

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2016-000460

DomainsNewMedia.com, LLC, ... Respondent,
v.

Hilton Head Island-Bluffton Chamber of Commerce, ...Appellant.

RECORD ON APPEAL
VOLUME I

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Certificate of Counsel

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

DOMAINSNEWMEDIA.COM, LLC,

Plaintiff,
vs.

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-07-0080

ORDER GRANTING SUMMARY
JUDGMENT FOR PLAINTIFF AND
DENYING SUMMARY JUDGMENT
FOR DEFENDANT

This matter came before the Court on cross motions for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. The parties stipulated that all discovery done in this matter, including the depositions filed of record, constituted the factual record of this case and that the Court may dispose of this case as a matter of law concerning the Plaintiff's request for declaratory judgment under the South Carolina Freedom of Information Act, S.C. Code Ann. Section 30-4-10 et. seq. The Court held a hearing on these motions in Beaufort, South Carolina on January 27, 2016. Robert E. Stepp and Bess J. DuRant appeared on behalf of Defendant Hilton Head Island-Bluffton Chamber of Commerce ("Defendant" or "Chamber") and Taylor M. Smith, IV appeared on behalf of Plaintiff DomainsNewMedia.com, LLC ("Plaintiff"). The Court took this matter under advisement and has carefully considered the issues presented by Plaintiff's and Defendant's motions, the arguments of counsel, and the applicable legal theories. The Court finds that Plaintiff is entitled to summary judgment in its favor because Defendant is a public body under the Freedom of Information Act ("FOIA").

FACTS

The Chamber is a 501(c)(6) non-profit corporation organized under the laws of the State of South Carolina. The Chamber's stated purpose is to advance the common interests of its membership, stimulate the expanding regional economy, and enhance the quality of life for all.

(Affidavit of William G. Miles ¶ 2.) The Chamber also operates a Visitor & Convention Bureau ("VCB") within the Defendant's organizational structure. The parties have stipulated that the VCB is not a separate jural personality distinct from that of the Chamber. The Chamber has been appointed as the Designated Marketing Organization ("DMO") for the Town of Hilton Head Island, the Town of Bluffton, and Beaufort County pursuant to S.C. Code Ann. § 6-4-10(3), for approximately 33, 16, and 8 years, respectively. (Thomas Dep. 12:16 – 12:20, Feb. 23, 2015.) As the DMO, the Chamber receives public funds under the Accommodations Tax Act ("ATAX"),¹ S.C. Code Ann. §§ 6-1-500, *et. seq.*, and under a grant from the South Carolina Department of Parks, Recreation, and Tourism ("PRT"). Both ATAX and PRT funds provided to Defendant are required to be used for the purpose of promoting tourism. There is no dispute that both ATAX and PRT funds are public funds, pursuant to S.C. Code Ann. § 30-4-20(a).

On November 28, 2012, Plaintiff requested that the Chamber provide it with the following information pursuant to FOIA:

- All documents pertaining to a proposed Welcome Center for the Hilton Head Island-Bluffton Chamber of Commerce on any property owned by the Town of Hilton Head;
- The names, sex, race, title and dates of employment of all employees and officers of the Hilton Head Island-Bluffton Chamber of Commerce;
- All administrative staff manuals and written instructions to staff that affect a member of the public;
- All statements of policy and interpretations of policy, statutes and the constitution that have been adopted by Hilton Head Island-Bluffton Chamber of Commerce;

¹ ATAX allows a county or municipality to impose a local accommodations tax that is a "tax on the gross proceeds derived from the rental or charges for accommodations furnished to transients" S.C. Code Ann. § 6-1-510(A). All of the proceeds from the Tax "must be kept in a separate fund segregated from the imposing entity's general fund." § 6-1-520(B). The revenue generated from the Tax must be used for tourism purposes. § 6-1-530.

- All written planning policies and final planning decisions;
- All information in or taken from all accounts, vouchers, or contracts dealing with the receipt or expenditure of public or other funds of the Hilton Head Island-Bluffton Chamber of Commerce, including all bank accounts and contracts pertaining to the receipt and use of any accommodation tax funds or state or local grants received and/or used by the Hilton Head Island-Bluffton Chamber of Commerce, including any funds allocated to or used by the Hilton Head Island Visitor and Convention Bureau; and
- The minutes of all meetings, including Board of Director meetings, and all votes taken at such meetings, except as exempted pursuant to S.C. Code § 30-4-70.

On December 17, 2012, the Chamber declined Plaintiff's FOIA request on the ground that the Chamber was not subject to FOIA because: (a) the Chamber's status as a DMO did not convert a private, non-profit organization into a public body for purposes of FOIA; and (b) the Chamber's operating funds were accounted for separately from any public funds that it may receive.

