the Arts and MB; showcasing regional and national artist; (B) \$592,161; (N) Est 28,000 attendees (T) 17,000 tourists		120,000	100,000			
First Presbyterian Church	2		Promotion of Professional Orchestra concerts; (B) \$60,750 (N) 4,000 total attendees (T) Approx 50% of audience nonresidents of Myrtle Beach (1,200-1,500)		10,000	10,000			
Grand Strand YMCA	2		Promotion of Soccer Tournaments; (B) \$168,213 (N) 4,086 (T) 14,301 tourists in attendance		50,000	40,000			
Waccamaw Arts & Crafts Guild	2		Promotion of the Arts through Arts Shows, Programs & Exhibits; (B) \$47,000 (N) 15,000 attendees (T) 10,000 tourist		36,000	20,000			
Myrtle Beach Golf Holiday	2		Promotion of Golf Tournament (T) Approx. 3,650 golfers compete & approx. 6,500 tourists in attendance (B)\$2,034,500		50,000	50,000			
Long Bay Symphony	2		attendees annually (T) Approx 40% of audience nonresidents of Myrtle Beach		72,500	72,500			
Beach Ball Classic, Inc.	2		Promotion for Basketball Tournament with live television coverage promoting MB to over 12 million cable households; (N) 30,000 ~10 day tournament; 32 teams from 12 States & Canada (B) \$467,000 (T) 1,750		60,000	40,000			
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North South Game Committee	2		Promotion of North South Football Games (high school seniors) with live television coverage (B) \$100,000 (N) 6,500 (T) Approx 4,500		30,000	10,000			
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Horry Cultural Arts & Cultural Events	2		Promotion of Cultural Arts (advertising) (B) \$95,415 - Umbrella Organization promoting arts (does not act as pass through for accommodations tax granting to other agencies).		9,000	9,000			
Mingo Bay Classic Baseball Tournament	2		Promotion of baseball tournament; (B) \$88,144 (N) 3,200 (T) 3,200		20,000	10,000			
Omar Shriners	2		Advertising of 2 professionally judged Shrine-BBQ Competition(national & international); (B) \$87,741 (N) 10,000 (T) 9,800		50,000	25,000			
Myrtle Beach Corporation for the Arts	3		Design & Renovation of facilities for civic and cultural activities to provide for and promote tourism (B) \$390,000 (T) not yet constructed		100,000	-			
Ocean Front Merchants Association	2		Regional and International Promotion of the businesses and events of Downtown Myrtle Beach (B)\$174,737 (T) New organization, no estimates at this time		85,000	85,000			

Offense-Defense All American Bowl	2	Promote an All-American Bowl by providing competition for top high school football players in the nation; (B) \$329,652 (N) 7,500 (T) 1,057	35,000	10,000		
Triple Crown Sports	2	Promotion of baseball tournaments; (B) \$367,406; (N) 10,800 (T) 10,800	43,000	-		
City of Myrtle Beach - Beach Renourishment	6	Reach II Beach Renourishment Project in Conjunction with Army Corp. of Engineers (B) \$2,243,000	147,424	147,424		
City of Myrtle Beach - Beach Monitoring	6	Beach Maintenance/Water Quality Monitoring & Posting	62,000	62,000		
City of Myrtle Beach - Convention Center	1	Advertising/Marketing Program thru MB Conv. Ctr.; (B) \$1,251,990	753,733	753,733		
		Support of operating expenses for services provided above and beyond permanent population throughout the year, to include additional Police, Fire and Parks personnel (B) General Fund \$51.7 Million (T) MB Chamber estimates 13.7 million visitors annually	3,977,794	3,065,294	4,664,951	4,664,951
City of Myrtle Beach - General Fund	4			4,664,951	4,664,951	4,664,951
		Totals:	5,928,835	4,664,951	4,664,951	4,664,951

*Project Name/Description should address the specific use of requested funds. A summary of the organization's request may also be attached.

**Amount approved must be based exclusively on the estimated percentage of costs directly attributed to attracting or serving tourists.

Return to:	Project Categories - All must attract or provide for tourists.
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PO Box 125	2- Tourism - Related Events
Columbia, SC 29214-0120	3- Tourism - Related Facilities
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	7- Operation of Visitor Information Centers

R - 217

LOCAL ACCOMMODATIONS TAX ADVISORY COMMITTEE MEMBERSHIP

Pursuant to Section 6-4-25, Code of Laws of South Carolina, there shall be a local advisory committee consisting of seven members. The majority of these members shall be selected from the hospitality industry, of which at least two must be the lodging industry, where applicable, and one member shall represent the cultural organizations. Please place an asterisk (*) to indicate the Chairperson.

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Please return to Tourism Expenditure Review Committee
Attn: Damita Jeter
PO Box 125
Columbia, SC 29214-0120

No later than October 15, 2008

Submitted by:

Michael D. Price
Budget Analyst

mprice@cityofmyrtlebeach.com

Phone:

(843) 918-1135

Date:

9/30/09

Name of County/Municipal Government:

City of Myrtle Beach

LOCAL ACCOMMODATIONS TAX ADVISORY COMMITTEE MEMBERSHIP (CURRENT)

Pursuant to Section 6-4-25, Code of Laws of South Carolina, there shall be a local advisory committee consisting of seven members. The majority of these members shall be selected from the hospitality industry, of which at least two must be the lodging industry, where applicable, and one member shall represent the cultural organizations. Please place an asterisk (*) to indicate the Chairperson.

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Please return to Tourism Expenditure Review Committee

Attn: Damita Jeter

PO Box 125

Columbia, SC 29214-0120

No later than October 15, 2008

Submitted by:

Michael D. Price

Budget Analyst

mprice@cityofmyrtlebeach.com

Phone:

(843) 918-1135

Date:

9/30/09

Name of County/Municipal Government:

City of Myrtle Beach

Side A.

Please turn page

I attest this report is a true account of the disbursement of all Accommodations Tax Revenues received during the period indicated.

Signature: _____
 Title: Budget Analyst
 Date: 9/28/2008

65% Tourism-Related Expenditures Special Fund Organizations Making Application to Accommodations Tax Advisory Committee									
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NOTE: Items with no recommendations or approvals that have expenditures were approved in the prior fiscal year. Approved unpaid awards will be disbursed in the next fiscal year, providing that all requirements are met by the recipient agencies.

Agencies listed above claimed non-profit (501)(3)(c) status.

LOCAL ACCOMMODATIONS TAX ADVISORY COMMITTEE MEMBERSHIP (CURRENT)

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Please return to Tourism Expenditure Review Committee

Attn: Damita Jeter

PO Box 125

Columbia, SC 29214-0120

No later than October 15, 2008

Submitted by:

Michael D. Price

Budget Analyst

mprice@cityofmyrtlebeach.com

Phone:

(843) 918-1135

Date:

9/30/09

Name of County/Municipal Government:

City of Myrtle Beach

LOCAL ACCOMMODATIONS TAX ADVISORY COMMITTEE MEMBERSHIP 2008-2009

Pursuant to Section 6-4-25, Code of Laws of South Carolina, there shall be a local advisory committee consisting of seven members. The majority of these members shall be selected from the hospitality industry, of which at least two must be the lodging industry, where applicable, and one member shall represent the cultural organizations. Please place an asterisk (*) to indicate the Chairperson.

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Date:

9/30/09

Name of County/Municipal Government:

City of Myrtle Beach

Expenditure Review Committee

P.O. Box 125
Columbia, SC 29214-0120
301 Gervais Street
Columbia, SC 29201
803-898-5400

Frans N. Mustert, CHA
CHAIRMAN
Appointed at the
Recommendation of the
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Arts Commission

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Appointed at the
Recommendation of the SC
Association of Counties

Edward W. Riggs, Sr.
Governor's Appointee

January 27, 2009

Mr. Michael D. Price
Budget Analyst
City of Myrtle Beach
Post Office Box 2468
Myrtle Beach, South Carolina
29578-2468

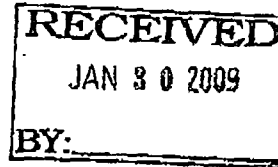


Exhibit A

RE: Report of Accommodations Tax 2007-2008 Expenditures

Dear Mr. Price:

At its meeting on January 12, 2009, the Tourism Expenditure Review Committee ("TERC") reviewed the above-referenced report submitted by the City of Myrtle Beach ("City") under cover of your letter dated October 13, 2008. The purpose of this letter is to notify the City that the TERC, pursuant to S.C. Code Ann. §6-4-35(B)(1)(a), questions the reported expenditure(s) and to offer the City an opportunity to submit additional information as permitted by that code section.

The bases upon which the TERC questions the reported expenditure(s) by the City are as follows:

1. At page 2 of its report, the City states that it expended \$4,318,250 of the \$4,558,662 available for "[s]upport of operating expenses for services provided above and beyond permanent population throughout the year, to include additional Police, Fire and Parks personnel." The TERC questions whether this expenditure is lawful in view of S.C. Code Ann. §6-4-10(b), which states that the City may not utilize accommodations tax funds as an additional source of revenue to provide services *normally* provided by the City. The TERC is of the view that the services for which the accommodations tax funds were used are those services that the City normally provides given its emphasis on attracting and providing for visitors. Thus, unlike a municipality which finds it necessary to provide additional services simply as a result of the presence of tourists, the City routinely provides services at this level. The TERC does not believe comparisons of the City's "permanent population" with those of other municipalities is relevant in view of the statutory proscription against using these funds for services that are "normally" provided.

2. The TERC is informed and believes that a variety of expenditures for "tourism related" projects were funded out of the City's general fund. If the TERC's information is correct, the effect of this practice would appear to be the circumvention of the procedure

Expenditure Review Committee

P.O. Box 125
Columbia, SC 29214-0120
301 Gervais Street
Columbia, SC 29201
803-898-6400

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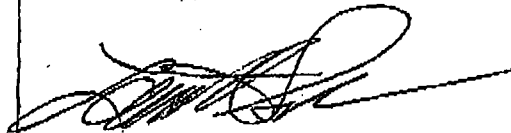
Edward W. Riggs, Sr.
Governor's Appointee

established under S.C. Code Ann. §§6-4-5, et seq. for the use of accommodations taxes for tourism-related expenditures.

Accordingly, the TERC respectfully requests that the City provide additional information with respect to the foregoing within thirty (30) days of the date of this letter. If the TERC does not receive such additional information from the City within that time-frame, it will act based upon the City's October 13, 2008 report at its next meeting, which is scheduled for March 16, 2009.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Lanneau H. Siegling
Tourism Expenditure Review Committee

LHS:lls

Review Committee

P.O. Box 125
Columbia, SC 29214-0120
301 Gervais Street
Columbia, SC 29201
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January 4, 2010

Mr. Michael D. Price
Budget Analyst
City of Myrtle Beach
PO Box 2468
Myrtle Beach, SC 29578

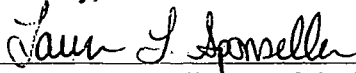
Dear Mr. Price:

At its meeting on November 2, 2009, the Tourism Expenditure Review Committee (TERC) reviewed the September 30, 2009 report submitted by the City of Myrtle Beach pursuant to S.C. Code Section 6-4-25(D) regarding the City's FY 08-09 Expenditures. As a result of this review, the TERC questions whether the City's expenditure of approximately \$4.6 Million on police, fire and parks personnel complies with the requirement of S.C. Code Ann. §6-4-10(4)(b) that monies in the fund created under S.C. Code Section 6-4-10(4)(a) not be used as an additional source of revenue to provide services normally provided by the City. The TERC also questions whether, by dedicating this amount to the City's general fund and subsequently approving expenditures on various events and projects from the City's general fund, the City is employing a procedure to authorize expenditures of local accommodations tax funds, generated under S.C. Code Section 12-36-2630(3), which is contrary to the requirements of S.C. Code Section 6-4-25(A-C).

In view of the City's recent filing with the Administrative Law Court, the TERC assumes that the City has already made known to the TERC the City's reasons for believing that this expenditure is compliant with the law. However, the TERC is scheduled to meet on January 11, 2010 and will be glad to consider at that time any additional information that the City may wish to submit regarding this matter and act upon it at that time. Should the City desire additional time to consider whether it will provide additional information, please let me know so that I may so advise the other members of the TERC.

Please respond in writing regarding this issue before January 11, 2010. Questions may be directed to me at sponseL@sctax.org or by calling 803-898-5400. Thank you.

Sincerely,



Lauren L. Sponseller, TERC Staff Liaison
Tourism Expenditure Review Committee



City of Myrtle Beach
S O U T H C A R O L I N A

January 7, 2010

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Ms. Lauren L. Sponseller, TERC Staff Liaison
Tourism Expenditure Review Committee
P.O. Box 125
Columbia, SC 29214-0120

Re: Response to TERC letter dated January 4, 2010

Dear Ms. Sponseller:

I have received your letter dated January 4, 2010, informing us that TERC has questioned whether the City's expenditure of funds as reported in the September 30, 2009 report is compliant under two sections of the statute. I would like to provide the following for TERC's consideration and for the record.

Question regarding compliance under Sec. 6-4-10(4)(b)

In the first paragraph of that letter, you state that TERC "questions whether the City's expenditure of approximately \$4.6 million on police, fire and parks personnel complies with the requirement of S.C. Code Sec. 6-4-10(4)(b) that monies in the fund created under S.C. Code Sec. 6-4-10(4)(a) not be used as an additional source of revenue to provide services normally provided by the City." The City's action was based upon the fact that the same section further states that the funds in question, i.e., those 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," must be used "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."

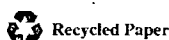
The method the City has used to evaluate its own compliance is consistent with Revenue ruling No 98-22, which provides as follows:

Examples of qualifying expenditures under this category would include salaries for extra police during the peak tourist season, monies spent to hire extra garbage service around tourist facilities during the tourist season or to provide other services that are required because of the high concentration of tourism.

When considering the percentage of costs that are attributable to tourism, the Department of Revenue will consider the number of permanent residents for the county or municipality as compared to the number of tourists that visit the locality, taking into consideration the average length of stay for such tourists.

Based upon an estimate of the number of annual visitors to the Myrtle Beach area conducted by D.K. Shiflett & Associates, Ltd. for the Myrtle Beach Area Chamber of Commerce,

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approximately 15.2 million people visited the area in 2007. The average length of stay for leisure travelers was 5 days (3 days for business travelers) according to data presented in the Chamber's 19th Annual Statistical Abstract, available on that organization's web site. Conservatively, that may amount to the equivalent of an *average* daily population of 208,000 people in addition to the area's permanent residents. In terms of orders of magnitude, this is fairly consistent with information prepared by a consultant to a local developer and provided to the City in 2004 in which the City of Myrtle Beach was estimated to have had an *average* daily population of about 105,000, approximately 4.3 times the size of its permanent population. If peak tourist months alone were considered, the ratio of tourists to residents would be entirely overwhelming during those months.

Thus at a ratio of 3.3:1, tourist-related expenditures may be estimated to account for approximately 76.7% of expenditures in a department such as Police or Fire. The ratio would be somewhat less in Parks and Recreation given that many recreation programs serve primarily residents.

For FY2008-09, total expenditures for the departments in question were:

Police Department	\$20,008,175
Fire Department	11,138,096
Cultural & Leisure Services	<u>10,998,109</u>
Total	\$42,144,380

Thus in the Police Department, at 76.7% of total, tourist-related expenditures amount to more than \$15 million—far greater than the \$4.6 million of accommodations tax money spent for such services.

I would also point out that we have been reviewing our reports to TERC and to the Accommodations Tax Oversight Committee, which existed prior to TERC's formation. Thus far, we have located records going as far back as the 1998-99 fiscal year. In each case, the reports show that the City spent substantial amounts of these funds for these identical purposes. The expenditures were not questioned until the 2006-07 fiscal year, at which time we provided additional information regarding our rationale for the expenditures and TERC found them to be compliant. I have attached a copy of the correspondence between the City and TERC regarding the FY2006-07 expenditure of funds.

Question regarding compliance under Sec. 6-4-25(A-C)

Your letter also states that the Committee questioned whether the City were making these expenditures and subsequently making grants to outside agencies, some of which were among those that had applied for accommodations tax funding, contrary to the requirements of S.C. Code Sec. 6-4-25(A-C). I have reviewed the referenced sections, which have to do with the local accommodations tax advisory committee and the requirements that the Committee review all applications for Accommodations Tax funding, make recommendations to the governing body regarding the disposition of those applications and that the governing body consider the local advisory committee's recommendations in this regard. As our report shows, we do maintain a properly constituted local advisory committee, the committee did review each of the applications as reported in the column headed "Amount Requested by Organization" on Side B of the reporting form (Side B consisting of pages 1 of 2 and 2 of 2) and The Advisory Committee did make recommendations regarding each expenditure as reported under the heading "Amount Rec. by Advisory Committee" of the same report. All of these recommendations were considered by

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Highlights

Employment

- The estimated 12,575 local police departments operating in the United States during 2007 employed approximately 463,000 full-time sworn personnel.
- In 2007, the number of full-time civilian employees in local police departments was about 138,000.
- Municipal and township police departments employed an average of 2.3 full-time officers per 1,000 residents in 2007. County police employed an average of 1.7 officers per 1,000 residents.

Operating Budgets

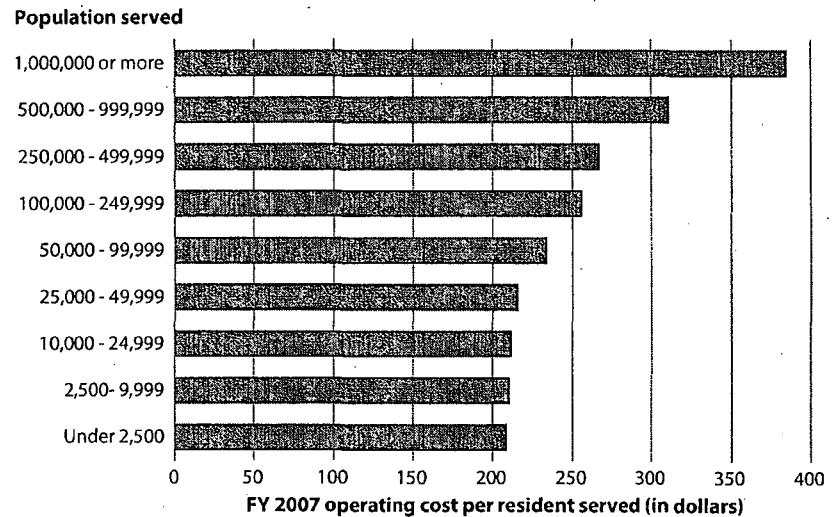
- Operating budgets of local police departments totaled \$55.4 billion for fiscal year 2007—14% more than in 2003 after adjusting for inflation.
- Overall local police operating costs for fiscal year 2007 were \$116,500 per sworn officer, \$88,200 per employee, and \$260 per resident.
- During 2006, about 1 in 3 local police departments received money, goods, or property from a drug asset forfeiture program, with more than \$300 million in receipts overall.

Officer Characteristics

- In 2007, 1 in 8 local police officers was a woman compared to 1 in 13 officers in 1987. About 1 in 4 officers was a member of a racial or ethnic minority in 2007, compared to 1 in 6 in 1987.
- From 2003 to 2007, the number of Hispanic or Latino local police officers increased by 16%. In 2007, about 1 in 10 officers was Hispanic or Latino.
- In 2007, local police departments employed about 55,000 female officers. About 117,000 officers were members of a racial or ethnic minority.

FIGURE 1.

Per resident operating costs for local police departments, by size of population served, 2007



Officer Selection and Hiring

- From 2003 to 2007, there was an increase in the percentage of officers employed by departments using personality inventories (47% to 66%), written aptitude tests (74% to 82%), and physical agility tests (80% to 86%) in the selection process.
- During 2007, about 3 in 10 local police officers worked for a department requiring new officers to have some college education. This was about the same proportion as in 2003.
- In 2007, local police recruits completed an average of 1,370 hours in required training. Compared to 2003, average training requirements were up by more than 100 hours in departments serving 250,000 or more residents.

Officer Pay

- In 2007, average starting salaries for entry-level local police officers ranged from \$26,600 in the smallest jurisdictions to \$49,500 in the largest.
- Based on where officers were employed, the overall average starting salary for new local police officers in 2007 was an estimated \$40,500.

- Average starting salaries for sworn officers were \$10,900 (38%) higher in departments with collective bargaining than in those without it.
- A majority of departments serving 10,000 or more residents offered tuition reimbursement and education incentive pay to sworn personnel.

Patrol and Response

- Nearly 7 in 10 local police officers had regular duties that included responding to calls for service, ranging from 6 in 10 officers in jurisdictions with 100,000 or more residents to 9 in 10 officers in jurisdictions with fewer than 10,000 residents.
- In addition to automobile patrol, more than half (55%) of local police departments used regularly scheduled foot patrol, and about a third (32%) used bicycle patrol.
- In jurisdictions with fewer than 50,000 residents, the use of foot or bicycle patrols declined from 69% of departments in 2003 to 63% in 2007.

Highlights (cont.)

- About 9 in 10 local police 9-1-1 systems were enhanced with the capability of displaying a caller's name, address, and special needs. Most could also display the phone number (84%) and general location (62%) of wireless callers.

Equipment

- In 2007, 75% of local police officers were employed by departments that authorized the use of conducted energy devices such as Tasers, compared to 47% in 2003.
- Sixty-one percent of local police departments used video cameras in patrol cars during 2007, compared to 55% in 2003. About 71,000 in-car cameras were in use during 2007, compared to 49,000 used in 2003.
- In 2007, 67% of local police officers were employed by a department that required them to wear protective body armor at all times while in the field, up from 59% in 2003.

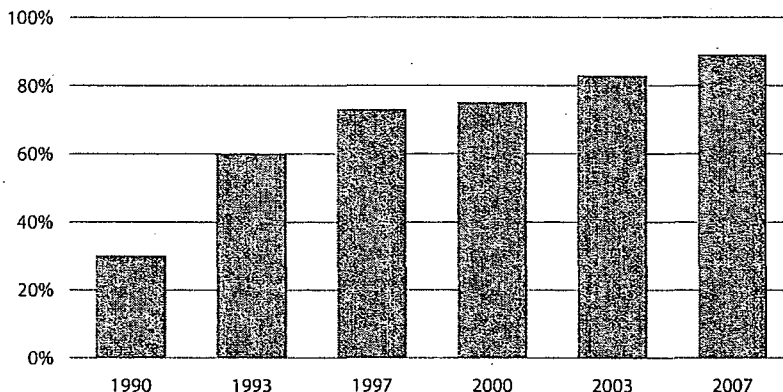
Computers and Information Systems

- More than 90% of local police departments serving 25,000 or more residents were using in-field computers during 2007.
- In 2007 about 9 in 10 local police officers were employed by a department that used in-field computers, compared to 3 in 10 officers in 1990 (figure 2).
- From 2003 to 2007, there was an increase in the percentage of local police officers employed by a department with in-field computer access to vehicle records (78% to 86%), driving records (71% to 80%), calls-for-service histories (39% to 65%), and criminal histories (39% to 56%).
- In 2007, most local police departments serving 25,000 or more residents used computers for crime mapping. About 3 in 4 officers worked for a department with computerized crime mapping in 2007, compared to 3 in 5 during 2003.

FIGURE 2.

Local police officers employed by a department that used in-field computers, 1990–2007

Percentage of local police officers



- From 2003 to 2007, the percentage of local police departments using electronic methods to transmit incident reports from the field increased from 38% to 60%.

Community Policing

- From 2003 to 2007, the percentage of local police officers employed by a department that trained all new recruits in community policing increased from 73% to 81%.
- A majority of local police departments serving 50,000 or more residents operated a full-time specialized unit dedicated to community policing during 2007.
- During 2007, a majority of local police departments serving 50,000 or more residents supported community policing efforts by partnering with citizen groups, upgrading technology, and conducting a citizen police academy.
- An estimated 47,000 full-time local police officers were designated as community policing officers in 2007, about 8,000 fewer than in 2003. Most of this decline occurred among departments serving fewer than 50,000 residents.

Task Force Participation

- About 13,400 local police officers were assigned full-time or part-time to a multi-agency drug task force. A majority of local police departments serving 10,000 or more residents had officers assigned to a drug task force.
- About 4,600 local police officers were assigned full time or part time to a multi-agency gang task force. Most departments serving 100,000 or more residents had officers assigned to a gang task force.

Emergency Preparedness

- During 2007, more than two-thirds of local police departments serving 10,000 or more residents had a written plan specifying actions to be taken in the event of a terrorist attack.
- As part of their efforts to prevent terrorist acts during 2007, a majority of local police departments serving 10,000 or more residents increased the presence of sworn officers in critical areas.
- During 2007, about 4,000 full-time sworn personnel in local police departments were employed in intelligence positions with primary duties related to terrorist activities.

The LEMAS Survey

Every 3 to 4 years, the Bureau of Justice Statistics (BJS) surveys a nationally representative sample of state and local law enforcement agencies. The surveys are conducted as part of the Law Enforcement Management and Administrative Statistics (LEMAS) program.

This report presents data from the 2007 LEMAS survey describing local police departments in terms of their personnel, budgets, operations, policies and procedures, computers and information systems, and equipment. Comparisons are made with prior years where appropriate, and as data are available.

The selected local police sample includes all departments employing 100 or more full-time sworn personnel and a systematic random sample of smaller agencies stratified by size. (See *Methodology* for more information.) The sample was selected from a BJS census of law enforcement agencies (see *Census of State and Local Law Enforcement Agencies, 2004*, BJS Web, 28 June 2007). Because sampling was used for smaller agencies, some of the statistics presented in the report are subject to sampling error. Statements of comparison have been tested at the 95%-confidence level. (See standard error tables in appendix.)

In order to compare departments with others serving similar sized jurisdictions, the statistics in this report are presented mainly by categories of population served. Because most departments employ small numbers of officers and serve small populations, overall agency-based percentages tend to reflect smaller departments more than larger ones. To adjust for this effect, additional overall percentages weighted by the number of officers employed are presented in the text and selected figures. (See *Methodology*.)

Local Police Departments

According to the 2004 BJS Census of State and Local Law Enforcement Agencies, nearly all local police departments were operated at the sub-county level by individual municipal (85%) or township (13%) governments. A total of 154 were operated by tribal governments, 63 by multiple local governments as regional or joint police departments, and 56 by county governments.

Local police departments perform a wide range of functions. Some of the law enforcement functions typically performed, regardless of jurisdiction size, include first response to criminal incidents, response to calls for service, patrol, crime investigation, arrest of criminal suspects, execution of warrants, traffic enforcement, traffic direction and control, accident investigation, drug enforcement, parking enforcement, and crime prevention education. For more information on functions performed by local police, see *Local Police Departments, 2003*, BJS Web, 1 April 2006.

Employment

As of September 2007, the estimated 12,575 local police departments in the United States employed about 601,000 persons on a full-time basis (table 1).

Local police departments employed about 463,000 full-time sworn personnel in 2007

About 463,000 (77% of total) local police department employees were sworn personnel with full arrest powers. Departments employed about 54,000 persons on a part-time basis. Nearly half of these part-time employees were sworn officers.

From 1987 (the first year of the LEMAS survey) to 2007, the number of full-time local police employees increased by an estimated 152,000 (34%) or an average of 1.7% annually (figure 3). The number of full-time sworn officers increased by about 108,000 (30%) during this period. The number of full-time civilian employees increased by about 44,000 (47%) from 94,000 to 138,000.

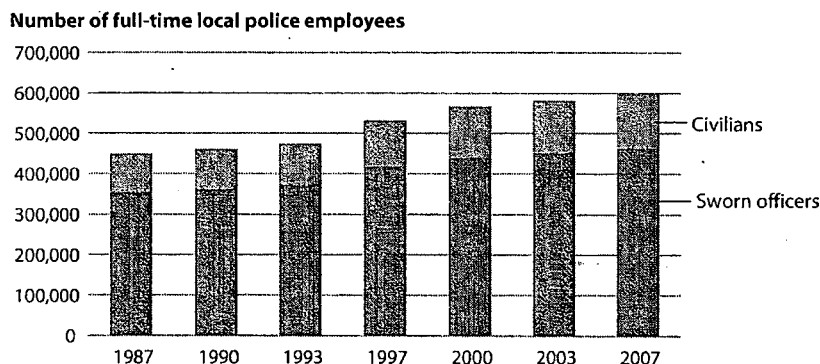
TABLE 1.
General purpose state and local law enforcement agencies, 2007

Type of agency	Number of agencies	Full-time employees			Part-time employees		
		Total	Sworn	Civilian	Total	Sworn	Civilian
Total	15,636	1,040,728	696,346	344,382	75,581	34,124	44,457
Local police	12,575	601,027	463,147	137,880	54,310	25,202	29,108
Sheriff's office*	3,012	346,337	172,241	174,096	22,747	8,831	13,916
Primary State	49	93,364	60,958	32,406	1,524	91	1,433

Note: Figures are estimates based on the 2007 LEMAS survey. Table excludes agencies not employing the equivalent of at least 1 full-time employee. Detail may not sum to total because of rounding.

*Excludes agencies not performing law enforcement functions.

FIGURE 3.
Full-time employees of local police departments, 1987–2007



From 2003 to 2007, the total number of full-time local police employees increased by about 20,300 (3.5%). During this period, local police employment of sworn personnel increased by about 11,400 (2.5%) and employment of civilians rose by about 8,900 (7%). (These changes were not statistically significant at the 95%-confidence level.)

Municipal and township police departments employed an average of 2.3 officers per 1,000 residents

County police departments employed an average of 1.7 full-time officers for every 1,000 residents served. Municipal and township police departments, which comprise 98% of local police departments, employed an average of 2.3 full-time officers per 1,000 residents in 2007, down from 2.5 per 1,000 in 2003. As in 2003, departments serving 25,000 to 99,999 residents had the lowest average ratio in 2007 (1.8 per 1,000).

Text table 1

Average officer-to- resident ratio for municipal and township police departments, 2007

Population served	Average number of full-time officers per 1,000 residents
All sizes	2.3
250,000 or more	2.2
100,000–249,999	1.9
50,000–99,999	1.8
25,000–49,999	1.8
10,000–24,999	2.0
2,500–9,999	2.3
1,000–2,499	2.7

Half of local police departments employed fewer than 10 full-time officers

Nationwide, 624 (5% of total) local police departments employed at least 100 sworn personnel (table 2). The New York City Police Department was the largest, with 35,216 officers. (See appendix table 1 for a list of the 50 largest local police departments.) Half of all departments employed fewer than 10 officers, including 652 departments (5%) with the equivalent of just 1 officer.

While departments with fewer than 10 officers accounted for 50% of departments, they employed just 5% of officers. The majority of full-time local police

officers (61%) were employed by departments with at least 100 sworn personnel, and a third of officers were employed by departments with at least 1,000 sworn personnel.

Three-fourths of local police departments served fewer than 10,000 residents

A similar pattern is observed when departments are grouped by population size. About three-fourths (73%) of departments served fewer than 10,000 residents, but these departments employed just 14% of all officers (table 3). About half (51%) of local police officers were employed in jurisdictions with 100,000 or more residents.

TABLE 2.
Local police departments and full-time employees, by number of sworn personnel, 2007

Number of sworn personnel*	Departments		Full-time sworn personnel		Full-time civilian personnel	
	Number	Percent	Number	Percent	Number	Percent
All sizes	12,575	100%	463,147	100.0%	137,880	100%
1,000 or more	48	0.4%	153,020	33.0%	49,774	36.1%
500–999	46	0.4	32,540	7.0	10,915	7.9
250–499	106	0.8	36,963	8.0	12,198	8.8
100–249	424	3.4	61,438	13.3	19,697	14.3
50–99	841	6.7	57,010	12.3	16,638	12.1
25–49	1,573	12.5	53,490	11.5	14,686	10.7
10–24	3,307	26.3	46,344	10.0	10,599	7.7
5–9	3,358	26.7	17,419	3.8	2,933	2.1
2–4	2,219	17.6	4,544	1.0	319	0.2
1	652	5.2	381	0.1	120	0.1

Note: Detail may not sum to total because of rounding.

*Includes both full-time and part-time employees with part-time employees weighted by 0.5.

TABLE 3.
Local police departments and full-time employees, by size of population served, 2007

Population served	Departments		Full-time sworn personnel		Full-time civilian personnel	
	Number	Percent	Number	Percent	Number	Percent
All sizes	12,575	100%	463,147	100%	137,880	100%
1,000,000 or more	14	0.1%	95,053	20.5%	34,304	24.9%
500,000–999,999	33	0.3	51,973	11.2	13,726	10.0
250,000–499,999	48	0.4	34,207	7.4	12,086	8.8
100,000–249,999	189	1.5	54,556	11.8	18,591	13.5
50,000–99,999	427	3.4	52,148	11.3	16,153	11.7
25,000–49,999	855	6.8	53,513	11.6	14,278	10.4
10,000–24,999	1,792	14.3	55,507	12.0	15,073	10.9
2,500–9,999	4,111	32.7	48,681	10.5	11,120	8.1
Under 2,500	5,107	40.6	17,510	3.8	2,549	1.8

Note: The median population served was 3,555. Detail may not sum to total because of rounding.

Operating Costs

Collectively, local police departments cost about \$55.4 billion to operate during fiscal 2007 (table 4). This was 14% more than in 2003 after adjusting for inflation (see *Methodology*). (These figures do not include capital expenditures such as major equipment purchases or construction projects.)

Local police departments cost \$260 per resident to operate during 2007

Compared to the overall annual operating cost per resident of \$260, departments serving a population of 1 million or more cost nearly 50% more to operate—\$385 per resident. Departments serving a population of fewer than 50,000 had the lowest per resident cost—less than \$220.

Overall, operating budgets averaged about \$4.4 million per department for 2007, ranging from about \$849 million for departments serving a population of 1 million or more, to \$263,000 for departments serving fewer than 2,500 residents.

Local police departments cost \$116,500 per officer to operate during 2007

When both sworn and nonsworn personnel are included, the average annual operating budget for local police departments was about \$88,000 per employee. Operating costs ranged from near \$100,000 per employee in jurisdictions with 50,000 to 999,999 residents to \$49,400 per employee in jurisdictions with fewer than 2,500 residents.

When nonsworn personnel are excluded, local police departments cost \$116,500 per officer to operate for 2007. Per officer costs ranged from more than \$130,000 per officer for departments serving 50,000 to 999,999 residents, to \$56,400 per officer in jurisdictions with a population under 2,500.

After controlling for inflation, per officer operating costs for 2007 were \$10,900 (10%) higher than in 2003 (figure 4). (This difference was not statistically significant at the 95%-confidence level.) The smallest increase—both in terms of dollars and percentage—occurred in jurisdictions with 10,000 to 49,999 residents, where costs rose by \$6,800 (7%). The largest dollar increase, about \$14,700, occurred in jurisdictions with 50,000 to 249,999 residents. The largest percentage increase, 15%, was observed in jurisdictions with fewer than 10,000 residents.

A majority of local police departments serving 10,000 or more residents had drug asset forfeiture receipts during 2006

During 2006, an estimated 33% of local police departments, employing 78% of officers, supplemented their operating budget with proceeds from a drug asset forfeiture program (appendix table 2). Overall, departments received money, goods, or property worth \$307.5 million. Average total receipts ranged from nearly \$3 million among departments serving 1 million or more residents to less than \$40,000 for departments serving fewer than 25,000 residents.

TABLE 4.

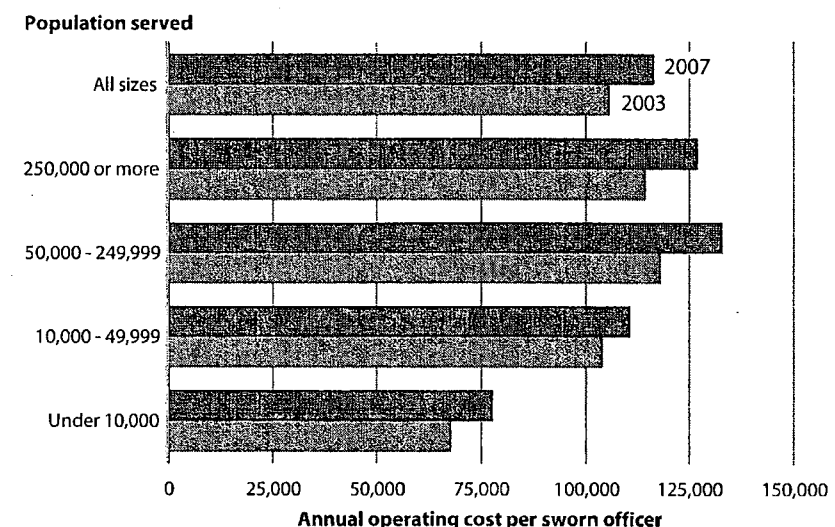
Annual operating budget of local police departments, by size of population served, 2007

Population served	Operating budget, 2007				
	Total	Per department	Per sworn officer	Per employee	Per resident
All sizes	\$55,403,566,000	\$4,406,000	\$116,500	\$88,200	\$260
1,000,000 or more	\$11,583,126,000	\$848,799,000	\$121,900	\$88,900	\$385
500,000–999,999	6,898,548,000	211,991,000	132,700	103,100	311
250,000–499,999	4,510,713,000	93,414,000	131,700	94,800	267
100,000–249,999	7,343,910,000	38,844,000	134,500	98,400	256
50,000–99,999	6,861,906,000	16,068,000	131,000	97,300	234
25,000–49,999	6,388,175,000	7,474,000	118,700	91,300	216
10,000–24,999	5,842,750,000	3,260,000	103,100	78,700	212
2,500–9,999	4,632,791,000	1,127,000	87,200	69,400	211
Under 2,500	1,341,647,000	263,000	56,400	49,400	209

Note: Data are for the fiscal year ending September 30, 2007, or the most recent fiscal year completed prior to that date. Figures do not include capital expenditures such as major equipment purchases or construction projects. Per officer and per employee averages include both full-time and part-time employees, with a weight of 0.5 assigned to part-time employees. Total and per agency figures are rounded to the nearest \$1,000. Per officer and per employee figures are rounded to the nearest \$100.

FIGURE 4.

Per officer operating costs of local police departments, 2003 and 2007



Note: All figures are in 2007 dollars.

Personnel

Nearly all (98%) local police departments had a minimum education requirement for new officers (table 5). The most common requirement (82% of departments) was a high school diploma.

About 3 in 10 local police officers worked for a department that required new hires to have some college education

An estimated 16% of departments had some type of college requirement, including 9% with a 2-year degree requirement. In 2007 the percentage of officers employed by a department with a college requirement for new officers (29%) was about the same as in 2003 (33%), and about 3 times as high as in 1990 (10%).

All departments used criminal record checks, and about 99% used background investigations and driving record checks during the officer hiring process (appendix table 3). Credit history checks were used by 61% of departments, including more than 90% of those serving 25,000 or more residents.

Nearly all departments serving 25,000 or more residents used psychological evaluations to screen applicants for sworn positions

Personal interviews (99%) were used almost universally by departments in the officer hiring process (appendix table 4). Interviews were supplemented by a psychological evaluation in 72% of departments, including more than 98% of those serving 25,000 or more residents.

Nearly half of departments used written aptitude tests (48%) and personality inventories (46%) to screen applicants. Among departments serving 25,000 or more residents, more than 80% used written aptitude tests, and more than 60% used personality inventories.

Screening methods related to physical attributes were also common (appendix table 5). Medical exams were used by 89% of departments, including all serving 25,000 or more residents. Drug tests were used by 83% of departments including more than 95% of those serving 25,000 or more residents. Physical agility tests were used by 60% of depart-

ments, including about 90% of those serving 25,000 or more residents.

Local police officers hired in 2007 were subjected to more screening methods than those hired in 2003

In 2007, nearly all local police officers were employed by a department that used criminal record checks (100%), background investigations (99.8%), driving record checks (99.8%), medical exams (98.3%), personal interviews (98.2%), drug tests (95.4%), and psychological evaluations (94.8%) in the selection process.

For each screening method included in the LEMAS survey, the percentage of officers employed by a department using that method remained stable or increased between 2003 and 2007 (figure 5). The largest increases were for personality inventories (from 47% of officers in 2003 to 66% of officers in 2007), credit history checks (70% to 83%), written aptitude tests (74% to 82%), and physical agility tests (80% to 86%).

TABLE 5.

Education requirements for new officers in local police departments, by size of population served, 2007

Population served	Total with requirement	Percent of departments requiring a minimum of—			
		High school diploma	Some college*	2-year college degree	4-year college degree
All sizes	98%	82%	6%	9%	1%
1,000,000 or more	100%	62%	38%	0%	0%
500,000–999,999	100	68	16	16	0
250,000–499,999	98	65	9	17	7
100,000–249,999	99	72	16	7	4
50,000–99,999	99	68	14	14	3
25,000–49,999	99	68	15	14	1
10,000–24,999	99	83	7	9	--
2,500–9,999	98	80	5	13	1
Under 2,500	97	87	5	5	1

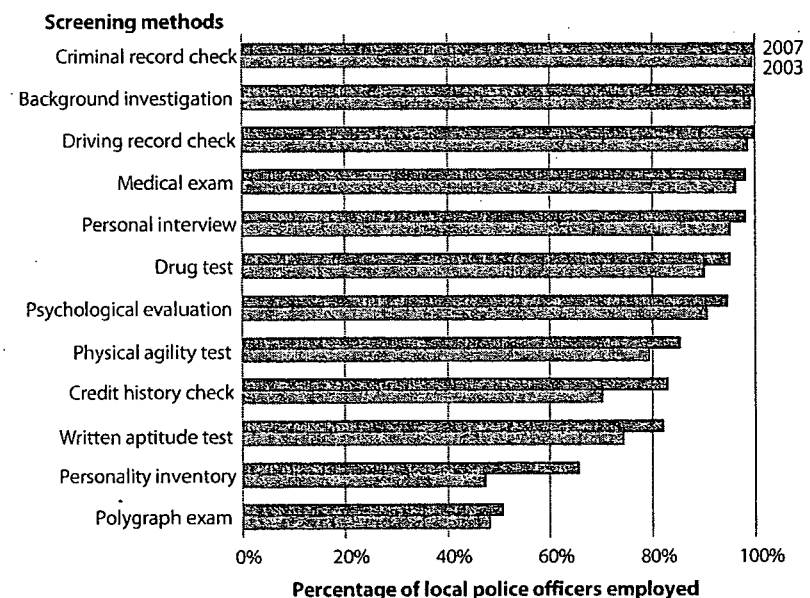
Note: Detail may not sum to total because of rounding.