On January 15, 2013, Plaintiff commenced this action seeking a determination that the Chamber is a "public body" as that term is defined in FOIA and seeking an order declaring that the Chamber, or its division, the Visitor and Convention Bureau, is a "public body" as defined under section 30-4-20(a). Additionally, Plaintiff seeks an order requiring the Chamber to produce the previously requested records. Plaintiff further contends that it is entitled to an order declaring the rights and legal relations of the parties pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 *et seq.* and FOIA. The Chamber filed an Answer denying that the Chamber is subject to FOIA. Plaintiff served written discovery on the Chamber, to which the Chamber responded. Additionally, Plaintiff deposed two 30(b)(6) witnesses of the Chamber and a 30(b)(6) witness of the Tourism Expenditure Review Committee. The parties then filed cross

motions for summary judgment and supported their positions through memoranda in support and in opposition to the other's motion.

LEGAL STANDARD

Summary judgment is appropriate if the pleadings and other supporting documents "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. Under South Carolina law, "summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Additionally, it must be shown that further inquiry into the facts of the case is not desirable to clarify the application of the law." *Folkens v. Hunt*, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986).

In determining whether to grant summary judgment, a court must view the evidence and its reasonable inferences in the light most favorable to the nonmoving party. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (citing *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. *Dawkins*, 354 S.C. at 69, 580 S.E.2d at 438 (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

 In determining whether a genuine issue of fact exists, a court must assume as true the evidence of the nonmoving party and draw all *reasonable* inferences in favor of that party. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). At the summary judgment stage, "the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883

(Ct. App. 2001) (citing case). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004).

LAW/ANALYSIS

By applying the summary judgment standard to the instant case, I find that there are no genuine issues of material fact that must be submitted to a fact finder, and that the undisputed evidence establishes as a matter of law that the Chamber is a public body as defined in section 30-4-20(a) of the South Carolina Code and thus, must comply the provisions of the FOIA.

"The essential purpose of the FOIA is to protect the public from secret government activity." *Burton v. York Cnty. Sheriff's Dep't*, 358 S.C. 339, 347, 594 S.E.2d 888, 892 (Ct. App. 2004) (citing cases). "FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature." *South Carolina Dep't of Mental Health v. Hanna*, 270 S.C. 210, 241 S.E.2d 563 (1978). When adopting FOIA, the legislature stated "it is vital in a democratic society that public business be performed in an open and public manner." S.C.Code Ann. § 30-4-15 (Supp.2000).

To be subject to FOIA, an entity must be a "public body." S.C. Code Ann. § 30-4-30(a).

Under FOIA, a public body is defined as follows:

any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, **or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds**, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions

S.C. Code Ann. § 30-4-20(a) (emphasis added). In *Disabato v. S.C. Association of School Administrators*, the South Carolina Supreme Court held that “a private corporation supported by public funds within the definition of a public body” can subject the private entity to the provisions of FOIA. *Id.* at 404 S.C. 433, 442, 746 S.E.2d 329, 333 (2013). It was in the case of *Weston v. Carolina Research and Development Foundation*, where the South Carolina Supreme Court provided guidance as to when a private organization will be subject to FOIA. *Weston* at 401 S.E.2d 161, 303 S.C. 398 (S.C. 1990).

In *Weston*, the Supreme Court analyzed whether the Carolina Research and Development Foundation, a nonprofit corporation, would be subject to FOIA by analyzing four principal transactions². *Id.* The Court said that “[e]ach of the [footnote 2] transactions alone would bring the Foundation within FOIA’s definition of ‘public body’. Taken together, they lead to the unavoidable conclusion that the Foundation is a ‘public body’.” *Id.* at 164. Consequently, the Court held that “when a block of public funds is diverted en masse from a public body to a related organization, or when the related organization undertakes the management of the expenditure of public funds, the only way that the public can determine with specificity how those funds were spent is through access to the records and affairs of the organization receiving and spending the funds.” *Id.* at 165. The Court said that the trial judge in that case noted correctly that FOIA would not apply to “business enterprises that receive payment from public bodies in return for supplying goods and services on an arms-length basis.” *Id.* In such a situation, the Court said, “there is an exchange of money for identifiable goods or services and

 ² 1) The Foundation’s receipt of sale proceeds from the Wade Hampton Hotel sale, 2) the Foundation’s acceptance of federal funds to develop of the Swearingen Engineering Center, 3) the Foundation’s acceptance of real estate and cash grants from the City of Columbia and County of Richland, and 4) the Foundation’s retention of a portion of development contract proceeds funneled to it from the University.

access to the public body's records would show how the money was spent." *Id.* To apply *Weston* to the facts of the present case therefore requires the Court to consider five separate factors:

1. Has there been a diversion of public funds?
2. To a related organization?
3. By means of an *en masse* transfer?
4. With no public access to information regarding how the funds were spent?
5. Does the private entity supply goods or services on an arm's length basis?

When applying these five factors to the present matter, I find that the Chamber is a public body for purposes of FOIA. First, there is a diversion of public funds to the Chamber by the local governments. Second, the Chamber is a related organization to all of the local governments which it serves as a DMO. Third, the Chamber receives an *en masse* transfers of funds quarterly. Four, the public has no access to information as to how the funds were spent because the Chamber only submits a proposed budget prior to the expenditure of public funds and a summary accounting to the local governments after each fiscal year. Finally, the Chamber does not supply goods and services to the local governments it serves on an arm's-length basis. The Chamber is therefore a public body for purposes of FOIA. Accordingly, Plaintiff is entitled to summary judgment, and Plaintiff's motion for summary judgment is denied.