--Less than 0.5%.

*Non-degree requirements.

FIGURE 5.

Local police officers employed by a department using selected screening methods in the hiring process, 2003 and 2007



In the largest jurisdictions, local police recruits were required to complete more than 1,700 hours of training

Upon selection, new local police recruits were typically required to complete extensive classroom and field training. In jurisdictions with 500,000 or more residents, average requirements exceeded 1,700 hours compared to about 700 hours in the smallest jurisdictions (table 6). (For greater detail on basic law enforcement training, see *State and Local Law Enforcement Training Academies*, 2006, BJS Web, 26 February 2009.) Based on where officers were employed, the average training requirement for local police recruits was 1,370 hours.

Ninety-two percent of local police departments had an annual in-service training requirement for non-probationary officers, including all of those serving a population of 250,000 or more. Overall, the average annual in-service requirement was 35 hours (appendix table 6).

TABLE 6.
Training requirements for new officer recruits in local police departments, by size of population served, 2007

Population served	Average number of hours required		
	Total	Academy	Field
All sizes	922	613	309
1,000,000 or more	1,700	1,033	667
500,000-999,999	1,783	1,063	720
250,000-499,999	1,542	906	636
100,000-249,999	1,463	809	654
50,000-99,999	1,341	731	610
25,000-49,999	1,241	698	543
10,000-24,999	1,101	666	434
2,500-9,999	979	634	345
Under 2,500	691	538	153

Note: Average number of training hours excludes departments not requiring training.

From 2003 to 2007, average training requirements increased by about 100 hours in larger jurisdictions

From 2003 to 2007 average training requirements for local police recruits in jurisdictions with 250,000 or more residents increased by 105 hours, from 1,543 to 1,648 hours (figure 6). In jurisdictions with fewer than 250,000 residents, the average number of training hours required was about the same in 2007 as in 2003.

Average starting salaries for entry-level officers were 1.2% higher in 2007 than in 2003 after adjusting for inflation

Minimum starting salaries for entry-level local police officers averaged \$49,500 in the largest jurisdictions, compared to \$26,600 in the smallest (table 7). When weighted by size of department, starting salaries for entry-level officers averaged about \$40,500 in 2007. This was \$5,000 (14%) more than in 2003. The inflation-adjusted 4-year increase was 1.2%. (See *Methodology* for information about the calculation to adjust dollars for inflation.)

The average base starting salary for local police chiefs was \$58,200, ranging from \$164,000 in jurisdictions with 1 million or more residents to \$38,300 in those with a population under 2,500. Minimum starting salaries for first-line supervisors (sergeant or equivalent) averaged \$78,800 in jurisdictions with 1 million or more residents, and at least \$60,000 in all other population categories of 25,000 or more.

FIGURE 6.
Training requirements for local police officer recruits, by size of population served, 2000, 2003, and 2007

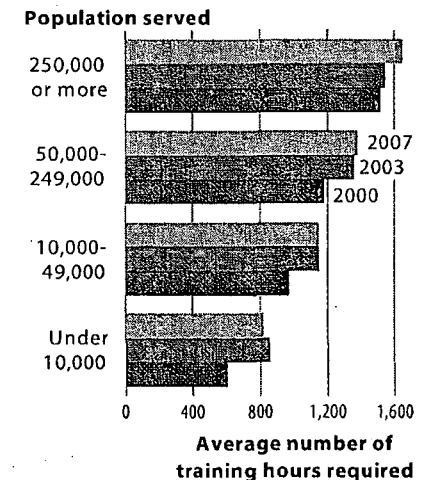


TABLE 7.
Average base annual salary for selected full-time positions in local police departments, by size of population served, 2007

Population served	Average base annual salary					
	Entry-level officer		First-line supervisor		Chief	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
All sizes	\$32,900	\$41,400	\$46,000	\$53,500	\$58,200	\$68,800
1,000,000 or more	\$49,500	\$73,900	\$78,800	\$96,100	\$164,000	\$212,700
500,000-999,999	43,700	62,200	62,900	76,000	132,900	164,100
250,000-499,999	44,700	64,700	63,200	79,700	111,900	156,900
100,000-249,999	45,700	61,900	64,200	78,900	113,000	143,600
50,000-99,999	43,000	59,100	63,400	75,100	101,000	125,900
25,000-49,999	41,800	55,500	60,500	70,700	89,000	108,300
10,000-24,999	37,700	50,100	52,700	61,900	74,500	90,100
2,500-9,999	33,000	41,200	44,400	51,800	57,200	66,800
Under 2,500	26,600	30,500	33,100	36,500	38,300	42,800

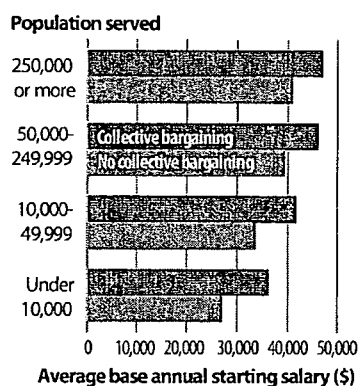
Note: Salary figures have been rounded to the nearest \$100.

Officer starting salaries were 38% higher in departments with collective bargaining

The average starting salary for entry-level officers was higher in departments with collective bargaining (\$39,263) than in those without it (\$28,376). This pattern existed in all population categories, ranging from a difference of about \$6,000 in the largest jurisdictions to \$9,000 in the smallest (figure 7).

FIGURE 7.

Starting salaries for entry-level officers in local police departments, by size of population served and collective bargaining status, 2007



Nationwide, 38% of local police departments, employing 66% of all officers, authorized collective bargaining for officers (appendix table 7). This included at least 62% of the departments in each population category of 10,000 or more.

About 7 in 10 local police officers worked for a department that offered tuition reimbursement

The base salaries earned by local police officers were sometimes supplemented by special pay and other financial benefits (appendix table 7). For example, 37% of departments, employing 72% of all officers, offered tuition reimbursement to officers, and 32% of departments, employing 55% of officers, offered education incentive pay. A majority of departments serving 10,000 or more residents offered these two types of benefits.

Other types of special pay offered by local police departments included merit pay (23% of departments, employing 31% of all officers), shift differential pay

(21%, 56%), special skills pay (16%, 36%), military service pay (13%, 41%), hazardous duty pay (6%, 27%) and bilingual ability pay (6%, 27%).

Workplace policies for sworn personnel

Local police departments typically maintained a variety of written policies and procedures pertaining to workplace issues during 2007. For example, all departments serving a population of 10,000 or more had a written code of conduct and appearance for officers (table 8). More than 95% of these departments also had an off-duty conduct policy.

At least 98% of the departments in each population category of 10,000 or more had policies on off-duty employment, and at least 70% of the departments in each of these categories had a policy on the maximum number of work hours allowed for officers.

Overall, nearly all local police officers were employed by a department with a code of conduct and appearance (99%), and policies pertaining to off-duty employment (97%) and conduct (97%) (figure 8). About 9 in 10 officers were employed by a department with a policy on employee counseling (91%). About 3 in 4 officers were employed by a department with a policy on maximum work hours (75%).

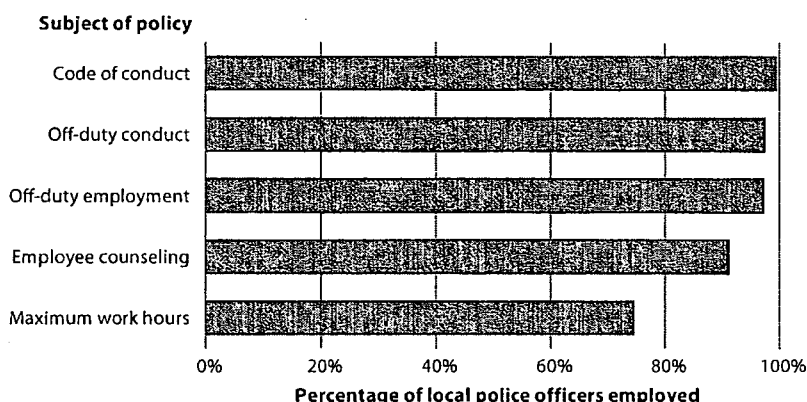
TABLE 8.

Workplace policies of local police departments, by size of population served, 2007

Population served	Percent of departments with written policy for officers on—				
	Code of conduct and appearance	Off-duty conduct	Off-duty employment	Employee counseling assistance	Maximum work hours allowed
All sizes	96%	90%	83%	63%	54%
1,000,000 or more	100%	100%	100%	100%	54%
500,000–999,999	100	97	100	100	77
250,000–499,999	100	100	100	98	78
100,000–249,999	100	99	99	94	75
50,000–99,999	100	97	99	94	74
25,000–49,999	100	99	98	91	71
10,000–24,999	100	95	98	82	70
2,500–9,999	98	91	89	68	55
Under 2,500	92	84	68	43	42

FIGURE 8.

Local police officers employed by a department with selected workplace policies, 2007



About 1 in 4 local police officers were members of a racial or ethnic minority

In 2007, about 1 in 4 full-time local police officers were members of a racial or ethnic minority (table 9). The estimated 117,113 minority officers employed in 2007 represented an increase of about 10,500 (10%) over 2003. From 2003 to 2007, minority representation among local police officers increased from 23.6% to 25.3%. In 1987, minorities comprised 14.6% of officers (figure 9).

An estimated 55,267 black or African American officers were employed by local police departments in 2007. This was about 2,400 (5%) more than in 2003. In 2007, the percentage of officers who were black (11.9%) was about the same as in 2003 (11.7%). In 1987, blacks comprised 9.3% of officers.

From 2003 to 2007, the number of Hispanic local police officers rose 16%

An estimated 47,678 Hispanic or Latino officers were employed by local police departments in 2007. This was about 6,600 (16%) more than in 2003. From 2003 to 2007, the percentage of officers who were Hispanic rose from 9.1% to 10.3%. In 1987, 4.5% of officers were Hispanic.

In 2007, an estimated 12,564 officers were members of other minority groups including Asians, Pacific Islanders, and American Indians—about the same number as in 2003. These groups comprised 2.7% of local police officers in 2007, about the same percentage as in 2003 (2.8%), but more than in 1987 (0.8%).

About 1 in 8 local police officers was a woman

In 2007, about 1 in 8 full-time sworn personnel in local police departments were women (table 10). The estimated 55,305 female officers employed in 2007 represented an increase of about 4,300 (8%) from 2003. During this time, female representation increased from 11.3% to 11.9%. By comparison, women comprised 7.6% of officers in 1987.

With the exception of Hispanic or Latino officers, changes from 2003 to 2007 in the percentage or number of officers by race and gender were not significant at the 95%-confidence level.

TABLE 9.

Race and ethnicity of full-time sworn personnel in local police departments, by size of population served, 2007

Population served	Percent of full-time sworn personnel who are—					
	White	Black/ African American	Hispanic/ Latino	Asian/ Pacific Islander	American Indian/ Alaska Native	Multi-race
All sizes	74.7%	11.9%	10.3%	2.0%	0.7%	0.3%
1,000,000 or more	56.0%	17.6%	22.9%	3.2%	0.3%	0.0%
500,000–999,999	60.6	24.1	9.3	4.1	0.4	1.6
250,000–499,999	69.5	16.5	11.2	2.0	0.6	0.1
100,000–249,999	73.7	13.4	9.1	2.6	0.9	0.3
50,000–99,999	83.6	7.0	7.5	1.4	0.3	0.3
25,000–49,999	88.2	5.0	5.1	0.9	0.6	0.2
10,000–24,999	87.5	5.6	5.1	0.6	1.0	0.2
2,500–9,999	87.9	5.1	4.4	0.6	1.8	0.1
Under 2,500	88.3	5.8	3.0	0.1	2.3	0.5

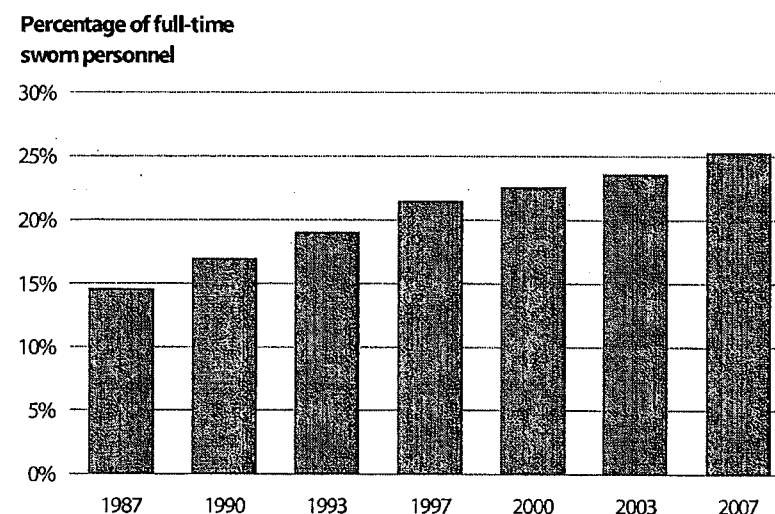
TABLE 10.

Gender of full-time sworn personnel in local police departments, by size of population served, 2007

Population served	Percent of full-time sworn personnel	
	Male	Female
All sizes	88.1%	11.9%
1,000,000 or more	82.1%	17.9%
500,000–999,999	84.5	15.5
250,000–499,999	85.7	14.3
100,000–249,999	87.2	12.8
50,000–99,999	90.6	9.4
25,000–49,999	91.8	8.2
10,000–24,999	92.1	7.9
2,500–9,999	92.5	7.5
Under 2,500	94.4	5.6

FIGURE 9.

Minority representation among local police officers, 1987–2007



Note: Includes blacks or African Americans, Hispanics or Latinos, Asians, Native Hawaiians or other Pacific Islanders, American Indians, Alaska Natives, and persons identifying two or more races.

Patrol and Response

About 2 in 3 local police officers had regularly assigned duties that included responding to calls for service

In 2007, two-thirds of full-time local police officers had regularly assigned duties that included responding to calls for service (appendix table 8). The proportion of officers assigned to respond to calls ranged from about 6 in 10 among departments serving 100,000 or more residents, to about 9 in 10 among departments serving fewer than 10,000 residents.

About 9 in 10 local police officers worked for a department with an enhanced 9-1-1 system

An estimated 91% of local police departments participated in an emergency 9-1-1 system during 2007 (table 11). At least 96% of the departments in each population category of 10,000 or more were 9-1-1 participants, including all serving 250,000 or more residents.

About 3 in 4 departments used enhanced 9-1-1 systems, capable of displaying information such as a caller's phone number, address, and special needs. This included 90% or more in each population category of 25,000 or more. In 2007, most local police 9-1-1 systems could display the phone number (84%) and general location (62%) of wireless callers (appendix table 9).

An estimated 97% of local police officers worked for a department with some type of 9-1-1 system during 2007, and 90% were employed by a department with an enhanced 9-1-1 system. Both percentages were about the same as in 2003.

A majority of departments serving 25,000 or more residents had regularly scheduled foot and/or bicycle patrols

All but a few local police departments used regularly scheduled automobile patrols during 2007. A majority (55%) also used routine foot patrols, including about 9 in 10 departments serving a population of 1 million or more, and about 8 in 10 departments serving a population of 250,000 to 999,999 (table 12).

About a third (32%) of departments used regularly scheduled bicycle patrols. A majority of departments serving 25,000 or more residents used bicycle patrols, including all of those serving 500,000 or more residents.

Motorcycle patrols were the next most common type of regularly scheduled patrol, used by about 1 in 6 departments. More than 90% of the departments serving 100,000 or more residents used motorcycle patrols on a regular basis.

Other types of routine patrol included marine (4% of departments), transporter (such as a Segway) (2%), horse (1%), and air (1%). A majority of the departments serving 500,000 or more residents used marine patrol on a routine basis, and a majority of those serving 250,000 or more residents used horse and air patrols regularly.

TABLE 11.
Emergency 9-1-1 system participation of local police departments, by size of population served, 2007

Population served	Percent of departments participating in a 9-1-1 system		
	Total	Enhanced	Basic
All sizes	91%	74%	16%
1,000,000 or more	100%	100%	0%
500,000-999,999	100%	100%	0%
250,000-499,999	100%	91%	9%
100,000-249,999	99%	94%	5%
50,000-99,999	99%	91%	8%
25,000-49,999	97%	90%	6%
10,000-24,999	96%	84%	12%
2,500-9,999	91%	75%	17%
Under 2,500	86%	65%	21%

Note: Participating agencies are those whose units can be dispatched as the result of a call to 9-1-1. Detail may not sum to total because of rounding.

TABLE 12.
Types of regularly scheduled patrols other than automobile used by local police departments, by size of population served, 2007

Population served	Percent of departments using each type of patrol regularly						
	Foot	Bicycle	Motorcycle	Marine	Transporter	Horse	Air
All sizes	55%	32%	16%	4%	2%	1%	1%
1,000,000 or more	92%	100%	100%	69%	31%	77%	100%
500,000-999,999	81	100	94	52	29	61	71
250,000-499,999	78	89	91	26	24	50	57
100,000-249,999	59	71	90	12	15	17	14
50,000-99,999	56	69	74	12	6	5	5
25,000-49,999	52	58	55	6	4	2	1
10,000-24,999	50	44	25	5	2	1	1
2,500-9,999	58	36	8	4	1	—	0
Under 2,500	54	15	4	1	—	0	—

—Less than 0.5%.

Policies and procedures pertaining to special populations or situations

An estimated 91% of local police departments, employing 98% of all officers, had written policies and procedures for dealing with domestic disputes (table 13, figure 10).

Many departments also had written policies pertaining to specific sub-groups of the community. Most common were policies on dealing with juveniles (90% of departments, employing 98% of officers). Many departments also had policies on dealing with mentally ill persons (69% employing 89%). About a third of departments, employing just over half of all officers, had policies on dealing with homeless persons (34% employing 51%) and persons with limited English-speaking ability (32% employing 58%).

An estimated 67% of departments, employing 85% of officers, had a written racial profiling policy. Nearly all departments serving 250,000 or more residents and about 8 in 10 departments serving 25,000 to 249,999 residents had such a policy.

FIGURE 10.

Local police officers employed by a department with selected special population/situation policies, 2007

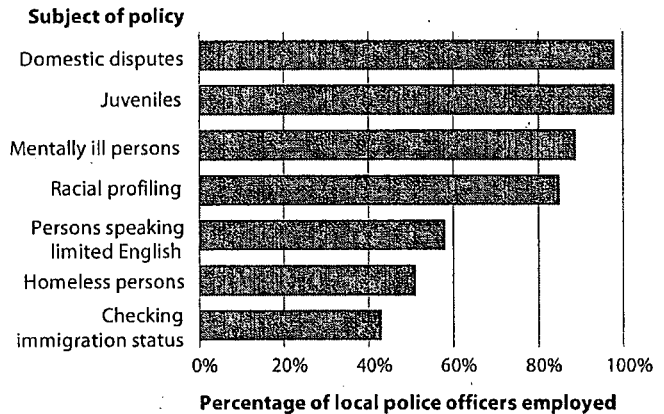


TABLE 13.

Special population/situation policies of local police departments, by size of population served, 2007

Population served	Percent of departments with written policy on—						
	Domestic disputes	Juveniles	Mentally ill persons	Racial profiling	Homeless persons	Persons with limited English proficiency	Checking immigration status
All sizes	91%	90%	69%	67%	34%	32%	20%
1,000,000 or more	100%	100%	100%	100%	69%	85%	69%
500,000–999,999	100	100	97	97	57	73	65
250,000–499,999	100	98	96	98	50	67	57
100,000–249,999	98	98	93	82	38	47	32
50,000–99,999	97	99	88	80	40	45	30
25,000–49,999	98	98	85	78	39	43	28
10,000–24,999	95	96	82	70	40	40	30
2,500–9,999	96	93	72	69	34	31	22
Under 2,500	83	84	57	59	29	25	13

From 2003 to 2007, use of foot and bicycle patrols declined in jurisdictions with fewer than 50,000 residents

A smaller percentage of departments used regularly scheduled foot or bicycle patrols in 2007 (63%) than in 2003 (69%). The percentage of local police officers employed by a department using these types of patrol declined slightly, from 86% to 83%.

The overall decline from 2003 to 2007 in the number of departments using foot or bike patrol can be attributed primarily to departments serving fewer than 50,000 residents: in jurisdictions with 10,000 to 49,999 residents, the percentage using foot or bike patrol dropped from 72% to 64%, and in jurisdictions with fewer than 10,000 residents, the percentage dropped from 67% to 61% (figure 11). The percentage of departments using foot or bike patrol remained about the same in jurisdictions with 50,000 or more residents.

Equipment

All local police departments authorized semiautomatics as a primary side-arm for patrol officers during 2007. Twenty-two percent of departments authorized revolvers as a primary side-arm (appendix table 10).

Pepper spray and batons were authorized by nearly all local police departments

Nearly all departments authorized officers to use one or more types of less-than-lethal weapons during 2007. Most commonly authorized was pepper spray (97% of departments, employing 98% of all officers) (table 14).

Batons were authorized by 93% of departments, employing 98% of all officers. Collapsible batons (88%) were authorized by more departments than traditional (45%) or PR-24 (36%) batons (appendix table 11). An estimated 92% of officers worked for a department authorizing collapsible batons, compared to 53% for traditional batons and 38% for PR-24 batons.

An estimated 60% of departments, employing 75% of officers, authorized conducted energy devices (CEDs), such

as Tasers or stun guns. At least two-thirds of the departments in each population category of 10,000 or more authorized CEDs.

An estimated 28% of departments, employing 44% of all officers, authorized the use of soft projectiles (appendix table 12). This included a majority of the departments serving a population of 25,000 or more. Fifteen percent of departments, employing 23% of all officers, authorized the use of neck restraints or holds.

An estimated 75% of local police officers worked for a department that authorized CEDs in 2007, compared to 47% in 2003

Previous LEMAS surveys recorded substantial increases in the number of local police departments authorizing the use of pepper spray from 1990 to 2003. In 1990, 72% of officers were employed by a department that authorized its use. By 2003, nearly all officers worked for a department authorizing it. This remained true in 2007.

FIGURE 11.

Local police departments using regularly scheduled foot or bicycle patrol, by size of population served, 1997–2007

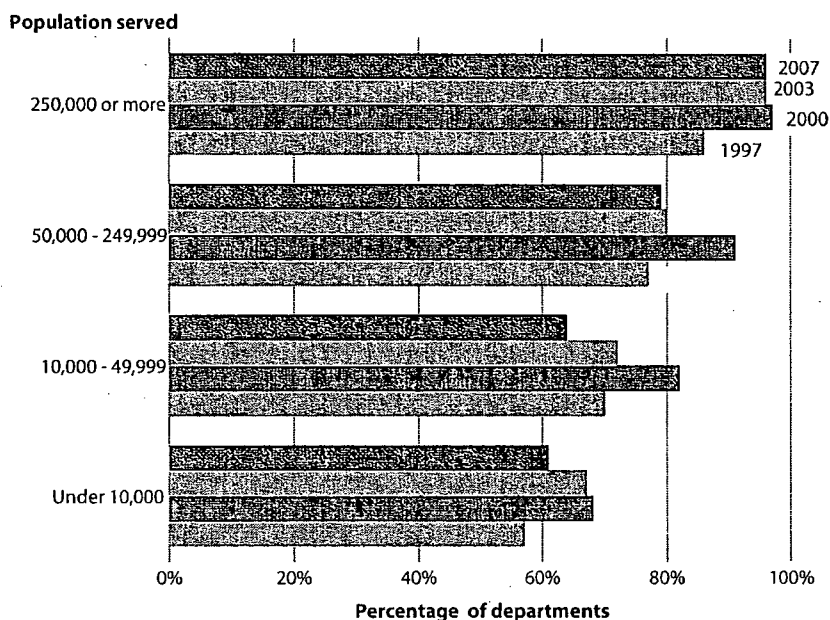


TABLE 14.

Less-than-lethal weapons authorized for use by a majority of local police departments, by size of population served, 2007

Population served	Percent of departments authorizing		
	Pepper spray	Baton	Conducted energy device*
All sizes	97%	93%	60%
1,000,000 or more	92%	100%	100%
500,000–999,999	100	100	77
250,000–499,999	100	100	93
100,000–249,999	100	99	76
50,000–99,999	99	99	78
25,000–49,999	99	98	70
10,000–24,999	99	96	67
2,500–9,999	98	93	58
Under 2,500	94	91	55

*Includes Tasers and stun guns.

Use-of-force policies and procedures

Nearly all local police departments had written policies pertaining to the use of lethal (97%) and less-than-lethal (96%) force by their officers (table 15). Just 0.2% of local police officers, all in small jurisdictions, were employed by a department without a written deadly force policy, and 0.7% by a department without a written policy on less-than-lethal force (figure 12).

When citizens filed complaints about use of force, 31% of departments required that the complaint be reviewed outside the chain of command of the involved officer(s). Most departments serving 250,000 or more residents had this requirement, and 55% of all officers worked for a department with such a policy.

Overall, 8% of departments, employing 33% of officers, had a citizen complaint review board (CCRB) in their jurisdiction that examined use-of-force complaints. A majority of departments serving 500,000 or more residents had a CCRB. About 4% of departments, employing 21% of officers, were served by an independent CCRB possessing full investigative authority with subpoena powers.

TABLE 15.

Use-of-force policies and procedures in local police departments, by size of population served, 2007

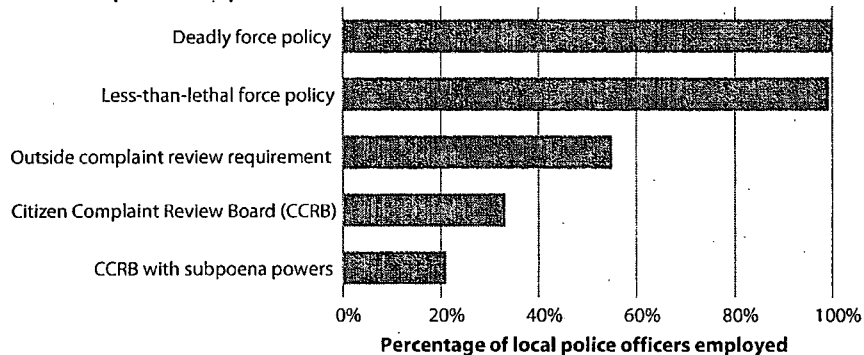
Population served	Percent of departments with use-of-force policy				
	Deadly force	Less-than-lethal force	Outside review required for complaints	Citizen complaint review board (CCRB)	Independent CCRB with subpoena powers
All sizes	97%	96%	31%	8%	4%
1,000,000 or more	100%	100%	77%	77%	31%
500,000–999,999	100	100	74	52	26
250,000–499,999	100	100	54	37	17
100,000–249,999	100	99	43	18	3
50,000–99,999	100	100	43	8	--
25,000–49,999	100	100	33	3	1
10,000–24,999	100	99	35	5	2
2,500–9,999	99	98	30	6	3
Under 2,500	93	91	28	11	5

--Less than 0.5%.

FIGURE 12.

Local police officers employed by a department with use-of-force policies and procedures, 2007

Use-of-force policies and procedures



A more recent trend in less-than-lethal weapons has been an increasing number of departments authorizing the use of conducted energy devices. In 2007, 60% of local police departments authorized these types of weapons, up from 23% in 2003 and 7% in 2000. In 2007, 75% of officers worked for a department that authorized CEDs, compared to 47% in 2003 and 24% in 2000.

From 2003 to 2007, large increases in the use of CEDs occurred in all population categories (figure 13). Among departments serving 250,000 or more residents, the percentage authorizing CEDs increased from 54% to 89%; 50,000 to 249,999 residents, from 47% to 77%; 10,000 to 49,999 residents, from 34% to 68%; and under 10,000 residents, from 18% to 56%.

About 2 in 3 local police departments required officers to wear protective armor at all times while in the field

In 2007, 75% of local police departments required field officers to wear protective body armor at least some of the time while on duty (table 16). Sixty-five percent of departments required field officers to wear armor at all times.

An estimated 80% of local police officers were employed by a department with some type of armor requirement in 2007, compared to 74% in 2003 and 30% in 1990 (figure 14). The percentage of officers employed by a department with an armor requirement for all field officers in all circumstances, was 67% in 2007, compared to 59% in 2003 and 25% in 1990.

FIGURE 13.
Use of conducted energy devices by local police departments, by size of population served, 2000, 2003, and 2007

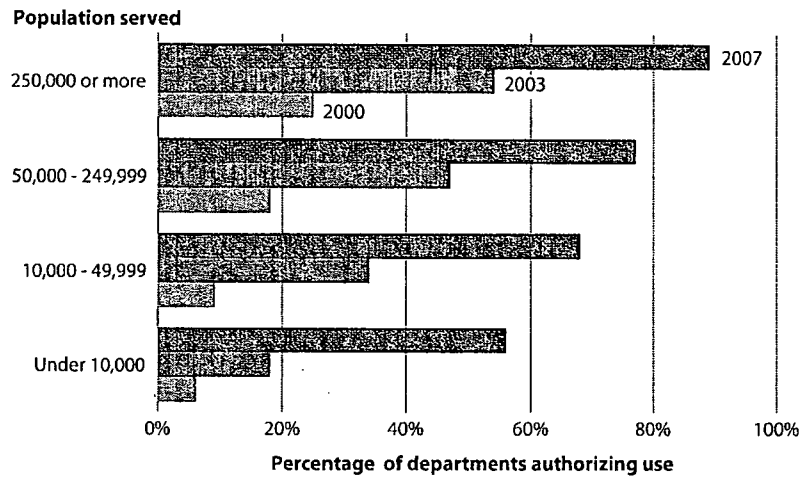
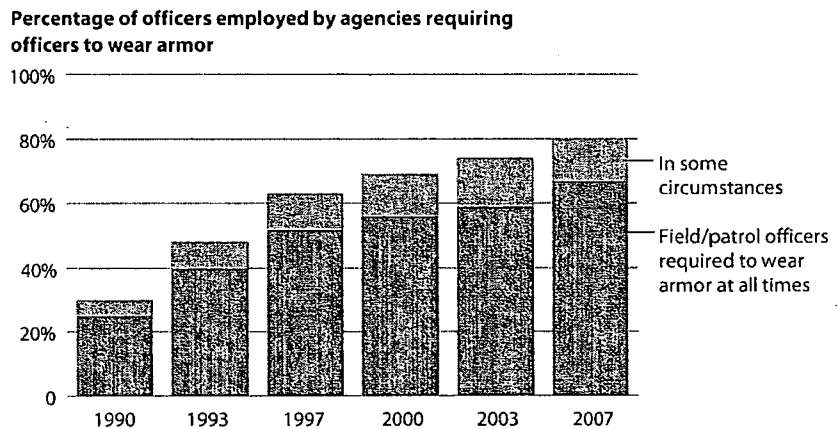


TABLE 16.
Body armor requirements for field officers in local police departments, by size of population served, 2007

	Percent of departments requiring officers to wear protective armor		
	Total	At all times	In some circumstances
All sizes	75%	65	10
1,000,000 or more	77%	62	15
500,000-999,999	81%	55	26
250,000-499,999	78%	61	17
100,000-249,999	73%	55	18
50,000-99,999	74%	62	12
25,000-49,999	77%	66	11
10,000-24,999	81%	71	11
2,500-9,999	79%	73	7
Under 2,500	69%	57	12

Note: Detail may not sum to total because of rounding.

FIGURE 14.
Body armor requirements for field officers in local police departments, 1990-2007



Local police departments operated about 60 cars per 100 officers

During 2007, local police departments collectively operated an estimated 286,000 cars, or 60 cars per 100 officers (table 17). About a third (34%) of local police cars were unmarked (appendix table 13). A majority (60%) of departments also used other 4-wheel motorized vehicles such as sport utility vehicles, trucks, and vans. This included all departments serving 25,000 or more residents. Eighteen percent of departments used motorcycles, including all serving a population of 100,000 or more.

In 2007, 50% of departments, employing 51% of all officers, allowed sworn personnel to take marked vehicles home for commuting purposes (appendix table 14). Overall, 19% of departments, employing 27% of officers, allowed vehicles to be used for personal errands.

A majority of local police departments serving 250,000 or more residents operated at least one helicopter

An estimated 6% of departments, employing 39% of officers, operated at least one boat during 2007 (table 18). This included a majority of those serving 500,000 or more residents. Nationwide, local police operated an estimated 1,350 boats.

One percent of departments, employing 34% of all officers, used helicopters. A majority of departments serving 250,000 or more residents used helicopters. An estimated 312 local police helicopters were in use nationwide in 2007.

Fewer than 1% of local police departments, employing 8% of all officers, operated airplanes, with 40 in use nationwide. More than a third (38%) of departments serving 1 million or more residents operated at least 1 airplane. For more information on the use of airplanes and helicopters by local police, see *Aviation Units in Large Law Enforcement Agencies, 2007*, BJS Web, 9 July 2009.

TABLE 17.

Motorized vehicles operated by local police departments, by size of population served, 2007

Population served	Automobiles		Other 4-wheel vehicles		Motorcycles	
	Percent using	Number per 100 officers*	Percent using	Number per 100 officers*	Percent using	Number per 100 officers*
All sizes	99%	60	60%	11	18%	2
1,000,000 or more	100%	49	100%	10	100%	2
500,000–999,999	100	51	100	10	100	2
250,000–499,999	100	64	100	11	100	3
100,000–249,999	100	67	100	12	100	4
50,000–99,999	100	65	100	11	86	3
25,000–49,999	100	60	100	11	60	3
10,000–24,999	100	62	89	11	30	2
2,500–9,999	100	63	66	12	10	1
Under 2,500	98	69	32	11	4	1

*Part-time officers are included with a weight of 0.5 assigned

TABLE 18.

Off-land vehicles operated by local police departments, by size of population served, 2007

Population served	Percent of departments using—		
	Boats	Helicopters	Airplanes
All sizes	6%	1%	--%
1,000,000 or more	77%	100%	38%
500,000–999,999	61	74	19
250,000–499,999	41	50	15
100,000–249,999	22	9	2
50,000–99,999	19	2	—
25,000–49,999	14	--	0
10,000–24,999	8	--	0
2,500–9,999	5	0	0
Under 2,500	2	--	0

--Less than 0.5%.

Local police departments used about 8,000 dogs and 1,200 horses for law enforcement purposes during 2007

Twenty-nine percent of local police departments, employing 77% of all officers, used dogs for law enforcement activities during 2007 (table 19). This included all departments serving 250,000 or more residents, and a majority of those serving 10,000 to 249,999 residents. Overall, about 8,000 dogs were involved in the activities of local police departments in 2007.

About 1% of departments, employing 34% of all officers, used horses for law enforcement purposes, including a majority of those serving 250,000 or more residents. Local police departments collectively maintained nearly 1,200 horses during 2007.

TABLE 19.

Use of animals by local police departments for law enforcement purposes, by size of population served, 2007

Population served	Percent of departments using—	
	Dogs	Horses
All sizes	29%	1%
1,000,000 or more	100%	77%
500,000–999,999	100	61
250,000–499,999	100	52
100,000–249,999	95	20
50,000–99,999	87	7
25,000–49,999	66	2
10,000–24,999	51	1
2,500–9,999	23	--
Under 2,500	10	--

--Less than 0.5%.

Most departments serving 500,000 or more residents used fixed-site surveillance cameras

An estimated 66% of local police departments, employing 74% of all officers, used video cameras on a regular basis during 2007 (table 20). Thirteen percent of departments used video cameras for fixed-site surveillance, including a majority of those serving a population of 500,000 or more. Among departments using such cameras, the average number in use ranged from 3 in the smallest jurisdictions to more than 200 in the largest.

Nine percent of departments used video cameras for mobile surveillance, including a majority of those serving 1 million or more residents. Among departments using cameras for this purpose, the average number of cameras in use ranged from 2 in departments serving fewer than 100,000 residents to 26 in those serving a population of 500,000 or more.

About 3 in 5 local police departments used video cameras in patrol cars

Video cameras were most commonly used in patrol cars. An estimated 61% of departments used in-car cameras in 2007 compared to 55% in 2003. The estimated 71,000 in-car cameras in use during 2007 was about 22,000 (45%) more than in 2003. By population category, the average number in use ranged from 3 in the smallest jurisdictions to more than 200 in jurisdictions with 500,000 to 999,999 residents.

From 2003 to 2007, the percentage of departments using in-car cameras increased in all population categories: from 46% to 51% among departments serving 250,000 or more residents, 54% to 60% among departments serving 50,000 to 249,999 residents, 61% to 64% among departments serving 10,000 to 49,999 residents, and from 54% to 61% among departments serving fewer than 10,000 residents (figure 15).

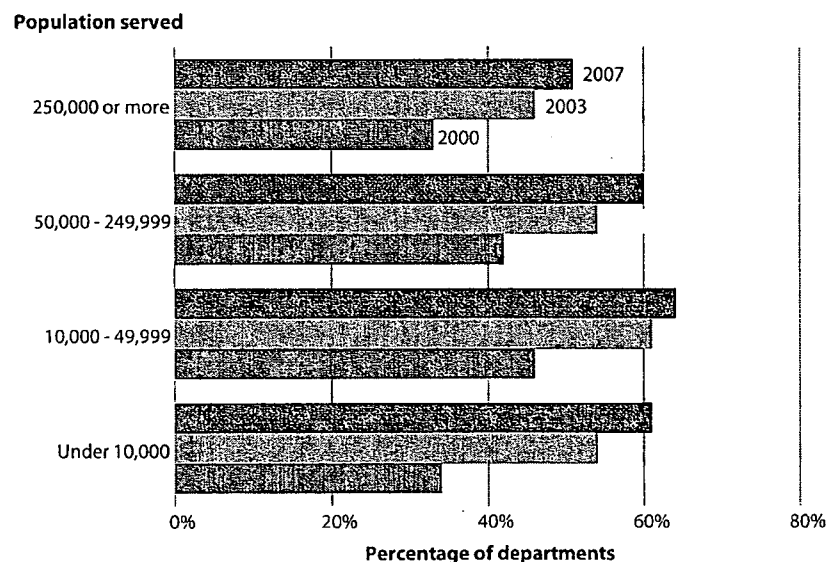
TABLE 20.

Use of video cameras by local police departments, by size of population served, 2007

Population served	Percent of departments regularly using video cameras	Departments using each type of video cameras—					
		In patrol cars		For fixed-site surveillance		For mobile surveillance	
		Percent using	Average number	Percent using	Average number	Percent using	Average number
All sizes	66%	61%	9	13%	9	9%	2
1,000,000 or more	69%	38%	118	54%	220	54%	26
500,000–999,999	81	61	210	55	119	39	26
250,000–499,999	63	48	98	37	53	30	9
100,000–249,999	75	59	67	24	13	34	5
50,000–99,999	72	61	33	26	14	25	2
25,000–49,999	72	66	19	19	8	15	2
10,000–24,999	69	63	12	18	7	11	2
2,500–9,999	68	65	6	11	4	9	2
Under 2,500	61	58	3	9	3	5	2

FIGURE 15.

Use of in-car video cameras by local police departments, by size of population served, 2000, 2003, and 2007



Computers and Information Systems

Local police departments used computers for a wide variety of functions during 2007.

More than 90% of departments serving 25,000 or more residents used computers for dispatch

Local police departments' uses of computers included general records management (79%), and maintaining personnel records (53%) (table 21). Computers were also used by some departments for fleet management (27%), and resource allocation (20%) purposes.

Computers also helped many departments support operational functions such as crime investigation (60%), dispatch (49%), and booking (32%).

For each general or operational function included in the LEMAS survey, more officers were employed by a department using computers to perform that function during 2007 than 2003: records management (91%, 80%), dispatch (86%, 72%), crime investigation (85%, 71%), personnel records (77%, 64%), information sharing (76%, 53%), fleet management (68%, 52%), automated booking (61%, 48%), and resource allocation (57%, 36%).

More than 90% of departments serving 25,000 or more residents had access to an Automated Fingerprint Identification System (AFIS)

Seventy percent of local police departments, employing 91% of officers, had access to an Automated Fingerprint Identification System (AFIS) that

included a file of digitized prints compared to 62% and 88% in 2003 (appendix table 15). Eleven percent of departments, employing 46% of all officers, had exclusive or shared ownership of an AFIS system in 2007. This included a majority of the departments serving 100,000 or more residents.

A majority of departments serving 25,000 or more residents used computers for crime analysis and crime mapping

A majority of departments serving 25,000 or more residents used computers in an analytic capacity related to intelligence gathering, crime analysis, analyzing community problems, and crime mapping (table 22).

TABLE 21.
General functions of computers in local police departments by size of population served, 2007

Population served	Percent of departments using computers for—							
	Records management	Crime investigation	Personnel records	Information sharing	Dispatch	Automated booking	Fleet management	Resource allocation
All sizes	79%	60%	53%	50%	49%	32%	27%	20%
1,000,000 or more	85%	100%	85%	85%	100%	77%	100%	85%
500,000–999,999	97	90	94	100	94	65	100	77
250,000–499,999	100	93	96	89	93	54	78	80
100,000–249,999	95	89	85	80	97	58	65	62
50,000–99,999	96	86	78	76	95	59	67	56
25,000–49,999	97	84	74	72	90	61	50	42
10,000–24,999	94	77	67	63	79	49	44	29
2,500–9,999	84	64	55	52	51	31	29	19
Under 2,500	65	43	39	36	23	18	9	9

TABLE 22.
Analytic functions of computers in local police departments, by size of population served, 2007

Population served	Percent of departments using computers for—				
	Intelligence gathering	Crime analysis	Analysis of community problems	Crime mapping	Hotspot identification
All sizes	40%	38%	28%	27%	13%
1,000,000 or more	85%	100%	77%	100%	92%
500,000–999,999	90	100	81	100	100
250,000–499,999	93	100	80	100	80
100,000–249,999	82	96	75	94	66
50,000–99,999	72	88	70	82	56
25,000–49,999	63	69	52	60	31
10,000–24,999	49	53	43	41	19
2,500–9,999	42	37	27	23	9
Under 2,500	26	21	14	11	5

Overall, 40% of departments used computers for intelligence gathering and 38% for crime analysis. About a fourth of departments used computers for the analysis of community problems (28%) and crime mapping (27%).

Thirteen percent of departments, including more than half of those serving a population of 50,000 or more, used computers to identify crime hotspots during 2007.