1. Public Funds Have Been Diverted

The first factor to be considered under *Weston* is whether there has been a "diversion" of public funds. The parties agree that the ATAX and PRT grant funds used by the Chamber are not funds created by the activities of the Defendant. Both sets of funds are generated by the mechanisms established by the General Assembly. The parties agree that in particular, the ATAX funds are then allocated by the state of South Carolina to the particular town, city, or

county pursuant to the statutory scheme. At this stage in the statutory process, the ATAX funds would be in the possession of the particular public entity and not Defendant. But when the particular public entity designates an organization to serve as its DMO, the public funds then must leave the entity and go to its DMO so it may spent for the promotion of tourism. The PRT grant works similarly in that the funds are possessed by the State of South Carolina before they are awarded to Defendant as a recipient of the grant. In both instances, it is clear the public funds are diverted from either the local entity or the State to Defendant.

In *Weston*, all four of the transactions scrutinized possessed similar origins to the ATAX and PRT funds at issue in this case. In every instance, the related public entity to the Foundation in *Weston* had the exclusive right to possess the public funds generated from transactions identified. *Weston*, 303 S.C. at 401, 401 S.E.2d at 163. In each instance though the related public entity did not spend the funds generated internally, but instead diverted the funds to the Foundation for its use. *Id.* It was completely appropriate for the *Weston* court to construe these transfers as a diversion of public money from a public entity to a private organization and it is directly analogous to facts of this case. The *Weston* Court did not specify any requirement that for a private company to be considered a public body for FOIA, the public funds had to be diverted with the intention to avoid transparency. Therefore, Defendant's contention that its open and transparent process makes it different from the Foundation in the *Weston* is simply irrelevant. The public funds at issue in this case have been "diverted" from the local governments to the Chamber.

2. The Chamber is a Related Organization of the Local Governments

The second factor underlying the court's decision in *Weston* was the relationship between the University and the Foundation. The Chamber's receipt of public funds is premised on its

status as the DMO for the public entities it serves. But for Defendant's status as DMO, it would not receive ATAX funding from its related public entities. The Defendant is correct that the Chamber has a separate and independent existence from the local governments it serves. It also correct that the Chamber provides services to its membership that are completely separate and apart from the services it provides in its capacity as DMO. But the Defendant may not avoid FOIA compliance by simply organizing as a hybrid Chamber-CVB structure. Furthermore, there is no requirement that the Chamber be as connected to its public entities as the Foundation was to its in *Weston*. See *Id.* at 400, 401 S.E.2d at 162. The Chamber may not work for the exclusive benefit of its public entities as the Foundation did for its in *Weston*, but it certainly works for the benefit of the Town of Hilton Head, the Town of Bluffton, and Beaufort County and is therefore a related organization.

3. There is an en masse transfer of public funds

Approximately every three months the Town of Hilton Head presents Defendant with a "lump sum" of cash, derived from ATAX revenue. (Deal Dep. 16:11 – 16:13, Feb. 23, 2015.) "En Masse" and "Lump Sum" are synonymous. "En masse – In a mass; in a large group all at once; all together." *Black's Law Dictionary* 610 (9th ed. 2009). "Lump sum payment – A payment of a large amount all at once, as opposed to a series of smaller payments over time." *Black's Law Dictionary* 1244 (9th ed. 2009). In *Weston*, the Foundation received public funds in bulk payments from its public entities. "When a block of public funds is diverted en masse from a public body to a related organization, or when the related organization undertakes the management of the expenditure of public funds," an otherwise private organization will be subject to FOIA as a public body. *Id.* at 165. The Court in *Weston* explained its purpose for holding that such private organizations will be subject to FOIA in its next sentence: "the only



way that the public can determine with specificity how those funds were spent is through access to the records and affairs of the organization receiving and spending the funds.” *Id.* at 404. The purpose for the *Weston* Court’s holding cannot be read as an additional requirement for the definition of a “public body” under FOIA. It simply is irrelevant here that the public entities whom Defendant serves approve a budget for the expenditure of public funds before they are received en masse by the Chamber. The *Weston* Court was rightly concerned with the discretion provided to an entity when it receives en masse public funds. Simply because a public entity provides guidance to the Chamber in the form of a budget, this does not change the quantifiable nature of the transfer of the funds nor the discretion being afforded by this kind of transfer. Therefore, there is an en masse transfer of public funds to the Defendant.

4. There is No Public Access to Information as to How the Funds Were Spent.

A primary concern of the *Weston* Court was whether the public could obtain information about how public money was spent through the records of private entity being considered as a public body. *Weston*, 303 S.C. at 404, 401 S.E.2d at 165 (holding that FOIA may apply if funds are diverted to a related organization and “the only way that the public can determine with specificity how those funds were spent is through access to the records and affairs of the organization receiving and spending the funds.”) Defendant does submit a budget and plan at the beginning of the fiscal year, and it submits an accounting at the end of each fiscal year pursuant to S.C. Code Ann. § 6-4-10(3). Because the Defendant presently claims it is not subject to FOIA, a citizen must request information relevant to the Chamber through the public entity. According to the parties, the information that will be provided by the public entity will be entity’s approved budget for the Chamber and then the fiscal year-end accounting submitted by the Chamber to the public entity. Plainly the Chamber’s approved budget will not provide the public access to



information as to how the ATAX and PRT funds are spent. At best, the budget can only do what all other budgets do: forecast how money is expected to be spent. Consequently, the only time a citizen would hopefully be able to learn how the money was spent would be to request a copy of the year-end accounting. A copy of such an accounting was attached to the Deposition of Ray Deal as Plaintiff's Exhibit 4. The document provides information regarding how the Chamber spent money generally. Unfortunately the accounting fails to describe "with specificity how those funds were spent" pursuant to the *Weston* Court's holding. *Id.* at 165. The accounting provides very little, if any, information on, for instance, the particular vendor chosen for a certain expenditure in furtherance of a stated tourism purpose. Without the Chamber being subject to FOIA, the residents of the areas the Chamber serves will not be able to learn how Defendant manages the expenditure of public funds.

5. The Chamber Does Not Supply Goods and Services to the Local Governments on an Arm's Length Basis.

The record before the Court fails to establish that the Chamber is providing identifiable advertising and promotional goods and services in exchange for payment from ATAX and the PRT grant. In *Weston*, the Supreme Court took care to analyze the individual transactions of the Foundation as I applied to University and other public bodies it had benefited from. It was through understanding what the Foundation got from the transactions that seemed to inform the Court of whether the Foundation was working at arm's length or not. The Court provided the test for when a private organization may be considered a public body for FOIA, but it then said the trial judge in that case noted correctly that FOIA would not apply to "business enterprises that receive payment from public bodies in return for supplying goods and services on an arms-length basis." *Weston* at 165. The Court did not go further in defining what they meant by "an arms-



length basis”, but fortunately a definition does exist. “Arm’s length” is defined as “of or relating to dealings between two parties who are not related or not on close terms and who are presumed to have roughly equal bargaining power; not involving a confidential relationship.” *Black’s Law Dictionary* 88 (8th ed. 2005).

While the facts of this case do not support the idea that the relationship the Chamber has with this public entities is confidential, the relationship is one that is close and not at arms-length. As previously stated, the Chamber has been the DMO for the public entities mentioned for several years. The record does not include a written agreement to be the DMO for any of the entities. The record does though include a thorough examination of the process by which the Chamber works to meet the demands as set for it in its agreed-upon annual budget every year. This examination included the procedure by which the Chamber must notify the public entity and seek its agreement with a change in a vendor. *See Thomas Dep. 20:5-21:4* (“ ... If it’s under \$10,000, no, typically we would not go back and have any consult with – within the, you know, scope of our overall budget, that’s well less than one percent.”). The depositions of both Thomas and Deal represent that these unwritten agreements that define the DMO relationship are seen through the hundreds of vendors that the Chamber works with promote tourism among its public entities. Because this relationship is defined by the Chamber’s work with all of these vendors it is impractical to enter into an individual analysis of individual transactions to determine it acts at arms-length distance with each public entity. From the statutory relationship that is created by designating the Chamber as a DMO before a proposed budget is even discussed to other facts listed above, the Court finds the Chamber does not operate at arms-length to its public entities.

SUMMARY JUDGMENT IS DENIED AS TO DEFENDANT



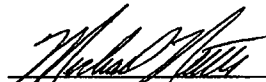
This Court denies Defendant's Motion for Summary Judgment for the same reasons that support the grant of summary judgment to the Plaintiff.

CONCLUSION

"The essential purpose of the FOIA is to protect the public from secret government activity." *Burton v. York Cnty. Sheriff's Dep't*, 358 S.C. 339, 347, 594 S.E.2d 888, 892 (Ct. App. 2004) (citing cases). By designating the Chamber as a DMO the public entities that are subject to this case agreed to provide the Chamber public funds to be used for the purpose of tourism. While some information about how the funds are spent can be given by the public entity, no citizen can learn specifically how the money was spent, as the Supreme Court said in *Weston*, unless the Chamber is subject to FOIA. Furthermore, the parties are correct that the CVB is not a separate legal entity from the Chamber so this Court cannot fashion a remedy that will bring only the CVB into compliance with FOIA. Consequently and by function of the facts stated on the record of this matter, the Defendant Hilton Head Island – Bluffton Chamber of Commerce as a matter of law is a "public body" for purposes of S.C. Code Ann. § 30-4-20(a).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that (a) Defendant's Motion for Summary Judgment is denied; (b) Plaintiff's Motion for Summary Judgment is granted; and, (c) judgment shall be entered for Plaintiff on its causes of action related to a declaration that Defendant is a public body, as set forth in Plaintiff's Complaint.

IT IS SO ORDERED.