As with general and operational computer functions, more officers worked for a department using computers for analytic functions in 2007 than in 2003: crime analysis (80% in 2007, 67% in 2003), crime mapping (75% in 2007, 57% in 2003), intelligence gathering (72% in 2007, 46% in 2003), analysis of community problems (64% in 2007, 52% in 2003), hotspot identification (58% in 2007, 45% in 2003).

More than 90% of departments serving 25,000 or more residents used in-field computers

A majority of the local police departments in each population category of 2,500 or more were using in-field computers or terminals during 2007, including more than 90% of those serving a population of 25,000 or more (table 23). Overall, 59% of departments, employing 89% of all officers, used in-field computers or terminals. Nationwide, departments using in-field computers operated about 37 for every 100 sworn officers. (See appendix table 16 for types of in-field computers used.)

About half (52%) of departments used in-field computers or terminals for writing field reports during 2007, and

about a third (35%) used them for communications (table 24). A majority of the departments serving 10,000 or more residents used in-field computers for these purposes.

Departments using in-field computers to produce field reports employed 65% of all officers in 2007, compared to 34% in 2003, and those using computers for communications purposes employed 72% of officers in 2007, compared to 49% in 2003.

Most local police officers were employed by a department providing them with in-field computer access to vehicle, driving, calls-for-service, and criminal records

In 2007 about half of local police departments provided officers with in-field computer access to vehicle records (52%), driving records (48%), and warrants (48%) (table 25). This included more than 80% of the departments in each population category of 25,000 or more. Departments using in-field computers for these purposes employed 89% of all officers.

TABLE 23.

Use of in-field computers and terminals by local police departments, by size of population served, 2007

Population served	Departments using in-field computers or terminals		
	Percent using	Average number in use	Per 100 sworn officers*
All sizes	59%	21	37
1,000,000 or more	100%	1,309	19
500,000-999,999	100	641	40
250,000-499,999	98	318	46
100,000-249,999	97	127	44
50,000-99,999	97	50	41
25,000-49,999	92	25	40
10,000-24,999	77	13	41
2,500-9,999	59	7	49
Under 2,500	43	3	51

*Part-time officers are included with a weight of 0.5 assigned

TABLE 24.

Use of in-field computers for reports and communications by local police departments, by size of population served, 2007

Population served	Percent of departments using in-field computers for—	
	Field reports	Communications
All sizes	52%	35%
1,000,000 or more	46%	100%
500,000-999,999	74	84
250,000-499,999	85	89
100,000-249,999	73	80
50,000-99,999	77	76
25,000-49,999	72	69
10,000-24,999	57	52
2,500-9,999	50	35
Under 2,500	46	18

TABLE 25.

Types of computerized information accessible to in-field officers in local police departments, by size of population served, 2007

Population served	Types of information accessible in the field using in-field computers							
	Vehicle records	Driving records	Warrants	Protection orders	Interagency information sharing	Calls-for-service history	Criminal history records	Internet
All sizes	52%	48%	48%	42%	37%	34%	32%	30%
1,000,000 or more	100%	100%	100%	92%	69%	85%	77%	23%
500,000-999,999	100	87	94	71	61	61	58	42
250,000-499,999	98	93	98	89	65	83	63	46
100,000-249,999	93	86	88	68	59	71	52	47
50,000-99,999	93	85	86	71	58	76	53	46
25,000-49,999	88	81	81	66	60	66	50	40
10,000-24,999	70	65	68	58	47	47	45	31
2,500-9,999	54	49	48	44	38	30	34	35
Under 2,500	33	31	31	28	25	22	21	23

Note: Detail may not sum to total because of rounding.

In about a third of departments, in-field computers or terminals could be used to access calls-for-service (34%) and criminal history (32%) records. The third included a majority of the departments serving 25,000 or more residents. Departments with in-field access to calls-for-service records employed 73% of officers, and those with access to criminal histories employed 63%.

Local police officers were about 3 times as likely to work for a department using in-field computers in 2007 (89%) as in 1990 (30%)

The percentage of local police departments using in-field computers or terminals in 2007 (59%) was slightly more than in 2003 (56%) and about 12 times greater than in 1990 (5%). Likewise, the 89% of local police officers working for a department with in-field computers or terminals in 2007 was slightly higher than in 2003 (83%) and about 3 times the percentage reported in 1990 (30%).

From 2003 to 2007, slight increases in local police use of in-field computers and terminals occurred in most population categories (figure 16). In-field computer use among departments serving 250,000 or more residents increased from 98% to 99%. In departments serving 50,000 to 249,999 residents, use increased from 94% to 97%; in departments serving 10,000 to 49,999 residents, use increased from 81% to 82%; and in departments serving fewer than 10,000 residents, use increased from 46% to 50%.

The percentage of local police officers employed by a department providing in-field computer access to critical information has also been on the increase since 1997 when LEMAS first began tracking this capability. In 2007, departments providing patrol officers with in-field computer access to vehicle records employed 86% of all officers in 2007, compared to 78% in 2003 (figure 17).

FIGURE 16.

Local police departments using in-field computers or terminals, by size of population served, 1997-2007

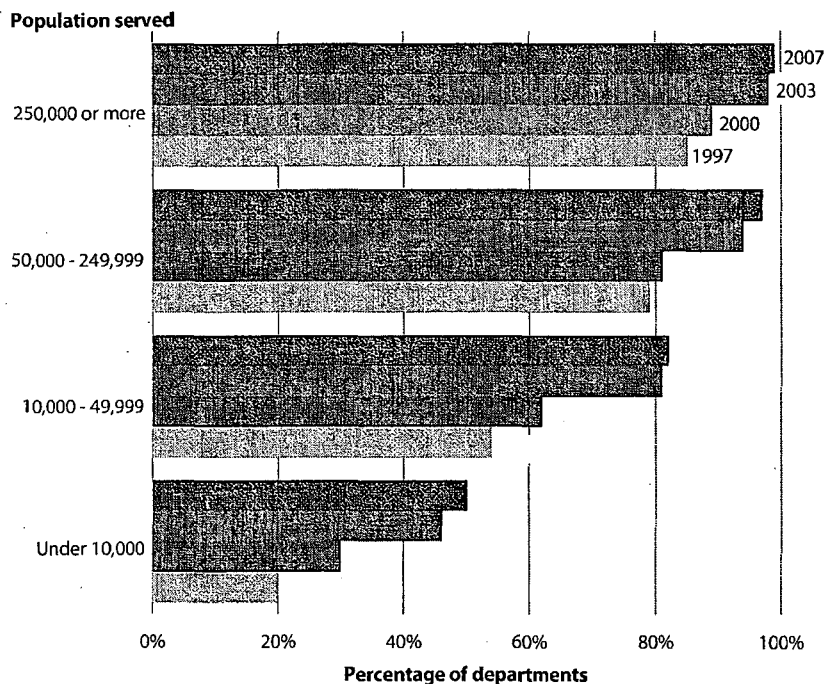
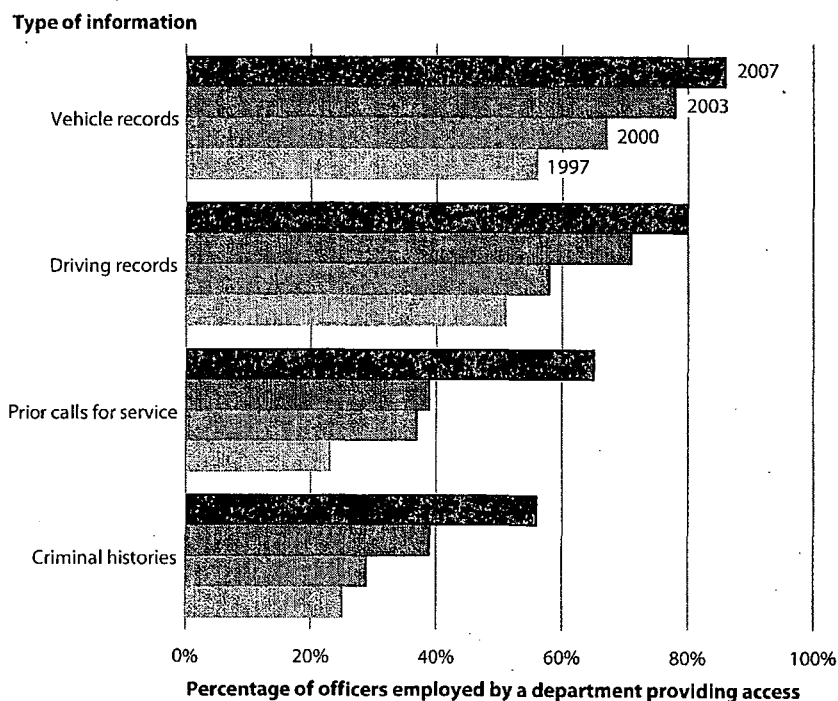


FIGURE 17.

Local police officers employed by a department providing in-field computer access to information, 1997-2007



Other types of information and the percentage of officers employed by a department providing in-field access during 2007 and 2003 are as follows: driving records—80% in 2007, 71% in 2003; calls-for-service records—65% in 2007, 39% in 2003; criminal history records—56% in 2007; 39% in 2003.

From 2003 to 2007, the percentage of departments using electronic methods to transmit criminal incident reports to headquarters increased from 38% to 60%.

In 2007, 60% of local police departments primarily used computers and data devices for transmitting criminal incident reports from the field to their central information system (table 26). Paper reports were used by 36% of departments, and 4% used voice transmission methods such as a telephone or radio.

Continuing a trend observed in past LEMAS surveys, the 36% of departments using paper reports to transmit criminal incidents represented a decrease from 2003, when 55% used this method. During the same period, use of computer and data devices increased from 38% to 60%.

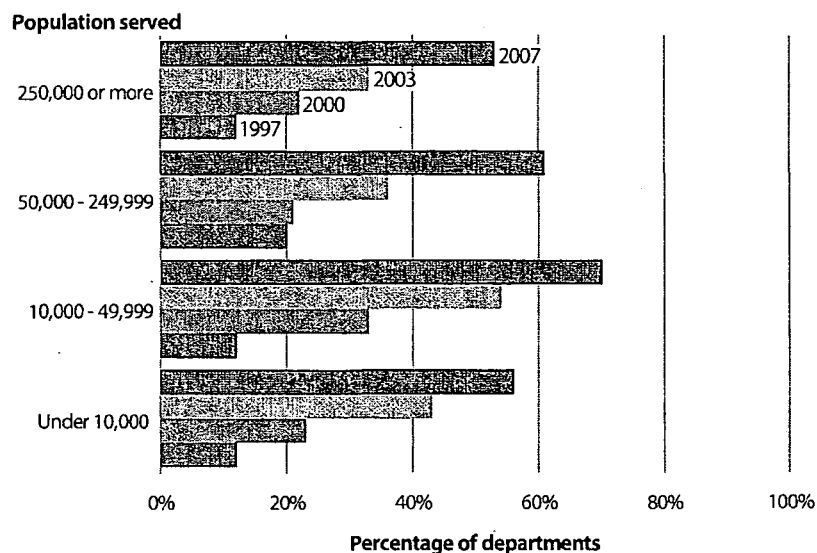
From 2003 to 2007 an increase in the use of electronic (non-paper) methods of report transmission was observed in all population categories (figure 18). Among departments serving 250,000 or more residents, 53% used electronic methods in 2007 compared to 33% in 2003. The percentage of departments in other population categories using electronic methods in 2007 and 2003 respectively, are as follows: 50,000 to 249,999 residents—61% in 2007, 36% in 2003; 10,000 to 49,999 residents—70% in 2007, 54% in 2003; under 10,000 residents—57% in 2007, 43% in 2003.

TABLE 26.
Methods used by local police departments for transmitting criminal incident reports to a central information system, by size of population served, 2007

Population served	Percent of departments using each transmission method			
	Total	Computer/data device	Paper report	Voice
All sizes	100%	60%	36%	4%
1,000,000 or more	100%	46%	46%	8%
500,000–999,999	100	48	48	3
250,000–499,999	100	59	28	11
100,000–249,999	100	63	32	5
50,000–99,999	100	60	36	4
25,000–49,999	100	67	28	4
10,000–24,999	100	71	26	3
2,500–9,999	100	68	29	2
Under 2,500	100	48	48	4

Note: Detail may not sum to total because of rounding.

FIGURE 18.
Local police departments using electronic methods for transmitting criminal incident reports to a central information system, by size of population served, 1997–2007



Note: Electronic methods include computer medium, data device, telephone line, or wireless transmission.

Community Policing

Balancing responsiveness to calls for service with proactive problem solving is a primary goal of effective community policing. The community policing approach requires that police and citizens join together to identify and address underlying causes of crime and disorder.

The Justice Department's Office of Community Oriented Policing Services (COPS) defines three major components: (1) collaborative police-community partnerships; (2) support from agency management, structure, personnel, and information systems; and (3) a problem-solving process that develops and rigorously evaluates effective responses. For more information on community policing, see the COPS Office website at <www.cops.usdoj.gov>.

The LEMAS survey began tracking community policing personnel, activities, and policies in 1997, in response to COPS funding programs that were impacting local law enforcement agencies. (See *Community Policing in Local Police Departments, 1997 and 1999*, BJS Web, 25 February 2001.)

About half of local police officers worked in a department with a written community policing plan

A local police department's commitment to community policing can be measured to some extent at the management level by the presence of written objectives and policies. For example, 53% of departments, employing 81% of officers, had an agency mission statement that included a community policing component in 2007 (table 27), compared to 47% of departments employing 73% of officers in 2003.

A commitment to community policing may be more evident in departments with a formal, written community policing plan. In 2007, 16% of departments, employing 48% of officers, had such a plan. This included about two-thirds of those serving 250,000 or more residents and nearly half of those serving 50,000 to 249,999 residents. In 2003, 14% of departments, employing 44% of officers, had a written community policing plan.

Nearly half of officers worked in a department that screened recruits for analytical problem-solving ability

Some departments assessed applicants' suitability for community policing activities during the selection and hiring process. For example, 29% of depart-

ments, employing 46% of all officers, screened applicants for analytical problem-solving ability (appendix table 17). This included a majority of departments serving a population of 250,000 or more.

TABLE 27.

Community policing policies of local police departments, by size of population served, 2007

Population served	Percentage of departments maintaining—	
	Mission statement with community policing component	Formal written community policing plan
All sizes	53%	16%
1,000,000 or more	100%	69%
500,000–999,999	84	71
250,000–499,999	93	65
100,000–249,999	86	49
50,000–99,999	89	43
25,000–49,999	76	27
10,000–24,999	70	19
2,500–9,999	56	12
Under 2,500	35	11

TABLE 28.

Community policing training for new officer recruits in local police departments, by size of population served, 2007

Population served	Percentage of departments that trained recruits for 8 or more hours in community policing		
	Total	All recruits	Some recruits
All sizes	56%	44%	12%
1,000,000 or more	100%	85%	15%
500,000–999,999	94%	94	0
250,000–499,999	93%	88	5
100,000–249,999	80%	73	7
50,000–99,999	82%	74	8
25,000–49,999	75%	67	8
10,000–24,999	65%	54	12
2,500–9,999	62%	49	13
Under 2,500	37%	25	12

Note: Detail may not sum to total because of rounding.

TABLE 29.

Community-oriented policies for patrol officers in local police departments, by size of population served, 2007

Population served	Percentage of departments with—		
	Geographic assignments for patrol officers	Patrol officer involvement in problem-solving projects	
		Actively encouraged	Included in performance evaluation
All sizes	31%	21%	15%
1,000,000 or more	92%	62%	62%
500,000–999,999	97	61	39
250,000–499,999	83	61	52
100,000–249,999	89	57	46
50,000–99,999	81	57	39
25,000–49,999	65	33	29
10,000–24,999	52	29	17
2,500–9,999	26	21	15
Under 2,500	14	11	7

Most local police departments serving 10,000 or more residents trained all new recruits in community policing

The practice of training at least some new recruits in community policing skills such as problem-solving and developing community partnerships increased to 56% of departments employing 83% of officers in 2007, up from 39% and 72% in 2003 (table 28). In 2007, 44% of departments, employing 70% of all officers, trained all new recruits in community policing, compared to 31% and 67% in 2003.

Most departments serving 50,000 or more residents actively encouraged officers to participate in problem-solving projects

More than 80% of departments serving a population of 50,000 or more and a majority of the departments serving 10,000 to 49,999 residents used geographic assignments for patrol officers (table 29). About 60% of the departments serving 50,000 or more residents also actively encouraged officers to become involved in community problem-solving projects.

More than 4 in 5 departments serving 50,000 or more residents partnered with citizen groups during 2007

Local police departments engaged in various community policing activities during 2007. For example, 38% of departments, employing 75% of officers, partnered with citizen groups to elicit feedback for developing community policing strategies (table 30). This included a majority of departments serving a population of 10,000 or more, and at least 80% of the departments in each population category of 50,000 or more.

An estimated 25% of departments, employing 57% of officers, upgraded technology during 2007 to support the analysis of community problems. This included a majority of departments serving a population of 50,000 or more.

Fifteen percent of departments, employing 60% of all officers, conducted a citizen police academy during 2007. This included a majority of departments

serving a population of 50,000 or more, and at least 80% of the departments in each population category of 100,000 or more.

Fifteen percent of local police departments, employing 35% of all officers, surveyed citizens in their jurisdiction on topics related to crime, fear of crime, or satisfaction with police services. This included 65% of the departments serving 250,000 to 999,999 residents.

A majority of departments serving a population of 50,000 or more had a full-time community policing unit

In 2007, 14% of local police departments had a separate specialized unit with full-time officers dedicated to community policing activities (table 31). This included 85% of departments serving 1 million or more residents, and about 60% of those serving a population of 50,000 to 999,999.

About 47,000 local police officers were specifically designated to perform community policing activities

Although not necessarily part of a separate specialized unit, many local police officers were specifically designated as community policing officers in order to engage in community policing activities during 2007. In 2007, nearly half (47%) of local police departments reported using community policing officers.

Collectively, local police departments had about 47,000 full-time community policing officers. More than two-thirds of the departments in each population category of 25,000 or more used full-time community policing officers. Departments serving 500,000 or more residents had well over 100 community policing officers each, on average.

TABLE 30.
Community policing activities of local police departments, by size of population served, 2007

Population served	Percentage of departments that—			
	Partnered with citizen groups to elicit feedback	Upgraded technology to support community policing	Conducted a citizen police academy	Conducted or sponsored citizen surveys
All sizes	38%	25%	15%	15%
1,000,000 or more	85%	77%	85%	31%
500,000–999,999	100	68	94	65
250,000–499,999	96	57	80	65
100,000–249,999	80	64	83	43
50,000–99,999	83	61	66	47
25,000–49,999	66	43	47	39
10,000–24,999	55	35	27	21
2,500–9,999	35	23	9	13
Under 2,500	22	15	2	6

TABLE 31.
Full-time community policing officers and units in local police departments, by size of population served, 2007

Population served	Community policing officers			
	Percentage of agencies using	Total number of officers	Average number of officers	Separate full-time unit
All sizes	47%	46,919	8	14%
1,000,000 or more	100%	2,101	153	85%
500,000–999,999	97	4,212	133	61
250,000–499,999	98	2,315	49	61
100,000–249,999	94	6,671	38	61
50,000–99,999	87	6,893	18	58
25,000–49,999	69	4,347	7	33
10,000–24,999	50	5,311	6	17
2,500–9,999	42	9,110	5	7
Under 2,500	39	5,959	3	9

The number of community policing officers in local police departments declined by 54% from 2000 to 2007

Despite increases in the number of new officer recruits receiving community policing training between 2003 and 2007, the LEMAS survey recorded downward trends in the number of local police departments using community policing officers and the total number of officers so designated during that period.

From 2000 to 2003, the number of community policing officers declined by almost half—from about 103,000 to about 55,000. The percentage of departments using community policing officers also declined—from 66% to 58%. From 2003 to 2007, the downward trend continued, dropping to 47% of departments and 47,000 officers.

These declines are in sharp contrast to the period from 1997 to 2000 when the LEMAS survey recorded a large increase in the use of community policing officers—from 34% of departments and 16,000 officers in 1997, to 66% of departments and 103,000 officers in 2000 (text table 2).

Text table 2

Use of community policing officers by local police departments, 1997–2007

	Percent of departments using	Total number of officers*
2007	47%	47,000
2003	58	55,000
2000	66	103,000
1997	34	16,000

*Rounded to the nearest 1,000.

Local police officers serving as school resource officers

Many local police departments, through cooperative agreements, assign some of their sworn personnel to work in local schools. Often these school resource officers (SROs) employ a community policing approach and work in collaboration with school and community-based organizations. The core duties of SROs include law-related education, counseling, and law enforcement. Their multi-faceted role in the unique environment of a school requires training beyond that typically encompassed by a basic recruit program.

In 2007, an estimated 38% of local police departments, employing 76% of all officers, had full-time sworn personnel assigned as school resource officers (table 32). More than two-thirds of the departments in each population category of 10,000 or more deployed school resource officers, including nearly 90% of those in jurisdictions with 25,000 to 499,999 residents.

The average number of school resource officers deployed ranged from 87 for departments serving 1 million or more residents, to 2 among those serving fewer than 25,000 residents. An estimated 13,056 full-time local police officers were serving as school resource officers in 2007. This was nearly 1,300 fewer than in 2003, but still 3,700 more than in 1997, the first year the number was tracked in the LEMAS survey. Additional school resource officers were deployed nationwide by sheriffs' offices, state law enforcement agencies, and school police departments.

TABLE 32.

Full-time school resource officers in local police departments, by size of population served, 2007

Population served	School resource officers		
	Percent of agencies using	Total number of officers	Average number of officers
All sizes	38%	13,056	3
1,000,000 or more	77%	913	87
500,000–999,999	71	788	34
250,000–499,999	89	664	15
100,000–249,999	85	1,480	9
50,000–99,999	88	1,678	4
25,000–49,999	88	1,950	3
10,000–24,999	68	1,992	2
2,500–9,999	34	2,142	2
Under 2,500	16	1,447	2

From 2003 to 2007 the use of community policing officers declined among departments serving fewer than 50,000 residents

From 2000 to 2003, a decline in the use of community policing officers by local police departments was observed in all population categories. While use in jurisdictions under 50,000 in population declined again from 2003 to 2007, this trend did not continue in jurisdictions with 50,000 or more residents. Among departments serving 250,000 or more residents, more were using community policing officers in 2007 (98%) than in 2003 (89%) or 2000 (92%) (figure 19). Although down from the peak year of 2000 (93%), departments serving 50,000 to 249,999 residents were as likely to use community policing officers in 2007 (89%) as in 2003 (88%).

Among departments serving 10,000 to 49,999 residents, 56% were using community policing officers in 2007, down from 67% in 2003 and 75% in 2000. Among departments serving fewer than 10,000 residents, 40% were using community policing officers in 2007 compared to 54% in 2003 and 62% in 2000.

Task Force Participation

While community policing emphasizes law enforcement personnel working closely with citizens, multi-agency task force participation involves working closely with other law enforcement agencies. Such task forces allow the partnering of local, state, and federal agencies to combat problems that may be of regional or even national scope. Task forces allow agencies to pool resources and share information and expertise across jurisdictional boundaries.

About 8,500 local police officers were assigned full time to a drug task force

In 2007, 35% of local police departments, employing 77% of officers, had at least 1 officer assigned to a multi-agency drug task force (table 33). This included a majority of departments serving 10,000 or more residents. About 1 in 4

departments had at least one officer assigned full time, including a majority of those serving a population of 25,000 or more. Nationwide, more than 13,000 local police officers were assigned to a drug task force, including about 8,500 assigned full time.

FIGURE 19.

Local police departments using full-time community policing officers, by size of population served, 1997–2007

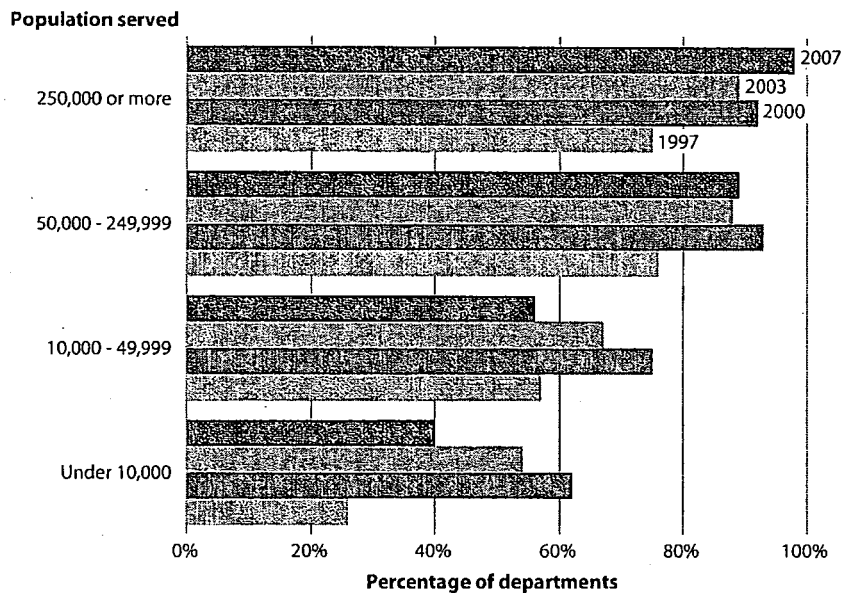


TABLE 33.

Drug task force participation of local police departments, by size of population served, 2007

Population served	Local police departments with officers assigned to a multi-agency drug task force			
	Officers assigned full time or part time		Officers assigned full time	
	Percent of departments	Number of officers	Percent of departments	Number of officers
All sizes	35%	13,409	24%	8,524
1,000,000 or more	100%	1,625	100%	1,620
500,000–999,999	94	843	90	747
250,000–499,999	98	367	96	360
100,000–249,999	83	1,015	79	916
50,000–99,999	82	1,189	77	1,064
25,000–49,999	73	1,483	62	1,111
10,000–24,999	54	2,147	41	1,089
2,500–9,999	36	3,392	17	1,234
Under 2,500	14	1,348	8	382

About 2,200 local police officers were assigned full time to a gang task force

In 2007, 12% of local police departments, employing 52% of officers, had at least one officer assigned to a gang task force, including a majority of depart-

ments serving 100,000 or more residents (table 34). Five percent of departments had at least 1 officer assigned full time to a gang task force, including a majority of those serving a population of 250,000 or more. Nationwide, about 4,600 local

police officers were assigned to a gang task force, including about 2,200 assigned full time.

About 700 local police officers were assigned full time or part time to a human trafficking task force

About 2% of departments had officers assigned to a human trafficking task force, including 54% of those serving a population of 1 million or more (table 35). Overall, about 700 local police officers were assigned to human trafficking task forces during 2007, and about a fifth of these were assigned full time.

Most departments serving 100,000 or more residents had officers assigned to an anti-terrorism task force

Nine percent of local police departments had officers assigned to an anti-terrorism task force, including nearly 90% of those serving a population of 250,000 or more, and 54% of those serving 100,000 to 249,999 residents (table 36). Nationwide, about 2,700 local police officers were assigned to anti-terrorism task forces, and more than 1,100 of these were assigned full time.

TABLE 34.

Gang task force participation of local police departments, by size of population served, 2007

Population served	Local police departments with officers assigned to a multi-agency gang task force			
	Officers assigned full time or part time		Officers assigned full time	
	Percent of departments	Number of officers	Percent of agencies	Number of officers
All sizes	12%	4,558	5%	2,230
1,000,000 or more	77%	429	77%	404
500,000-999,999	81	413	74	396
250,000-499,999	67	189	61	171
100,000-249,999	52	451	43	345
50,000-99,999	46	526	33	341
25,000-49,999	26	471	11	187
10,000-24,999	20	852	7	162
2,500-9,999	9	765	1	63
Under 2,500	4	461	2	160

TABLE 35.

Human trafficking task force participation of local police departments, by size of population served, 2007

Population served	Local police departments with officers assigned to a multi-agency human trafficking task force			
	Officers assigned full time or part time		Officers assigned full time	
	Percent of departments	Number of officers	Percent of agencies	Number of officers
All sizes	2%	722	1%	142
1,000,000 or more	54%	33	31%	13
500,000-999,999	32	39	26	28
250,000-499,999	22	31	20	28
100,000-249,999	6	24	3	10
50,000-99,999	5	41	1	14
25,000-49,999	3	39	2	14
10,000-24,999	1	50	1	29
2,500-9,999	1	130	--	5
Under 2,500	3	335	0	0

--Less than 0.5%.

TABLE 36.

Anti-terrorism task force participation of local police departments, by size of population served, 2007

Population served	Local police departments with officers assigned to a multi-agency anti-terrorism task force			
	Officers assigned full time or part time		Officers assigned full time	
	Percent of departments	Number of officers	Percent of agencies	Number of officers
All sizes	9%	2,693	4%	1,141
1,000,000 or more	100%	365	100%	364
500,000-999,999	90	121	84	105
250,000-499,999	80	105	80	101
100,000-249,999	54	196	43	146
50,000-99,999	29	200	16	97
25,000-49,999	16	262	7	65
10,000-24,999	10	663	3	145
2,500-9,999	5	347	2	87
Under 2,500	4	433	1	31

Emergency Preparedness

Just over half (54%) of local police departments had a written plan that specified actions to be taken in the event of a terrorist attack (text table 3). All departments serving a population of 1 million or more had such a plan, as did about 9 in 10 departments serving 100,000 to 999,999 residents. Departments with a terrorism response plan employed 81% of all officers.

Text table 3

Local police departments with a written terrorism response plan, by size of population served, 2007

Population served	Percent of departments
All sizes	54%
1,000,000 or more	100%
500,000-999,999	94
250,000-499,999	96
100,000-249,999	89
50,000-99,999	76
25,000-49,999	75
10,000-24,999	67
2,500-9,999	53
Under 2,500	42

In addition to participating in anti-terrorism task forces, local police departments engaged in a variety of other activities during 2007 as part of their emergency preparedness and homeland security responsibilities. For example, 62% of departments participated in emergency preparedness exercises, including more than 90% of those serving 50,000 or more residents (table 37).

More than a third (36%) of departments increased the presence of sworn officers at critical areas. This included more than three-fourths of those serving 250,000 or more residents, and more than half of those serving 10,000 to 249,999 residents.

About 1 in 3 departments disseminated information to increase citizen preparedness during 2007, and 1 in 4 departments held community meetings on homeland security issues. About 3 in 4 departments serving a population of 250,000 or more engaged in these two activities.

Overall, 13% of departments partnered with culturally diverse populations, including about two-thirds of departments serving a population of 250,000 or more. Just 4% of departments conducted a public anti-fear campaign during 2007, although nearly half (46%) of those serving a population of 1 million or more did so.

About 6 in 7 local police officers worked for a department that participated in emergency preparedness exercises

A majority of local police officers were employed by a department that participated in emergency preparedness exercises (86%), increased the presence of sworn personnel at critical areas (65%), disseminated information to increase citizen preparedness (62%), and held community meetings on homeland

security and preparedness issues (52%) (figure 20).

A quick, effective emergency response involving multiple first responder agencies in an affected region is essential. The use of a shared radio network infrastructure allows interoperability—an important factor in achieving an effective, coordinated emergency response.

FIGURE 20.

Local police officers employed by a department engaging in selected preparedness activities, 2007

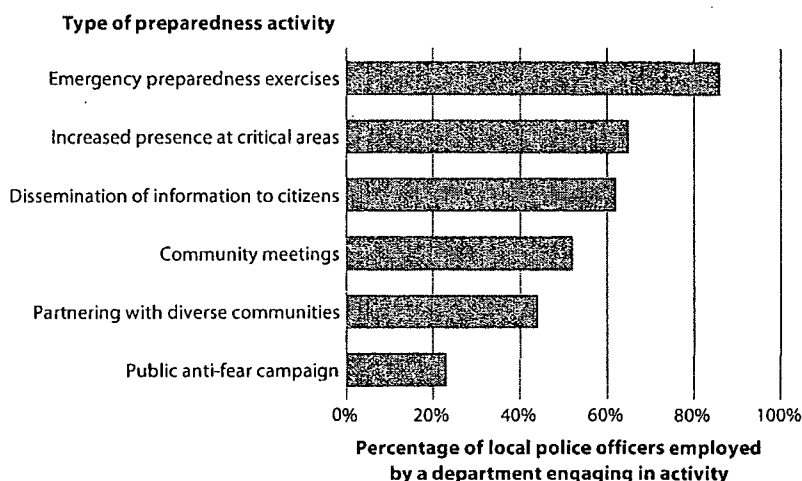


TABLE 37.

Preparedness activities of local police departments, by size of population served, 2007

Population served	Percent of departments that—					
	Participated in emergency preparedness exercises	Increased officer presence at critical areas	Disseminated information to increase citizen preparedness	Held community meetings on homeland security	Partnered with culturally diverse populations	Conducted a public anti-fear campaign
All sizes	62%	36%	33%	26%	13%	4%
1,000,000 or more	92%	77%	92%	85%	54%	46%
500,000–999,999	94	74	71	68	65	19
250,000–499,999	98	80	72	78	72	26
100,000–249,999	92	64	57	43	41	9
50,000–99,999	90	60	53	39	40	9
25,000–49,999	82	54	53	31	22	6
10,000–24,999	77	51	42	25	15	5
2,500–9,999	64	36	35	28	8	3
Under 2,500	47	23	20	21	11	2

As of 2007, about 7 in 8 local police departments were able to use a radio network that achieved interoperability, and at least 77% of the departments in any population category had this capability (text table 4).

Text table 4
Local police departments that use a shared radio network that achieves interoperability, by size of population served, 2007

Population served	Percent of departments
All sizes	86%
1,000,000 or more	77%
500,000–999,999	94
250,000–499,999	91
100,000–249,999	80
50,000–99,999	81
25,000–49,999	78
10,000–24,999	85
2,500–9,999	88
Under 2,500	87

Local police departments had about 4,000 sworn personnel serving in intelligence positions related to combating terrorism

More than 90% of local police departments serving a population of 500,000 or more had full-time sworn personnel serving in intelligence positions with primary duties related to terrorist activities (appendix table 18). A majority of departments serving 100,000 to 499,999 residents also had such personnel. Overall, 11% of departments had sworn personnel serving in this capacity with a total of about 4,000 nationwide.

Just 1% of all departments had non-sworn intelligence personnel with primary duties related to terrorism, although nearly half (46%) of the departments serving a population of 1 million or more did. Nationwide, an estimated 238 civilian personnel from local police departments served in this type of position.

Methodology

Sample design

Based on employment data from the 2004 BJS Census of State and Local Law Enforcement Agencies (CSLLEA), the original 2007 LEMAS survey sample included 3,224 state and local law enforcement agencies. The sample was designed to be representative of all general purpose state and local law enforcement agencies in the United States, with separate samples drawn for local police departments and sheriffs' offices. Agencies serving special jurisdictions (such as schools, airports, or parks) or with special enforcement responsibilities (such hunting and fishing laws or alcohol laws) were considered out of scope for the survey.

Sheriffs' offices without primary law enforcement jurisdiction were also considered out of scope for the survey. In addition, some smaller local police departments were determined to have closed since the 2004 CSLLEA and were dropped from the sample. After all out-of-scope and closed agencies were dropped, the final sample size for the survey was 3,095.

The final sample included 950 self-representing (SR) agencies with 100 or more sworn personnel, and 2,145 non-self-representing (NSR) agencies employing fewer than 100 sworn personnel.

The SR agencies included 591 local police departments, 310 sheriffs' offices, and 49 state law enforcement agencies. All 950 SR agencies received the 49-item CJ-44L questionnaire.

The NSR local police agencies were selected using a stratified random sample with cells based on the number of sworn personnel. The NSR sheriffs' offices were selected using a simple random sample. Overall, the NSR sample included 1,504 local police departments and 641 sheriffs' offices. All 2,145 NSR agencies received the 40-item CJ-44S questionnaire.

Agency response rate

A total of 2,840 agencies completed their LEMAS questionnaire for an overall response rate of 91.8%. This included 879 SR agencies (92.5%) and 1,961 NSR agencies (91.4%). The response rate for local police departments was 93.9%; for sheriffs' offices it was 87.0%; and for state law enforcement agencies it was 91.8%. The final database includes full responses from 1,968 local police departments, 827 sheriffs' offices, and 45 state agencies. An additional 21 local police departments and 14 sheriffs' offices completed the first page of the questionnaire as part of a final non-response follow-up effort.

Weighting

The base weight for all SR agencies is one. For NSR sheriffs' offices, the base weight is 4.22. For NSR local police departments, the base weights are determined by the number of sworn personnel employed as reported in the 2004 BJS Census of State and Local Law Enforcement Agencies. The final weight associated with every agency, both SR and NSR, is the product of the base weight, a factor that adjusted for changes in the universe since 2004, and a factor that adjusted for any nonresponding agencies in each cell. For state law enforcement agencies, the final weight is 1.09. For SR sheriffs' offices it is 1.12, and for NSR sheriffs' offices it is 4.90.

The final weight for all SR local police departments is 1.06. For NSR local police departments with 63 to 99 officers, the final weight is 2.22, with 40 to 62 officers, 3.54; with 24 to 39 officers, 5.21; with 14 to 23 officers, 7.55; with 7 to 13 officers, 10.97; and for departments with fewer than 7 officers the final weight is 20.29.

To compute the officer-based percentages in the report, the final weight for an agency was multiplied by the proportion of all full-time equivalent sworn officers employed by that agency. The number of full-time equivalent sworn officers was defined as the sum of the number of full-time sworn officers and one-half the number of part-time sworn officers.

Item non-response

For the 1,968 local police departments completing one of the two versions of the LEMAS questionnaire, item non-response rates due to omission or invalid data were quite low. For most categorical items, the non-response rate was 0% (appendix table 19).

Imputations

When an agency did not supply a response to a numeric item, median value imputation or ratio imputation was used. The median value imputations used the median value of an item reported in the 2007 survey by other agencies in the same sample cell. The ratio imputations used the median value of a ratio reported in the 2007 survey by other agencies in the same sample cell. Imputations were not used for categorical items.

For race and gender data, a cold-deck imputation process was used where the percentages represented in an agency's sworn personnel totals by each racial/ethnic or gender group in the 2003 LEMAS survey was applied to the 2007 sworn personnel totals. If 2003 data were not available, then a ratio imputation method was used.

Accuracy of the estimates

The accuracy of the estimates presented in this report depends on two types of error: sampling and nonsampling. Sampling error is the variation that may occur by chance because a sample rather than a complete enumeration of the population was conducted. Nonsampling error can be attributed to many sources such as the inability to obtain information about all cases in the sample, inability to obtain complete and correct information from the administrative records, and processing errors. In any survey the full extent of the nonsampling error is never known.

The sampling error, as measured by an estimated standard error, varies by the size of the estimate and the size of the base population. Estimates of the standard errors have been calculated for the 2007 survey (appendix table 20). These estimates may be used to con-

struct confidence intervals around percentages in this report. For example, the 95%-confidence interval around the percentage of local police departments using foot patrol is approximately 55% plus or minus 1.96 times 1.5% (or 52% to 58%).

These standard errors may also be used to test the significance of the difference between two sample statistics by pooling the standard errors of the two sample estimates. For example, the standard error of the difference between departments serving fewer than 2,500 residents and those serving 2,500 to 9,999 residents for enhanced 9-1-1 would be 3.5% (or the square root of the sum of the squared standard errors for each group). The 95%-confidence interval around the difference would be 1.96 times 3.5% (or 6.9%). Since the difference of 10% (75% minus 65%) is greater than 6.9%, the difference would be considered statistically significant.

Standard error estimates may also be used to construct confidence intervals around numeric variables such as personnel counts (appendix table 21). For example, the 95%-confidence interval around the number of full-time sworn personnel is approximately 463,147 plus or minus 1.96 times 10,265, or 443,028 to 483,266.

Abbreviated form responses

In the final phase of the data collection, all remaining non-respondents were given the opportunity to complete an abbreviated questionnaire consisting of the first page of the original survey form they received. A total of 21 local police departments (5 SR and 16 NSR) and 14 sheriffs' offices (0 SR and 14 NSR) completed the abbreviated form. For analysis of the data that includes these partial-form responses, slightly different weights must be used.

The adjusted partial-form weight for all SR local police departments is 1.05. For NSR agencies with 63 to 99 officers, the partial form weight is 20.04; with 40 to 62 officers, 3.49; with 24 to 39 officers, 5.15; with 14 to 23 officers, 7.48; with 7 to 13 officers, 10.80; and for departments with fewer than 7 officers, the

partial-form weight is 20.04. For NSR sheriffs' offices the adjusted partial-form weight is 4.78.

Dollar amounts adjusted for inflation

For comparison purposes salary and budget data for 2003 were converted into 2007 dollars. This conversion was accomplished using Consumer Price Index data published by the Bureau of Labor Statistics.

APPENDIX TABLE 1.

Fifty largest local police departments in the United States, by number of full-time sworn personnel, 2007

Name of department	Population served	Full-time sworn personnel		Total full-time employees	
		Number	Per 10,000 residents	Number	Per 10,000 residents
New York (NY) Police	8,220,196	35,216	43	51,480	63
Chicago (IL) Police	2,824,434	13,336	47	15,436	55
Los Angeles (CA) Police	3,870,487	9,504	25	12,834	33
Philadelphia (PA) Police	1,435,533	6,778	47	7,610	53
Houston (TX) Police	2,169,544	4,892	23	6,317	29
Washington (DC) Metropolitan Police	588,292	3,913	67	4,493	76
Phoenix (AZ) Police	1,541,698	3,231	21	4,379	28
Dallas (TX) Police	1,239,104	3,122	25	3,739	30
Miami-Dade (FL) Police	1,082,395	3,120	29	4,495	42
Detroit Police (MI) Police	860,971	3,049	35	3,418	40
Baltimore (MD) Police	624,237	2,952	47	3,565	57
Suffolk County (NY) Police	1,308,750	2,644	20	3,234	25
Nassau County (NY) Police	1,030,495	2,600	25	3,922	38
Las Vegas (NV) Metropolitan Police	1,341,156	2,390	18	4,704	35
San Francisco (CA) Police	733,799	2,303	31	2,625	36
Boston (MA) Police	591,855	2,169	37	2,813	48
Memphis (TN) Police	669,264	2,062	31	2,666	40
Milwaukee (WI) Police	572,938	1,960	34	2,436	43
San Diego (CA) Police	1,261,196	1,922	15	2,677	21
Honolulu (HI) Police	905,903	1,911	21	2,406	27
Baltimore County (MD) Police	785,567	1,888	24	2,188	28
Columbus (OH) Police	735,981	1,829	25	2,187	30
San Antonio (CA) Police	1,316,882	1,795	14	2,402	18
Atlanta (GA) Police	497,290	1,701	34	2,177	44
Jacksonville (FL) Sheriff's Office	797,350	1,629	20	2,852	36
Indianapolis (IN) Metropolitan Police	797,268	1,607	20	1,887	24
Cleveland (OH) Police	439,888	1,584	36	1,884	43
Denver (CO) Police	573,387	1,523	27	1,876	33
Prince George's County (MD) Police	647,701	1,522	23	1,823	28
Charlotte-Mecklenburg (NC) Police	733,291	1,481	20	1,927	26
Fairfax County (VA) Police	976,392	1,427	15	1,737	18
New Orleans (LA) Police	220,614	1,425	65	1,693	77
Austin (TX) Police	716,817	1,415	20	2,029	28
Fort Worth (TX) Police	670,693	1,412	21	1,794	27
Kansas City (MO) Police	447,725	1,393	31	2,129	48
San Jose (CA) Police	934,553	1,386	15	1,831	20
St. Louis (MO) Police	348,197	1,348	39	1,863	54
Seattle (WA) Police	585,118	1,277	22	1,767	30
Newark (NJ) Police	280,158	1,229	44	1,429	51
Montgomery County (MD) Police	911,528	1,199	13	1,563	17
Louisville (KY) Metro Police	624,030	1,184	19	1,411	23
Metropolitan Nashville (TN) Police	564,169	1,180	21	1,499	27
El Paso (TX) Police	616,029	1,095	18	1,455	24
Cincinnati (OH) Police	332,388	1,062	32	1,309	39
Miami (FL) Police	410,252	1,054	26	1,770	43
Tucson (AZ) Police	523,299	1,052	20	1,456	28
Oklahoma City (OK) Police	542,199	999	18	1,251	23
Tampa (FL) Police	337,220	992	29	1,352	40
Long Beach (CA) Police	473,959	972	21	1,485	31
Albuquerque (NM) Police	513,124	963	19	1,455	28

APPENDIX TABLE 2.**Drug asset forfeiture receipts of local police departments, by size of population served, 2006**

Population served	Percent of departments with receipts	Value of money, goods, and property received		
		Total	Per department*	Per sworn officer*
All sizes	33%	\$307,542,052	\$73,200	\$1,033
1,000,000 or more	62%	\$23,742,200	\$2,802,100	\$644
500,000-999,999	74	25,906,900	1,063,500	703
250,000-499,999	89	36,392,300	838,100	1,218
100,000-249,999	89	50,931,700	298,500	1,028
50,000-99,999	82	61,684,200	175,000	1,385
25,000-49,999	68	37,804,500	64,300	967
10,000-24,999	57	40,211,500	38,800	1,135
2,500-9,999	33	15,537,400	11,300	743
Under 2,500	12	15,331,200	25,300	3,388

Note: Table based on asset forfeiture receipts during calendar 2006. The value of goods and property is based on estimates provided by reporting agencies. Computation of per officer averages includes both full-time and part-time employees, with a weight of 0.5 assigned to part-time employees.

*Excludes departments without receipts.

APPENDIX TABLE 3.**Background and record check methods used in selection of new officer recruits in local police departments, by size of population served, 2007**

Population served	Percent of departments requiring—			
	Criminal record check	Background investigation	Driving record check	Credit history check
All sizes	100%	99%	99%	61%
1,000,000 or more	100%	100%	100%	85%
500,000-999,999	100	100	100	97
250,000-499,999	100	100	100	96
100,000-249,999	100	100	100	94
50,000-99,999	100	100	100	93
25,000-49,999	100	100	100	90
10,000-24,999	100	100	100	78
2,500-9,999	100	99	99	65
Under 2,500	100	99	97	41

APPENDIX TABLE 4.**Personal attribute screening methods used in selection of new officer recruits in local police departments, by size of population served, 2007**

Population served	Percent of departments requiring—					
	Personal interview	Psychological evaluation	Written aptitude test	Personality inventory	Polygraph exam	Voice stress analyzer
All sizes	99%	72%	48%	46%	26%	5%
1,000,000 or more	100%	100%	100%	85%	77%	0%
500,000-999,999	97	100	90	68	74	13
250,000-499,999	96	100	96	67	83	7
100,000-249,999	98	99	88	64	77	13
50,000-99,999	99	100	87	66	63	13
25,000-49,999	100	98	83	64	51	9
10,000-24,999	100	94	76	57	42	11
2,500-9,999	100	82	56	44	26	5
Under 2,500	98	48	20	38	10	2

APPENDIX TABLE 5.

Physical attribute screening methods used in selection of new officer recruits in local police departments, by size of population served, 2007

Population served	Percent of departments requiring—		
	Medical exam	Drug test	Physical agility test
All sizes	89%	83%	60%
1,000,000 or more	100%	100%	100%
500,000–999,999	100	100	97
250,000–499,999	100	91	96
100,000–249,999	100	95	86
50,000–99,999	100	96	89
25,000–49,999	100	97	90
10,000–24,999	99	94	78
2,500–9,999	95	87	65
Under 2,500	76	73	41

APPENDIX TABLE 6.

In-service training requirements for sworn personnel in local police departments, by size of population served, 2007

Population served	Annual in-service training requirement for patrol/field officers	
	Percent with requirement	Average number of hours required
All sizes	92%	35
1,000,000 or more	100	27
500,000–999,999	100	31
250,000–499,999	100	31
100,000–249,999	99	39
50,000–99,999	98	42
25,000–49,999	96	41
10,000–24,999	95	39
2,500–9,999	95	37
Under 2,500	86	29

APPENDIX TABLE 7.

Special pay and benefits for full-time sworn personnel in local police departments, by size of population served, 2007

Population served	Percent of departments authorizing—									
	Collective bargaining	Tuition reimbursement	Education incentive pay	Merit pay	Shift differential pay	Special skills pay	Military service pay	Hazardous duty pay	Bilingual pay	Residency incentive pay
All sizes	38%	37%	32%	23%	21%	16%	13%	6%	6%	2%
1,000,000 or more	85%	85%	69%	46%	92%	62%	62%	69%	62%	8%
500,000–999,999	71	84	71	35	71	45	52	61	45	3
250,000–499,999	63	80	61	54	72	39	50	48	50	0
100,000–249,999	62	81	77	41	51	43	33	32	42	2
50,000–99,999	68	80	70	32	47	40	29	23	32	4
25,000–49,999	70	71	63	29	44	31	29	9	15	3
10,000–24,999	67	64	58	30	37	29	18	7	10	4
2,500–9,999	47	40	36	25	25	15	12	5	3	2
Under 2,500	11	14	9	15	4	5	7	2	1	2

APPENDIX TABLE 8.

Local police officers assigned to respond to calls for service, by size of population served, 2007

Population served	Percent of full-time sworn personnel
All sizes	67%
1,000,000 or more	59%
500,000–999,999	54
250,000–499,999	59
100,000–249,999	61
50,000–99,999	68
25,000–49,999	68
10,000–24,999	77
2,500–9,999	87
Under 2,500	96

APPENDIX TABLE 9.

Wireless capabilities of emergency 9-1-1 systems in local police departments, by size of population served, 2007

Population served	Emergency 9-1-1 systems can display wireless caller's—		
	Phone number	Exact location	General location
All sizes	84%	27%	62%
1,000,000 or more	92%	31%	69%
500,000–999,999	90	27	80
250,000–499,999	100	37	89
100,000–249,999	90	30	82
50,000–99,999	85	25	68
25,000–49,999	85	27	71
10,000–24,999	84	24	62
2,500–9,999	84	23	58
Under 2,500	83	30	61

APPENDIX TABLE 10.

Types of sidearms authorized for use by sworn personnel in local police departments, by size of population served, 2007

Population served	Type of sidearm authorized			
	Semi-automatic		Revolver	
	Primary	Backup	Primary	Backup
All sizes	100%	77%	22%	51%
1,000,000 or more	100%	100%	62%	69%
500,000–999,999	100	100	23	55
250,000–499,999	100	100	17	52
100,000–249,999	100	100	19	55
50,000–99,999	100	95	11	53
25,000–49,999	100	73	7	47
10,000–24,999	100	70	10	50
2,500–9,999	100	77	17	51
Under 2,500	100	77	34	51

APPENDIX TABLE 11.

Types of batons authorized for use by sworn personnel in local police departments, by size of population served, 2007

Population served	Type of baton authorized			
	Any type	Collapsible	Traditional	PR-24
All sizes	93%	88%	45%	36%
1,000,000 or more	100%	92%	69%	54%
500,000–999,999	100	94	55	26
250,000–499,999	100	87	50	30
100,000–249,999	99	98	56	35
50,000–99,999	99	96	48	32
25,000–49,999	98	94	34	28
10,000–24,999	96	90	40	32
2,500–9,999	93	89	41	31
Under 2,500	91	85	52	42

APPENDIX TABLE 12.

Less-than-lethal weapons or actions authorized for use by fewer than half of local police departments, by size of population served, 2007

Population served	Type of less-than-lethal weapon authorized			
	Soft projectile	Hold or neck restraint	Rubber bullet	Blackjack/slapjack
All sizes	28%	15%	8%	4%
1,000,000 or more	46%	46%	15%	8%
500,000-999,999	65	29	23	3
250,000-499,999	57	43	22	4
100,000-249,999	60	40	21	1
50,000-99,999	67	28	24	2
25,000-49,999	55	18	16	1
10,000-24,999	46	14	13	1
2,500-9,999	26	14	7	3
Under 2,500	14	13	4	6

APPENDIX TABLE 13.

Number of motorized land vehicles operated by local police departments and percent unmarked, by size of population served, 2007

Population served	Type of vehicle				
	Cars		Other 4-wheel		Motorcycles*
	Number operated	Percent unmarked	Number operated	Percent unmarked	Number operated
All sizes	286,180	34%	52,008	47%	11,162
1,000,000 or more	46,993	41%	9,592	60%	1,918
500,000-999,999	26,833	40	5,353	60	1,104
250,000-499,999	22,161	37	3,946	56	938
100,000-249,999	37,042	38	6,382	46	1,991
50,000-99,999	34,387	36	5,579	41	1,688
25,000-49,999	32,613	34	5,780	43	1,538
10,000-24,999	35,748	30	6,322	40	1,034
2,500-9,999	33,789	24	6,383	36	722
Under 2,500	16,613	15	2,670	19	230

*Percent unmarked motorcycles not collected in survey.

APPENDIX TABLE 14.

Vehicle use policies for sworn personnel in local police departments, by size of population served, 2007

Population served	Percent of departments with policy allowing marked vehicles to be—		
	Driven home	Used for personal errands	Operated outside jurisdiction
All sizes	50%	19%	30%
1,000,000 or more	62%	13%	13%
500,000-999,999	61	37	37
250,000-499,999	65	33	33
100,000-249,999	63	35	44
50,000-99,999	53	35	35
25,000-49,999	40	37	39
10,000-24,999	38	22	42
2,500-9,999	46	22	30
Under 2,500	59	13	26

APPENDIX TABLE 15.

Automated fingerprint identification systems (AFIS) in local police departments, by size of population served, 2007

Population served	Percent of departments with AFIS access			
	Total with access	Exclusive/ shared owner	Remote terminal access	Access through other agency
All sizes	70%	11%	7%	54%
1,000,000 or more	100%	92%	15%	15%
500,000–999,999	100	87	13	16
250,000–499,999	100	57	37	15
100,000–249,999	98	62	22	24
50,000–99,999	94	37	20	41
25,000–49,999	92	35	14	48
10,000–24,999	79	17	9	54
2,500–9,999	73	8	5	60
Under 2,500	58	2	5	52

APPENDIX TABLE 16.

Types of in-field computers or terminals used by local police departments, by size of population served, 2007

Population served	Type of in-field computer or terminal used			
	Any type	Portable with docking station	Vehicle-mounted	Portable non-docking
All sizes	59%	33%	28%	17%
1,000,000 or more	100%	62%	62%	54%
500,000–999,999	100	65	61	42
250,000–499,999	98	78	33	50
100,000–249,999	97	53	51	29
50,000–99,999	97	52	57	36
25,000–49,999	92	44	56	37
10,000–24,999	77	44	34	25
2,500–9,999	59	33	26	15
Under 2,500	43	24	18	9

APPENDIX TABLE 17.

Screening methods related to community policing used in selection of new officer recruits for local police departments, by size of population served, 2007

Population served	Percent of departments assessing—			
	Analytical problem-solving	Volunteer/ community service history check	Understanding of culturally diverse populations	Mediation/ conflict management skills
All sizes	29%	20%	20%	16%
1,000,000 or more	62%	31%	31%	46%
500,000–999,999	52	48	45	42
250,000–499,999	54	26	26	28
100,000–249,999	43	25	27	25
50,000–99,999	44	26	24	25
25,000–49,999	38	27	18	19
10,000–24,999	35	23	20	20
2,500–9,999	32	25	23	17
Under 2,500	21	14	18	12

APPENDIX TABLE 18.

Full-time intelligence personnel in local police departments with primary duties related to terrorist activities, by size of population served, 2007

Population served	Percent of departments with full-time intelligence personnel					
	Sworn			Non-sworn		
	Percent of departments using	Average number	Total number	Percent of departments using	Average number	Total number
All sizes	11%	3	3,994	1%	2	238
1,000,000 or more	92%	69	882	46%	12	73
500,000-999,999	94	13	392	26	4	31
250,000-499,999	76	3	127	28	2	28
100,000-249,999	59	2	207	13	2	42
50,000-99,999	29	2	201	3	2	20
25,000-49,999	17	1	201	2	1	21
10,000-24,999	11	2	394	1	1	16
2,500-9,999	8	3	831	--	1	8
Under 2,500	8	2	759	0	0	0

--Less than 0.5%.

APPENDIX TABLE 19.

Item non-response for local police department data in 2007 LEMAS survey

Item description	Percent of cases missing	Item description	Percent of cases missing
Numeric variables		Categorical variables	
Number of agency personnel	0.0%	Minimum education requirement	0.0%
Number of task force officers	0.0	Entry-level training requirement	2.1
Number of officers responding to calls	0.0	In-service training requirements	1.2
Number of community policing officers	0.0	Special pay for sworn personnel	0.0
Number of school resource officers	0.0	Emergency 9-1-1 system	0.0
Agency operating budget	2.0	Wireless 9-1-1 capabilities	1.0
Drug asset forfeiture receipts	0.0	Types of regularly scheduled patrol	0.0
Recruit screening methods	0.0	Community policing training	0.4
Race of sworn personnel	2.6	Community policing activities	0.1
Gender of sworn personnel	0.4	Terrorism response plan	0.0
Salary range for chief	5.6	Shared radio network	0.0
Salary range for sergeant	3.0	Preparedness activities	0.0
Salary range for entry-level officer	3.2	Types of sidearms authorized	0.0
Number of intelligence personnel	0.4	Body armor-wear policies	0.0
Number of dogs and horses	0.0	Types of non-lethal weapon authorized	0.0
Number of cars operated	0.6	Vehicle take-home policy	0.0
Number of other land vehicles operated	0.7	Use of video cameras	0.0
Number of off-land vehicles operated	0.0	Computer functions	0.1
Number of video cameras	0.3	Use of in-field computers	0.0
Number of in-field computers	1.0	In-field information access	0.2
		Transmission methods for field reports	0.1
		AFIS system	0.1
		Written policy directives	0.0
		Citizen complaint review board	0.2
		Outside review of complaints	0.3

APPENDIX TABLE 20.

Standard errors of the estimated percentages for local police departments, by size of population served, 2007

Population served	Standard errors for estimated percentages ^a				
	50-60%	61-70%	71-80%	81-90%	91-100%
All sizes^b	1.5	1.4	1.3	0.8	0.4
100,000 - 249,999	1.0	0.9	0.8	0.6	0.4
50,000 - 99,999	0.9	1.8	1.6	1.4	0.5
25,000 - 49,999	2.6	2.5	2.2	1.9	1.2
10,000 - 24,999	2.5	2.4	2.2	1.8	1.2
2,500 - 9,999	2.4	2.3	2.1	1.7	1.1
Under 2,500	2.9	2.8	2.5	2.2	1.4

^aEach specific standard error in the table is based on the approximate midpoint of the specified percentage range and may be applied to all dichotomous variables with a comparable percentage distribution.

^bNo standard errors are presented for population categories of 250,000 or more because all cases in these groups were selected for the survey.

APPENDIX TABLE 21.

Standard errors of the estimated personnel counts for local police departments, 2007

	Survey estimate	Estimated standard error
Number of employees		
Full-time	601,027	14,466
Part-time	54,310	1,683
Number of full-time employees		
Sworn	463,147	10,265
Civilian	137,880	4,414
Number of full-time sworn personnel		
Population served ^a		
100,000-249,999	54,556	993
50,000-99,999	52,148	1,240
25,000-49,999	53,513	1,735
10,000-24,999	55,507	1,871
2,500-9,999	48,681	1,616
Under 2,500	17,510	902

^aNo standard errors are presented for population categories of 250,000 or more because all cases in these groups were selected for the survey.

APPENDIX TABLE 22.

Standard errors for estimated operating budgets and starting salaries for entry-level officers in local police departments, 2007

	Survey estimate	Estimated standard error
Average annual operating budget		
Population served		
All sizes^a	\$4,406,000	\$91,960
100,000-249,999	\$38,844,000	\$361,721
50,000-99,999	\$16,068,000	\$249,258
25,000-49,999	\$7,474,000	\$158,579
10,000-24,999	\$3,260,000	\$77,111
2,500-9,999	\$1,127,000	\$36,970
Under 2,500	\$263,000	\$13,805
Average starting salary for entry-level officers		
Population served		
All sizes^a	\$32,900	\$236
100,000-249,999	\$45,700	\$224
50,000-99,999	\$43,000	\$429
25,000-49,999	\$41,800	\$473
10,000-24,999	\$37,700	\$435
2,500-9,999	\$33,000	\$401
Under 2,500	\$26,600	\$423

^aNo standard errors are presented for population categories of 250,000 or more because all cases in these groups were selected for the survey.

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State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #98-22

SUBJECT: Use of Accommodations Tax Funds

EFFECTIVE DATE: Applies to all fiscal years beginning after December 1, 1998.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Chapter 4, Title 6 (Supp. 1997)
S.C. Code Ann. 53-1-150 (Supp. 1997)

AUTHORITY: S. C. Code Ann. Section 6-4-30 (Supp. 1997)
SC Revenue Procedure #97-8

SCOPE: A Revenue Ruling is the Department of Revenue's official **advisory opinion** of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

LAW:

Allocation of Accommodation Tax Funds

Chapter 4 of Title 6 of the South Carolina Code of Laws ("Code") provides a procedure for handling accommodations tax revenues collected by taxpayers within a county or municipality. If a county or municipality is located in a "County Area" that collects over \$50,000 in Accommodations Tax ("Accommodations Tax Funds"), each county or municipality in that County Area will be required to allocate and spend all Accommodations Tax Funds that they collect in the manner required by the statute. A "County Area" is defined as a county and the municipalities located within the geographic boundaries of the county. See Code Section 6-4-5(1).

For example, if County A has within its boundaries Municipalities X, Y, and Z and County A collects \$25,000 in Accommodations Tax Funds, Municipality X collects \$10,000, Municipality Y collects \$20,000 and Municipality Z collects \$5,000, the county and each of the municipalities will be required to allocate and spend their Accommodations Tax Funds as required by the statute.

Under Code Section 6-4-10, the first \$25,000 of all Accommodations Tax Funds collected by a county or municipality is allocated to the general fund of the county or municipality. Whatever is

left after allocating the original \$25,000 is the balance. Five percent of the balance is allocated to the general fund of the county or municipality and 30% of the balance is allocated to a special fund which must be used for the advertising and promotion of tourism ("Promotion Fund"). The monies in the Promotion Fund must be administered by one or more non-profit organizations that have an existing, ongoing tourism promotion program, or if the organization does not currently have a program, it must show that it can develop an effective program. Any Accommodations Tax Funds remaining after allocation to the Promotion Fund, plus any interest earned on the "balance" (i.e., 65% of the balance) must be allocated to a special fund that must be used for "tourism-related expenditures" ("Tourism-related Fund").

For example, assume that a county collects \$125,000 in Accommodations Tax Funds.

Step 1 - The first \$25,000 of Accommodations Tax Funds is allocated to the general fund of the county or municipality. This leaves a balance of \$100,000. (This \$100,000 will be referred to as the "balance" throughout this example.)

Step 2 - Five percent of the balance ($\$100,000 \times .05 = \$5,000$) is also allocated to the general fund of the county or municipality.

Step 3 - Thirty percent of the balance ($\$100,000 \times .30 = \$30,000$) is allocated to the Promotion Fund.

Step 4 - Any remaining money left after subtracting the \$25,000 allocated to the general fund, the five percent of the balance that is allocated to the general fund and the thirty percent of the balance allocated to the Promotion Fund, goes into the Tourism-related Fund and must be used for tourism-related expenditures. Any interest that has accrued on the Accommodations Tax Funds prior to the amounts being divided as described in steps (1) through (4) above, is also allocated to the Tourism-related Fund.

Requirements for Tourism-related Expenditures

As stated above, any money in the Tourism-related Fund must be spent on tourism-related expenditures. Section 6-4-10(4)(b)-(d) states:

(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 a 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 to attract and provide for tourists.

"Tourism-related expenditures" include:

- 1 advertising and promotion of tourism so as to develop and increase tourist attendance through the generation of publicity;

2. promotion of the arts and cultural events;
3. construction, maintenance, and operation of facilities for civic and cultural activities including construction and maintenance of access and the nearby roads and utilities for the facilities;
4. 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;
5. public facilities such as restrooms, dressing rooms, parks, and parking lots;
6. tourist shuttle transportation;
7. control and repair of waterfront erosion;
8. operating visitor information centers.

(c) Allocations to the special fund must be spent by the municipality or county within two years of receipt. If the allocations are not spent within two years, the municipality or county is subject to the provisions of Section 6-4-30(6). However, the time limit may be extended upon the recommendation of the county or municipality and approval of the South Carolina Accommodations Tax Oversight Committee in Section 6-4-30. An extension must include provisions that funds be committed for a specific project or program.

(d) In the expenditure of these funds, counties and municipalities are required to promote tourism and make tourism-related expenditures primarily in geographical areas of the county or municipality in which the proceeds of the tax are collected where it is practical.

Under the statute, in order to qualify as a "tourism-related expenditure" an expenditure must meet the following two tests:

- (1) The expenditure must be used to attract or provide for tourists.**
- (2) The expenditure cannot be used for an item that would normally be provided by the county or municipality.**

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 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.

Filing with the Department of Revenue

Counties or municipalities that receive over \$25,000 in Accommodations Tax Funds in County Areas collecting more than \$50,000 are subject to additional requirements regarding their Accommodations Tax Funds. First, they must appoint a seven member advisory committee to make recommendations on how Tourism-related Funds should be used. Secondly, they are required to file certain information with the Accommodations Tax Oversight Committee. Code Section 6-4-25 provides that every year, municipalities and counties that receive over \$25,000 in Accommodations Tax Funds must submit information concerning how they spent Accommodations Tax Funds that were collected in the county or municipality to the Accommodations Tax Oversight Committee. During the 1997 Legislative Session, the duties of the Accommodations Tax Oversight Committee were transferred to the South Carolina Department of Revenue. Pursuant to Code Section 6-4-30, the Department of Revenue serves as a resource to answer questions of local advisory committees and local governments concerning the implementation of the accommodations tax. The Department of Revenue has recently received a number of requests questioning what are considered appropriate expenditures of Accommodations Tax Funds and more particularly, money accumulating in the Tourism-related Fund.

QUESTIONS AND ANSWERS:

QUESTION 1: Must the amounts allocated to the general fund of the county or municipality be used for tourism-related expenditures?

ANSWER: No. Code Section 6-4-10 specifically provides that Accommodations Tax Funds allocated to the general fund are specifically exempted from the requirements of Chapter 4 of Title 6, including any requirements as to how those funds must be spent.

QUESTION 2: Does the county or municipality's advisory committee oversee the expenditure of revenues in the Promotion Fund?

ANSWER: No. The monies in the Promotion Fund are overseen by the non-profit organization or organizations chosen by the county to administer the Promotion Fund. However, if there is no non-profit organization to whom the county or municipality can grant its Promotion Fund, the county or municipality must create an organization using the same membership standard as those used for appointing members to the advisory committee. Additionally, the non-profit organization that is chosen to oversee the Promotion Fund is required to submit a budget and an accounting to the county or municipality on an annual basis for approval. Nothing, of course, prevents the county or municipal council from consulting with other organizations, including the Accommodations Advisory Committee, concerning proposed expenditures from the Promotion Fund.

Question 3: What is the definition of “tourism” or “tourist”?

ANSWER: Under Code Section 6-4-5, “travel” and “tourism” means the action and activities of people taking trips outside their home communities for any purpose, except daily commuting to and from work. Thus, under this definition, a “tourist” would be a person who is taking trips outside his or her home community for any purpose other than daily commuting to and from work.

QUESTION 4: When will a county or municipality be considered to have a “high concentration of tourism activity”?

ANSWER: Chapter 4 of Title 6 does not provide any guidance as to when a county or municipality will be deemed to have a high concentration of tourism activity. However, Code Section 53-1-150, which exempts certain counties from the Sunday “blue laws”, appears to be relevant to this inquiry. Code Section 53-1-150(A) reads as follows:

“The General Assembly finds that certain areas of the State would benefit greatly from a complete exemption from Chapter 1 of Title 53 [the Sunday “blue laws”]. This benefit would be a result of an expanded tax base thereby reducing the burden placed on property owners through the property tax. Allowing the operation of establishments on Sunday in these areas also would reduce the property tax burden through additional accommodations tax revenue which allows these areas to provide necessary governmental service from these revenues”[emphasis added].

Code Section 53-1-150(B) reads, in part:

“The provisions of Chapter 1 of Title 53 do not apply to any county area, as defined in Section 6-4-5(1), which collects more than nine hundred thousand dollars in one fiscal year in revenues from the accommodations tax provided for in Section 12-36-2630(3) and imposed in Section 12-36-920(A)....”

These two provisions read together conclude that “county areas” collecting over \$900,000 would benefit from additional accommodations tax revenues which would allow these areas to provide necessary governmental service from these revenues. Under Code Section 6-4-10, only counties or municipalities with a high concentration of tourism activity are allowed to use Accommod-

ations Tax Funds for providing county or municipal services. Accordingly, the Department concludes that counties and municipalities in county areas collecting over \$900,000 in accommodations tax revenues are considered to have a high concentration of tourism activity.

QUESTION 5: Can the Department provide some guidance on the different categories of tourism-related expenditures?

ANSWER: For purposes of determining what qualifies under the different categories of tourism-related expenditures, the Department has adopted the following descriptions of qualifying expenditures in each of the categories listed in the statute.

1. Advertising and Promotion of Tourism

Under Code Section 6-4-10(4)(b)(1), monies in the Tourism-related Fund can be used for advertising and promotion of tourism to increase tourism in the county or municipality. Expenditures that would qualify under this category would include monies spent on magazine, newspaper, radio or television advertising in an attempt to promote the county or municipality to tourists. Qualifying expenditures also include revenues spent to promote the county or municipality to entities that specialize in tourism, such as bus tour companies and travel agencies. Examples of qualifying expenditures under this category include advertising in magazines such as *Southern Living*.

2. Arts and Cultural Events

Under Code Section 6-4-10(4)(b)(2), monies in the Tourism-related Fund can be used for the promotion of the arts and cultural events. Expenditures that can qualify under this category include money used for advertising or promotion of a particular festival (examples of such festivals might be the Spoleto Festival, the Lexington Peach Festival, or the Salley Chitlin Strut) or, money used for advertising and promoting arts and cultural events held in the county or municipality in an effort to attract tourists. Examples of events qualifying under this category include symphony orchestras, art shows, theater productions, home and garden or touring shows.

3. Facilities for Civic and Cultural Events

Under Code Section 6-4-10(4)(b)(3), monies in the Tourism-related Fund can be used for the construction, maintenance and operation of facilities for cultural and civic activities including construction and maintenance of access and other nearby roads and utilities for the facilities. Eligible expenditures under this category can include the costs incurred in building a civic center, a museum, or a coliseum. Tourism-related monies can also be used to fund the continued operation of such facilities including management fees or to pay the salaries of those who work at the facility, as well as the cost of repairs and necessary additions to such facilities. Please note, the facility must enhance the ability of the county or municipality to attract and provide for tourists and cannot provide a purely local function or benefit.

4. Municipality and County Services

Under Code Section 6-4-10(4)(b)(4), monies in the Tourism-related Fund can be used for the criminal justice system, law enforcement, fire protection, solid waste collection, and health facilities when required to serve tourists and tourist facilities. The amount that may be expended on this category must be based on the estimated percentage of costs directly attributable to tourists. Tourism-related funds cannot be used for these purposes by counties or municipalities that do not have high concentration of tourism activity. Examples of qualifying expenditures under this category would include salaries for extra police during the peak tourist season, monies spent to hire extra garbage service around tourist facilities during the tourist season or to provide other services that are required because of the high concentration of tourism.

When considering the percentage of costs that are attributable to tourism, the Department of Revenue will consider the number of permanent residents for the county or municipality as compared to the number of tourists that visit the locality, taking into consideration the average length of stay for such tourists.

5. Public Facilities

Under Code Section 6-4-10(4)(b)(5), monies in the Tourism-related Fund may be used for public facilities such as restrooms, dressing rooms, parks and parking lots. These public facilities must enhance the ability of the county to attract and provide for tourists. Tourism-related funds cannot be used for these purposes by counties or municipalities that do not have high concentration of tourism activity. Example of a qualifying expenditures under this category might include dressing rooms and restrooms at a public beach, a public park that would be frequented by tourists or a public parking lot adjacent to a major tourist attraction.

6. Tourist Transportation

Under Code Section 6-4-10(4)(b)(6), monies in the Tourism-related Fund may be used for tourist shuttle transportation. Qualifying expenditures in this category will include any monies spent to provide public transportation to tourists, such as shuttle buses or trolleys. For example, shuttles to transport persons from the airports to hotels or from the hotels to tourists attractions would qualify, as well as transportation from conventions or tourist attractions to other tourist facilities.

7. Waterfront Erosion

Under Code Section 6-4-10(4)(b)(7), monies in the Tourism-related Fund may be used for control and repair of waterfront erosion. Repairs for waterfront erosion are a municipal or county service. Thus, in order to use Tourism-related Funds for this purpose, a county or municipality must have a high concentration of tourism. Expenditures qualifying under this category include monies spent for beach renourishment projects, and other ocean front repairs in those areas frequented by tourists.

8. Visitors Centers

Under Code Section 6-4-10(4)(b)(8), monies in the Tourism-related Fund may be used for operating visitors centers. Expenditures that will qualify under this category are any monies spent to operate and maintain centers whose primary purpose is to provide information, brochures, and other services to tourists.

QUESTION 6: Are the eight categories listed in the statute, all inclusive, or might there be other items that could qualify as tourism-related expenditures?

ANSWER: The use of the term "includes" in the statute leads to the conclusion that the listed items are not all inclusive, therefore, there are other items that may qualify as tourism-related expenditures. Under the statute, in order to qualify as a tourism-related expenditure an expenditure must meet the following two tests: (1) The expenditure must be used to attract or provide for tourists. (2) The expenditure cannot be used for an item that would normally need to be provided by the county or municipality. 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 enforcement, traffic control, public facilities and highway and street maintenance, the expenditure must: (a) be for items that would normally not be provided by the county; (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.

Some items that might qualify as tourism-related expenditures which are not listed in the statute include, the development of a public garden designed to attract tourists, a major exhibition which is designed to attract tourists, or the acquisition of a historical landmark designed to attract tourists.

QUESTION 7: Is there a formula that would dictate what percentage of Tourism-related Funds should be spent on the different categories of tourism-related expenditures?

ANSWER: The statute does not require that the Tourism-related Fund be divided in any particular way. Provided that the expenditure meets the requirements of the law as described in the discussion, a county or municipality can use all of its Tourism-related Funds on a single category of eligible expenditures.

QUESTION 8: Is there a formula for determining whether a specific expenditure benefits tourism and tourists?

ANSWER: No. Under the statute, there is no specific formula that determines whether a particular expenditure benefits tourists.

QUESTION 9: What will the Department consider important in determining whether an expenditure for an event or a facility enhances the ability of the county or municipality to attract or provide for tourists?

ANSWER: If the expenditure is incurred in connection with an event, the Department will look at all the facts and circumstances including where and how the event will be advertised, the number of tourists that an event has attracted in the past, the nature of the event, where the event will occur, and the purpose of the event to determine if the event is designed to attract tourists. If the expenditure is incurred for a facility, the Department will look at all the facts and circumstances including the nature of the facility, where the facility is located and the purpose of the facility to determine if the facility is designed to attract and serve tourists.

QUESTION 10: Can Accommodations Tax Funds be used to promote events staged by colleges, senior centers or local choirs?

ANSWER: Whether Accommodations Tax Funds can be used to promote such an event depends on what, if any, effect such a show would have on tourism. If the show is strictly a local event attended **primarily** by those in the community, Accommodations Tax Funds could not be spent on the show. However, if the show was advertised and was intended to attract tourists from outside the community, then Accommodations Tax Funds could be used to advertise the show.

QUESTION 11: Can Tourism-related Funds be used for acquisitions by local museums?

ANSWER: Possibly, provided that the acquisition can be shown to enhance the ability of the county or municipality to attract tourists. Tourism-related Funds must be used 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, thus the expenditure of Tourism-related Funds must be guided by this principle. Whether the museum acquisition is designed to enhance the ability of the county and municipality to attract tourists is a question of fact to be determined from all the facts and circumstances.

QUESTION 12: Can Tourism-related Funds be used to support local art or music programs, such as Jazz in the Schools, that improve the cultural climate of the county or municipality?

ANSWER: No. While such arts programs are educational and promote culture, they do not enhance the ability of the county or municipality to attract and provide for tourists. These types of programs primarily benefit the local population by exposing them to new experiences, however, tourists rarely participate or experience the benefits of these programs.

QUESTION 13: Is it proper to use Tourism-related Funds for promotion of conventions or meetings?

ANSWER: Yes, provided that the convention or meeting is designed to attract tourists to the community and the expenditure is found to serve a public purpose. Note, that the Department of Revenue will consider all the facts and circumstances in determining whether the expenditure qualifies as a tourism-related expenditure included whether such meeting is designed to attract tourists to the county or is primarily a local event.

QUESTION 14: In a small town with a large amount of Tourism-related Funds and a high concentration of tourism activity, is there a limit on how many police cars, fire trucks, and related equipment can be purchased over a five or ten year period of time?

ANSWER: The first question that must be answered is whether Tourism-related Funds may be used for tangible property such as police cars and fire trucks. The statute states that "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". While the use of the term "services" in a statute generally connotes "the performance of activities benefiting another", this is not the exclusive use of the term. The American Heritage Dictionary (2nd College Ed. 1985) includes among the definition of "services" the following definition: "a facility providing the public with the use of something such as water or transportation". The statute specifically contemplates the application of this definition of services in the statute by using the term "public facilities" in listing those items of county or municipal services which may be paid for with tourism-related funds. Thus, the Department concludes that county and municipal services, for purposes of this statute, may include using tourism-related funds to pay for tangible property of the county or municipality when such property is necessary to serve tourists.

However, not all expenditures for police car, fire trucks, public facilities, etc. may be paid for from Tourism-related funds. *Tourism-related Funds may only be used to provide additional county and municipality services, such as fire and police protection, in areas with a high concentration of tourism activity and such expenditures may not pay for services that would normally be provided by a county or municipality. Thus, to the extent that a county or municipality would have been required, or planned to buy, a police car or fire truck irrespective of the number of tourists that visit the municipality or county, Tourism-related Funds could not be used to fund that purchase.* In order to use Tourism-related Funds to provide for fire trucks or police cars, the county or municipality must show that: (1) it has a high concentration of tourism and (2) the trucks and cars are only needed because of the additional tourist activity. Even though there is no set numerical limit on the number of police cars or fire trucks that may be purchased using Tourism-related funds, the county or municipality must be guided by the principles stated above.

Additionally, to the extent that Tourism-related Funds will be used to provide additional services, such as extra police or additional firemen or garbage collectors, there is an additional requirement. The costs spent on wages and salaries for such personnel must be based on the estimated percentage of costs attributable to tourists.

For example, assume that the City of North Myrtle Beach wishes to use some of their Tourism-related Funds on their police department. Tourism-related Funds could not be used to fund the police chief's salary, since this is a county expense that would be need to be funded whether North Myrtle Beach had any tourists or not. However, the money could be used to hire additional police because of the high concentration of tourism in North Myrtle Beach. The amount that can be spent on additional police must be based on the estimated percentage of costs attributable to tourists.

QUESTION 15: May a county or municipality which does not have a high concentration of tourism activity, use Tourism-related Funds for fire and police protection?

ANSWER: No. See discussion in question 14.

QUESTION 16: Can Tourism-related Funds be used for local transportation for senior citizens' programs, or programs related to drug abuse, AIDS awareness or similar items for residents?

ANSWER: No. While such programs do benefit the local community, they do not fit into any of the categories of tourism-related expenditures and they do not attract or promote tourism within the county or municipality. However, to the extent that a particular program is primarily designed to serve tourists, the program would be eligible as a tourism-related expenditure. For example, senior citizens transportation for elderly tourists may be able to qualify as a tourism-related expenditure.

QUESTION 17: Is it appropriate to use Tourism-related Funds to fund monuments?

ANSWER: It will depend on the nature of the monument and the impact it will have on tourism. If it is a single statute dedicated to a local figure, it is unlikely that such a monument will have any impact on tourism. However, if the monument is in the nature of a large structure designed to honor a group or entity, then it may be permissible to use Tourism-related Funds for such monument. For example, a monument along the lines of the United States Holocaust Memorial Museum or the Vietnam Veterans Memorial may have a sufficient impact on tourism to warrant receiving Tourism-related Funds.

QUESTION 18: Can Tourism-related Funds be used to pick up garbage and debris?

ANSWER: Garbage removal is a county or municipal service that is ordinarily funded by the county or municipality. In order to use Tourism-related Funds for garbage and yard debris removal, the county or municipality must show that: (1) it has a high concentration of tourism; (2) the trash removal and clean-up services are only needed because of the additional tourist activity (they are not a normal service provided by the county or municipality) and (3) the amount that they spend on such costs are based on the estimated percentage of costs directly attributable to tourists. For example, Tourism-related Funds may be able to be used to pick up trash at a public beach in Myrtle Beach, however, those same funds could not be used to pick up garbage and trash from yards in a small private subdivision in Myrtle Beach.

QUESTION 19: Can Accommodations Tax Funds be used to fund local government salaries?

ANSWER: As a general rule, no unless the county or municipality can show that the employee's position is necessary to attract or provide for tourists. Additionally, since these employees are providing a county or municipal service, the salary or wage must: (a) be for services that would normally not be provided by the county; (b) the county or municipality must have a high concentration of tourism activity; and (c) the amount of Tourism-related Funds spent on the salary or wages must be based on the estimated percentage of costs attributable to tourists. To the extent that only a portion of the employee's salary or wages meets the requirements listed

above, only that portion of the salary or wages that would satisfy these requirements may be paid for out of Tourism-related Funds. If a staff person's entire time is not devoted to the promotion of tourism or the furnishing of services to tourists, the Department would expect the employee and the county or municipality to determine the amount of time the employee devotes to tourism and to treat an appropriate amount of the employee's salary as a tourism-related expenditure.

For example, Tourism-related Funds could not be used to pay for the mayor's salary even if a portion of his time is spent on tourism matters, since this is a position that would need to be filled, whether or not the municipality had any tourism activity at all.

QUESTION 20: Is it appropriate to use Accommodations Tax Funds to fund billboards or advertising relating to anniversaries or other non-tourist related promotions for schools, colleges, universities, or towns and municipalities?

ANSWER: As a general rule, no. However, if the billboard was designed to advertise the area and attract tourists to the county or municipality, then Accommodations Tax Funds could be used. For example, a billboard that reads "Come see Charleston and celebrate our 350th Anniversary" listing events to be held celebrating the anniversary, would qualify for the use of Accommodations Tax Funds, however, a billboard recognizing the anniversary of a private high school would not.

QUESTION 21: Can Tourism-related Funds be used to pay the expenses (such as trash removal and police protection) of local markets?

ANSWER: Generally, no. In order to use Tourism-related Funds to fund expenses of farmers' markets the county or municipality must show that: (1) it has a high concentration of tourism; (2) the services are only needed because of the additional tourist activity (they are not a normal service provided by the county or municipality); and (3) the amount that they spend on such costs are based on the estimated percentage of costs directly attributable to tourists. For example, the market in historic Charleston functions as much as a tourist attraction as it does a local farmer's market, thus Tourism-related Funds could be used to offset expenses of running and upkeep on that market. However, a local market in Lexington probably would not be eligible to receive Tourism-related Funds since it does not generally attract tourists.

QUESTION 22: Can Tourism-related Funds be used to fund buildings or operations for the local chamber of commerce?

ANSWER: As a general rule, no. Chambers of commerce usually benefit the local members and are not designed to accommodate or benefit tourists. However, if the local chamber of commerce operates the Visitor's Bureau or Visitor's Center it may be possible that Tourism-related Funds could be used for the operations of the Visitor Center.

QUESTION 23: Can Tourism-related Funds be used for the county's or municipality's employees to attend educational workshops, conferences or programs involving tourism?

ANSWER: No. While the county or municipality may receive an indirect benefit from its employees attending workshops, conferences, or programs that discuss tourism issues, these programs do not directly contribute to the county's or municipality's ability to attract or provide for tourists.

QUESTION 24: Can Tourism-related Funds be used for the administrative expenses of advisory committees?

ANSWER: No. While the law requires that the Accommodations Tax Advisory Committee meet and take actions, it does not provide for the reimbursement of the expenses incurred by such a committee. Additionally, the Accommodations Tax Advisory Committee does not directly contribute to the county's or municipality's ability to attract or provide for tourists, but merely provides guidance as to the allocation and expenditure of Tourism-Related Funds. Unfortunately, the statute does not appear to allow Tourism-related Funds to be used to cover the expenses of such committees. Note, however, this does not prevent a county or municipality from paying for expenses of the Accommodations Tax Advisory Committee from other sources.