The Honorable Michael G. Nettles
Circuit Court Judge

Beaufort, South Carolina
2-22-, 2016



The Supreme Court of South Carolina

DOMAINSNEWMEDIA.COM, LCC,
Plaintiff/Respondent,

v.

Hilton Head Island-Bluffton Chamber of Commerce,
Defendant/Petitioner.

Appellate Case No. 2013-000310

ORDER

Petitioner has filed a petition for original jurisdiction asking this Court to determine whether it is a "public body" for purposes of the Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.* (2007 & Supp. 2012). We deny the petition.

 C.J.
FOR THE COURT

Columbia, South Carolina

May 2, 2013

cc:
Robert E. Stepp
Roland M. Franklin, Jr.
Bess Jones DuRant
Dean Britton Bell
Harry A. Hancock

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

DomainsNewMedia.com, LLC,) Civil Action No. 2013-CP-07-00080
Plaintiff,)
vs.)
Hilton Head Island-Bluffton Chamber of) **CASE MANAGEMENT ORDER**
Commerce,)
Defendant.)

2015 JUL 23 PM 3:50
CLERK OF COURT
JUDICIAL CIRCUIT
BEAUFORT COUNTY
SOUTH CAROLINA

A status conference in the captioned matter was held on June 3, 2015. During the conference the parties proposed and the Court agreed that this case should be submitted for decision on cross motions for summary judgment in lieu of a trial. The parties believe that the material facts are not in dispute and that the case primarily presents legal issues that will be ripe for decision by the Court. The parties further indicated that discovery was complete except for one deposition to be taken by Plaintiff. In order to facilitate the management of the case under these circumstances, the Court therefor enters this Case Management Order with the consent of the parties.

1. The remaining deposition to be taken by Plaintiff shall be taken prior to July 31, 2015.
2. The parties shall file serve cross motions for summary judgment on or before September 30, 2015.
3. The parties shall serve memoranda in opposition to the other party's motion on or before October 30, 2015.

4. Reply memoranda shall be served on or before November 16, 2015.
5. The cross motions shall be heard at the convenience of the Court after November 16, 2015.
6. This case shall be removed from the non-jury trial roster.

AND IT IS SO ORDERED.

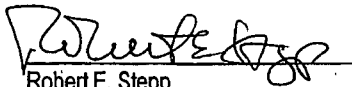


The Honorable Carmen T. Mullen
Circuit Court Judge

Beaufort, South Carolina
June 14, 2015

We consent:



Taylor M. Smith IV
Attorney for Plaintiff

Robert E. Stepp
Attorney for Defendant

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-07- 00080

DOMAINSNEWMEDIA.COM, LLC,

Plaintiff,

v.

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMERCE

Defendant.

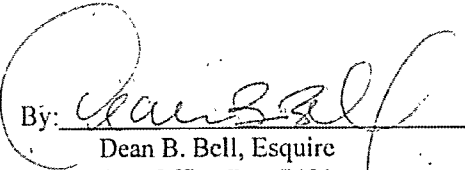
SUMMONS
(Non-Jury)

2013 JAN 15 AM 9:35
JAMES M. ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at The Law Office of Dean B. Bell, LLC, 1 Corpus Christi Place, Bldg. 105 Executive Center, Post Office Box 7401, Hilton Head Island, South Carolina 29938, within thirty (30) days after service hereof, exclusive of the day of such 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 this Complaint.

The Law Office of Dean B. Bell, LLC

By: 

Dean B. Bell, Esquire
Post Office Box 7401
Hilton Head Island, SC 29938
(843) 785-9772 (843) 785-9773 Fax
ATTORNEYS FOR PLAINTIFF

Hilton Head Island, SC
January 14, 2013

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-07- 00000
)

DOMAINSNEWMEDIA.COM, LLC,

Plaintiff,

v.

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMERCE

Defendant.

COMPLAINT
FOR DECLARATORY JUDGMENT
AND INJUNCTION
(Non-Jury)

2013 JAN 15 AM 9:35
JAN AM ROSENEAU
BEAUFORT COUNTY S.C.
CLERK OF COURT

THE PLAINTIFF, DOMAINSNEWMEDIA.COM, LLC, complaining of the Defendant, Hilton Head Island - Bluffton Chamber of Commerce, would respectfully show unto the Court and allege as follows:

GENERAL FACTUAL ALLEGATIONS

1. The Plaintiff DomainsNewMedia.com, LLC ("DNM") is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business being located in Beaufort County, South Carolina.
2. Upon information and belief, the Defendant Hilton Head Island - Bluffton Chamber of Commerce ("Chamber") f/k/a Hilton Head Island Chamber of Commerce is a non-profit corporation organized and existing under the laws of the State of South Carolina and Section 501(c)(6) of the Internal Revenue Code with its principal place of business being located in the Town of Hilton Head, Beaufort County, South Carolina.
3. According to the Certificate of Incorporation for the Chamber, its purpose "is to promote the civic, commercial, and industrial welfare of Hilton Head Island, South Carolina.
4. According to the Chamber's audited financial statements, the Visitor and Convention Bureau ("V&CB") is a division of the Chamber and funding for the V&CB is provided by the State of South Carolina and Town of Hilton Head Island and Town of Bluffton though

accommodations taxes ("ATAX") and the Department of Parks, Recreation and Tourism ("PRT") funds.