QUESTION 25: May Tourism-related Funds be used for mosquito control?

ANSWER: No. Mosquito control is a health service that would normally be provided by the county or municipality. Furthermore, this is not the type of service that will need to be varied depending on the number of tourists that visit the county or municipality. Accordingly, Tourism-related Funds may not be used for mosquito control.

QUESTION 26: May Tourism-related Funds be used for travel and lodging expenses of local high school bands that perform in events such as the Macy's Thanksgiving Day parade?

ANSWER: No. These events do not serve to attract tourists to the band's county or municipality, rather they only serve to attract tourists to the locality where such event is being held.

QUESTION 27: A sporting or other type of similar event which otherwise qualifies for Accommodations Tax Funds for promoting its events, wishes to use Tourism-related Funds to fund scholarships to attract better players and teams. May Tourism-related Funds be used to provide these scholarships?

ANSWER: No. The scholarships do not qualify as tourism-related expenditures under the statute.

QUESTION 28: Can Accommodations Tax Funds be used to develop a formal training program to attract and train entry level positions in the hospitality industry?

ANSWER: No. The training program does not qualify as a tourism-related expenditure under the statute. Such a training program does not directly effect the ability of the county to attract and provide for tourists, although it may provide an indirect benefit to those tourist facilities that hire graduates of such a program.

QUESTION 29: May Accommodations Tax Funds be used for a county's or municipality's supplies such as checks, paper, copier machines, etc.?

ANSWER: As a general rule, no, these do not qualify as tourism-related expenditures. However, if paper or postage is used to advertise or promote tourism, Tourism-related funds could be used to pay for these expenditures. For example, if a county or municipality used paper and postage to send brochures about upcoming events to tourists that have visited the area in the past, this would be an appropriate tourism-related expenditure.

QUESTION 30: A county wishes to grant Tourism-related Funds to a local clinic. A quarter of the patients seen by this clinic are employed in the tourism industry, a low paying industry that typically does not provide health insurance to its employees. Is this an appropriate expenditure of Tourism-related Funds?

ANSWER: While the statute does allow the use of Tourism-related Funds for health facilities, these facilities must be required to serve tourist or tourist facilities. The statute does not allow the use of such funds for providing health care to the tourism industry's employees.

QUESTION 31: May a county or municipality use Tourism-related Funds for beautification projects?

ANSWER: It depends. Two factors must be evaluated. First, is the project designed to attract or provide for tourists. Secondly, is the beautification a service that would normally be provided by the county or municipality. For example, beautification projects around county or municipal service buildings (such as the courthouse) is a county or municipal service that is normally provided by the county or municipality, therefore, it cannot be paid for with Tourism-related Funds. However, the creation of a public garden such as Edisto Gardens in Orangeburg or Brookgreen Gardens in Horry County is the creation of destination tourist facility and would not be considered a normal county or municipal service. Provided such a location was designed to attract tourists or enhance the ability of the county or municipality to attract and provide for tourists, Tourism-related Funds could be used to cover the expenses of the garden.

QUESTION 32: Is a county required to allocate and spend all of its Tourism-related Funds accumulated during the fiscal year?

ANSWER: No. Pursuant to Code Section 6-4-10(4)(c), allocations to the Tourism-related Fund must be spent within two years of receipt. The two year time limit may be extended upon the recommendation of the county or municipality and must be approved by the Department of Revenue. Any extension must include information about the specific project or program to which the funds will be committed.

QUESTION 33: Is the county or municipality required to expend all of its Tourism-related Funds in the geographical area or areas where the proceeds of the tax are collected?

ANSWER: No. However, counties and municipalities are required to make such expenditures primarily in the geographical areas of the county or municipality where the tax was collected, if practicable. In Thompson v. County of Horry, 294 SC 81, 362 SE 2d 646 (S.C. App. 1987) the court considered language in Code Section 12-35-720 that is substantially similar to the current language of Code Section 6-4-10(4)(d). The court found that the statute did not require that all Tourism-related Funds be returned exclusively to the area from which they are collected. It was sufficient if the funds were for the most part spent in these geographic areas.

QUESTION 34: Can Tourism-related Funds be used to pay the legal fees of a county or municipality?

ANSWER: No. This expense, even if incurred in connection with issues relating to the accommodations tax, is for an activity that does not attract, or provide for, tourists.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank, III, Director

Columbia, South Carolina
October 27, 1998

South Carolina General Assembly
105th Session, 1983-1984

Bill 2186

Current Status

Bill Number:	2186
Ratification Number:	347
Act Number:	316
Introducing Body:	House
Subject:	Relating to retail license sales and use taxes

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(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

(A316, R347, H2186)

AN ACT TO AMEND CHAPTER 35 OF TITLE 12, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO RETAIL LICENSE SALES AND USE TAXES, BY ADDING ARTICLE 6 SO AS TO LEVY A SALES TAX OF TWO PERCENT OF THE GROSS PROCEEDS ON THE RENTAL OF TRANSIENT ACCOMMODATIONS, TO PROVIDE THE MANNER IN WHICH THE FUNDS GENERATED BY THE TAX MAY BE EXPENDED AND PROVIDE A FORMULA BY WHICH THE FUNDS ARE DISTRIBUTED TO THE MUNICIPALITIES AND COUNTIES OF THIS STATE.

Be it enacted by the General Assembly of the State of South Carolina:

Findings

SECTION 1. The General Assembly finds that areas of the State which have a high concentration of tourism activity may also be required from time to time 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 purpose of this act is not to provide an additional source of revenue for counties and municipalities required 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.

Accommodations tax levied

SECTION 2. The 1976 Code is amended by adding to Chapter 35 of Title 12:

"ARTICLE 6

ACCOMMODATIONS TAX

Section 12-35-710. (1) In addition to the tax levied in Sections 12-35-510, 12-35-810, and 12-35-1120 and Article 11 of Chapter 35 of Title 12, there is levied and imposed an additional sales tax of two percent of the gross proceeds from the rental of transient accommodations, including campgrounds, which are subject to the state sales tax.

The tax provided for in this section shall be collected by the Tax Commission in the manner that the sales tax prescribed in Chapter 35 of Title 12 is collected. All provisions of law other than Section 12-35-520 applicable to the sales tax must apply with equal force and effect to the additional sales tax on transient accommodations, including the requirement that all persons subject

to the tax must acquire the necessary sales tax license provided for in Section 12-35-320. The proceeds of the tax, less the Tax Commission's actual incremental increase in the cost of administration, must be remitted quarterly to the municipality or to the county in which it is collected. Procedures for collection of the tax shall be established by regulations promulgated by the Tax Commission. In addition to other regulations the commission considers necessary, the commission's regulations must prescribe that the customers paying the sales tax on transient accommodations must have the regular four percent sales tax and the additional tax on accommodations billed and paid in a single tax item listed as 'tax', without itemizing the two taxes as separate items. When any business is subject to the accommodations tax and such business has more than one place of business in the State, the licensee shall separately report in his sales tax return the total gross proceeds derived from business done within and without the corporate limits of municipalities.

(2) The two percent transient accommodations tax provided for by this section may not be increased except upon approval of two-thirds of the membership of each House of the General Assembly. However, the tax may be decreased or repealed by a simple majority of the membership of each House of the General Assembly.

Section 12-35-720. (1) The funds received by a municipality or a county must be allocated in the following manner: (A) The first twenty-five thousand dollars must be allocated to the general fund of the municipality or county 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. To manage and direct the expenditure of these tourism promotion funds, the municipality or county must select one or more organizations, such as a Chamber of Commerce, Visitor and Convention Bureau, or Regional Tourism Commission, which have an existing, ongoing tourist promotion program or, if no such organization exists, to create an organization with the same membership standard as put forth in paragraph (3) of this section. To be eligible for selection the organization must be organized as a nonprofit organization and must 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. Prior to the beginning of each fiscal year, any organization receiving funds collected pursuant to the provisions of this article from a municipality or county must submit a budget of planned expenditures. The organization must receive the approval of the municipality or county which distributed the funds prior to expenditure of the funds. At the end of each fiscal year, any organization receiving funds must render an accounting of the expenditure of the funds to the municipality or county which distributed them. (C) The remaining balance received by a municipality or county must be allocated to a special fund and used for tourism-related expenditures.

The term 'tourism-related expenditures' includes the following types of expenditures: advertising and promotion of tourism so as to develop and increase tourist attendance through the generation of publicity; promotion of the arts and cultural events; construction, maintenance, and operation of facilities for civic and cultural activities including construction and maintenance of 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. Provided, however, that 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. Any person or political subdivision which determines that the expenditure of accommodations tax proceeds by the county is not substantially in compliance with the provisions of this paragraph may seek relief to obtain compliance in the Court of Common Pleas of the county concerned.

(2) A municipality or county may issue bonds or enter into other financial obligations or create reserves to secure obligations for the purposes of financing all or a portion of the cost of constructing facilities for civic activities, the arts, and cultural events which fulfill the purpose of this article. The annual debt service of indebtedness incurred to finance such facilities or lease payments for the use of the facilities may be provided from the funds received by a municipality or county from the accommodations tax in an amount not to exceed the amount received by the municipality or county after deduction of the accommodations tax funds dedicated to the general fund and the advertising and promotion fund as provided for in this article. Provided, however, that none of the revenue received by a municipality or county from the accommodations tax may be used to retire outstanding bonded indebtedness incurred

prior to July 1, 1984.

(3) A municipality or county receiving revenue from the accommodations tax must appoint an advisory committee to make recommendations on the expenditure of revenue generated from the accommodations tax. The advisory committee shall consist of not less than five members with a majority of the committee members being selected from the hospitality industry of the municipality or county receiving the revenue.

Section 12-35-730. For the purposes of this section 'county area' means a county and all municipalities within the geographical boundaries of that county. There is hereby created an account to administer the accommodations tax as authorized by this article. It must be administered by the State Treasurer in the following manner:

(a) At the end of each fiscal year and prior to August first a percentage, to be determined by the State Auditor, must be withheld from those county areas collecting four hundred thousand dollars or more from that amount which exceeds four hundred thousand dollars from the tax authorized by this article and that amount must be distributed to assure that each county area receives a minimum of fifty thousand dollars; provided, however, that the amount withheld from those county areas collecting four hundred thousand dollars or more must be apportioned among the municipalities and the county in the same proportion as those units receive quarterly remittances as provided in subsection (1) of Section 12-35-710; provided, that if the total collections as a result of the tax imposed by Section 12-35-710 in any fiscal year after 1984 exceed such collections for fiscal year 1984, this fifty thousand dollar figure shall be increased by seventy-five percent for that fiscal year. The difference between the fifty thousand dollar minimum and the actual collections within a county area shall be distributed to the eligible units within the county area based on population as determined by the most recent United States census.

(b) At the end of each fiscal year and prior to August first, the State Auditor must distribute to each county area collecting more than fifty thousand dollars but less than four hundred thousand dollars an additional fifteen thousand dollars; provided, that if the total collections as a result of the tax imposed by Section 12-35-710 in any fiscal year after 1984 exceed such collections for fiscal year 1984, this fifteen thousand dollar figure shall be increased by seventy-five percent for that fiscal year. This amount must be distributed in the same manner as the fifty thousand dollars provided in item (a) of this section. The amount paid those qualified county areas under the provisions of this item must be paid from the account created under the provisions of this section.

(c) Any amount withheld in excess shall be distributed to the county areas whose collections exceed four hundred thousand dollars based on the ratio of the funds available to the collections by each county area.

(d) Any county areas receiving fifty thousand dollars under the provisions of this section or from the provisions of Section 12-35-710 are excluded from the requirements of Section 12-35-720, except that the fifteen thousand dollars paid to those county areas collecting more than fifty thousand dollars but less than four hundred thousand dollars as provided in item (b) of this section must be allocated to a special fund and used for the purposes as required in item (B) and (C) of subsection (1) of Section 12-35-720 and an advisory committee must be appointed as provided in subsection (3) of Section 12-35-720."

Severability clause

SECTION 3. If any section, subsection, or part of this act shall be declared unconstitutional, it shall be severed from the act, and the remaining provisions hereof shall remain in full force and effect.

Time effective

SECTION 4. This act shall take effect July 1, 1984.

BATTLE, VAUGHT & HOWE P.A.

ATTORNEYS AND COUNSELORS AT LAW

1200 MAIN STREET

POST OFFICE BOX 530

CONWAY, SOUTH CAROLINA 29528

TELEPHONE (843) 248-4321

FACSIMILE (843) 248-4512

www.battlevaught.com

Exhibit **B**

MICHAEL W. BATTLE

E-Mail Address: mbattle@sccost.net

VICTORIA T. VAUGHT

E-Mail Address: vvaught@sccost.net

CYNTHIA GRAHAM HOWE, PA

E-Mail Address: cghowe@sccost.net

JAMES R. BATTLE, II

E-Mail Address: jbattle@sccost.net

February 9, 2009

Mr. Lanneau H. Siegling, Vice Chairman
Tourism Expenditure Review Committee
P.O. Box 125
Columbia, South Carolina 29214-0120

RE: City of Myrtle Beach vs. Tourism Expenditure Review Committee

Dear Mr. Siegling:

The City of Myrtle Beach (City) is in receipt of the Tourism Expenditure Review Committee's (TERC) letter dated January 27, 2009 to Mr. Michael D. Price. The City appreciates the candor of the letter. The letter makes clear and the City understands TERC's concerns over the City's expenditure of accommodation tax funds for police, fire and public safety protection made necessary by its high concentration of tourism.

However, until TERC's last meeting on January 12, 2009, the City of Myrtle Beach had relied upon the general consensus among the SC Dept. of Revenue and TERC's members that the City's expenditure of accommodation tax funds for police, fire and public safety protection was permitted under the statute controlling the use of accommodation tax funds. That statute states a municipality which has a high concentration of tourism activity may use accommodation tax funds to provide additional 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... This is based on the estimated percentage of costs directly attributed to tourists. S.C. Code Ann. § 6-4-10(b). The statute is further explained in SC Revenue Ruling #98-22 which contains the following example:

For example, assume that the City of North Myrtle Beach wishes to use some of their Tourism related Funds on their police department. Tourism-related Funds could not be used to fund the police chief's salary, since this is a county expense that would need to be funded whether North Myrtle Beach had *any tourists or not*. However, the money could be used to hire additional police because of the high concentration of tourism in North Myrtle Beach. The amount that can be spent on additional police must be based on the estimated percentage of costs attributable to tourists. (Emphasis added). SC Revenue Ruling #98-22 p. 10

Previously, TERC had approved the City's use of accommodations tax funds in 2007 as illustrated in the minutes of its meeting of December 10, 2007 and its letter to the City dated February 7, 2008. The City's use of accommodation tax funds was the same in 2007 as it has been in 2008, and no fact or law has changed to justify TERC's reversal of position.

The City understands TERC's preference that accommodation tax funds be spent to promote the growth of tourism. However, the City believes the General Assembly was farsighted enough to allow local governments to use the accommodations tax funds to enlarge their economic benefits by promoting sustainable growth. Everyone should recognize that unsustainable growth is not good. Accommodations tax funds used by the City for public safety enhance the City's ability to attract and provide for tourists. If the City could not enhance its police, fire and public safety protection to include the tourists it normally attracted, then the quality of those tourists' experiences would deteriorate. If the City were to acquire a reputation as an unsafe City, then all tourism efforts in the State would suffer from the resulting negative advertising and the tourists who normally come to Myrtle Beach would disappear.

The City takes issue with TERC's assertion that our high concentration of tourism activity is "normal", and therefore the enhanced services made necessary by the high concentration should be "normally" provided. Only cities with high concentrations can use the money for enhanced services. If high concentration cities like Myrtle Beach, Charleston, Hilton Head and others can't use the money for enhanced service, and those who are not high concentration cannot use the money for enhanced service, one must ask what was the point of the General Assembly's use of the terminology in the statute?

The City also takes issue with TERC's belief that comparisons of the City's "permanent population" with those of other municipalities is not relevant to the General Assembly's guidelines for the use of accommodation tax funds. That comparison is the same one implied by the example in Revenue Ruling #98-22. How else would a local government distinguish normal City services from enhanced services necessary to accommodate the presence of tourists if it did not compare its expenditures with other local governments which did not provide those enhanced services for tourists?

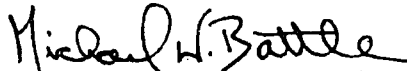
The City was surprised that TERC would criticize the City's use of its general fund to promote a variety of "tourism related" projects. The City was under the impression that TERC was formed for the purpose of promoting tourism. The City has in place a legally approved procedure by which it evaluates all applications for funding including applications for accommodations tax funds. That procedure is widely recognized as a model for other cities. In fact, the Municipal Association of South Carolina has included the form on its website for others to copy. From time to time, applications arise which are "tourism related" which the City believes merits funding even though those projects require funding over and above the amount allocated by accommodations tax funds. TERC should encourage the City's use of its general fund for "tourism related" projects.

TERC's sole function is to provide oversight for expenditure of accommodation tax funds. The City's expenditure of those funds for police, fire and public safety is permitted by the Accommodations Tax Act. Prior to 2009, that type of expenditure had been approved by the S.C. Dept. of Revenue and by TERC. If the City uses

accommodation tax funds for a purpose permitted by the Act that should be the end of TERC's oversight responsibility since the boundaries of its jurisdiction are established by the General Assembly. TERC does not have oversight jurisdiction over the general funds of the City, and it cannot dictate to the City Council how it uses its general fund.

The City has submitted a report and application which contains the facts about the City's population, tourist populations and a comparison between the City's expenditures with other municipality's expenditures for police, fire and public safety. The City has shown that the amount it spends on enhanced public safety for tourists is far greater than the accommodations tax funds it receives. In light of those facts, the City requests that TERC clarify what additional information would be useful to it in resolving its questions about the City's expenditure of \$4,318,250 for police, fire and public safety.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Battle". The signature is fluid and cursive, with the first name "Michael" and last name "Battle" being the most prominent parts.

Michael W. Battle
Battle, Vaught & Howe, P.A.

C Tom Ellenburg, Mike Shelton

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

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JOHN M.S. HOEFER
RANDOLPH R. LOWELL
ELIZABETH ZECK*
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MICHAEL R. BURCHSTEAD
ANDREW J. MACLEOD

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

TRACEY C. GREEN
ALAN WILSON
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

April 22, 2009

**VIA ELECTRONIC AND
U.S. MAIL**

Michael W. Battle, Esquire
Post Office Box 530
Myrtle Beach, South Carolina 29578-2468

RE: Report of Accommodations Tax 2007-2008 Expenditures

Dear Mr. Battle:

Thank you for your February 9, 2009, letter to the Tourism Expenditure Review Committee ("TERC") written on behalf of the City of Myrtle Beach ("City") regarding the above-referenced matter. I have been requested by the TERC to respond on its behalf. The TERC is pleased to have this opportunity to clarify its position with respect to the matters you have raised.

Unfortunately, it appears that the TERC and the City simply have different interpretations of S.C. Code Ann. §6-4-10(b), particularly in terms of what circumstances can justify the use of accommodations tax funds by a municipality with a high-concentration of tourism activity to provide "additional ...municipal services." The TERC's view is that the pertinent comparison under the statute is the amount of services the City of Myrtle Beach normally provides versus the additional services provided by the City of Myrtle Beach as a result of the presence of tourists.¹ A comparison of what level of services the City would be providing if it had the same permanent population as another municipality not situated in an area with a high concentration of tourism activity is, in TERC's view, inapt since it assumes that two municipalities are similar. If the TERC were to accept the City's interpretation of §6-4-10(4)(b), the City would always have been

¹This view is supported by the plain language of §6-4-10(b) providing that "[t]he funds must not be used as an additional source of revenue to provide services normally provided by the ...municipality." (Emphasis supplied.) In other words, the statute does not call for an examination of service levels among different municipalities, but does require a comparison of service levels within the specific municipality.

justified in expending 100% of the accommodations tax funds allocated to it under §6-4-10(4)(a) on municipal services simply because it is located in a high concentration of tourism area. The TERC does not believe that was the legislature's intent inasmuch as that would lead to municipalities simply supplanting a portion of the municipal tax revenues needed for services normally provided by the municipalities with state accommodations tax revenues.

To the City's point that TERC's interpretation would result in a municipality in a high concentration of tourism area being unable to use accommodations tax funds for additional services, too much has been read into the TERC's letter of January 27th. The TERC recognizes that a municipality has the right to utilize accommodations tax allocations as a source of revenue to provide services beyond those normally provided by the municipality. However, in order to establish that services are being provided beyond those normally provided by the municipality, TERC believes that the municipality must show that the costs associated with providing the additional services (e.g., wages and salaries of municipal personnel) are attributable solely to the presence of tourists. Your letter asks how a municipality would "distinguish normal City services from enhanced services necessary to accommodate the presence of tourists" if not by a "comparison[] of the City's 'permanent population' with those of other municipalities." As noted above, the TERC does not believe that a comparison among dissimilar municipalities is appropriate. Moreover, the TERC disagrees that Revenue Ruling #98-22, which you have referenced in your letter, implies that a comparison among dissimilar municipalities is appropriate for purposes of determining whether an expenditure is appropriate under §6-4-10(4)(b). Further, an answer to your question can be found in Revenue Ruling #98-22. In several places in this document, the DOR opines that a municipality must show that the amount expended on costs for additional municipal services are based upon the estimated percentage of the municipality's total costs incurred in providing the service in question **that are directly attributable to tourists**. One means suggested by Revenue Ruling #98-22 for making such a showing is to determine the difference in costs incurred during the tourist season and the non-tourist season. Neither your letter, nor the City's October 13, 2008 report to the TERC, makes such a showing.

Notwithstanding the foregoing, TERC recognizes that its letter of February 7, 2008, regarding the City's 2006-2007 expenditures did state that same were properly documented and therefore permissible. Although TERC now believes that the documentation was legally not sufficient in view of TERC's interpretation of §6-4-10(4)(b), it recognizes that it would impose a hardship on the City if TERC were to apply its interpretation of the law to the City's 2007-2008 expenditures. Accordingly, TERC will not certify any part of the City's 2007-2008 expenditures to the State Treasurer as non-compliant **on this ground**. The TERC advises the City, however, that any 2008-2009 expenditures made by the City under §6-4-10(4)(b) will be reviewed by TERC in accordance with the interpretation of the statute set forth above.

Your letter states that the City is "surprised that TERC would criticize the City's use of its general fund to promote a variety of 'tourism related' projects" in view of the City's "legally

approved procedure by which it evaluates all applications for ...accommodations tax funding.”² Apparently, the City is referring to the second numbered paragraph of the TERC’s January 27th letter. The TERC appreciates this opportunity to clarify its point in this regard. The TERC’s position is that it is inappropriate for the City to put 100% of the allocated funds in the general fund account and then employ a City-created process to make a portion of these funds available for “tourism-related” projects. This circumvents the local advisory committee process mandated by §6-4-25. To the extent there have been expenditures from the City’s general fund for this purpose utilizing accommodations tax revenues in excess of those permitted under §6-4-10(1) and (2), this would be improper. Further, the TERC is not aware of any “legally approved procedure” which would allow the City to eliminate the local advisory review process.³

With respect to the City’s position regarding TERC’s authority and jurisdiction over the City’s “general fund, the TERC would note as follows: the legislature has vested in TERC the authority to oversee all questionable expenditures under §6-4-35(B)(1)(a) and the City has deposited approximately \$4.3 million worth of state accommodations tax revenues in its general fund, purportedly under §6-4-10(4)(a). The TERC is not attempting “to dictate to the City Council how it uses its general fund.” The TERC is simply questioning if the City’s devotion of all accommodations tax revenues for the period in question to the general fund to be used “for police, fire and public safety” in tandem with an extra-statutory process by which tourism-related projects may be funded out of the general fund, comports with state law.⁴ You have asked what additional facts would be useful to the TERC in resolving its questions. It would be helpful for TERC to know exactly what type of “tourism-related” projects the City has funded with general fund monies and the amount dedicated to that. The TERC will need to receive any additional information from the City before its next meeting, which is scheduled for May 6, 2009.

²Your letter appears to confirm the information that TERC had regarding the City’s practice in this regard. The City’s report suggests to TERC that \$1,337,000 in accommodations tax funds were used for this purpose as that represents the amount recommended by the local advisory committee for “tourism-related projects” as shown in the City’s report. If the TERC is incorrect in regard to the amount taken from the general fund to support these projects, please so advise and provide to TERC the correct amount.

³Although the City’s internal review process is discussed in an order of the Administrative Law Court (presently on appeal, as you are aware), that order does not sanction a procedure under which a municipality places 100% of accommodations tax revenues in its general fund under the guise of it being for additional municipal services and then later awards monies from the general fund to applicants for tourism-related projects which have not been reviewed by the local advisory committee. It appears to TERC that this may be being done to avoid the local advisory committee process.

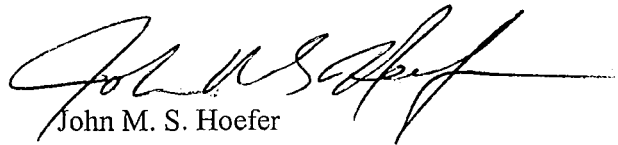
⁴TERC notes that the City’s report states that used \$4,318,250 for “additional Police, Fire and Parks personnel.” Your letter states that these funds were used for “police, fire and public safety.” The TERC would like clarification in this regard.

Michael W. Battle, Esquire
April 22, 2009
Page 4

If you have any questions, please do not hesitate to contact me. With best regards, I am

Sincerely,

Willoughby & Hoefer, P.A.



John M. S. Hoefer

JMSH/cf

cc: Ms. Lauren Sponseller

BATTLE & VAUGHT P.A.
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RECEIVED

SEP 14 2009

Willoughby & Hofer, P.A.

MICHAEL W. BATTLE
E-Mail Address: mbattle@battlevaught.com
VICTORIA T. VAUGHT
E-Mail Address: vvaught@battlevaught.com

JAMES R. BATTLE, II
E-Mail Address: jbattle@battlevaught.com

September 9, 2009

Ms. Jana E. Shealy
Clerk of Court
South Carolina Administrative Law Court
P.O. Box 11667
Columbia, SC 29211

RE: City of Myrtle Beach vs. Tourism Expenditure Review Committee

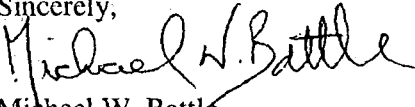
Dear Ms. Shealy:

In connection with the above referenced matter, enclosed are an original and one copy of the City of Myrtle Beach's: a) Petition for Declaratory Judgment, Temporary, and Permanent Injunction; b) Motion for Preliminary Relief; and; d) two checks in the amounts of \$150 and \$25.

Please file the above referenced documents and return to me a clocked copy of the same in the enclosed envelope.

Thank you for your assistance in the matter.

Sincerely,


Michael W. Battle
Battle & Vaught, P.A.

C Tom Ellenburg, Esquire
John M.S. Hofer, Esquire
Lanneau H. Siegling, TERC

CAPTION: City of Myrtle Beach vs. Tourism Expenditure Review Committee
AGENCY: City of Myrtle Beach
PARTIES: Petitioner:
City of Myrtle Beach

Respondent:
Tourism Expenditure Review Committee
DOCKET
NUMBER: 09-ALJ-_____
APPEARANCES: For the Petitioner:
Michael W. Battle, Esq.
Battle & Vaught, P.A.

**PETITION FOR DECLARATORY JUDGMENT, TEMPORARY, AND
PERMANENT INJUNCTION**

Pursuant to S.C. Code Ann. §1-23-630, Rule 65, SCRCP and Rule 16 of the Rules of Procedure for the Administrative Law Court ("RPALC"), the City of Myrtle Beach hereby petitions the Court to inquire into the matters set forth herein below and issue a declaratory judgment declaring the City's rights under the Accommodations Tax Act and a temporary and permanent injunction enjoining the Tourism Expenditure Review Committee's ("TERC") from notifying the South Carolina Department of Revenue that the use of the City of Myrtle Beach's 2008-2009 accommodations tax funds is non compliant.

RPALC 33 A Addresses:

The Petitioner is the City of Myrtle Beach. Its address and phone number are:
City of Myrtle Beach, Post Office Box 2468, Myrtle Beach, South Carolina 29578; phone number 843-918-1000. The attorney representing the City of Myrtle Beach is Michael W. Battle, Battle & Vaught, P.A., Post Office Box 530, Conway, South Carolina, phone number, 843-248-4321.

RPALC 33 B Grounds for the Injunctive and Declaratory Relief:

1. TERC has given notice to the City that it intends to notify the S.C. Department of Revenue to withhold all of the City of Myrtle Beach's 2008-2009 accommodations tax allocation is non compliant based on its interpretation of S.C. Code Ann. § 6-4-35 (B)(1)(a) .
2. TERC claims that areas of high concentrations of tourists should not be permitted to make expenditures of accommodations tax funds for additional law enforcement, traffic control, public facilities, and highway and street maintenance services because accommodating tourists is something such areas do in the normal course of business.
3. The City contends the Accommodations Tax Act expressly permits it to use accommodation tax funds for additional law enforcement, traffic control, public facilities, and highway and street maintenance services.
4. The party's respective positions are set forth in detail in the attached correspondence between TERC and the City of Myrtle Beach and correspondence between attorneys for the City of Myrtle Beach and the attorneys for TERC. (Copies Attached Exhibits "A", "B" & "C") That correspondence is incorporated herein as a part of the City's Petition.
5. TERC's interpretation of the propriety of the City's use of tax accommodation tax funds to provide additional law enforcement, traffic control, public facilities, and highway and street maintenance services represents a change in its previous position on the issue.
6. TERC notified the City of its change in position after the City's 2008-2009 budget had been enacted and after approximately 80% of the 2008-2009 accommodations tax funds had been expended. by the City.

7. The amount of tax accommodations funds the City uses to provide additional law enforcement, traffic control, public facilities, and highway and street maintenance is in excess of 4.3 million dollars.
8. TERC's position on the City's expenditure of accommodations tax funds is erroneous as a matter of law.
9. The City is entitled to a Declaratory Judgment declaring its rights under the Accommodations Tax Act.
10. If TERC were to notify the S.C. Department of Revenue the City's use of accommodations tax funds for 2008-2009 was non compliant the S.C. Department of Revenue would withhold those funds from the City's future accommodation tax allocations. Such action would cause irreparable harm to the City and impair its ability to provide adequate tourist related services to the tourists who come to the City of Myrtle Beach.
11. The City has no alternative means to exercise its rights under the South Carolina Accommodations Tax Act but to petition the Administrative Court for injunctive relief and a declaratory judgment.
12. The City of Myrtle Beach hereby requests that the Court inquire into the matter, hold such evidentiary hearings as it deems necessary and issue an order declaring the rights of the City under the Accommodations Tax Act and issue such temporary and permanent injunctive relief as to the Court deems appropriate to enjoin TERC from notifying the S.C. Department of Revenue to withhold accommodations tax funds from the City of Myrtle Beach ,

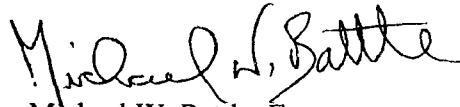
RPALC 33 C Final Decision: See Exhibits "A" & "C"

RPALC 33 D Transcript Request Not applicable.

RPALC 71 C Attached is a check in the amount of \$100 to cover the filing fees for
Other Miscellaneous Cases.

A copy of this PETITION FOR DECLARATORY JUDGMENT, TEMPORARY, AND
PERMANENT INJUNCTION is being sent to the Tourism Expenditure Review
Committee, P.O. Box 125, Columbia, South Carolina 29214-0120 and its attorneys John
M.S. Hoefer Willoughby & Hoefer, P.A., PO Box 8416, Columbia, SC 29202-8416 .

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael W. Battle". The signature is fluid and cursive, with the first name "Michael" and last name "Battle" being the most prominent parts.

Michael W. Battle, Esq.
Battle & Vaught, P.A.
P.O. Box 530
Conway, S.C. 29528
Tel. No. (843) 248-4321
Attorneys for the City of Myrtle Beach

September 9, 2009

JAN. 30. 2009 12:15PM

NO. 9721 P. 2/3

Expenditure Review Committee

P.O. Box 125
Columbia, SC 29214-0120
301 Gervais Street
Columbia, SC 29201
803-898-5400

Frans N. Mustert, CHA
CHAIRMAN
Appointed at the
Recommendation of the
Hospitality Association of SC

Lanncau H. Siegling, CHA
VICE CHAIRMAN
President Pro Tempore
Appointee

Susan Cruse
Appointed at the
Recommendation of the SC
Association of Tourism Regions

John Curry, CHA
Appointed at the
Recommendation of the SC
Association of Convention and
Visitors Bureaus

Lisa Martin
Appointed at the
Recommendation of the SC
Travel and Tourism Coalition

Mark Williams
Appointed at the
Recommendation of the
Municipal Association of SC

Rod Swaim
Speaker of the House
Appointee

Toni Nance
Ex-Officio SCPRT Designee

Suzette Surkamer
Appointed at the
Recommendation of the SC
Arts Commission

Kevin Yokim
Appointed at the
Recommendation of the SC
Association of Counties

Edward W. Riggs, Sr.
Sovereigns Appointee

January 27, 2009

Mr. Michael D. Price
Budget Analyst
City of Myrtle Beach
Post Office Box 2468
Myrtle Beach, South Carolina
29578-2468

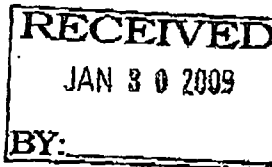


Exhibit A

RE: Report of Accommodations Tax 2007-2008 Expenditures

Dear Mr. Price:

At its meeting on January 12, 2009, the Tourism Expenditure Review Committee ("TERC") reviewed the above-referenced report submitted by the City of Myrtle Beach ("City") under cover of your letter dated October 13, 2008. The purpose of this letter is to notify the City that the TERC, pursuant to S.C. Code Ann. §6-4-35(B)(1)(a), questions the reported expenditure(s) and to offer the City an opportunity to submit additional information as permitted by that code section.

The bases upon which the TERC questions the reported expenditure(s) by the City are as follows:

1. At page 2 of its report, the City states that it expended \$4,318,250 of the \$4,558,662 available for "[s]upport of operating expenses for services provided above and beyond permanent population throughout the year, to include additional Police, Fire and Parks personnel." The TERC questions whether this expenditure is lawful in view of S.C. Code Ann. §6-4-10(b), which states that the City may not utilize accommodations tax funds as an additional source of revenue to provide services *normally* provided by the City. The TERC is of the view that the services for which the accommodations tax funds were used are those services that the City normally provides given its emphasis on attracting and providing for visitors. Thus, unlike a municipality which finds it necessary to provide additional services simply as a result of the presence of tourists, the City routinely provides services at this level. The TERC does not believe comparisons of the City's "permanent population" with those of other municipalities is relevant in view of the statutory proscription against using these funds for services that are "normally" provided.

2. The TERC is informed and believes that a variety of expenditures for "tourism related" projects were funded out of the City's general fund. If the TERC's information is correct, the effect of this practice would appear to be the circumvention of the procedure

Expenditure Review Committee

P.O. Box 125
Columbia, SC 29214-0120
301 Gervais Street
Columbia, SC 29201
803-898-6400

Frans N. Mustert, CHA
CHAIRMAN
Appointed at the
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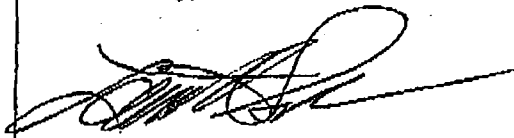
Edward W. Riggs, Sr.
Governor's Appointee

established under S.C. Code Ann. §§6-4-5, et seq. for the use of accommodations taxes for tourism-related expenditures.

Accordingly, the TERC respectfully requests that the City provide additional information with respect to the foregoing within thirty (30) days of the date of this letter. If the TERC does not receive such additional information from the City within that time-frame, it will act based upon the City's October 13, 2008 report at its next meeting, which is scheduled for March 16, 2009.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Lanneau H. Siegling
Tourism Expenditure Review Committee

LHS:lls

BATTLE, VAUGHT & HOWE P.A.

ATTORNEYS AND COUNSELORS AT LAW

1200 MAIN STREET

POST OFFICE BOX 530

CONWAY, SOUTH CAROLINA 29528

TELEPHONE (843) 248-4321

FACSIMILE (843) 248-4512

www.battlevaught.com

Exhibit B

MICHAEL W. BATTLE

E-Mail Address: mbattle@sccoast.net

VICTORIA T. VAUGHT

E-Mail Address: vvaught@sccoast.net

CYNTHIA GRAHAM HOWE, PA

E-Mail Address: cghowe@sccoast.net

JAMES R. BATTLE, II

E-Mail Address: jbattle@sccoast.net

February 9, 2009

Mr. Lanneau H. Siegling, Vice Chairman
Tourism Expenditure Review Committee
P.O. Box 125
Columbia, South Carolina 29214-0120

RE: City of Myrtle Beach vs. Tourism Expenditure Review Committee

Dear Mr. Siegling:

The City of Myrtle Beach (City) is in receipt of the Tourism Expenditure Review Committee's (TERC) letter dated January 27, 2009 to Mr. Michael D. Price. The City appreciates the candor of the letter. The letter makes clear and the City understands TERC's concerns over the City's expenditure of accommodation tax funds for police, fire and public safety protection made necessary by its high concentration of tourism.

However, until TERC's last meeting on January 12, 2009, the City of Myrtle Beach had relied upon the general consensus among the SC Dept. of Revenue and TERC's members that the City's expenditure of accommodation tax funds for police, fire and public safety protection was permitted under the statute controlling the use of accommodation tax funds. That statute states a municipality which has a high concentration of tourism activity may use accommodation tax funds to provide additional 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... This is based on the estimated percentage of costs directly attributed to tourists. S.C. Code Ann. § 6-4-10(b). The statute is further explained in SC Revenue Ruling #98-22 which contains the following example:

For example, assume that the City of North Myrtle Beach wishes to use some of their Tourism related Funds on their police department. Tourism-related Funds could not be used to fund the police chief's salary, since this is a county expense that would need to be funded whether North Myrtle Beach had *any tourists or not*. However, the money could be used to hire additional police because of the high concentration of tourism in North Myrtle Beach. The amount that can be spent on additional police must be based on the estimated percentage of costs attributable to tourists. (Emphasis added). SC Revenue Ruling #98-22 p. 10

Previously, TERC had approved the City's use of accommodations tax funds in 2007 as illustrated in the minutes of its meeting of December 10, 2007 and its letter to the City dated February 7, 2008. The City's use of accommodation tax funds was the same in 2007 as it has been in 2008, and no fact or law has changed to justify TERC's reversal of position.

The City understands TERC's preference that accommodation tax funds be spent to promote the growth of tourism. However, the City believes the General Assembly was farsighted enough to allow local governments to use the accommodations tax funds to enlarge their economic benefits by promoting sustainable growth. Everyone should recognize that unsustainable growth is not good. Accommodations tax funds used by the City for public safety enhance the City's ability to attract and provide for tourists. If the City could not enhance its police, fire and public safety protection to include the tourists it normally attracted, then the quality of those tourists' experiences would deteriorate. If the City were to acquire a reputation as an unsafe City, then all tourism efforts in the State would suffer from the resulting negative advertising and the tourists who normally come to Myrtle Beach would disappear.

The City takes issue with TERC's assertion that our high concentration of tourism activity is "normal", and therefore the enhanced services made necessary by the high concentration should be "normally" provided. Only cities with high concentrations can use the money for enhanced services. If high concentration cities like Myrtle Beach, Charleston, Hilton Head and others can't use the money for enhanced service, and those who are not high concentration cannot use the money for enhanced service, one must ask what was the point of the General Assembly's use of the terminology in the statute?

The City also takes issue with TERC's belief that comparisons of the City's "permanent population" with those of other municipalities is not relevant to the General Assembly's guidelines for the use of accommodation tax funds. That comparison is the same one implied by the example in Revenue Ruling #98-22. How else would a local government distinguish normal City services from enhanced services necessary to accommodate the presence of tourists if it did not compare its expenditures with other local governments which did not provide those enhanced services for tourists?

The City was surprised that TERC would criticize the City's use of its general fund to promote a variety of "tourism related" projects. The City was under the impression that TERC was formed for the purpose of promoting tourism. The City has in place a legally approved procedure by which it evaluates all applications for funding including applications for accommodations tax funds. That procedure is widely recognized as a model for other cities. In fact, the Municipal Association of South Carolina has included the form on its website for others to copy. From time to time, applications arise which are "tourism related" which the City believes merits funding even though those projects require funding over and above the amount allocated by accommodations tax funds. TERC should encourage the City's use of its general fund for "tourism related" projects.

TERC's sole function is to provide oversight for expenditure of accommodation tax funds. The City's expenditure of those funds for police, fire and public safety is permitted by the Accommodations Tax Act. Prior to 2009, that type of expenditure had been approved by the S.C. Dept. of Revenue and by TERC. If the City uses

accommodation tax funds for a purpose permitted by the Act that should be the end of TERC's oversight responsibility since the boundaries of its jurisdiction are established by the General Assembly. TERC does not have oversight jurisdiction over the general funds of the City, and it cannot dictate to the City Council how it uses its general fund.

The City has submitted a report and application which contains the facts about the City's population, tourist populations and a comparison between the City's expenditures with other municipality's expenditures for police, fire and public safety. The City has shown that the amount it spends on enhanced public safety for tourists is far greater than the accommodations tax funds it receives. In light of those facts, the City requests that TERC clarify what additional information would be useful to it in resolving its questions about the City's expenditure of \$4,318,250 for police, fire and public safety.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Battle". The signature is fluid and cursive, with the first name "Michael" and last name "Battle" being the most prominent parts.

Michael W. Battle

Battle, Vaught & Howe, P.A.

C Tom Ellenburg, Mike Shelton

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

Exhibit C

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL
ELIZABETH ZECK*
BENJAMIN P. MUSTIAN
MICHAEL R. BURCHSTEAD
ANDREW J. MACLEOD

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

TRACEY C. GREEN
ALAN WILSON
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

April 22, 2009

VIA ELECTRONIC AND
U.S. MAIL

Michael W. Battle, Esquire
Post Office Box 530
Myrtle Beach, South Carolina 29578-2468

RE: Report of Accommodations Tax 2007-2008 Expenditures

Dear Mr. Battle:

Thank you for your February 9, 2009, letter to the Tourism Expenditure Review Committee ("TERC") written on behalf of the City of Myrtle Beach ("City") regarding the above-referenced matter. I have been requested by the TERC to respond on its behalf. The TERC is pleased to have this opportunity to clarify its position with respect to the matters you have raised.