5. The audited financial statements for the Chamber for the years 2009, 2010 and 2011 reflect that the V&CB incurred Administrative Expenses (salaries, payroll, operations, and employee benefits of \$497,030, \$532,874, and \$438,743, respectively.

6. Upon information and belief, the V&CB has no separate employees but instead allocates expenses of the Chamber to the V&CB and Chamber employees provide all of the services performed by the V&CB. Upon further information and belief, other expenses of the Chamber are likewise allocated to the V&CB.

7. According to the audited financial statements for the Chamber for the years 2009, 2010 and 2011, the V&CB reported revenues in the form of ATAX funds and grants from the Town of Hilton Head of \$1,694,139, \$1,675,229, and \$1,338,733, respectively.

8. According to the audited financial statements for the Chamber for the years 2009, 2010, and 2011, the V&CB also received grants from the PRT of \$603,355, \$1,200,000, and \$428,027, respectively.

9. According to the audited financial statements for the Chamber for the years 2009, 2010, and 2011 V&CB also received funds as the Direct Marketing Organization ("DMO") for the Town of Bluffton in the amounts of \$59,048, \$50,961, and \$46,986, respectively.

10. The audited financial statements for the Chamber for the years 2009, 2010 and 2011 reflect that the V&CB incurred Administrative Expenses as the DMO for the Town of Bluffton (salaries, payroll, operations, and employee benefits of \$10,145, \$12,638, and \$11,747, respectively.

11. Upon information and belief, the V&CB has no separate employees but instead allocates expenses of the Chamber to the V&CB and Chamber employees provide all of the services performed by the V&CB. Upon further information and belief, other expenses of the Chamber are likewise allocated to the V&CB for services performed as the DMO for the Town of Bluffton.

12. The audited financial statements for the Chamber for the years 2009, 2010 and 2011 reflect the following: total revenue for 2009 of \$6,813,744 and total expenses of \$6,067,575 with a net excess of revenue over expenses of \$746,169 (which includes a one-time gain from the sale of real estate of \$722,309), total revenue for 2010 of \$5,454,695 and total expenses of

\$5,449,053 with a net excess of \$5,642, and total revenue for 2011 of \$4,544,148 and total expenses of \$4,713,551 with a net shortfall of \$169,403.

13. Upon information and belief, in the absence of receipt of the significant sums referenced above as ATAX funds and grants from the Town of Hilton Head, Town of Bluffton and PRT, the Chamber would not be able to meet its ongoing operating expenses and overhead.

14. S.C. Code §30-5-10, *et seq.* contains the various provisions of South Carolina's 'Freedom of Information Act.' S.C. Code §30-4-15 provides in part "The General Assembly finds that it is vital in a democratic society that the public business be performed in an open and public manner so that the citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy."

15. S.C. Code §30-4-20(a) defines "Public Body" to include "any organization, corporation, or agency supported in whole or in part by public funds, or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body"

16. The Plaintiff is informed and believes that the ATAX funds and various grants the Chamber and V&CB receives from Town of Hilton Head, Town of Bluffton and PRT constitute public funds.

17. The Plaintiff is further informed and believes that the Chamber, through allocations of various expenses and overhead is "supported in whole or part by public funds" because the funds provided to it and the V&CB by the Town of Hilton Head, Town of Bluffton and PRT go directly to providing support in the form of paying various expenses and overhead.

18. S.C. Code §30-4-20(c) defines "Public Record" to include "all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of the physical form or characteristics prepared, owned, used, in the possession of, or retained by the public body."

19. S.C. Code §30-4-30(a) provides that "[a]ny person has the right to inspect or copy any public record of a public body, except as otherwise provided by §30-4-40, in accordance with reasonable rules concerning time and place of access," and §30-4-30(d) provides: "[t]he following records of a public body must be made available for public inspection and copying during the hours of operations of the public body without the requestor being required to make a

written request to inspect or copy the records when the requestor appears in person; (1) the minutes of the meeting of the public body for the proceeding six months."

20. On or about November 26, 2012, the Plaintiff, through its counsel forwarded a written request to the Hilton Head Island - Bluffton Chamber of Commerce pursuant to S.C. Code §30-5-10, *et seq.* that certain records be made available for inspection. A copy of that request is attached hereto and incorporated herein as Exhibit "A".

21. The Plaintiff is informed and believes that the records requested fall within the parameters of the documents that a "Public Body" must make available to the public pursuant to the provisions of S.C. Code §30-5-10, *et seq.* and none of those documents fall within the exclusions set forth in S.C. Code §30-4-40.

22. The Plaintiff is further informed and believes that the Chamber is a "Public Body" as defined in S.C. Code §30-4-20(a).

23. On or about December 17, 2012, the Chamber through its counsel formerly rejected the Plaintiff's request for inspection of records. A copy of the denial is attached hereto and incorporated herein as Exhibit "B".