Unfortunately, it appears that the TERC and the City simply have different interpretations of S.C. Code Ann. §6-4-10(b), particularly in terms of what circumstances can justify the use of accommodations tax funds by a municipality with a high-concentration of tourism activity to provide "additional ...municipal services." The TERC's view is that the pertinent comparison under the statute is the amount of services the City of Myrtle Beach normally provides versus the additional services provided by the City of Myrtle Beach as a result of the presence of tourists.¹ A comparison of what level of services the City would be providing if it had the same permanent population as another municipality not situated in an area with a high concentration of tourism activity is, in TERC's view, inapt since it assumes that two municipalities are similar. If the TERC were to accept the City's interpretation of §6-4-10(4)(b), the City would always have been

¹This view is supported by the plain language of §6-4-10(b) providing that "[t]he funds must not be used as an additional source of revenue to provide services normally provided by the ...municipality." (Emphasis supplied.) In other words, the statute does not call for an examination of service levels among different municipalities, but does require a comparison of service levels within the specific municipality.

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BATTLE 2 1/2

justified in expending 100% of the accommodations tax funds allocated to it under §6-4-10(4)(a) on municipal services simply because it is located in a high concentration of tourism area. The TERC does not believe that was the legislature's intent inasmuch as that would lead to municipalities simply supplanting a portion of the municipal tax revenues needed for services normally provided by the municipalities with state accommodations tax revenues.

To the City's point that TERC's interpretation would result in a municipality in a high concentration of tourism area being unable to use accommodations tax funds for additional services, too much has been read into the TERC's letter of January 27th. The TERC recognizes that a municipality has the right to utilize accommodations tax allocations as a source of revenue to provide services beyond those normally provided by the municipality. However, in order to establish that services are being provided beyond those normally provided by the municipality, TERC believes that the municipality must show that the costs associated with providing the additional services (e.g., wages and salaries of municipal personnel) are attributable solely to the presence of tourists. Your letter asks how a municipality would "distinguish normal City services from enhanced services necessary to accommodate the presence of tourists" if not by a "comparison[] of the City's 'permanent population' with those of other municipalities." As noted above, the TERC does not believe that a comparison among dissimilar municipalities is appropriate. Moreover, the TERC disagrees that Revenue Ruling #98-22, which you have referenced in your letter, implies that a comparison among dissimilar municipalities is appropriate for purposes of determining whether an expenditure is appropriate under §6-4-10(4)(b). Further, an answer to your question can be found in Revenue Ruling #98-22. In several places in this document, the DOR opines that a municipality must show that the amount expended on costs for additional municipal services are based upon the estimated percentage of the municipality's total costs incurred in providing the service in question **that are directly attributable to tourists**. One means suggested by Revenue Ruling #98-22 for making such a showing is to determine the difference in costs incurred during the tourist season and the non-tourist season. Neither your letter, nor the City's October 13, 2008 report to the TERC, makes such a showing.

Notwithstanding the foregoing, TERC recognizes that its letter of February 7, 2008, regarding the City's 2006-2007 expenditures did state that same were properly documented and therefore permissible. Although TERC now believes that the documentation was legally not sufficient in view of TERC's interpretation of §6-4-10(4)(b), it recognizes that it would impose a hardship on the City if TERC were to apply its interpretation of the law to the City's 2007-2008 expenditures. Accordingly, TERC will not certify any part of the City's 2007-2008 expenditures to the State Treasurer as non-compliant **on this ground**. The TERC advises the City, however, that any 2008-2009 expenditures made by the City under §6-4-10(4)(b) will be reviewed by TERC in accordance with the interpretation of the statute set forth above.

Your letter states that the City is "surprised that TERC would criticize the City's use of its general fund to promote a variety of 'tourism related' projects" in view of the City's "legally

approved procedure by which it evaluates all applications for ...accommodations tax funding.”² Apparently, the City is referring to the second numbered paragraph of the TERC’s January 27th letter. The TERC appreciates this opportunity to clarify its point in this regard. The TERC’s position is that it is inappropriate for the City to put 100% of the allocated funds in the general fund account and then employ a City-created process to make a portion of these funds available for “tourism-related” projects. This circumvents the local advisory committee process mandated by §6-4-25. To the extent there have been expenditures from the City’s general fund for this purpose utilizing accommodations tax revenues in excess of those permitted under §6-4-10(1) and (2), this would be improper. Further, the TERC is not aware of any “legally approved procedure” which would allow the City to eliminate the local advisory review process.³

With respect to the City’s position regarding TERC’s authority and jurisdiction over the City’s “general fund, the TERC would note as follows: the legislature has vested in TERC the authority to oversee all questionable expenditures under §6-4-35(B)(1)(a) and the City has deposited approximately \$4.3 million worth of state accommodations tax revenues in its general fund, purportedly under §6-4-10(4)(a). The TERC is not attempting “to dictate to the City Council how it uses its general fund.” The TERC is simply questioning if the City’s devotion of all accommodations tax revenues for the period in question to the general fund to be used “for police, fire and public safety” in tandem with an extra-statutory process by which tourism-related projects may be funded out of the general fund, comports with state law.⁴ You have asked what additional facts would be useful to the TERC in resolving its questions. It would be helpful for TERC to know exactly what type of “tourism-related” projects the City has funded with general fund monies and the amount dedicated to that. The TERC will need to receive any additional information from the City before its next meeting, which is scheduled for May 6, 2009.

²Your letter appears to confirm the information that TERC had regarding the City’s practice in this regard. The City’s report suggests to TERC that \$1,337,000 in accommodations tax funds were used for this purpose as that represents the amount recommended by the local advisory committee for “tourism-related projects” as shown in the City’s report. If the TERC is incorrect in regard to the amount taken from the general fund to support these projects, please so advise and provide to TERC the correct amount.

³Although the City’s internal review process is discussed in an order of the Administrative Law Court (presently on appeal, as you are aware), that order does not sanction a procedure under which a municipality places 100% of accommodations tax revenues in its general fund under the guise of it being for additional municipal services and then later awards monies from the general fund to applicants for tourism-related projects which have not been reviewed by the local advisory committee. It appears to TERC that this may be being done to avoid the local advisory committee process.

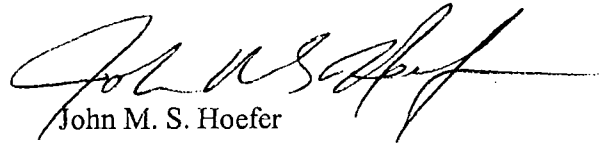
⁴TERC notes that the City’s report states that used \$4,318,250 for “additional Police, Fire and **Parks** personnel.” Your letter states that these funds were used for “police, fire and **public safety**.” The TERC would like clarification in this regard.

Michael W. Battle, Esquire
April 22, 2009
Page 4

If you have any questions, please do not hesitate to contact me. With best regards, I am

Sincerely,

Willoughby & Hoefer, P.A.



John M. S. Hoefer

JMSH/cf

cc: Ms. Lauren Sponseller

CAPTION: City of Myrtle Beach vs. Tourism Expenditure Review Committee
AGENCY: City of Myrtle Beach
PARTIES: Petitioner: **City of Myrtle Beach**

Respondent: **Tourism Expenditure Review Committee**

DOCKET
NUMBER: 09-ALJ-_____

APPEARANCES: For the Petitioner:
Michael W. Battle, Esq.
Battle & Vaught, P.A.

MOTION FOR PRELIMINARY RELIEF

Pursuant to S.C. Code Ann. §1-23-630, Rule 65, SCRCP and Rule 16 of the Rules of Procedure for the Administrative Law Court ("RPALC"), the City of Myrtle Beach hereby moves for a Temporary Injunction enjoining the Tourism Expenditure Review Committee (TERC) from notifying the S.C. Department of Revenue to withhold the City's 2008-2009 accommodation tax funds on the position set forth in Exhibits A & C of the Affidavit of Mike Shelton attached hereto. The grounds for the City's motion are:

1. TERC's position represents a change in position and will cause irreparable harm to the City of Myrtle Beach. TERC's change in position occurred after the City's 2008-2009 budget had been enacted designating the use of accommodation tax funds. In addition, notice of the change was sent to the City after more than 50% of its accommodations tax funds had been expended. The amount of accommodations tax funds that would be affected by TERC's change in position would be in excess of 4.3 million dollars.
2. TERC's interpretation of the S.C. Accommodations Tax Act is incorrect as a matter of law.

and highway and street maintenance to accommodate the tourists who visit the City.

4. The grant of the temporary injunction will not have any adverse affect on TERC.
5. The City is likely to succeed on the merits of the underlying merits because the actions taken by the City are expressly permitted by the Accommodations Tax Act.
6. The public has a strong interest in the City of Myrtle Beach's ability to continue to provide adequate additional municipal services including, but not limited to, law enforcement, traffic control, public facilities, and highway and street maintenance to accommodate the tourists who visit the City.

Respectfully Submitted,



Michael W. Battle, Esq.

Battle & Vaught, P.A.

P.O. Box 530

Conway, S.C. 29528

Tel. No. (843) 248-4321

Attorneys for the City of Myrtle Beach

9/9, 2009

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE COURT**

Docket No.09-ALJ-_____

City of Myrtle Beach,)
)
 Petitioner,)
)
 v.)
)
Tourism Expenditure Review Committee,)
)
 Respondent.)

Affidavit of Michael Shelton

PERSONALLY APPEARED BEFORE ME Michael Shelton who, being duly sworn,
deposes and states:

1. He has personal knowledge of the matters set forth herein.
2. At all times relevant to the incidents set forth in the above captioned matter he was employed as the Budget & Evaluation Director for the City of Myrtle Beach and he was the person responsible for administering the City's expenditures of funds received from accommodations taxes.
3. On January 30, 2009, his office received the attached letter from the Tourism Expenditure Review Committee dated January 27, 2009, (copy attached as Exhibit "A") requesting the following:

Accordingly, the TERC respectfully requests that the City provide additional information with respect to the foregoing within thirty (30) day of the date of this letter. If the TERC does not receive such additional information from the City within that time-frame, it will act based upon the City's October 13, 2008 report at its next meeting, which is scheduled for March 16, 2009.

4. The City of Myrtle Beach responded on February 9, 2009, with the attached copy of a letter from Attorney Michael W. Battle for the City of Myrtle Beach. (Copy Attached as Exhibit B)
5. On April 22, 2009, the TERC responded through its attorney John M.S. Hoefer stating in part:

The TERC advises the City, however, that any 2008-2009 expenditures made by the City under §6-4-1 (4)(b) will be reviewed by TERC in accordance with the interpretation of the statute set forth above.
(Copy Attached as Exhibit C)

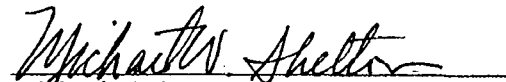
6. In approving the allocation to the City of Myrtle Beach for 2009, Council directed that the total of \$4,664,951 in funds estimated be available for Tourism Related Expenditures under Sec. 6-4-10(4)(a) be expended as follows:

Debt Service on Beach Nourishment Project (Reach 2)	\$ 147,424
Beach Monitoring	62,000
Convention Center Marketing (Advertising and Promotion)	650,000
General Fund—Public Safety	<u>3,805,527</u>
TOTAL	\$ 4,664,951

7. The 2008-2009 expenditures are expenditures that are made from July 1, 2008 to June 30, 2009. At the time TERC provided its notice, approximately 81% of the expenditures TERC stated it would find non-compliant based on its new interpretation of the statute had been made. At that time over 3.0 million of the 3.8 million dollars allocated to the General Fund for Public Safety expenditures had been expended by the City in a manner the TERC claimed was non-compliant.

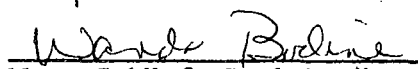
8. If TERC notifies the SC Department of Revenue that the 2008-2009 expenditures are noncompliant, SC Department of Revenue will automatically withhold from future allocations of accommodation tax dollars to the City.
9. Such withholding of accommodation tax funds would affect approximately 19.4% of the City's police budget which is used to provide police protection for the large numbers of tourists who visit Myrtle Beach each year.
10. The withholding of such funds from the City will dramatically affect its ability to accommodate tourists and will adversely impact the City's ability to protect tourists and residents of the City.
11. The City has been expending accommodation tax funds to provide law enforcement, traffic control, public facilities, and highway and street maintenance to accommodate the tourists who visit the City since the origin of accommodation tax funds through the S.C. Accommodations Tax Act.

FURTHER AFFIANT SAYETH NOT.


Michael Shelton

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 4th DAY OF

September 2009


Notary Public for South Carolina

My commission expires: January 2018

JAN. 30. 2009 12:15PM

NO. 9721 P. 2/3

Expenditure Review Committee

P.O. Box 125
Columbia, SC 29214-0120
301 Gervais Street
Columbia, SC 29201
803-898-5400

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Appointed at the
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Suzette Surkamer
Appointed at the
Recommendation of the SC
Arts Commission

Kevin Yokim
Appointed at the
Recommendation of the SC
Association of Counties

Edward W. Higgs, Jr.
Sovereigns Appointee

January 27, 2009

Mr. Michael D. Price
Budget Analyst
City of Myrtle Beach
Post Office Box 2468
Myrtle Beach, South Carolina
29578-2468

RE: Report of Accommodations Tax 2007-2008 Expenditures

Dear Mr. Price:

At its meeting on January 12, 2009, the Tourism Expenditure Review Committee ("TERC") reviewed the above-referenced report submitted by the City of Myrtle Beach ("City") under cover of your letter dated October 13, 2008. The purpose of this letter is to notify the City that the TERC, pursuant to S.C. Code Ann. §6-4-35(B)(1)(a), questions the reported expenditure(s) and to offer the City an opportunity to submit additional information as permitted by that code section.

The bases upon which the TERC questions the reported expenditure(s) by the City are as follows:

1. At page 2 of its report, the City states that it expended \$4,318,250 of the \$4,558,662 available for "[s]upport of operating expenses for services provided above and beyond permanent population throughout the year, to include additional Police, Fire and Parks personnel." The TERC questions whether this expenditure is lawful in view of S.C. Code Ann. §6-4-10(b), which states that the City may not utilize accommodations tax funds as an additional source of revenue to provide services *normally* provided by the City. The TERC is of the view that the services for which the accommodations tax funds were used are those services that the City normally provides given its emphasis on attracting and providing for visitors. Thus, unlike a municipality which finds it necessary to provide additional services simply as a result of the presence of tourists, the City routinely provides services at this level. The TERC does not believe comparisons of the City's "permanent population" with those of other municipalities is relevant in view of the statutory proscription against using these funds for services that are "normally" provided.

2. The TERC is informed and believes that a variety of expenditures for "tourism related" projects were funded out of the City's general fund. If the TERC's information is correct, the effect of this practice would appear to be the circumvention of the procedure

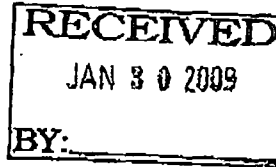


Exhibit A

Expenditure Review Committee

P.O. Box 125
Columbia, SC 29214-0120
301 Gervais Street
Columbia, SC 29201
803-898-6400

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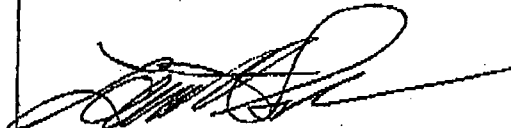
Edward W. Riggs, Sr.
Governor's Appointee

established under S.C. Code Ann. §§6-4-5, et seq. for the use of accommodations taxes for tourism-related expenditures.

Accordingly, the TERC respectfully requests that the City provide additional information with respect to the foregoing within thirty (30) days of the date of this letter. If the TERC does not receive such additional information from the City within that time-frame, it will act based upon the City's October 13, 2008 report at its next meeting, which is scheduled for March 16, 2009.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Lanneau H. Siegling
Tourism Expenditure Review Committee

LHS:lls

BATTLE, VAUGHT & HOWE P.A.

ATTORNEYS AND COUNSELORS AT LAW

1200 MAIN STREET

POST OFFICE BOX 530

CONWAY, SOUTH CAROLINA 29528

TELEPHONE (843) 248-4321

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Exhibit B

MICHAEL W. BATTLE
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VICTORIA T. VAUGHT
E-Mail Address: vaught@sccoast.net

CYNTHIA GRAHAM HOWE, PA
E-Mail Address: cghowe@sccoast.net
JAMES R. BATTLE, II
E-Mail Address: jbattle@sccoast.net

February 9, 2009

Mr. Lanneau H. Siegling, Vice Chairman
Tourism Expenditure Review Committee
P.O. Box 125
Columbia, South Carolina 29214-0120

RE: City of Myrtle Beach vs. Tourism Expenditure Review Committee

Dear Mr. Siegling:

The City of Myrtle Beach (City) is in receipt of the Tourism Expenditure Review Committee's (TERC) letter dated January 27, 2009 to Mr. Michael D. Price. The City appreciates the candor of the letter. The letter makes clear and the City understands TERC's concerns over the City's expenditure of accommodation tax funds for police, fire and public safety protection made necessary by its high concentration of tourism.

However, until TERC's last meeting on January 12, 2009, the City of Myrtle Beach had relied upon the general consensus among the SC Dept. of Revenue and TERC's members that the City's expenditure of accommodation tax funds for police, fire and public safety protection was permitted under the statute controlling the use of accommodation tax funds. That statute states a municipality which has a high concentration of tourism activity may use accommodation tax funds to provide additional 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... This is based on the estimated percentage of costs directly attributed to tourists. S.C. Code Ann. § 6-4-10(b). The statute is further explained in SC Revenue Ruling #98-22 which contains the following example:

For example, assume that the City of North Myrtle Beach wishes to use some of their Tourism related Funds on their police department. Tourism-related Funds could not be used to fund the police chief's salary, since this is a county expense that would need to be funded whether North Myrtle Beach had *any tourists or not*. However, the money could be used to hire additional police because of the high concentration of tourism in North Myrtle Beach. The amount that can be spent on additional police must be based on the estimated percentage of costs attributable to tourists. (Emphasis added). SC Revenue Ruling #98-22 p. 10

Previously, TERC had approved the City's use of accommodations tax funds in 2007 as illustrated in the minutes of its meeting of December 10, 2007 and its letter to the City dated February 7, 2008. The City's use of accommodation tax funds was the same in 2007 as it has been in 2008, and no fact or law has changed to justify TERC's reversal of position.

The City understands TERC's preference that accommodation tax funds be spent to promote the growth of tourism. However, the City believes the General Assembly was farsighted enough to allow local governments to use the accommodations tax funds to enlarge their economic benefits by promoting sustainable growth. Everyone should recognize that unsustainable growth is not good. Accommodations tax funds used by the City for public safety enhance the City's ability to attract and provide for tourists. If the City could not enhance its police, fire and public safety protection to include the tourists it normally attracted, then the quality of those tourists' experiences would deteriorate. If the City were to acquire a reputation as an unsafe City, then all tourism efforts in the State would suffer from the resulting negative advertising and the tourists who normally come to Myrtle Beach would disappear.

The City takes issue with TERC's assertion that our high concentration of tourism activity is "normal", and therefore the enhanced services made necessary by the high concentration should be "normally" provided. Only cities with high concentrations can use the money for enhanced services. If high concentration cities like Myrtle Beach, Charleston, Hilton Head and others can't use the money for enhanced service, and those who are not high concentration cannot use the money for enhanced service, one must ask what was the point of the General Assembly's use of the terminology in the statute?

The City also takes issue with TERC's belief that comparisons of the City's "permanent population" with those of other municipalities is not relevant to the General Assembly's guidelines for the use of accommodation tax funds. That comparison is the same one implied by the example in Revenue Ruling #98-22. How else would a local government distinguish normal City services from enhanced services necessary to accommodate the presence of tourists if it did not compare its expenditures with other local governments which did not provide those enhanced services for tourists?

The City was surprised that TERC would criticize the City's use of its general fund to promote a variety of "tourism related" projects. The City was under the impression that TERC was formed for the purpose of promoting tourism. The City has in place a legally approved procedure by which it evaluates all applications for funding including applications for accommodations tax funds. That procedure is widely recognized as a model for other cities. In fact, the Municipal Association of South Carolina has included the form on its website for others to copy. From time to time, applications arise which are "tourism related" which the City believes merits funding even though those projects require funding over and above the amount allocated by accommodations tax funds. TERC should encourage the City's use of its general fund for "tourism related" projects.

TERC's sole function is to provide oversight for expenditure of accommodation tax funds. The City's expenditure of those funds for police, fire and public safety is permitted by the Accommodations Tax Act. Prior to 2009, that type of expenditure had been approved by the S.C. Dept. of Revenue and by TERC. If the City uses

accommodation tax funds for a purpose permitted by the Act that should be the end of TERC's oversight responsibility since the boundaries of its jurisdiction are established by the General Assembly. TERC does not have oversight jurisdiction over the general funds of the City, and it cannot dictate to the City Council how it uses its general fund.

The City has submitted a report and application which contains the facts about the City's population, tourist populations and a comparison between the City's expenditures with other municipality's expenditures for police, fire and public safety. The City has shown that the amount it spends on enhanced public safety for tourists is far greater than the accommodations tax funds it receives. In light of those facts, the City requests that TERC clarify what additional information would be useful to it in resolving its questions about the City's expenditure of \$4,318,250 for police, fire and public safety.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Battle". The signature is fluid and cursive, with the first name "Michael" and last name "Battle" being the most prominent parts.

Michael W. Battle
Battle, Vaught & Howe, P.A.

C Tom Ellenburg, Mike Shelton

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

Exhibit C

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL
ELIZABETH ZECK*
BENJAMIN P. MUSTIAN
MICHAEL R. BURCHSTEAD
ANDREW J. MACLEOD

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

TRACEY C. GREEN
ALAN WILSON
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

April 22, 2009

VIA ELECTRONIC AND
U.S. MAIL

Michael W. Battle, Esquire
Post Office Box 530
Myrtle Beach, South Carolina 29578-2468

RE: Report of Accommodations Tax 2007-2008 Expenditures

Dear Mr. Battle:

Thank you for your February 9, 2009, letter to the Tourism Expenditure Review Committee ("TERC") written on behalf of the City of Myrtle Beach ("City") regarding the above-referenced matter. I have been requested by the TERC to respond on its behalf. The TERC is pleased to have this opportunity to clarify its position with respect to the matters you have raised.

Unfortunately, it appears that the TERC and the City simply have different interpretations of S.C. Code Ann. §6-4-10(b), particularly in terms of what circumstances can justify the use of accommodations tax funds by a municipality with a high-concentration of tourism activity to provide "additional ...municipal services." The TERC's view is that the pertinent comparison under the statute is the amount of services the City of Myrtle Beach normally provides versus the additional services provided by the City of Myrtle Beach as a result of the presence of tourists.¹ A comparison of what level of services the City would be providing if it had the same permanent population as another municipality not situated in an area with a high concentration of tourism activity is, in TERC's view, inapt since it assumes that two municipalities are similar. If the TERC were to accept the City's interpretation of §6-4-10(4)(b), the City would always have been

¹This view is supported by the plain language of §6-4-10(b) providing that "[t]he funds must not be used as an additional source of revenue to provide services normally provided by the ...municipality." (Emphasis supplied.) In other words, the statute does not call for an examination of service levels among different municipalities, but does require a comparison of service levels within the specific municipality.

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BATTLE & VAIL

Michael W. Battle, Esquire

April 22, 2009

Page 2

justified in expending 100% of the accommodations tax funds allocated to it under §6-4-10(4)(a) on municipal services simply because it is located in a high concentration of tourism area. The TERC does not believe that was the legislature's intent inasmuch as that would lead to municipalities simply supplanting a portion of the municipal tax revenues needed for services normally provided by the municipalities with state accommodations tax revenues.

To the City's point that TERC's interpretation would result in a municipality in a high concentration of tourism area being unable to use accommodations tax funds for additional services, too much has been read into the TERC's letter of January 27th. The TERC recognizes that a municipality has the right to utilize accommodations tax allocations as a source of revenue to provide services beyond those normally provided by the municipality. However, in order to establish that services are being provided beyond those normally provided by the municipality, TERC believes that the municipality must show that the costs associated with providing the additional services (e.g., wages and salaries of municipal personnel) are attributable solely to the presence of tourists. Your letter asks how a municipality would "distinguish normal City services from enhanced services necessary to accommodate the presence of tourists" if not by a "comparison[] of the City's 'permanent population' with those of other municipalities." As noted above, the TERC does not believe that a comparison among dissimilar municipalities is appropriate. Moreover, the TERC disagrees that Revenue Ruling #98-22, which you have referenced in your letter, implies that a comparison among dissimilar municipalities is appropriate for purposes of determining whether an expenditure is appropriate under §6-4-10(4)(b). Further, an answer to your question can be found in Revenue Ruling #98-22. In several places in this document, the DOR opines that a municipality must show that the amount expended on costs for additional municipal services are based upon the estimated percentage of the municipality's total costs incurred in providing the service in question **that are directly attributable to tourists**. One means suggested by Revenue Ruling #98-22 for making such a showing is to determine the difference in costs incurred during the tourist season and the non-tourist season. Neither your letter, nor the City's October 13, 2008 report to the TERC, makes such a showing.

Notwithstanding the foregoing, TERC recognizes that its letter of February 7, 2008, regarding the City's 2006-2007 expenditures did state that same were properly documented and therefore permissible. Although TERC now believes that the documentation was legally not sufficient in view of TERC's interpretation of §6-4-10(4)(b), it recognizes that it would impose a hardship on the City if TERC were to apply its interpretation of the law to the City's 2007-2008 expenditures. Accordingly, TERC will not certify any part of the City's 2007-2008 expenditures to the State Treasurer as non-compliant **on this ground**. The TERC advises the City, however, that any 2008-2009 expenditures made by the City under §6-4-10(4)(b) will be reviewed by TERC in accordance with the interpretation of the statute set forth above.

Your letter states that the City is "surprised that TERC would criticize the City's use of its general fund to promote a variety of 'tourism related' projects" in view of the City's "legally

approved procedure by which it evaluates all applications for ...accommodations tax funding.”² Apparently, the City is referring to the second numbered paragraph of the TERC’s January 27th letter. The TERC appreciates this opportunity to clarify its point in this regard. The TERC’s position is that it is inappropriate for the City to put 100% of the allocated funds in the general fund account and then employ a City-created process to make a portion of these funds available for “tourism-related” projects. This circumvents the local advisory committee process mandated by §6-4-25. To the extent there have been expenditures from the City’s general fund for this purpose utilizing accommodations tax revenues in excess of those permitted under §6-4-10(1) and (2), this would be improper. Further, the TERC is not aware of any “legally approved procedure” which would allow the City to eliminate the local advisory review process.³

With respect to the City’s position regarding TERC’s authority and jurisdiction over the City’s “general fund, the TERC would note as follows: the legislature has vested in TERC the authority to oversee all questionable expenditures under §6-4-35(B)(1)(a) and the City has deposited approximately \$4.3 million worth of state accommodations tax revenues in its general fund, purportedly under §6-4-10(4)(a). The TERC is not attempting “to dictate to the City Council how it uses its general fund.” The TERC is simply questioning if the City’s devotion of all accommodations tax revenues for the period in question to the general fund to be used “for police, fire and public safety” in tandem with an extra-statutory process by which tourism-related projects may be funded out of the general fund, comports with state law.⁴ You have asked what additional facts would be useful to the TERC in resolving its questions. It would be helpful for TERC to know exactly what type of “tourism-related” projects the City has funded with general fund monies and the amount dedicated to that. The TERC will need to receive any additional information from the City before its next meeting, which is scheduled for May 6, 2009.

²Your letter appears to confirm the information that TERC had regarding the City’s practice in this regard. The City’s report suggests to TERC that \$1,337,000 in accommodations tax funds were used for this purpose as that represents the amount recommended by the local advisory committee for “tourism-related projects” as shown in the City’s report. If the TERC is incorrect in regard to the amount taken from the general fund to support these projects, please so advise and provide to TERC the correct amount.

³Although the City’s internal review process is discussed in an order of the Administrative Law Court (presently on appeal, as you are aware), that order does not sanction a procedure under which a municipality places 100% of accommodations tax revenues in its general fund under the guise of it being for additional municipal services and then later awards monies from the general fund to applicants for tourism-related projects which have not been reviewed by the local advisory committee. It appears to TERC that this may be being done to avoid the local advisory committee process.

⁴TERC notes that the City’s report states that used \$4,318,250 for “additional Police, Fire and **Parks** personnel.” Your letter states that these funds were used for “police, fire and **public safety**.” The TERC would like clarification in this regard.

Michael W. Battle, Esquire

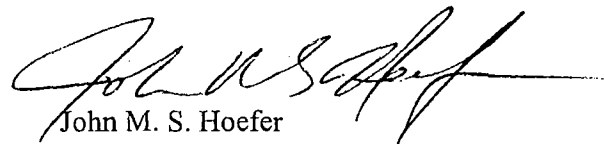
April 22, 2009

Page 4

If you have any questions, please do not hesitate to contact me. With best regards, I am

Sincerely,

Willoughby & Hoefer, P.A.



John M. S. Hoefer

JMSH/cf

cc: Ms. Lauren Sponseller

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

City of Myrtle Beach,	)	
	)	Case No. 09-ALJ-_____
Petitioner,	)	
	)	
Vs	)	
	)	CERTIFICATE OF
	)	SERVICE
Tourism Expenditure Review Committee	)	
	)	
Respondent.	)	
_____	)	

I, Sherri Benninga, Paralegal for Battle & Vaught, P.A., hereby certify that I have this September 9, 2009 have served a copy of *Petition for Declaratory Judgment, Temporary, and Permanent Injunction and Motion for Preliminary Relief* upon the Tourism Expenditure Review Committee and previous counsel of record, by depositing the same in the United States mail, first-class postage pre-paid, to the following address(es):

Tourism Expenditure Review Committee
Lanneau H. Siegling
P.O. Box 125
Columbia, South Carolina 29214-0120

John M.S. Hoefer
Willoughby & Hoefer, P.A.
P.O. Box 8416
Columbia, South Carolina 29202-8416



Sherri Benninga Paralegal
to Michael W. Battle
BATTLE & VAUGHT, P.A.
1200 Main Street
PO Box 530
Conway, SC 29528

September 9, 2009

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW
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P.O. BOX 8416
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TRACEY C. GREEN
ALAN WILSON
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

October 26, 2009

VIA HAND DELIVERY

The Honorable Carolyn C. Matthews
S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: *City of Myrtle Beach v. Tourism Expenditure Review Committee*; Docket No. 09-
ALJ-30-0435-IJ

Dear Judge Matthews:

Enclosed for filing on behalf of Respondent Tourism Expenditure Review Committee in the above-referenced matter please find the original and one copy of each of the following documents:

1. Return to Motion for Temporary Relief in accordance with Rule 19.A, RPALC;
2. Motion to Dismiss; and
3. Affidavit of Lanneau H. Siegling, CHA.

By copy of this letter, I am serving a copy of these documents upon counsel of record for the other party and enclose a Certificate of Service to that effect. In accordance with Rule 71.D, RPALC, no motion fee is being submitted in view of the fact that Respondent is a creature of statute.

I would appreciate your acknowledging receipt of these documents by date-stamping the extra copies that are enclosed and returning same to me via our courier.

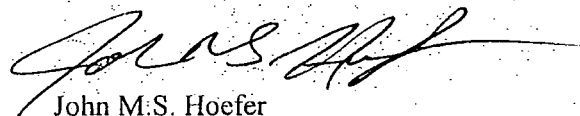
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SC ADMIN. LAW COURT

Respectfully,

WILLOUGHBY & HOEFER, P.A.


John M.S. Hoefer

cc: Michael W. Battle, Esquire

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

City of Myrtle Beach,

Petitioner,

v.

Tourism Expenditure Review Committee

Respondents.

Docket No. 09-ALJ-30-0435-IJ

MOTION TO DISMISS

Pursuant to Rule 19 of the Rules of Procedure of the Administrative Law Court ("RPALC"), Respondent Tourism Expenditure Review Committee ("TERC") hereby moves to dismiss the "Petition for Declaratory Judgment, Temporary and Permanent Injunctions" ("Petition") filed September 9, 2009 by Petitioner City of Myrtle Beach ("City"). In support of this motion, the TERC submits the affidavit of Lanneau H. Siegling, CHA, that has been filed contemporaneously herewith. For the reasons discussed below, the TERC submits that none of the City's requests for relief are ripe and that the Court lacks subject matter jurisdiction over the City's request for declaratory relief. Therefore, the Court should dismiss the Petition.

BACKGROUND

Under S.C. Code Ann. § 12-36-920(A), a sales tax of seven percent is imposed by the state on accommodations provided to transients in South Carolina. One component of that tax is a two percent "local" accommodations tax which, pursuant to S.C. Code Ann. § 12-36-2630(3), must be credited to cities and counties in accordance with S.C. Code Ann. §§ 6-4-5, *et seq.* In counties where more than \$50,000.00 in revenues are generated by the two percent accommodations tax, these revenues are required to be allocated among the local government

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SC ADMIN. LAW COURT

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entity's general fund and a special fund in specified amounts and percentages. See S.C. Code Ann. § 6-4-10. The balance of the accommodations tax proceeds remaining, which is 65% of the total distributed to counties and municipalities, is to be allocated to another special fund to be used for "tourism-related expenditures." See S.C. Code Ann. § 6-4-10(4)(a). Disbursements from this special fund are to be made by cities and counties only after a request for an expenditure has been reviewed by a local advisory committee established in accordance with S.C. Code Ann. § 6-4-25(A) and (B). The cities and counties must consider the recommendations of the local advisory committee in determining whether to disburse "tourism-related" funds to an applicant and thereafter submit a report of all such expenditures to the TERC. See S.C. Code Ann. § 6-4-25(C) and (D).

The TERC was established by the General Assembly in S.C. Code Ann. § 6-4-35 "to serve as the oversight authority on all questionable tourism-related expenditures." In order for the TERC to be able to discharge its duties and determine whether local government disbursements of accommodations tax revenues comply with §§ 6-4-5, *et seq.*, cities and counties are required to forward to the TERC certain reports required under § 6-4-25(D), including details of the city's or county's expenditures from the special funds and the recommendation made regarding same by the local advisory committee. If upon review of these reports the TERC questions whether an expenditure complies with the requirements of §§ 6-4-5 *et seq.*, it must notify the city or county involved and may consider any further supporting information submitted by the local government involved. If the TERC finds an expenditure to be non-compliant, it is required to so notify the State Treasurer, who must then withhold from future distributions of accommodations tax revenues to the city or county involved an amount equal to the non-compliant expenditure. See S.C. Code Ann. § 6-4-35(B)(1)(a). If a city or county

disputes action of the TERC finding an expenditure to be non-compliant, its recourse is to the ALC. *Id.*¹

FACTS

In the Petition, the City seeks a declaratory judgment from this Court "declaring the rights of the City under the Accommodations Tax Act" and asks that it "issue such temporary and permanent injunctive relief as the Court deems appropriate." Petition at 1, 2, ¶12. Although not specifically stated, the City appears to be asking this Court to issue a declaratory judgment regarding the meaning of S.C. Code Ann. § 6-4-10(4)(b).²

On October 13, 2008, the City submitted to TERC, a report of the City's expenditures of state accommodations tax funds for the fiscal year 2007-2008 as required by S.C. Code Ann. § 6-4-25(D)(3). *See* Petition Ex. A, January 27, 2009, Letter from Lanneau H. Siegling to Michael D. Price, City of Myrtle Beach. Therein, the City reported that it had expended approximately \$4.3 million on police, fire and parks personnel costs during that period. *Id.* At its meeting held January 12, 2009, the TERC reviewed the City's report of these expenditures as contemplated by S.C. Code Ann. § 6-4-30(B)(1)(a). *Id.* In a letter dated January 27, 2009, TERC notified the City that, "pursuant to S.C. Code Ann. § 6-4-35(B)(1)(a), [it] questions the reported

¹ Although the pertinent statute, S.C. Code Ann. § 6-4-35(B)(1)(a) references an appeal to the ALC, no provision is made therein for the TERC to conduct a contested case hearing as defined under S.C. Code Ann. § 1-23-505 and no contested case hearing was conducted by the TERC in this matter. In matters involving these same parties, this Court has held that § 6-4-35(B)(1)(a) contemplates disposition of issues arising under Chapter 4 of Title 6 by way of contested case. *See City of Myrtle Beach v. Tourism Expenditure Review Committee*, 04-ALJ-30-0382-CC, 2005 WL 3308567 (S.C. ALC Nov. 7, 2005) (Kittrell, J.).

² Paragraph 1 of the Petition erroneously states that "TERC has given notice to the City that it intends to notify the S.C. Department of Revenue to withhold all of the City of Myrtle Beach's 2008-2009 accommodations tax [a]s non compliant based on its interpretation of S.C. Code Ann. § 6-4-35(B)(1)(a)." (Emphasis supplied.) As the exhibits to the Petition reflect, TERC has given no such notice. To the contrary, TERC has informed the City that it has a different reading of S.C. Code Ann. § 6-4-10(4)(b) than that of the City and that, based upon that reading, TERC would certify to the State Treasurer's Office ("STO") as non-compliant any future expenditures reported by the City and reviewed by the TERC which do not comply with § 6-4-10(4)(b).

expenditure(s)" and offered the City "an opportunity to submit additional information as permitted by that code section." *Id.*

In response, the City had its counsel send a letter to TERC explaining the City's reading of the relevant statutory section, S.C. Code Ann. § 6-4-10(b), as it applied to the City's 2007-2008 expenditures in question and pointing out that, in reviewing the City's 2006-2007 expenditures, the TERC had not questioned the City's expenditure of accommodations tax funds for similar purposes. *See* Petition Ex. B, February 9, 2009, Letter from Michael W. Battle to Lanneau H. Seigling. Thereafter, TERC had its own counsel reply by letter to counsel for the City, which letter stated, in pertinent part, that the "TERC and the City simply have different interpretations of S.C. Code Ann. §6-4-10(b)." *See* Petition Ex. C at 1, April 22, 2009, Letter from John M.S. Hoefer to Michael W. Battle. This letter went on to state, however, that TERC recognized the "hardship to the City if TERC were to apply its interpretation of the law to the City's 2007-2008 expenditures" in view of the fact that TERC had not questioned the City's 2006-2007 expenditures in this regard and, for that reason, TERC would not "certify any part of the City's 2007-2008 expenditures to the State Treasurer as non-compliant on this ground." The City was advised in this letter, however, "that any 2008-2009 expenditures made by the City under §6-4-10(4)(b) will be reviewed by TERC in accordance with the interpretation of the statute set forth above." *Id.* at 2.

On September 30, 2009, the TERC received the City's report required by S.C. Code Ann. § 6-4-25(D) for fiscal year 2008-2009. Affidavit of Lanneau Siegling, ¶3 and Exh. "A" thereto. Therein, the City has reported \$4,664,951 worth of accommodations tax revenue governed by § 6-4-10(4)(b) as having been expended on "Police, Fire and Parks Personnel" in fiscal year 2008-2009. *Id.*, Exh. "A", p. 4 of 11. According to the City, these funds would have been

expended during the period July 1, 2008 to June 30, 2009. See Affidavit of Michael Shelton, Sept. 4, 2009, ¶¶6-7 (attached to the City's Petition and Motion).

By its petition, the City is requesting that this Court preclude TERC from applying its reading of § 6-4-10(4)(b) to the City's fiscal year 2008-2009 expenditures of accommodations tax funds by issuing a declaratory judgment regarding the meaning of that statutory provision and enjoining TERC from making a determination under § 6-4-35(B)(1)(a) that is adverse to the City. See Petition at ¶12. The only action the City alleges TERC has taken, aside from the issuance of the correspondence described above, is forming the intention to notify the STO³ if the City's expenditures are not compliant with that statutory provision after a future review. *Id.* at ¶1.

ARGUMENT

I. This case is not justiciable.

The action brought by the City is not justiciable because it is not ripe for judicial review by this court. An action for declaratory judgment must include a justiciable controversy. See *Holden v. Cribb*, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002). "The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing." *Id.* (citing *Jackson v. State*, 331 S.C. 486, 490 n. 2, 489 S.E.2d 915, 917 n. 2 (1997)). The Supreme Court has found that a claim is not ripe, and therefore not justiciable, if "it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296 (1998) (citing *Thomas v. Union Carbide Agric. Prod. Co.*, 473 U.S. 568, 580-581 (1985)). Therefore, in cases before this Court, "the ripeness doctrine is designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract

³ Although this part of the City's Petition references an anticipated notification by TERC to the South Carolina Department of Revenue ("DOR") that the City's expenditure is non-compliant under § 6-4-35(B)(1)(a), it is apparent that the reference should be to the STO and not DOR. See n.2, *supra*.

disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effect felt in a concrete way by the challenging parties.” *Sanders v. S.C. Dep’t of Health & Envtl. Control*, 00-ALJ-07-0160-CC, 2000 WL 428966 (S.C. ALC March 31, 2000) (Stevens, J.) (citing *Ohio Forestry Ass’n, Inc. v. Sierra Club*, 523 U.S. 726, 732-733 (1998)).

The current case is not yet ripe for review because the TERC has not yet taken any action under § 6-4-35(B)(1)(a). The April 22, 2009, letter from TERC’s counsel merely informs the City that TERC would not question the City’s 2007-2008 expenditure of accommodations tax funds on police, fire and parks personnel costs and apprises the City of TERC’s reading of § 6-4-10(4)(b) that will be employed to review the City’s expenditures in the future. *See* Petition Ex. C, Letter from John M.S. Hoefer at 2. Therefore, the TERC has merely advised the City as to how it will review future expenditures. Indeed, the City’s petition itself references only future actions that TERC may take. *See* Petition at ¶1. As of this date, the TERC has not conducted a review of the City’s 2008-2009 expenditures, the report for which was only received by TERC on September 30, 2009. *See* Siegling Affidavit at ¶¶3 and 4.

Conjecture as to the future course of actions TERC may or may not take cannot be grounds for a ripe and justiciable contested case, because “mere speculation” as to the future actions of an administrative agency do not create a ripe and justiciable declaratory judgment action. *Sanders*, 00-ALJ-07-0160-CC. Speculation as to an agency’s future actions is the antithesis of a formalized agency decision espoused by the Supreme Court as giving rise to a ripe controversy. Indeed, if this Court were to find that the specter of future TERC actions did comprise a ripe contested case, such a finding would directly violate the United States Supreme Court’s rationale for the protections provided by this very doctrine. In the administrative

context, ripeness "protect[s] the agencies from judicial interference until an administrative decision has been formalized and its effect felt in a concrete way by the challenging parties." *Ohio Forestry Ass'n, Inc.*, 523 U.S. at 733. In the present case, the Court should not interfere with a future expenditure review that TERC has not yet begun, let alone formalized. *See also Charleston Radiologists, P.A. v. S.C. Dep't of Health and Envtl. Control*, 00-ALJ-07-0328-CC, 2001 WL 263390 (S.C. ALC Feb. 22, 2001) (Anderson, J.) (claim not ripe for review and the ALC lacks jurisdiction when an agency is considering a matter but has not rendered a decision).

Additionally, the TERC has not yet taken any action that will have an "effect felt in a concrete way" by the City. *Ohio Forestry Ass'n, Inc.*, 523 U.S. at 733. The completed action taken by the TERC regarding its review of the City's 2007-2008 expenditures is not at issue, and TERC's 2008-2009 review cannot yet have an effect upon the City because it has not yet occurred. Additionally, even after the TERC completes its 2008-2009 review, the City will only feel an effect in a concrete way if the STO subsequently takes action. The City admits this contingency in its complaint: "If TERC were to notify the [STO] the City's use of accommodations tax funds for 2008-2009 was non compliant the [STO] would with hold [sic] those funds from the City's future accommodation tax allocations." Petition at ¶10.

In summary, the City cannot yet have suffered harm or felt the direct effect of a future expenditure review not yet begun by TERC. Therefore, absent a completed agency action with a direct effect or hardship felt by the City, the City's claim is not yet ripe for review. Consequently, the claim is not justiciable, and this Court should dismiss the Petition.

II. The Court Lacks Jurisdiction.

Even assuming a justiciable controversy had been stated in the Petition, it should nonetheless still be dismissed for lack of jurisdiction inasmuch as this Court lacks subject matter

jurisdiction over the City's request for declaratory relief. This Court is a court of limited jurisdiction, created and governed by statute. See *Sanders*, 00-ALJ-07-0160-CC. The South Carolina legislature limited the Court's jurisdiction to "hearings of contested cases." S.C. Code Ann. § 1-23-600.⁴ The statute defines a "contested case" as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law ... to be determined by an agency or the Administrative Law Court after an opportunity for hearing." S.C. Code Ann. § 1-23-505.⁵

In effect, the City seeks a declaratory judgment as to the meaning of § 6-4-10(4)(b). "A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 663, S.E.2d 484, 487 (2008). In the present case, the primary purpose of the action can be determined by looking at the relief sought by the petitioner. See generally, *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 406, 656 S.E.2d 775, 779 (Ct. App. 2008). The City seeks an injunction; "actions for injunctive relief are equitable in nature." *Doe v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n*, 347 S.C. 642, 645, 557 S.E.2d 670, 672 (2001).

Although the Court has the general power to grant equitable remedies, the authority to grant such relief must stem from the Court's statutory grant of jurisdiction. The Court has authority to award equitable relief pursuant to S.C. Code Ann. § 1-23-630(A), which confers on

⁴ While the ALC also has appellate jurisdiction of decisions of other agencies, the ALC's jurisdiction over TERC arises in the contested case context. See n.1, *supra*.

⁵ That a request for declaratory relief is not a contested case is made evident by the fact that the General Assembly has separately provided circumstances in which an agency may issue declaratory rulings. See, e.g., S.C. Code Ann. § 1-23-150(a) ("Any person may petition an agency in writing for a declaratory ruling as to the applicability of any regulation. ..."). Pursuant to that authority, certain agencies have adopted regulations which pertain to requests for declaratory relief. See, e.g., S.C. Code Ann. Regs. 30-9.D (pertaining to petitions to the Department of Health and Environmental Control for declaratory rulings) and S.C. Code Ann. Regs. 103-825.A.2 (pertaining to petitions for declaratory orders by the Public Service Commission). By contrast, §§ 1-23-500 *et seq.* make no provision for declaratory proceedings in this Court.

Administrative Law Judges "the same power at chambers or in open hearing as [] circuit court judges" as well as the power "to issue those remedial writs as are necessary to give effect to its jurisdiction." However, to the extent this statute confers the authority to grant equitable remedies, such remedies must be provided in connection with a claim over which this court has jurisdiction. *Smith v. S.C. Budget & Control Bd.*, 06-ALJ-30-0688-CC, 2007 WL 1508272 (S.C. ALC April 25, 2007) (Gossett, J.). In the current case, the Court can only grant the City's prayer for equitable relief to give effect to its jurisdiction. Therefore, the Court must, independent of these equitable claims, have jurisdiction over an underlying "contested case."

The City's claims for relief do not constitute a "contested case" so as to give rise to jurisdiction of this Court because the claims do not seek a proceeding "in which the legal rights, duties, or privileges of a party are required by law ... to be determined by an agency or the Administrative Law Court." S.C. Code Ann. § 1-23-505. Indeed, the TERC enabling statute clearly grants the Court power to review only a determination by the committee that a given expenditure of accommodations tax revenue does not comply with §§ 6-4-5, *et seq.* and thus compels TERC to "certify the noncompliance to the State Treasurer." S.C. Code Ann. § 6-4-35(B)(1)(a). In the current case, TERC has not made any such determination, as is evident from the injunctive relief requested.⁶ In fact, TERC has not even reviewed the City's 2008-2009 expenditures. *See* Affidavit of Lanneau Siegling, *supra*. In bringing this proceeding, the City is attempting a preemptive strike against TERC's future review of the 2008-2009 expenditures. To date, TERC has merely informed the City as to the statutory interpretation of § 6-4-10(4)(b) it will employ in a future review; TERC has not yet taken any action to give effect to this interpretation so as to give rise to a contested case or ALC jurisdiction. *See Charleston*

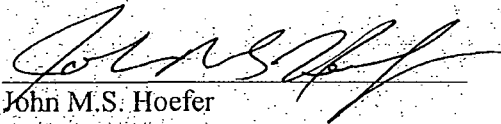
⁶ The City has, by separate motion, also sought preliminary injunctive relief and has submitted in support of same the above-referenced affidavit of Mr. Shelton. The TERC has, contemporaneously herewith, filed its return to this motion which is supported by the affidavit of Mr. Siegling.

Radiologists, P.A.; 00-ALJ-07-0328-CC (ALC "jurisdiction arises when the legal rights of a party are impacted by an agency's decision."). As the City has not brought a contested case in the current action, the ALC does not have the jurisdiction to grant the Petitioner equitable relief. Therefore, this Court should dismiss this suit for lack of subject matter jurisdiction.

CONCLUSION

The Petition does not present a justiciable claim because it relates to a matter that is not ripe for judicial review. Also, the specific statutory grant of authority to this Court does not confer jurisdiction to hear the plaintiff's petition for equitable relief because it does not arise in a contested case. Therefore, the TERC requests that this Court dismiss this case because the claim is not ripe for review and because the Court lacks jurisdiction.

Respectfully submitted,



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Attorneys for Tourism Expenditure Review
Committee

October 26, 2009
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

City of Myrtle Beach,

Petitioner,

v.

Tourism Expenditure Review Committee.

Respondent.

Docket No. 09-ALJ-30-0435-IJ

**RETURN TO MOTION FOR
TEMPORARY RELIEF**

Respondent, Tourism Expenditure Review Committee ("TERC"), hereby makes return to the September 9, 2009, motion of Petitioner City of Myrtle Beach ("City") for a temporary injunction in the above-captioned docket ("Motion").¹ In support of this return, the TERC submits the affidavit of Lanneau H. Siegling, CHA, that has been filed contemporaneously herewith. For the reasons discussed below, TERC submits that the motion should be denied.

BACKGROUND

This matter arises out of the City's effort to have this Court preclude the TERC from exercising its statutory duty under S.C. Code Ann. §6-4-35(B)(1)(a) (2004, as amended) to review the City's expenditures of state accommodations tax funds for compliance with the requirements of S.C. Code Ann. §6-4-10(4) (2004). In essence, the City seeks to have this Court issue a declaratory judgment with respect to the meaning of S.C. Code Ann. §6-4-10(4)(b) (2004) and to enjoin the TERC from engaging in a statutorily mandated review of the City's expenditure of approximately \$4.6 Million worth of state accommodations tax funds on police, fire and parks personnel expenses. A more fulsome explication of the background of the instant matter and the

¹ The Motion was served on October 15, 2009.

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underlying statutes is found in the TERC's Motion to Dismiss of even date ("Motion to Dismiss"), to which reference is craved.²

ARGUMENT

"An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the [movant]." Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). Further, it is a remedy that "ought to be applied with caution." Strategic Resources Co. v. BCS Life Ins. Co., 367 S.C. 540, 627 S.E.2d 687 (2006). The pleadings must allege facts sufficient to constitute a cause of action for injunction and demonstrate that it is reasonably necessary to protect the legal rights of the movant pending in the action. Peek v. Spartanburg Reg'l Healthcare Sys., 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005). Generally, for a preliminary injunction to be granted, the moving party must establish that: (1) irreparable harm would be suffered if the injunction is not granted; (2) a likelihood of success on the merits of the litigation; and (3) the absence of an adequate remedy at law. Scratch Golf Co., 361 S.C. at 121, 603 S.E.2d at 908; Peek, 367 S.C. at 454-55, 626 S.E.2d at 36. In addition, an injunction against the performance of duties imposed by valid statutes is generally not available and is only properly granted where, in addition to demonstrating irreparable damage and lack of an adequate remedy at law, the party seeking the injunction demonstrates that state officials are acting in an illegal manner. Frady v. Student Loan Servicing Center, 313 S.C. 561, 564, 443 S.E.2d 580, 582 (Ct. App. 1994). The TERC submits that the City cannot establish any of the foregoing requirements for issuance of an

² As the TERC has already noted in its motion to dismiss, this matter is not ripe for review because TERC has not yet made a determination under S.C. Code Ann. §6-4-35(B)(1)(a) with respect to whether the City's expenditure of approximately \$4.6 Million in state accommodations tax funds is compliant with S.C. Code Ann. §§6-4-5, *et seq.* Furthermore, and as is also set forth in its motion to dismiss, TERC submits that because this Court has no authority to issue declaratory judgments, there is a lack of jurisdiction over the subject matter. The within return is submitted on an alternative basis for the Court's consideration should the motion to dismiss be denied.

injunction against TERC in the instant case.³

I. The Petitioner has not alleged that TERC is acting in an illegal manner

In order to be entitled to an injunction against TERC's exercise of its statutory responsibilities under §6-4-35(B)(1)(a), it is incumbent upon the City to establish that TERC is "acting in an illegal manner." *Frady, supra*. The Petition is devoid of any allegation to that effect. Nor can there be any such allegation in light of TERC's clear statutory authority to review expenditures of accommodations tax funds. Having failed to demonstrate an illegal action on the part of the TERC, the City should be denied the requested relief without further analysis by the Court.

II. The Petitioner will suffer no irreparable harm

For many reasons, Petitioner cannot demonstrate any irreparable harm arising out of TERC's future review of the City's 2008-2009 expenditures of accommodations tax funds in accordance with §6-4-35(B)(1)(a). First, Petitioner's attempt to establish irreparable harm founders on the fact that there is no allegation in the Petition, nor an assertion in the Motion or supporting affidavit, to the effect that the City was not aware of the TERC's reading of §6-4-10(4)(b) **before** the City adopted its 2009-2010 budget. *Cf.* Affidavit of Michael Shelton, September 4, 2009, at ¶¶ 5-6. Upon information and belief, the City did not adopt its 2009-2010 budget until well **after** the April 22, 2009 letter of its counsel (Petition Exhibit A) was received by the City. See Affidavit of Lanneau Siegling, ¶7. Thus, even assuming that Petitioner can demonstrate irreparable harm from TERC discharging its statutory duties, which is denied, such

³ It appears from the Motion that the City is attempting to invoke the standard applicable to the issuance of an injunction under the Federal Rules of Civil Procedure which, in addition to a demonstration of irreparable harm and a likelihood of success on the merits, requires a balancing of the equities between the parties and a showing that an injunction would be in the public interest. See *Winter v. Natural Resources Defense Council, Inc.*, 129 S.Ct. 365, 374-76 (2008). In addition to being inapplicable to the instant case, the TERC submits that this more stringent standard clearly cannot be met by the City because, by the very nature of the relief sought, the City seeks to elevate the interests of a municipality over those of the State of South Carolina with respect to the distribution of state accommodations tax funds.

harm would not arise out of TERC's performance of its responsibilities to review the City's 2008-2009 expenditures of accommodations tax revenues, but out of the City's own conduct.⁴ Second, contrary to the position advanced by the City, it is not the impact on the City's 2008-2009 budget which is pertinent. Cf. Motion at ¶1, Shelton Affidavit at ¶7. This is so because any action taken by the TERC in regard to this matter will only bear on the City's 2010-2011 budget because the withholding of funds by the State Treasurer's Office will not take place until such time as TERC makes a certification under §6-4-35(B)(1)(a). See §6-4-35(B)(1)(a) ("[i]f the committee finds and 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 otherwise due the municipality or county"). Such a certification is not likely to occur until after the March 30, 2010, quarterly distribution of accommodations tax revenues is made by STO to the City. See Affidavit of Lanneau H. Siegling, ¶5. Thus, any effect on the City's finances can be addressed in its ensuing budget.⁵ Third, neither the Petition nor the Motion allege that the City will be incapable of recouping withheld distributions in future

⁴ In fact, the City's conduct arguably constitutes "unclean hands" since it appears to have knowingly adopted a 2009-2010 budget which relied upon the use of accommodations tax funds in a manner that (by virtue of Petition Exhibits A and B) it was clearly aware would be questioned by the state authority designated by the General Assembly to review expenditures of such funds. See Affidavit of Lauren Sponseller, ¶7 and Exhibit "B" thereto. For this reason, too, the drastic equitable relief sought by Petitioner should be denied. See Wilson v. Landstrom, 282 S.C. 260, 315 S.E.2d 130 (Ct. App. 1984) (holding that equitable relief may be denied to a litigant that has acted unfairly in a matter that is the subject of the litigation to the prejudice of the other party in the case).

⁵ The Court may take notice that governmental finances, including those of municipalities, are fraught with budgetary issues involving revenue shortfalls which must be addressed as they arise. See S.C. Code Ann. §1-23-330(4), Rules 25, 27, 28 and 68, RPALC, Rule 201, SCRE. By its Petition and Motion, the City effectively seeks a guarantee from this Court that it will not have to address a potential shortfall in anticipated state accommodations tax revenues which will only affect the City's finances on a going forward basis and can be addressed by a variety of means, including the use of other funding sources available to the City, including *ad valorem* taxes (see S.C. Code Ann. §5-7-30), local accommodations taxes (see S.C. Code Ann. §§6-1-500, *et seq.*) and local hospitality taxes (see S.C. Code Ann. §§6-1-700, *et seq.*) to name just three. The Petition and Motion effectively request this Court to insulate a municipality from the vagaries of a single municipal finance stream which, as a matter of law, is subject to review by the State under §6-4-35(B). Quite clearly, this would constitute a "drastic remedy" that caution dictates the Court not grant. Frady, Strategic Resources, supra.

years. Thus, Petitioner has failed to establish that an injunction is reasonably necessary. Peek v. Spartanburg Reg'l Healthcare Sys., supra.⁶

III. An adequate remedy at law exists.

By virtue of §6-4-35(B)(1)(a), the City has an adequate remedy at law in that it may petition this court for a contested case hearing after TERC has made a determination under that subsection. As noted above, this remedy can be exhausted in ample time for the City to reflect its outcome in any budget it adopts and the City has alternative funding sources available to it in the meantime. Thus, an adequate remedy exists and no preliminary injunction is necessary.

IV. Petitioner has no likelihood of success on the merits.

Although the City is not required to demonstrate an absolute right to relief, in order to demonstrate a likelihood of success on the merits it must show that there is a fair question as to the existence of a legal right to relief on the merits of its underlying claim. Peek, supra, citing Williams v. Jones, 92 S.C. 342, 75 S.E. 705 (1912). As a body created by the legislature charged with administering S.C. Code Ann. §§6-4-5 *et seq.*, the reading of §6-4-10(4)(b) by the TERC would be due substantial deference from this Court. Harling v. Board of Commissioners of Police Ins. and Annuity Fund, 205 S.C. 319, 31 S.E.2d 913 (1944) (holding that the construction given a statute by those charged with its execution is entitled to respectful consideration and ought not be overruled without cogent reasons). It is axiomatic that statutes are required to be given their plain and ordinary meaning. Tilley v. Pacesetter Corp., 366 S.C. 361, 585 S.E.2d 292 (2003).

⁶ As previously noted, this Court is not required to balance the equities between the City and TERC under South Carolina law. See n.1, *supra*. However, were the Court to do so, Petitioner would still not be entitled to relief inasmuch as the State of South Carolina would be irreparably harmed because the entity created by it to review expenditures of accommodations tax revenues would be precluded from discharging its duties if an injunction were to issue. As the agency charged by the General Assembly with reviewing expenditures of accommodations taxes by counties and municipalities, the TERC must have unfettered ability to perform its duties in the absence of illegal action on its part. *Frady, supra*.

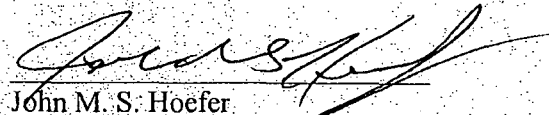
Section 6-4-10(4)(b) authorizes the City to use accommodations tax funds "to provide additional...municipal services including, but not limited to, law enforcement," but limits that authority by providing that such funds "must not be used as an additional source of revenue to provide services normally provided by the...municipality." (Emphasis supplied.) The TERC reads the two sentences comprising this subsection of the statute together to mean that although municipalities like the City may use accommodations tax funds on services which include law enforcement, they may only do so when these services are beyond those normally provided by the City. [Petition Exhibits A and C.] By contrast, the City's interpretation of §6-4-10(4)(b) is that it may expend accommodations tax revenues on municipal services where such services are beyond those which are provided by another municipality with a similar permanent population. [Petition Exhibit B.] The TERC submits that no cogent reason exists to overrule its reading of §6-4-10(4)(b) as plainly requiring the City to demonstrate that its 2008-2009 expenditures of accommodations tax funds on police, public safety and parks do not constitute a use of funds "as an additional source of revenue to provide services normally provided" by the City. Even assuming that this is not the plain meaning of §6-4-10(4)(b), the TERC would nonetheless be entitled to deference under Harling, supra. Cf. Brown v. S.C. Dep't of Health and Environmental Control, 348 S.C. 507, 560 S.E.2d 410 (2002) (holding that the construction given an ambiguous statute by the responsible governing agency is entitled to "the most respectful consideration and will not be overruled absent compelling reasons") and McNickel's, Inc. v. Department of Revenue, 331 S.C. 629, 503 S.E.2d 723 (1998) (holding that an agency may be authorized "to fill up details" not supplied in legislation forming a complete law in itself). To accept the City's interpretation would require the Court to read out of the statute the express limitation that such expenditures be only be made for services provided beyond those

normally provided by the City. This the Court may not do. See Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 520 S.E.2d. 142 (1999). Further, if the City's interpretation is accepted, a municipality with a high concentration of tourism activity could justify spending every penny of the fund created under §6-4-10(4)(b) on municipal services and not tourism-related expenditures. The TERC submits that, in view of the extensive treatment given by the legislature to the question of what constitutes a permissible expenditure of accommodations tax funds in §6-4-10, this interpretation would yield an absurd result which cannot be sustained as a matter of law. Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 529 S.E.2d 280 (2000). The TERC submits that in view of the foregoing, the City cannot demonstrate that a fair question exists with respect to its asserted right to legal relief and, thus, that the City cannot demonstrate a likelihood of success on the merits.

CONCLUSION

For all of the above reasons, this Court should deny Petitioner's request for preliminary relief by way of a temporary injunction.

Respectfully submitted,



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Attorneys for Tourism Expenditure Review
Committee

October 26, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

City of Myrtle Beach,

Petitioner,

v.

Tourism Expenditure Review Committee

Respondent.

Docket No. 09-ALJ-30-0435-IJ

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

AFFIDAVIT OF LANNEAU H. SIEGLING, CHA

Personally appeared before me, the undersigned authority, came Lanneau H. Siegling, CHA, who, being duly sworn, deposes and says as follows:

1. I am a citizen and resident of the State of South Carolina, County of Lexington and am in excess of eighteen years of age.
2. I am, and at all times relevant to the matter described in the Petition and Motion filed by the City of Myrtle Beach in the above-captioned docket was, the duly appointed and serving Vice Chairman of the South Carolina Tourism Expenditure Review Committee.
3. The City of Myrtle Beach, on or about September 30, 2009, filed its annual report with the Tourism Expenditure Review Committee required by Section 6-4-25(D) for its fiscal year beginning July 1, 2008 and ending June 30, 2009, a copy of which is attached to this affidavit as Exhibit "A".

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4. The Tourism Expenditure Review Committee has not commenced its review of the City's 2008-2009 report pursuant to Section 6-4-25(D). However, a meeting of the Tourism Expenditure Review Committee has been set and publicly noticed for November 2, 2009, and the City's 2008-2009 report, along with the reports of all of other counties and municipalities required to report to the committee, is currently scheduled to be reviewed at that meeting.
5. Should the Tourism Expenditure Review Committee determine that an expenditure of accommodations tax funds is questionable, its practice is to communicate that fact (and the basis for the committee's questioning of an expenditure) to the affected county or municipality city in a letter subsequent to the meeting at which an expenditure is reviewed. This letter usually issues no later than four weeks after a Tourism Expenditure Review Committee meeting has been held at which an expenditure is questioned. It is also the practice of the Tourism Expenditure Review Committee to notify the affected county or municipality via such letter that it has an opportunity to provide the committee with any further supporting information regarding the questioned expenditure that it may wish for the committee to consider, as required by S.C. Code Section 6-4-35(B)(1)(a), and to request that any such additional information be provided prior to the next regularly scheduled meeting of the committee, which is normally held in January of each year. If, after reviewing any additional information submitted by a reporting county or municipality, it is determined that an expenditure is non-complaint with Chapter 4 of Title 6 of the South Carolina Code, it is also the practice of the Tourism Expenditure Review Committee to notify the State Treasurer's Office when the committee has made such

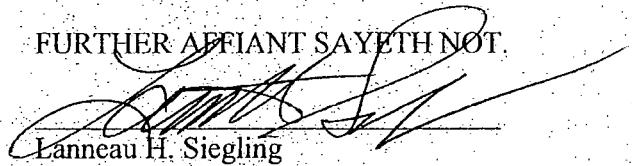


a determination and that the amount of the non-compliant expenditure should therefore be withheld by that office from future disbursements of accommodations tax revenues to the affected county or municipality. Typically, such a notice by the committee to State Treasurer's Office issues on or after April 1 of each year. I have no reason to believe that the Tourism Expenditure Review Committee would not follow the procedure described in this paragraph with respect to the expenditures of accommodations tax funds described in the petition and motion filed by the City of Myrtle Beach.

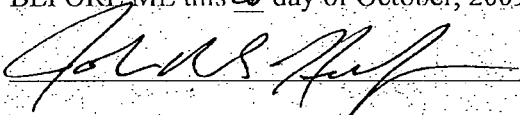
6. If the Tourism Expenditure Review Committee were to certify non-compliance by the City of Myrtle Beach with respect to any of its fiscal year 2008-2009 expenditures of accommodations tax funds, it would not affect the City's current budget because the State Treasurer's Office only withholds from subsequent quarterly distributions of accommodations tax funds on a prospective basis after receipt of a notice to do so from the committee and no such notice would issue with respect to this matter until after April 1, 2010. Because the City's fiscal year ends on June 30, 2010, its current budget would not include any accommodations revenues received on or after that date.
7. Because I am not employed by the City of Myrtle Beach, and because no timely means of obtaining certified true copies of the city's budget ordinances is available, I cannot state based upon personal knowledge the dates upon which the city has or will adopt its budget ordinances. Nonetheless, I have reviewed the City of Myrtle Beach website and note therefrom that the city did not give second and final reading of its 2009-2010 budget ordinance, Ordinance Number 2009-30, until June 9, 2009.

Attached as Exhibit "B" to this affidavit is a copy of Myrtle Beach Ordinance Number 2009-30 I reviewed on the city's website in this regard. If the City does not adopt its 2010-2011 budget until June of 2010, there is no reason of which I am aware that it will not be able to take into account the action of the Tourism Expenditure Review Committee with respect to the City's report of its 2008-2009 expenditures of accommodations tax funds.

FURTHER AFFIANT SAYETH NOT.


Lanneau H. Siegling

SWORN TO AND SUBSCRIBED
BEFORE ME this 26th day of October, 2009.



Notary Public For South Carolina

My Commission Expires: 12/28/16



City of Myrtle Beach
SOUTH CAROLINA

September 30, 2009

Ms. Damita Jeter
Tourism Expenditure Review Committee
P.O. Box 125
Columbia, SC 29214-0120

Re: Accommodations Tax Expenditure Reporting Forms

Dear Ms. Jeter,

Please find enclosed the Accommodations Tax Expenditure Reporting Forms as required by the South Carolina Code of Laws, Title 6, Chapter 4, Section 6-4-25, detailing the expenditures for the fiscal year 2008-2009. Detailed information, as requested, has been included on the forms when available.

If you have any questions with regards to this letter or information attached, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Michael D. Price".

Michael D. Price
Budget & Evaluation Analyst

Side A

1,979,688

Please turn page

I attest this report is a true account of the disbursement of all Accommodations Tax Revenues received during the period indicated.

Please turn page

Signature: Michael J. Duce
Title: Budget Analyst
Date: 9/28/2008

Please turn page

Side B

65% Tourism-Related Expenditures, Special Fund Organizations Making Application to Accommodations Tax Advisory Committee					Amount Requested by Organization	Amount Rec. by Advisory Committee	Amount approved by Local Government	Amount disbursed by Local Government
Report all applications whether they were approved or not	Organization(s)	Cat.	B=Total Budget; N=#of Attendees; T=# of Tourists ***ALL INFORMATION PROVIDED BY APPLICANT***	Project Description				
	Carolina Master Chorale	2		Promotion of the arts through professional performances of choral masterworks in concert; (B) \$124,500 (T) 1,600 total with 25% of attendees tourists (375)	30,000	15,000		
	Art Museum	2		Promotion of the Arts and MB; showcasing regional and national artists; (B) \$592,161; (N) Est 28,000 attendees (T) 17,000 tourists	120,000	100,000		
	First Presbyterian Church	2		Promotion of Professional Orchestra concerts; (B) \$60,750 (N) 4,000 total attendees (T) Approx 50% of audience nonresidents of Myrtle Beach (1,200-1,500)	10,000	10,000		
	Grand Strand YMCA	2		Promotion of Soccer Tournaments; (B) \$168,273 (N) 4,086 (T) 14,301 tourists in attendance	50,000	40,000		
	Waccamaw Arts & Crafts Guild	2		Promotion of the Arts through Arts Shows, Programs & Exhibits; (B) \$47,000 (N) 15,000 attendees (T) 10,000 tourist	36,000	20,000		
	Myrtle Beach Golf Holiday	2		Promotion of Golf Tournament (T) Approx. 3,650 golfers compete & approx. 6,500 tourists in attendance; (B) \$2,034,500	50,000	50,000		
	Long Bay Symphony	2		attendees annually (T) Approx 40% of audience nonresidents of Myrtle Beach	72,500	72,500		
	Beach Ball Classic, Inc.	2		Promotion for Basketball Tournament with live television coverage promoting MB to over 12 million cable households; (N) 30,000 ~ 10 day tournament; 32 teams from 12 States & Canada; (B) \$467,000 (T) 1,750	60,000	40,000		
	Baseball At the Beach Tournament	2		Promotion of 3-high school and college baseball tournaments; (T) approx 6,000; (B) \$115,000	60,000	40,000		
	North South Game Committee	2		Promotion of North South Football Games (high school seniors) with live television coverage (B) \$100,000 (N) 6,500 (T) Approx 4,500	30,000	10,000		
	Childrens Museum of SC	2		Advertising/Marketing for museum and MB; (B) \$481,806; (N) 36,000 (08-09) (T) 18,360 (08-09)	127,384	100,000		
	Horry Cultural Arts & Cultural Events	2		Promotion of Cultural Arts (advertising); (B) \$95,415-- Umbrella Organization promoting arts (does not act as pass-through for accommodations tax granting to other agencies)	9,000	9,000		
	Mingo Bay Classic Baseball Tournament	2		Promotion of baseball tournament; (B) \$88,144 (N) 3,200 (T) 3,200	20,000	10,000		
	Omar Shiners	2		Advertising of 2 professionally judged Shrine BBQ Competition (national & international); (B) \$87,741 (N) 10,000 (T) 9,800	50,000	25,000		
	Myrtle Beach Corporation for the Arts	3		Design & Renovation of facilities for civic and cultural activities to provide for and promote tourism; (B) \$390,000 (T) not yet constructed	100,000			
	Ocean Front Merchants Association	2		Regional and International Promotion of the businesses and events of Downtown Myrtle Beach; (B) \$174,737 (T) New organization, no estimates at this time	85,000	85,000		

1 of 2

Offense-Defense All American Bowl	2	Promote an All-American Bowl by providing competition for top high school football players in the nation; (B) \$329,652 (N) 7,500 (T) 1,057	35,000	10,000	
Triple Crown Sports	2	Promotion of baseball tournaments; (B) \$367,406; (N) 10,800 (T) 10,800	43,000		
City of Myrtle Beach - Beach Renourishment	6	Beach II Beach Renourishment Project in Conjunction with Army Corp. of Engineers (B) \$2,243,000	147,424	147,424	
City of Myrtle Beach - Beach Monitoring	6	Beach Maintenance/Water Quality Monitoring & Posting	62,000	62,000	
City of Myrtle Beach - Convention Center	1	Advertising/Marketing Program thru MB Conv. Ctr.; (B) \$1,251,990	753,733	753,733	
		Support of operating expenses for services provided above and beyond permanent population throughout the year, to include additional Police, Fire and Parks personnel (B) General Fund \$51.7 Million (T) MB Chamber estimates 13.7 million visitors annually			
City of Myrtle Beach - General Fund	4		3,977,794	3,065,294	4,664,951
		Totals:	5,928,635	4,664,951	4,664,951

*Project Name/Description should address the specific use of requested funds. A summary of the organization's request may also be attached.

**Amount approved must be based exclusively on the estimated percentage of costs directly attributed to attracting or serving tourists.

Return to:	Project Categories - All must attract or provide for tourists
A-Tax Expenditure Review Committee	1- Destination advertising/promotion
P.O. Box 125	2- Tourism - Related Events
Columbia, SC 29214-0120	3- Tourism - Related Facilities
	4- Tourism - Related Public Services
	5- Tourism Public Transportation
	6- Waterfront Erosion/Control/Repair
	7- Operation of Visitor Information Centers

LOCAL ACCOMMODATIONS TAX ADVISORY COMMITTEE MEMBERSHIP

Pursuant to Section 6-4-25, Code of Laws of South Carolina, there shall be a local advisory committee consisting of seven members. The majority of these members shall be selected from the hospitality industry, of which at least two must be the lodging industry, where applicable, and one member shall represent the cultural organizations. Please place an asterisk (*) to indicate the Chairperson.

List below the four designated hospitality industry representatives, two of which must be from the lodging sector of the hospitality industry:

- 1- Mary Frances Tall - Owner Sea Dip Motel, 6707 Procher Drive, 68th Ave. North - MBSC 29572
(Name) (Business Name & Address)
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(Name) (Business Name & Address)

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Please return to Tourism Expenditure Review Committee

Attn: Damita Jeter

PO Box 125

Columbia, SC 29214-0120

No later than October 15, 2008

Submitted by:

Michael D. Price

Budget Analyst

mprice@cityofmyrtlebeach.com

Phone:

(843) 918-1135

Date:

9/30/09

Name of County/Municipal Government:

City of Myrtle Beach

LOCAL ACCOMMODATIONS TAX ADVISORY COMMITTEE MEMBERSHIP (CURRENT)

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No later than October 15, 2008.

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Budget Analyst		
mprice@cityofmyrtlebeach.com		
Name of County/Municipal Government:		
City of Myrtle Beach		

addo.unj.osseid

Signature:

Title: Budget Analyst

Date: 9/28/2008

Side B

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PO Box 125

Columbia, SC 29214-0120

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- 4- Tourism - Related Public Services

- 5- Tourism Public Transportation
- 6- Waterfront Erosion/Control/Repair
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NOTE: Items with no recommendations or approvals that have expenditures were approved in the prior fiscal year. Approved unpaid awards will be disbursed in the next fiscal year, providing that all requirements are met by the recipient agencies.
All agencies listed above claimed non-profit (501)(3)(c) status.

LOCAL ACCOMMODATIONS TAX ADVISORY COMMITTEE MEMBERSHIP (CURRENT)

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Phone:

(843) 918-1135

Date:

9/30/09

Name of County/Municipal Government:

City of Myrtle Beach

LOCAL ACCOMMODATIONS TAX ADVISORY COMMITTEE MEMBERSHIP 2008-2009

Pursuant to Section 6-4-25, Code of Laws of South Carolina, there shall be a local advisory committee consisting of seven members. The majority of these members shall be selected from the hospitality industry, of which at least two must be the lodging industry, where applicable, and one member shall represent the cultural organizations. Please place an asterisk (*) to indicate the Chairperson.

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Budget Analyst		
mprice@cityofmyrtlebeach.com		
Name of County/Municipal Government:		
City of Myrtle Beach		

ORDINANCE NO. 2009-30

1
2 STATE OF SOUTH CAROLINA)
3 COUNTY OF HORRY)
4 CITY OF MYRTLE BEACH)
5
6
7
8

9
10 AN ORDINANCE TO LEVY TAXES AND
11 ESTABLISH A MUNICIPAL BUDGET FOR
12 THE FISCAL YEAR BEGINNING JULY 1,
13 2009, AND ENDING JUNE 30, 2010, AND A
14 CAPITAL IMPROVEMENTS PROGRAM
15 FOR FISCAL YEARS 2010-2014.
16

17 WHEREAS, Section 5-13-30(3) of the Code of Laws of South Carolina requires that a municipal council shall act
18 by ordinance to adopt budgets and to levy taxes pursuant to public notice;

19 NOW, THEREFORE, BE IT ORDAINED by the governing body of the City of Myrtle Beach, in Council duly
20 assembled, and by the authority of the same, that taxes are hereby levied, and revenue estimates and appropriations
21 are hereby established as set forth in the following Municipal Budget Ordinance for the Fiscal Year beginning July
22 1, 2009 and ending June 30, 2010 (the "Ordinance").

23 Sec. 1. Levy of taxes.

24 For the support of general governmental functions of the City, an *ad valorem* tax to apply for the period
25 July 1, 2009 through June 30, 2010, both inclusive, for the sums and in the manner set forth as follows, is
26 and shall be levied, collected, and paid into the treasury of the City of Myrtle Beach, South Carolina, for
27 the use and service thereof.
28

Tax Levy and Distribution (in mills)

Operations	
General Fund	53.7
Convention Center Fund	3.4
Total Levy for Operations	57.1
Debt Service	7.3
Total Tax Levy (in mills)	64.4

29 Such tax is hereby levied upon the value of all real and personal property within the corporate limits of the
30 City, except such as is exempt from taxation under the Constitution and Laws of the State of South
31 Carolina, as such property is assessed for taxation for County and State purposes, provided however, that a
32 credit in the amount of 1.5 mills shall be applied against the operating millage levy for the 2009 real
33 property tax year and for all other *ad valorem* taxes levied pursuant to this Ordinance.
34

35 Sec. 2. Estimates of revenues and other financing sources, and establishment of appropriations.

- 36 A. Moneys from revenues and other financing sources are hereby estimated to be available to finance
37 appropriations of the 2009-10 fiscal year in the manner and the amounts as set forth in Exhibit A, which is
38 attached hereto and made a part hereof.
- 39 B. The table shown in Exhibit A is hereby amended to account for the effect of the tax credit of 1.5 mills
40 referenced in Section 1 of this Ordinance. To wit, Governmental Fund Revenues shown in Exhibit A shall
41 be adjusted by applying a contra-revenue in the Property Tax section of the General Fund in the amount of
42 \$546,000 and by reducing appropriations by an identical amount in the Tourism Development Account of
43 the General Fund.
- 44 C. The table shown in Exhibit A is further amended with respect to expenditures in the Local
45 Accommodations Tax Fund to provide that funding heretofore programmed for payment to the Chamber of
46 Commerce for out-of-market advertising is hereby reprogrammed to be used to pay project costs, debt
47 issuance costs, interest expense and other costs associated with the Boardwalk Project in the Downtown
48 Redevelopment District.
- 49 D. The table shown in Exhibit A is further amended with respect to (1) estimated revenues from the \$20
50 County Resident Library Card Fee added to the Parks and Recreation Fee Schedule in Exhibit D attached
51 hereto and (2) expenditures in the Chapin Library Account in order to restore \$70,000 previously cut due to
52 a reduction in funding from Horry County.
53

B. Exceptions for Certain Funds.

Provisions of Existing Statutes, Ordinances, Contracts and Covenants. Where existing Statutes, Ordinances, Contracts and Covenants govern the use of funds according to legislatively or contractually determined formulae, the estimates in this ordinance are illustrative rather than controlling and appropriations of those funds will adjust according to the applicable provisions of such Statutes, Ordinances, Contracts and Covenants.

Capital Project Appropriations. Appropriations in the General Capital Projects Fund shall not lapse at June 30, 2010, but each project appropriation shall remain in force for the life of the project and shall be closed out upon completion of the project.

Appropriations Established by Other Ordinances. Appropriations for capital investment or bond issuance costs or for the payment of annual installments of capitalized interest according to a predetermined schedule are made in the related Bond Ordinances. Nothing in this ordinance shall modify or amend the terms of any Bond Ordinance.

Sec. 3. Affirmation/amendment of various schedules of fees and charges.

- A. **Waterworks and Sewer System fees and charges.** Pursuant to provisions of the Code of Ordinances of the City of Myrtle Beach, Sec. 21-9(a), the schedule of Water and Sewer System Fees and Charges is hereby amended to read in its entirety according to the schedule attached hereto as Exhibit B.
- B. **Solid Waste Fees and Charges.** The schedule of Solid Waste Fees and Charges is hereby amended to read in its entirety as according to the schedule attached hereto as Exhibit C.
- C. **Other Fees and Charges.** Various other fees and charges set by ordinance are hereby affirmed or amended to read in their entirety according to the schedules appearing in Exhibits D through H, attached hereto.

Sec. 4. FY2008-09 Encumbrances and Remaining Grant Authorizations Reappropriated; Recording of Reservations for Amounts Appropriated from Fund Balance.

- A. Encumbrances in each fund at June 30, 2009, representing commitments against 2008-09 appropriations outstanding as of that date, are hereby re-appropriated and the appropriations shall be distributed to the budgetary accounts under which the expenditures will be charged during the 2009-10 budget year as the prior commitments are satisfied, provided that such encumbrances, when taken together with 2008-09 expenditures, do not cause any fund to exceed its budgetary authorization for the year ended June 30, 2009.
- B. For each fund in which a re-appropriation occurs under Sec. 5.A. above, a "Reserve for Encumbrances" in the amount of funds appropriated hereunder shall be established in that fund.
- C. For each fund in which the balanced budget for 2009-10 includes the use of fund balance, a "Reserve for Appropriations" in the amount of the Uses of Fund Balance identified in Sec. 2.D., above, shall be established in that fund.
- D. Appropriations for grants, the authorization for which extends beyond the end of the fiscal year, shall not lapse at the end of the fiscal year. Any such grant authorizations remaining at the end of a fiscal year shall be re-appropriated pursuant to the conditions of the respective grant agreements.
- E. Prior appropriations for active projects resulting in reservations of fund balance shall be identified by appropriate titles in the Capital Project Fund's financial statements.
- F. Amounts of Governmental Fund balances designated for debt service expenditures during the coming year per the terms of Bond Ordinances, Indentures or local policy are hereby established as Designations of Fund Balances.