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

25. The Plaintiff repeats and reiterates the forgoing paragraphs as though fully set forth herein verbatim.

24. S.C. Code §30-4-100(a) provides that any person "may apply to the circuit court for either or both declaratory judgment and injunctive relief to enforce the provisions of the [Act]" within one year of the alleged violation and subsection (b) of that section provides that if the person seeking such relief prevails may be awarded reasonable attorney fees and other costs of litigation. It has been less than one year from the date the Chamber refused to allow inspection of the requested records.

25. The Defendant denies it is a "Public Body", as defined in S.C. Code §30-4-20(a) and as such refuses to make the requested documents available for inspection.

26. A justiciable controversy exists between the Plaintiff and Defendant as to the application of the provisions of S.C. Code §30-5-10, *et seq.* to the Chamber and V&CB, one of its divisions.

27. The Plaintiff is informed and believes it is entitled to an Order of the Court declaring the rights and legal relations of the parties pursuant to S.C. Code §15-53-10 *et seq.*, S.C. Code §30-4-10, *et seq.*, and Rule 57 SCRCP, specifically declaring that the Chamber, or at least its division the V&CB is a "Public Body" as that term is defined in S.C. Code §30-4-20(a), and further awarding the Plaintiff attorney fees and cost incurred in connection with this matter, all in accordance with S.C. Code §30-4-100.

FOR A SECOND CAUSE OF ACTION
(Injunctive Relief)

28. The Plaintiff repeats and reiterates the forgoing paragraphs as though fully set forth herein verbatim.

29. In accordance with the provisions of S.C. Code §30-4-100, the Plaintiff is informed and believes that it is entitled to an Order of the Court affirmatively Ordering the Defendant to comply with the Plaintiff's request that it make certain records available for copying and inspection and enjoining the Defendant from further denial of its obligation to make all records subject to disclosure available for copying and inspection in accordance with the provisions of S.C. Code §30-5-10, *et seq.* and further ordering that the Defendant reimburse the Plaintiff for all costs and expenses incurred in this matter including attorney's fees.

WHEREFOR, having fully set forth its Complaint against the Defendant, the Plaintiff, DNM, prays that the Court inquire into the matters set forth herein and issue its Order as follows:

i) Declaring the rights and legal relations of the parties pursuant to S.C. Code §15-53-10 *et seq.*, S.C. Code §30-4-10, *et seq.*, and Rule 57 SCRCP, specifically declaring that the Chamber, or at least its division the V&CB is a "Public Body" as that term is defined in S.C. Code §30-4-20(a);

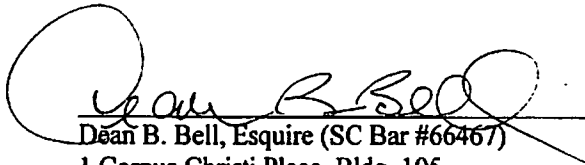
ii) Affirmatively Ordering the Defendant to comply with the Plaintiff's request that it make certain records available for copying and inspection and enjoining the Defendant from further denial of its obligation to make all records subject to disclosure available for copying and inspection in accordance with the provisions of S.C. Code §30-5-10, *et seq.*;

iii) awarding the Plaintiff attorney fees and cost incurred in connection with this matter, all in accordance with S.C. Code §30-4-100; and

iv) granting such other and further relief as the Court deems just and proper.

THE LAW OFFICE OF DEAN B. BELL, LLC

January 14, 2013


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* Certified Arbitrator & Mediator

November 26, 2012

D. Jay Davis, Jr., Esquire
Young Clement Rivers, LLP
25 Calhoun Street, Ste. 400
P. O. Box 993
Charleston, SC 29402

Re: FOIA Request/Hilton Head/Bluffton Chamber of Commerce

Dear Jay:

On behalf of several interested Persons, as that term is defined pursuant to S.C. Code §30-4-20(b), and in accordance with the remaining provisions of the South Carolina Freedom of Information Act, S.C. Code §30-40-10, *et seq.* (as amended), I hereby request the following records be provided or made available for inspection:

- 1) Copies of any and all documents pertaining to a proposed Welcome Center for the Hilton Head Island - Bluffton Chamber of Commerce on any property owned by the Town of Hilton Head, including but not limited to any proposed lease documents, correspondence, email communications, memoranda, building plans, cost estimates, development agreements, meeting minutes, building permit applications, conceptual plans, or proposals or plans of any nature whatsoever pertaining to the planned Welcome Center or renovation of any existing structure for that use on any property owned by the Town of Hilton Head.
- 2) The names, sex, race, title and dates of employment of all employees and officers of the Hilton Head Island - Bluffton Chamber of Commerce, pursuant to S.C. Code §30-4-50(1) and all compensation paid by the Hilton Head Island - Bluffton Chamber of Commerce as provided in S.C. Code §30-4-40(a)(6).
- 3) All administrative staff manuals and written instructions to staff that affect a member of the public;



D. Jay Davis, Jr. Esquire
November 26, 2012
Page 2 of 3

- 4) All statements of policy and interpretations of policy, statute and the Constitution which have been adopted by the Hilton Head Island - Bluffton Chamber of Commerce.
- 5) All written planning policies and goals and final planning decisions;
- 6) All information in or taken from all accounts, vouchers, or contracts dealing with the receipt or expenditure of public or other funds of the Hilton Head Island - Bluffton Chamber of Commerce to include but not be limited to all bank accounts and contracts pertaining to the receipt and use of any accommodation tax funds or state or local grants received and/or used by the Hilton Head Island - Bluffton Chamber of Commerce, including any funds allocated to or used by the Hilton Head Island Visitor and Convention Bureau.
- 7) The minutes of all meetings (including but not limited to Board of Director meetings) and all votes taken at such meetings except as exempted pursuant to S.C. Code §30-4-70.