1 **Sec. 5. Business Policies, Goals and Objectives, Capital Improvement and Debt Management Plans:**
2 The business policies, goals and objectives, capital improvement and debt management plans of
3 the 2009-2010 budget are hereby adopted by reference.
4

5 **Sec. 6. Certain supplemental appropriations.** Any funds received during the fiscal year as a result of
6 new grants awarded to the City and any increases in the appropriation of fund balances for grants
7 from the City to outside agencies or appropriations of fund balance for Capital Projects approved
8 by motion or resolution of City Council shall increase the original budget and shall not require a
9 supplemental budget ordinance.
10

11 **Sec. 7. Administration of the budget.** The City Manager or his designee shall administer the budget and
12 may authorize the transfer of appropriations within the allotments heretofore established as
13 necessary to achieve the goals of the budget provided, however, that no such transfers shall be
14 used to increase the total appropriation within any fund.
15

16 **Sec. 8. Validity of the budget ordinance:** If, for any reason, any sentence, clause, or provision of this
17 ordinance shall be declared invalid, such declaration shall not affect the remaining provisions
18 thereof.
19

20 **Sec. 9. Conflicts with preceding ordinances.** Except as otherwise provided herein, in any conflicts
21 arising between this and other ordinances, this Ordinance shall prevail with respect to the
22 conflicting sections.
23
24
25
26
27

Mayor

28
29 **Attest:**

30
31 _____
32 **City Clerk**
33

34 **First Reading: May 12, 2009**

35 **Second Reading: June 9, 2009**
36
37
38
39

Exhibit A Table of Estimated Revenues, Appropriations and Projected Changes in Fund Balances/Net Assets

	Governmental Operating Budget	Enterprise Operating Budget	Total Operating Budget	General Capital Improvements Budget	Total Manager's Recommended Budget
<u>Revenues and Other Financing Sources</u>					
Property Taxes	30,390,000	-	30,390,000	484,500	30,874,500
Licenses and Permits	34,713,500	-	34,713,500	100,000	34,813,500
Fines and Forfeitures	1,514,000	-	1,514,000	-	1,514,000
Intergovernmental Revenue	9,635,950	-	9,635,950	706,000	10,341,950
Charges for Current Services	6,961,393	27,748,000	34,709,393	-	34,709,393
Miscellaneous Revenue	2,619,450	1,316,850	3,936,300	215,000	4,151,300
Bond Proceeds	-	-	-	-	-
Transfers from Other Funds	17,696,647	1,200,000	18,896,647	-	18,896,647
Net Use of Fund Balances	-	6,124,263	6,124,263	659,278	6,783,541
	<u>103,530,940</u>	<u>35,389,113</u>	<u>138,920,053</u>	<u>2,164,778</u>	<u>142,084,831</u>
<u>Expenditures/Expenses</u>					
General Government	12,288,260	-	12,288,260	703,485	12,991,745
Public Safety	32,806,092	-	32,806,092	-	32,806,092
Transportation, Community and Economic Development	2,776,943	-	2,776,943	-	2,776,943

Culture and Recreation	6,453,693	-	6,453,693	-	6,453,693
Public Works	15,343,106	2,634,014	17,977,120	-	17,977,120
Capital Improvements & Acquisitions	1,497,335	31,754,754	33,252,089	-	33,252,089
Principal Retirement	66,034	-	66,034	1,269,900	1,335,934
Interest and Fiscal Charges	4,770,389	-	4,770,389	-	4,770,389
Bond Issuance Costs	8,348,373	820,780	9,169,153	-	9,169,153
Transfers to Other Funds	-	31,265	31,265	25,000	56,265
Increase in Fund Net Assets	17,581,954	1,148,300	18,730,254	166,393	18,896,647
	<u>1,598,761</u>	-	<u>1,598,761</u>	-	<u>1,598,761</u>
	103,530,940	36,389,113	139,920,053	2,164,778	142,084,831
<u>Add items previously appropriated and non-expense items</u>					
Interest and fiscal charges on Series					
2006 Tax Increment Bonds (Mkt Cmn)	-	-	-	-	-
Downtown Redevelopment Projects	-	-	-	-	-
Enterprise Capital Projects	-	-	-	4,800,000	4,800,000
<u>Less Interfund Transfers</u>	<u>(17,581,954)</u>	<u>(1,148,300)</u>	<u>(18,730,254)</u>	<u>(166,393)</u>	<u>(18,896,647)</u>
Grand Total FY2010 Recommended Budget	85,948,986	35,240,813	121,189,799	6,798,385	127,988,184

Exhibit B

Exhibit B. Schedule of Water and Sewer User Charges

Water

Base Charge

<u>Meter Size</u>	<u>Inside City</u>	<u>Outside City</u>
3/4" & 5/8"	2.43	4.86
1"	4.05	8.10
1.5"	8.10	16.20
2"	12.96	25.92
3"	28.35	56.70
4"	40.50	81.00
6"	81.00	162.00

Tiered Volume Charge (per 1,000 gallons)

Tier 1—0-4	1.35	2.70
Tier 2—5-30	2.56	5.12
Tier 3—> 30 ¹	2.89	5.78

Sewer

Base Charge

<u>Meter Size</u>	<u>Inside City</u>	<u>Outside City</u>
3/4" & 5/8"	2.60	5.20
1"	4.34	8.68
1.5"	8.67	17.34
2"	13.88	27.76
3"	30.37	60.74
4"	43.38	86.76
6"	86.76	173.52

Volume Charge

(per 1,000 gal)	2.53	5.06

- 1
- 2
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- 7

¹ All consumption registered on flow meters (cooling towers) and irrigation meters is assessed at the Tier 3 rate beginning with the first thousand gallons of consumption registered.

1 **Exhibit C. Schedule of Solid Waste Fees and Charges**

2 For purposes of this section, "standard residential service" shall mean (i) once per week curbside
3 collection of general waste, once per week recycling service, once per week yard waste collection,
4 and bulky trash service for a single service address with one or two roll-out containers or (ii) once
5 per week service to each residential service address utilizing a shared 8 cubic yard container. For
6 customers with more than two containers, each additional container is serviced at an additional
7 charge. "8 cubic yard Container Service" shall mean one instance of collecting and removing the
8 contents of one solid waste container with a rated capacity of eight cubic yards; "call-back
9 service" refers to each incidence of unscheduled service above and beyond the rate for which the
10 customer has subscribed; "compactor service" shall mean one instance of collecting and removing
11 the contents of one compaction unit. "Transfer station customers" are (1) private haulers, (2)
12 private individuals or firms doing business as landscapers, or (3) other individuals or firms not
13 falling into a previously defined class, which customers collect waste and deliver it to the transfer
14 station to be transferred to the landfill by city forces.
15

	<u>Collection</u>	<u>Landfill Disposal</u>
<u>Standard Residential Service:</u>		
One or two containers	\$ 15.25 per month	\$ 4.25 per month
Each Additional Container	\$ 7.90 per month, per container	Included in rate
<u>Commercial Services:</u>		
8 cubic yard Container Service:		
Once per week schedule	\$ 140.00 per month	Included in rate
All other service schedules	\$ 40.00 per service	Included in rate
Call-Back Service (8 cu. yd. Container)	\$ 60.00 per service	Included in rate
Compactor Service	\$ 125.00 per service	Contemporary landfill tipping rate
<u>Transfer Station Customers:</u>		
Transfer Station Processing Fees	\$ 22.00 per ton	Contemporary landfill tipping rate
Landscaping Waste Fees	\$ 22.00 per ton	Contemporary landfill tipping rate"

1 **Exhibit D. Schedule of Parks and Recreation Fees and Charges**

2 For the purposes of this section "youth" shall mean any person three (3) to twelve (12) years of age;
 3 "teen" shall mean any person thirteen (13) to seventeen (17) years of age; "adult" shall mean any
 4 person eighteen (18) through fifty-four (54) years of age; "senior" shall mean any person fifty-five
 5 (55) years of age or older; "civic" shall mean any of the following non-profit organizations or persons:

- 6 a) Government agency
 7 b) Civic Organization
 8 c) Church Organization
 9 d) Charitable Organization
 10 e) Individual requesting the use of a facility for a 'not for profit' function.

13 Recreation Division Uniform Schedule of Fees and Charges

15 Fitness Membership Fees

16 Prices for the new combined Fitness Fees are taken directly from the current ordinance. Non-city fees are
 17 computed by multiplying the city fee by 167% and rounding up to the nearest \$5.00 increment. Fitness
 18 classes are not included in membership fees.

20 City Resident Fees :

Guests under 14 are not permitted in the weight room

21 Daily Use Fitness Fees

22 Youth	3-12	\$1.00
23 Teen	13-17	\$1.00
24 Adult	18-54	\$5.00
25 Senior	55 and up	\$3.00

27 Monthly Membership Fitness Fees

28 Teen	13-17	\$20.00
29 Adult	18-54	\$30.00
30 Senior	55 and up	\$25.00
31 Add a Family Member	\$10.00	\$15.00

32 Family members cannot be added to Teen memberships

33 Family members added to senior memberships must be seniors

35 Annual Membership Fitness Fees

36 Teen	13-17	\$100.00
37 Adult	18-54	\$175.00
38 Senior	55 and up	\$125.00
39 Add a Family Member	\$25.00	\$ 30.00

40 Family members cannot be added to Teen memberships

41 Family members added to senior memberships must be seniors

42 Non-City Resident Fees

43 Daily Use Fitness Fees

44 Youth	3-12	\$1.00
45 Teen	13-17	\$1.00
46 Adult	18-54	\$5.00
47 Senior	55 and up	\$3.00

49 Monthly Membership Fitness Fees

50 Teen	13-17	\$35.00
51 Adult	18-54	\$55.00
52 Senior	55 and up	\$45.00
53 Add a Family Member	\$15.00	\$30.00

Exhibit B

- 1 Family members cannot be added to Teen memberships
- 2 Family members added to senior memberships must be seniors
- 3

4 Annual Membership Fitness Fees		
5 Teen	13-17	\$170.00
6 Adult	18-54	\$295.00
7 Senior	55 and up	\$210.00
8 Add a Family Member	\$45.00	\$55.00

- 9 Family members cannot be added to Teen memberships
- 10 Family members added to senior memberships must be seniors
- 11
- 12

13 Facility Fees

14 Rental Fees

15 Rates for facility rental to City residents and businesses are as follows. Non-resident persons or businesses
16 shall be charged at 167% of the expressed resident rates. Non-city fees shall be computed by multiplying
17 the city fee by 167% and rounding up to the nearest \$5.00 increment. Rental fees cover the exclusive use of
18 facilities only. Additional fees for services in connection with use of the facilities may be charged.

21 Staffing Fees & Labor Costs

22 Additional fees for services in connection with the use of the facilities are as follows and rates are the same
23 for civic or non-civic users. After hours gymnasium rentals require a minimum of 3 hours rental and a
24 minimum of 2 staff members at overtime rates. Staffing fees will be charged for facility rentals during non-
25 business hours to include overtime and/or holiday rates.

27 Basic Labor during regular business hours	\$20.00/hour/person
28 Overtime Rate during non business hours	\$30.00/hour/person
29 Holiday Rate (On a City Holiday if staff is available)	\$50.00/hour/person
30 Cleanup	\$200.00-\$1,200.00/site/use depending on the 31 event and the amount of clean-up required
32 Materials	provided at cost

33
34 Clients may reserve facilities no more than 730 days in advance of their events by entering into a contract
35 with City. The contract may provide for a deposit to secure the reservation in an amount not to exceed
36 50.0% of the contract rental price. The reservation may be cancelled, with a full refund of the deposit, no
37 fewer than 90 days prior to the event. In the event of a cancellation fewer than 90 days prior to the event,
38 the client shall forfeit the deposit in its entirety. Should the client cancel the event fewer than ninety days
39 in advance for two consecutive years, he or she shall forfeit the right to the event date(s) and the date(s)
40 shall be returned to a list of available dates to be offered subject to lottery drawing.

Pool Rental*

City will furnish up to 3 lifeguards for
rentals. Additional lifeguards may be
required depending on type of function and
number of participants. See staffing fees
above for additional cost of lifeguards.

After hour pool rentals
require a minimum of 3 hours
rental and a minimum of 3
staff members (2 lifeguards &
1 center staff) at overtime
rates.

Entire Pool (for all pools)	\$120.00/hour
Lane Rentals (at all pools)	\$ 15.00/lane/hour
Shallow End Only (at Pepper Geddings)	\$ 30.00/hour

Recreation Facility Rental*

	Civic	Non-civic
Meeting Room	\$20.00/hour	\$35.00/hour
Small Gymnasium	\$65.00/hour	\$90.00/hour

Exhibit B

	\$ 250.00/day	\$ 360.00/day
Large Gymnasium	\$ 75.00/hour	\$ 120.00/hour
	\$ 300.00/day	\$ 400.00/day
Ballroom/Banquet Hall	\$ 30.00/hour	\$65.00/hour

Table & Chair Set Up Fee	\$25.00	\$25.00

Renters may request all available tables and chairs in the facility for their use. If additional tables and chairs are needed, they must be provided by the renter. Setup and delivery must be coordinated with the City.

See Staffing Fees and Labor Costs above for rentals that occur during non business hours.

	<u>Civic</u>	<u>Non-Civic</u>
Security Deposit	\$200.00	\$200.00

Required when food and beverages are served. Security deposit may be returned after assessment by City provided that rooms are returned to the same condition as before rental.

Athletic Fields/Parks*		
Ballfield Rental—single	\$ 30.00/hour	\$ 30.00/hour
Ballfield Rental—Tournament/League Rate (Covers initial daily preparation, use of any existing press box and lights as needed to maintain the safety of players and spectators. The City retains the right to assess a fee to recover the cost of lighting used during other periods of time.) The rate will escalate from \$125.00 to \$150.00 beginning July 1, 2010.	\$125.00/field or court/day	\$125.00/field or court/day

Doug Shaw Memorial Stadium	\$1000.00/day	\$ 3,125.00/day
Additional Field Lines	\$ 540.00	
Video Display	\$ 100.00/day	
Video Display Operator	\$ 50.00/game or	\$20/hr/non game function
Scorekeeper	\$ 50.00/game or	\$20/hr/non game function
Clean-Up Fee	\$ 500.00/function	

(Clean up fee to be discussed with applicant and cleaning deposit may be required)

This facility must be staffed at all times, with a minimum of 2 staff members. Use of track areas or size of event may require additional staffing. See Staffing Fees and Labor Costs above for rentals.

	<u>Civic</u>	<u>Non-Civic</u>
All City Parks except Grand Park	\$ 125.00/day	\$ 500.00/ day
Grand Park		
Park Area surrounding Lake (excluding Ballfields and Picnic Shelters)	\$ 500.00/ day	\$ 2,000.00/ day

Exhibit B

<i>Esplanade/Dock</i>	\$ 125.00/ day	\$ 500.00/ day
<i>Lake Front Area</i>	\$ 375.00/ day	\$ 1,500.00/ day
<i>Move in / Move out days, per day</i>	50 % of one days rental	

Any event of more than 250 people, and lasting more than 3 hours, will be required to provide additional portable toilets, at the expense of the Facility Use Permit holder.

Post event clean up of the park is the responsibility Facility Use Permit holder. Any event of more than 250 people will be required to pay a clean up fee. (See labor rates, 2-person minimum.)

<i>Picnic Shelter (includes cleanup)</i>	\$ \$50.00/day	\$ \$50.00/day

Concessions

The City of Myrtle Beach retains all concession rights for all city facilities.

Preparation of Facility (in excess of initial preparation for natural grass turf or if additional lines are required to be painted on synthetic turf for event)

<i>Softball, Baseball Single and/or Seasonal</i>	\$ 25.00/field/day	\$ 25.00/field/day
<i>Football, Soccer, Lacrosse or Rugby</i>	\$250.00/field/day	\$250.00/field/day

Facility Lighting (during periods of broad daylight)

<i>Youth Fields (baseball, softball) and Courts</i>	\$ 5.00/hour	\$ 5.00/hour
<i>Adult Fields (softball)</i>	\$ 9.00/hour	\$ 9.00/hour
<i>Football, Soccer fields, Doug Shaw Memorial Stadium</i>	\$ 12.00/hour	\$ 12.00/hour

Recreation Activities and Instructional Programs

For recreation activities, fitness classes, and instructional programs offered by the City on a fee basis, non-residents shall be charged at a rate of 167% of the rate established for City residents. Non-city fees shall be computed by multiplying the city fee by 167% and rounding up to the nearest \$5.00 increment.

Youth Sports Fees

For each sport

City resident	\$15.00
Non-resident	\$75.00

Greens Fees—Whispering Pines Golf Course

Maximum Resident Fee, per round including cart	35.00
Non-resident, per round including cart	Market rates
Other Golf Course fees and charges	Market rates

Coastal Federal Field.

COASTAL FEDERAL FIELD
RENTAL FEES SCHEDULE

CATEGORY 1

COMMERCIAL USE- defined as any event staged by a group or individual for profit or business purposes. (i.e., entertainment shows, concerts, corporate events, trade shows, fantasy camps, company picnics, etc.)

CATEGORY 2

NON PROFIT USE- Defined as Myrtle Beach, Horry County, State, or Federal non-profit organizations staging an event with the purpose of generating revenue for charitable organizations. Must be registered with the State as a non-profit organization. A minimum of 40 % of the gross revenues must be contributed to the listed charitable organization.

CATEGORY 3

GOVERNMENT AND PUBLIC SCHOOL USE Defined as use by any local government in Horry County, use by Horry County Government, or use by Horry County Public Schools for the purpose of providing recreational opportunities, public service opportunities or educational opportunities to their citizens.

AREA	RENTAL FEE	CATEGORY 1	CATEGORY 2	CATEGORY 3
Entire stadium	per day	\$4000.00	\$2400.00	\$800.00
	per hour*	\$800.00	\$480.00	\$240.00
Picnic area	per day	\$600.00	\$360.00	\$200.00
	per hour*	\$120.00	\$72.00	\$40.00
Concourse	per day	\$600.00	\$360.00	\$200.00
	per hour *	\$120.00	\$72.00	\$40.00
Playing field	per day	\$1,000.00	\$600.00	\$300.00
	per hour*	\$200.00	\$120.00	\$60.00
Parking lot	per day	\$1200.00	\$720.00	\$360.00
	per hour*	\$240.00	\$144.00	\$72.00

Parking lot rates are for exclusive use of the paved area only and do not include any access to the stadium.

* Three hour minimum rental on all areas. Must include set up and tear down time.

ADDITIONAL CHARGES

Stadium Head Groundskeeper	\$25 per hour (required for all events utilizing the playing field)
Grounds Crewman	\$15 per hour each (required for baseball events)
Cleaning Fees	\$100 - \$1200 per use depending on event based on \$15.00 per hour for supervisor and \$12.00 per hour for each laborer.
Field lights*	\$60 per hour (included in full day rentals)*
Video Board Operator	\$50.00 per game or \$20.00 per hour for non game functions
PA System Operator	\$50.00 per game or \$20.00 per hour for non game functions
Scoreboard operator	\$50.00 per game or \$20.00 per hour for non game functions
Sound System Operator	\$50.00 per game or \$20.00 per hour for non game functions

Exhibit B

1	Scorekeeper	\$10 per hour
2	Move in / Move out days	50 % of one day's rental
3	Programs and Novelties Sales	\$300 vendor fee
4	Stadium/Field Damages	Lessee must pay 100% of repair costs.
5	8 Foot Folding Table	\$9 per day
6	Folding Chair	\$1.25 per day
7	Security Officer	\$15 per hour
8	Usher/Ticket Taker/Parking Attendant	\$8.50 per hour \$9.25 per hour
9	Geotextile fabric installation	\$0.325 per square foot (required for all events utilizing the playing field)
10		
11	Holiday Rates – Field Maintenance Crew	\$75.00/hour/person (minimum of 2 staff required)
12	Holiday Rates – Scoreboard & Operator	\$75.00/game/person (minimum of 2 staff required)
13		
14	Train Station Fees and Charges:	
15	City Resident	\$30.00/hour
16	Non-Resident	\$55.00/hour
17	Staffing Charge for events during non-business hours	\$30.00 per hour
18	Holiday Staffing Rate (if staff is available)	\$50.00/hour
19	Table/Chair Set-up Fee	\$25.00
20	(12 tables and 50 chairs are available as part of the rental. If additional tables and chairs are needed, they must be provided by the renter. Setup and delivery must be coordinated with the Facility Attendant.)	
21		
22	Security Deposit	\$200.00
23	Security deposit may be returned after assessment by City provided that Train Depot is returned to the same condition as before rental.	
24		
25		
26		
27	Library Cards. The current schedule of fees and charges for Library Cards is hereby amended to read in its entirety as follows:	
28		
29	For the purposes of this schedule, the following definitions shall apply:	
30	"City Resident" shall mean the owner of record of property registered in the City of Myrtle Beach for purposes of taxation or any other person residing permanently in the City regardless of ownership of taxable property.	
31		
32		
33	"County Resident" shall mean the owner of record of property registered in Horry County for purposes of taxation or any person residing permanently in the County regardless of ownership of taxable property.	
34		
35		
36	"Non-resident" shall mean any person who does not qualify as either a City Resident or a County Resident.	
37		
38	"Family member" shall mean any person related by blood, marriage, or other legal means to the primary cardholder.	
39		
40		
41	<u>Class</u>	<u>Annual Fee</u>
42		
43	City Resident	No charge
44	Horry County Resident	
45	Primary Card	\$20.00
46	Additional Cards for other family members	No charge
47	Non-resident 90-Day Card	
48	Primary Card	\$ 8.00
49	Additional cards for other family member(s)	\$ 2.00 per card
50	Non-resident annual card	
51	Primary Card	\$20.00
52	Additional cards for other family member(s)	\$ 8.00 per card"
53		

Exhibit E. Myrtle Beach Convention Center Fees and Charges

Convention Center Exhibition, Ballroom and Meeting Room maximum rates

These maximum rates cover events being planned as far as ten years into the future. This structure allows the Convention Center marketing staff the flexibility to propose on conventions being planned in the intermediate and more distant future without underselling the facility vis-à-vis its market. Actual rates for any given time are subject to negotiation between the respective event planners and the Convention Center marketing staff.

Space	Maximum Rate
Exhibit Hall ABC (100,800 sq. ft.)	\$ 12,000
Exhibit Hall A (36,000 sq. ft.)	5,400
Exhibit Hall B (28,800 sq. ft.)	4,400
Exhibit Hall C (36,000 sq. ft.)	5,400
Total of three halls if rented separately	15,200
Meeting Rooms	300
Ballroom	\$ 7,000
Other Convention Center services and Charges	Market Rates

Exhibit F. Schedule of Building Permit Charges

(a) PERMIT FEES:(i) Single-family construction; alterations of any structure, single-family or other:

<u>Total Valuation</u>	<u>Fee</u>
\$5,000 and less	\$50.00
\$5,000 to \$25,000	\$50.00 for the first \$5,000 plus \$5.00 for each \$1,000, or fraction thereof, over \$5,000.
\$25,000 to \$150,000	\$175.00 for the first \$25,000 plus \$4.75 for each \$1,000, or fraction thereof, over \$25,000.
\$150,000 to \$250,000	\$769.00 for the first \$150,000 plus \$4.50 for each \$1,000, or fraction thereof, over \$150,000.
\$250,000 to \$750,000	\$1,244.00 for the first \$250,000 plus \$4.25 for each \$1,000, or fraction thereof, over \$250,000.
\$750,000 to \$5,000,000	\$3,619.00 for the first \$750,000 plus \$4.00 for each \$1,000, or fraction thereof, over \$750,000.
Over \$5,000,000	\$23,806.00 for the first \$5,000,000 plus \$3.00 for each \$1,000, or fraction thereof, over \$5,000,000.

(ii) All other permits for new construction:

Permit fees	\$0.30 per square foot

(b) MANUFACTURED HOME PERMIT FEES

Base	\$35.00

(c) TRADE PERMIT FEES

Trade permits are required in addition to the permit fees of (a) & (b) herein above.

MECHANICAL PERMIT

\$2,000 and less	\$35.00
Over \$2,000	\$35.00 plus \$2.00 for each \$1000, or fraction thereof, over \$2,000.

PLUMBING PERMIT

Base Fee	\$25.00
Per Fixture	\$2.50
Sewer	\$5.00
Vacuum Breaker	\$2.50
Grease Trap	\$5.00

GAS PERMIT

Base	\$25.00
Per Appliance	\$2.50

ELECTRICAL PERMIT

Base	\$25.00
Temporary Service Pole	\$10.00
Residential Service	\$10.00
Commercial Service	\$25.00
Each Sub-panel	\$10.00
Per 110-volt outlet	\$0.20
Per 220/440-volt outlet	\$2.00

(d) MOVING OF BUILDINGS OR STRUCTURES:

For the moving of any building or structure, the fee shall be One Hundred Fifty Dollars (\$150.00).

(d) DEMOLITION OF BUILDINGS OR STRUCTURES:

For the demolition of any building or structure, the fee shall be One Hundred Fifty Dollars (\$150.00).

(e) RE-INSPECTION FEES:

All re-inspection fees will be One Hundred Dollars (\$100.00), which shall be paid before the re-inspection is made.

(f) PENALTIES

Where work for which a permit is required by this code is started or proceeded prior to obtaining said permit, the fees herein specified shall be doubled; but the payment of such double fee shall not relieve any persons from fully complying with the requirements of this code in the execution of the work nor from any other prescribed penalties.

(g) PLAN-CHECKING FEES

When a plan is required to be submitted a plan-checking fee shall be paid at the time of submitting plans and specifications for checking. The plan-checking fee shall be equal to one-half of the building permit fee as determined in accordance with sub-section (a) herein above. Such plan-checking fee is in addition to the building permit fee.

(h) SIGN PERMIT FEES

Permit fees for signs shall be calculated in accordance with sub-section (a) herein above. Plan-check fees for all sign permit applications shall be \$15.00 per sign, payable at the time the permit application is made.

1
2 (i) PARKING LOTS, DRIVEWAYS AND ASSOCIATED LANDSCAPING PERMIT FEES

3 The permit fee for development of a parking lot or a driveway that is not associated with any other
4 building development will be based on the contract value of the developed lot, including all
5 landscaping, and be determined in accordance with sub-section (a) herein above. Plan-checking
6 fees will be one-half the permit fees, payable at the time the permit application is made.
7

1	Exhibit G. Schedule of Planning Fees and Charges	
2	Zoning Ordinance Text Change	\$200.00
3	Rezoning	\$500.00
4	Planned Unit Development	\$2,500.00 + \$1,000.00 per
5		applicant contiguance
6	Encroachments	
7	Residential, Right-of-Way	\$100.00
8	Residential, City Property	\$250.00
9	Commercial, Right-of-Way	\$300.00
10	Commercial, City Property	\$600.00
11		
12	Subdivision Review (Minor Exempt)	No charge
13	Subdivision Review (Major)	\$100.00 + \$25.00 per lot
14	Annexation and Rezoning	No charge
15	Planned Unit Development Amendment	\$1,250.00 + actual noticing costs
16		
17	Street Naming Fees	
18	With New Subdivision	\$100.00
19	Required of Private Drive	\$ 25.00 per street name
20		
21	Plat Review (staff review)	
22	Combination Plats	\$ 25.00
23	Site Plats	\$ 25.00
24	Easements	\$ 50.00
25	Subdivisions with lots > 5 ac.	\$100.00 per lot
26		
27	Minor Subdivision Review (Planning Commission)	\$ 50.00
28		
29	Map Fees	\$ 100.00
30		
31	Re-review of Plats	
32	First re-review	(No additional charge)
33	Second Re-review	\$ 50.00
34	Third Re-review	\$100.00
35	Fourth Re-review	\$150.00
36	Fifth and subsequent re-reviews	\$200.00
37		
38	Restrictive Covenant, failure to apply	\$500.00
39	For failure to apply for annexation within one year	
40	of becoming contiguous to City limits; or within	
41	sixty (60) days of receiving a letter requesting compliance	
42		
43		
44		
45		

Exhibit H. Miscellaneous Fees and Charges

Cemetery Fees and Charges

Cemetery Plot Price, each	\$1,250.00
Niche, each	\$1,000.00
Pet Plot Price, each	
2ft. x 2ft.	\$ 400.00
2ft. x 4ft.	\$ 450.00
Continuing care charge	20% of Plot or Niche price

Fire and Emergency Medical Service Fees and Charges:

<u>Service</u>	<u>City Resident</u>	<u>Non-City resident</u>
Base Transport Charges:		
Basic Life Support	\$300.00	\$ 400.00
Advanced Life Support (Tier 1)	400.00	500.00
Advanced Life Support (Tier 2)	500.00	600.00
Third Attendant	80.00	80.00
Mileage (charge per mile)	6.25	6.25

Medications, fluids, supplies and special treatments

The above charges include all medications, fluids, supplies and special treatments necessary to deliver required medical treatments.

Hazardous Materials Incident Charges

The Fire Department shall, from time to time, establish reasonable rates sufficient to recoup the costs of these incidents but not in excess of the then current County rate schedule or, for items not included in the County rate schedule, not in excess of reasonable direct and indirect costs.

Ambulance and Medical Personnel. The Fire Department shall, from time to time, establish reasonable rates sufficient to recoup the costs of providing personnel and equipment for special events but not in excess of prevailing rates charged by other providers operating in Horry County.

Fire Training. The Fire Department shall, from time to time, establish reasonable rates sufficient to recoup the costs of providing personnel and equipment for special training per contractual agreements.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

City of Myrtle Beach,

Docket No. 09-ALJ-30-0435-IJ

Petitioner,

v.

CERTIFICATE OF SERVICE

Tourism Expenditure Review
Committee,

Respondent.

This is to certify that I have caused to be served this day one (1) copy each of the **Return to Motion for Temporary Relief in accordance with Rule 19.A, RPALC, Motion to Dismiss and Affidavit of Lanneau Siegling** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Michael W. Battle, Esquire
Battle & Vaught, P.A.
Post Office Box 530
Conway, South Carolina 29526

Clark Fancher

Clark Fancher

Columbia, South Carolina
This 26th day of October, 2009.

FILED

OCT 26 2009

SC ADMIN. LAW COURT

Expenditure Review Committee

P.O. Box 125
Columbia, SC 29214-0120
301 Gervais Street
Columbia, SC 29201
803-898-5400

Frans N. Mustert, CHA

CHAIRMAN

Appointed at the
Recommendation of the
Hospitality Association of SC

Lanneau H. Siegling, CHA

VICE CHAIRMAN

President Pro Tempore
Appointee

Susan Cruse

Appointed at the
Recommendation of the SC
Association of Tourism Regions

John Munro

Appointed at the
Recommendation of the SC
Association of Convention and
Visitors Bureaus

Andy Cajka

Appointed at the
Recommendation of the SC
Travel and Tourism Coalition

Mark Williams

Appointed at the
Recommendation of the
Municipal Association of SC

Rod Swaim

Speaker of the House
Appointee

Toni Nance

Ex-Officio SCPRT Designee

Harriett Green

Appointed at the
Recommendation of the SC
Arts Commission

Kevin Yokim

Appointed at the
Recommendation of the SC
Association of Counties

Edward W. Riggs, Sr.

Governor's Appointee

May 6, 2010

Mr. Michael Shelton
Budget and Evaluation Director
City of Myrtle Beach
PO Box 2468
Myrtle Beach, SC 29578

RE: September 30, 2009, report of City of Myrtle Beach
(the "City") pursuant to S.C. Code Ann. § 6-4-25(D)

Dear Mr. Shelton:

This follows up on my letter to Mr. Michael D. Price of January 4, 2010, regarding the Tourism Expenditure Review Committee (TERC) review of the above-referenced report of the City's FY 08-09 expenditures of accommodations tax revenues.

As a result of its review of this report, your January 7, 2010, letter to the TERC, and public records of the City pertaining to the funding of projects for which applications were filed when the City subsequently considered the allocation of grant money from its general fund, the TERC determined at its meeting held in Columbia on April 26, 2010, that the City's expenditures totaling \$312,545 (reflected on the attached Schedule 1) are tourism related expenditures that do not comply with the requirements of S.C. Code Ann. §§6-4-5, *et seq.* Accordingly, the TERC is hereby certifying to the State Treasurer that this amount was not expended in compliance with the statutes and should therefore be withheld from subsequent distributions of accommodations tax funds to the City and reallocated proportionately to all other recipients. See S.C. Code Ann. §6-4-35(B)(1)(a) and (c).

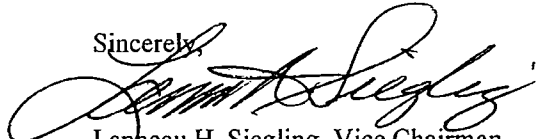
The reason for TERC's determination is that the expenditures listed on Schedule 1 have been made for one or more purposes that are consistent with S.C. Code Ann. §6-4-10(4)(b)(1-8), but were not submitted to the City's local advisory committee for review and recommendation to the City Council. It is the TERC's view that the deposit of accommodations tax funds into the City's general fund and subsequent disbursement of funds for the listed events and projects was intended to avoid the requirements of S.C. Code Section 6-4-25(A-C). The TERC notes from the City's September 30, 2009, report that approximately \$700,000 more

in accommodations tax revenues were devoted to the City's general fund than was requested for the City's general fund.¹

With respect to the City's reported expenditure of approximately \$4.6 Million on personnel expenditures for the police, fire and parks departments, the TERC has concluded that it would be arbitrary to certify this expenditure as non-compliant at this time in view of the fact that TERC has previously approved significant expenditures of this type in the past. However, because TERC now believes that such expenditures are not consistent with the legislative intent of S.C. Code Ann. §§6-4-5, *et seq.*, TERC has this day filed a declaratory judgment action against the City in the Court of Common Pleas for the Fifth Judicial Circuit seeking a determination as to the meaning of S.C. Code Ann. §6-4-10(4)(b) with respect to such expenditures of accommodations tax funds. TERC is taking this action because, like the City, TERC believes that a judicial determination of the meaning of this statute is necessary. Because it is TERC's view that the Administrative Law Court lacks jurisdiction to issue declaratory judgments, it believes that the circuit court is the appropriate forum to address this question.

If you have any questions, you may direct them to our staff liaison, Mrs. Lauren Sponseller, by emailing her at sponseL@sctax.org.

Sincerely,



Larnieau H. Siegling, Vice Chairman
Tourism Expenditure Review Committee

LHS:lls

cc: State Treasurer's Office

¹ Although the City appears to have made other tourism-related expenditures in this manner, they were reflected on the September 30, 2009, report as having been reviewed by the local advisory committee. Although the TERC does not endorse the use of this procedure because it does not comply with the statutory requirements, TERC has concluded that to determine these expenditures as being non-compliant would be to elevate form over substance. TERC reserves its right, however, to disallow any future disbursements of accommodations tax funds which are not made in compliance with the procedures set out S.C. Code Ann. § 6-4-25.

SCHEDULE 1

Grant Recipient	Amount Disbursed
FPC Concert Series	\$10,000
Children's Museum of SC (for expansion of programs)	\$20,000
Coast Rapid Transit Authority	\$252,545
Coastal Carolina University Tourism Studies	\$15,000
SC Hall of Fame	\$15,000

TOTAL: \$312,545

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

City of Myrtle Beach,	)	Docket No. 10-ALJ-30-0421-CC
	)	
Petitioner,	)	ORDER FOR CONSOLIDATION
	)	
vs.	)	
	)	
Tourism Expenditure Review Committee,	)	
	)	
Respondents.	)	
	)	

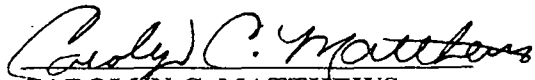
This matter is currently pending before the South Carolina Administrative Law Court, along with City of Myrtle Beach v. Tourism Expenditure Review Committee Docket No. 09-ALJ-30-0435-IJ. On August 6, 2010, the Petitioner requested to consolidate the cases. The Petitioner and Respondent Tourism Expenditure Review Committee consent to the request. It appears that the facts, circumstances, and issues are common to the cases, that both cases involve the same questions of law and facts, and that the same or substantially similar evidence will be relevant. Therefore, in the interest of judicial economy and with the consent of the Parties, it is hereby **ORDERED** that these matters are consolidated into one contested case as provided in SC ALC Rule 19 (D).

IT IS FURTHER ORDERED that the caption in this matter will read "City of Myrtle Beach v. Tourism Expenditure Review Committee" and shall bear Docket No. 10-ALJ-30-0421-CC. The file for City of Myrtle Beach v. Tourism Expenditure Review Committee, Docket 09-ALJ-30-0435-IJ shall be closed and merged into case 10-ALJ-30-0421-CC.

AND IT IS FURTHER ORDERED that Prehearing Statement be filed in this consolidated matter within fifteen days of the date of this order.

AND IT IS FURTHER ORDERED that this matter be set for a hearing on the merits for November 3, 2010. A Notice and Order of Hearing is attached

AND IT IS SO ORDERED.


CAROLYN C. MATTHEWS
Administrative Law Judge

August 17, 2010
Columbia, South Carolina

This is to certify that the undersigned has served this order on the parties and all parties to this matter by depositing a copy hereto, in the office of the clerk of the court, and the undersigned hereby certifies that the order is a true and correct copy of the original.

This 17th day of August 2010
By: Shelly H. Kellah
Clerk

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AUG 17 2010

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

City of Myrtle Beach,	)	Docket No. 10-ALJ-30-0421-CC
	)	
Petitioner,	)	NOTICE AND ORDER OF HEARING
	)	
vs.	)	
	)	
Tourism Expenditure Review Committee,	)	
	)	
Respondents.	)	
	)	

IT IS HEREBY ORDERED that this action will be heard on the merits before the undersigned Administrative Law Judge at on Wednesday, November 3, 2009 at 10:00AM. The Administrative Law Court hearing room, 2nd Floor, Edgar A. Brown Building, 1205 Pendleton Street, Columbia, South Carolina. This hearing is scheduled for four hours.

AT LEAST FIFTEEN (15) DAYS BEFORE THE TRIAL DATE, PARTIES MUST PROVIDE COPIES OF ANY EXHIBITS TO BE OFFERED AT TRIAL (1) TO THE COURT AND (2) TO ALL OPPOSING PARTIES OR COUNSEL. YOUR EXHIBITS MAY NOT BE ADMITTED AT TRIAL IF YOU DO NOT COMPLY. Any documents or records which are over ten (10) pages in length should have numbered pages. PLEASE ARRIVE AT THE HEARING AT LEAST TWENTY (20) MINUTES IN ADVANCE TO GIVE THE COURT REPORTER TIME TO MARK THE ORIGINAL EXHIBITS YOU INTEND TO OFFER AT TRIAL.

1. This hearing will be conducted in accordance with the Rules of Procedure of the Administrative Law Court, a copy of which is available from the Clerk of the Court upon payment of costs, or which may be downloaded from the website: www.scalc.net.

2. Unless otherwise determined by the Administrative Law Judge, the hearing will proceed as follows:

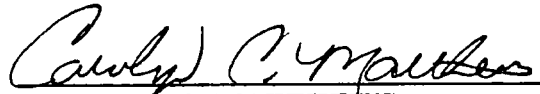
- a. Call of the case;
- b. Motions and other preliminary matters;
- c. Stipulations, agreements, or consent orders entered into the record;
- d. Opening statements, not to exceed ten (10) minutes, with the party requesting the

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- contested hearing proceeding first;
- e. Presentation of evidence;
 - f. Final arguments, not to exceed fifteen (15) minutes, with the party requesting the contested hearing opening and closing.
3. All parties are notified to bring all documents, records, and witnesses needed to present the party's case. NOTE: IF SPECIAL EQUIPMENT IS REQUIRED FOR THE PRESENTATION OF EVIDENCE, THE PARTY PRESENTING THE EVIDENCE IS RESPONSIBLE FOR OBTAINING THE EQUIPMENT AND ITS CUSTODY.
4. Subpoenas are available to the parties pursuant to S.C. Code Ann. § 1-23-320(d) (Supp. 2006) and the rules of the Court, to compel the attendance of witnesses or for the production of documents at the hearing. The parties are responsible for the service of the subpoenas.
5. A party may represent himself or may be represented by an attorney at the hearing. An attorney representing a party must file a notice of representation with the Court and with all opposing parties immediately after his or her services have been retained.
6. FAILURE TO APPEAR AT THE HEARING MAY RESULT IN:
- a. A finding that the party who fails to appear does not object to the relief of which notice has been given;
 - b. Dismissal of the case or striking of the pleadings of the party who fails to appear;
 - c. Exclusion of evidence proffered by the party who fails to appear; or
 - d. Such other rulings as are deemed appropriate by the Administrative Law Judge, including a finding of civil contempt and/or a monetary fine.
7. **Continuances will be granted only when extraordinary circumstances exist.** Parties may request continuances no later than 24 hours prior to the scheduled hearing date. Failure to timely request a continuance may result in imposition of court costs and court reporter fees.
8. **In case of settlement or dismissal**, failure of the parties to inform the court before the scheduled hearing that the hearing is not necessary may result in the imposition of court costs and court reporter fees against the parties.

AND IT IS SO ORDERED.


CAROLYN C. MATTHEWS
Administrative Law Judge

August 17, 2010
Columbia, South Carolina

CERTIFICATE OF SERVICE
I, the undersigned, hereby certify that I have served a true and correct copy of the foregoing on all parties to the above-captioned matter, and that I have also served a true and correct copy of the foregoing on the Administrative Law Judge, and that I have also served a true and correct copy of the foregoing on the Attorney(s).
File 17th day of August 2010
By Shelly H. Kellah
Judicial Law Clerk

From: [John Hoefer](#)
To: [Chad Johnston](#)
Subject: Fw: TERC v. City of Myrtle Beach
Date: Monday, July 11, 2011 3:45:23 PM

From: Seals, William Law Clerk (Matthew Ozment) [mailto:wsealslc@sccourts.org]
Sent: Monday, July 11, 2011 03:42 PM
To: mbattle@battlevaught.com <mbattle@battlevaught.com>; John Hoefer
Subject: TERC v. City of Myrtle Beach

Judge Seals has decided to rule in favor of Myrtle Beach. He requests Mr. Battle prepare a proposed order and send it to me via email. Please submit a hard copy and a self-addressed stamped envelope to our office. Please copy opposing counsel on same.

Best Wishes,

Matt Ozment
Judicial Clerk to the Honorable William H. Seals, Jr.
Circuit Court Judge At-Large Seat 6
208 W. Dozier St.
Marion, South Carolina 29571

From: Seals, William
To: mbattle@battlevaught.com; Chad Johnston
Cc: Seals, William Law Clerk (Ryan Huntley)
Subject: City of Myrtle Beach vs. Tourism Expenditure Review Committee
Date: Thursday, August 04, 2011 8:45:19 AM

Mr. Battle and Mr. Johnston:

I am in receipt of the defendant's Motion to Alter or Amend Judgment pursuant to rule 59(e) SCRPC. If the two of you cannot agree on these issues then I will hear same orally or on the written record pursuant to written briefs and proposed orders for my consideration. What is your preference?

The Honorable William H. Seals, Jr.
Circuit Court Judge At-Large Seat 6
208 W. Dozier St.
Marion, South Carolina 29571

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2010-CP-40-3001

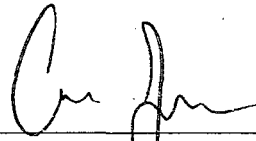
Tourism Expenditure Review Committee, ... Appellant,

v.

City of Myrtle Beach, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



John M.S. Hoefler
Chad N. Johnston

WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
803-252-3300

Attorneys for Appellant
Tourism Expenditure Review Committee

Columbia, South Carolina
April 6, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2010-CP-40-3001

Tourism Expenditure Review Committee, ...Appellant,

v.

City of Myrtle Beach, ...Respondent.

PROOF OF SERVICE

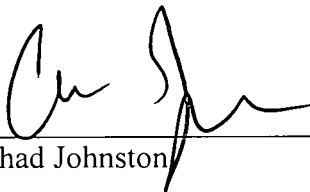
This is to certify that I, an employee of the law offices of Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of the **Record on Appeal** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Michael W. Battle, Esquire
Battle Vaught & Howe, P.A.
Post Office Box 530
Conway, South Carolina 29528

RECEIVED

APR 09 2012

SC Court of Appeals


Chad Johnston

This 6th day of April, 2012