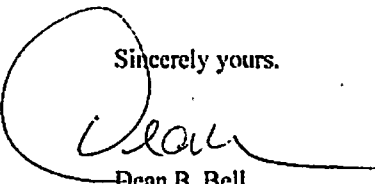
I am sure that I do not need to point out that the Hilton Head Island - Bluffton Chamber of Commerce, Inc. is a "Public Body" as defined in S.C. Code §30-4-20(a) due to the fact that as a Designated Marketing Organization for the Town of Hilton Head, it receives significant amounts of public funds that it appears to expense through its Visitor and Convention Bureau. The organization also receives other significant public funds in the form of various grants. Additionally, I do not believe there is an exception to Board meetings being required to be open to the public pursuant to S.C. Code §30-4-60. I welcome your thoughts on that. Barring an exception, it would appear that all Board meetings must be open to the public and all the notices required by S.C. Code §30-4-80 must be given. As such, I would appreciate your providing me directly with the date, time, location, and agenda for the next Board meeting or meeting of any subcommittee of the Board.

I look forward to your response within fifteen days of the date of your receipt of this request. If a deposit is required for the costs associated with searching for these documents and making them available for inspection, or for copying should you prefer to provide them directly to me, please let me know. Should you have any questions or comments, please do not hesitate to contact me.

D. Jay Davis, Jr. Esquire
November 26, 2012
Page 3 of 3

With kind regards, I am

Sincerely yours.

A handwritten signature in cursive script, appearing to read "Dean B. Bell", is written over a circular stamp. The signature extends to the right with a long horizontal flourish.

Dean B. Bell



ROBERT E. STEPP
Direct Dial 803 231.7836
Direct Fax 803 231.7866
Email rstepp@sowellgray.com

December 17, 2012

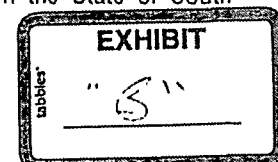
Dean D. Bell, Esquire
The Law Office of Dean D. Bell, LLC
Post Office Box 7401
Hilton Head Island, SC 29928

Re: FOIA Request to Hilton Head Island-Bluffton Chamber of Commerce
SGS&L File No.: 6515/1500

Dear Mr. Bell:

I represent the Hilton Head Island-Bluffton Chamber of Commerce ("Chamber") in connection with the request made in your letter dated November 26, 2012. Please be advised that the Chamber is not a public body or otherwise subject to the provisions of S.C. Code Ann. §30-40-10 *et seq.*, and therefore will not be providing the requested documents to you.

In your letter, you refer to the status of the Chamber as the Designated Marketing Organization for the Town of Hilton Head as the basis for your request. The Chamber's status as the DMO for the Town of Hilton Head does not convert a private non-profit organization into a public body under well established law. This precise issue has previously been litigated and decided in Horry County under facts that are identical to the present matter. I enclose a copy of the Order in *Sun Publishing Co., Inc. v. The Board of Directors of the Myrtle Beach Chamber of Commerce* for your review. Just as in *Sun Publishing*, the Chamber merely serves as a contractor providing services to local governments, and does not rely on public funds for its operations except to defray direct costs of the services provided. Additionally, the Chamber's operating funds are accounted for separately from any public funds that it may receive. See also *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 404, 401 S.E.2d 161, 165 (1991) (holding FOIA does not "apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms length basis."); *Woods v. Boeing Co.*, 841 F. Supp. 2d 925, 929 (D.S.C. 2012) (holding that even though Boeing receives millions of dollars from the State of South



1310 Gadsden Street PO Box 11449 Columbia, SC 29211
Phone 803 929.1400 Fax 803 929.0300 sowellgray.com

SOWELL GRAY STEPP & LAFFITE, LLC Litigation is our Business.

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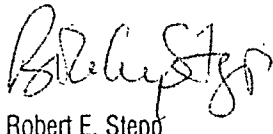
Litigation is our Business

Carolina, Boeing is not a "public body" under the Whistleblower Act, which uses the same definition of "public body" as FOIA, because it provides the service of providing jobs to the State).

Based upon these authorities, the Chamber declines to respond further to your request.

Please call me if you have any questions or would like to discuss this issue.

Very truly yours,



Robert E. Stepp

Enclosure

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

IN THE ORIGINAL JURISDICTION

FEB 15 2013

COUNTY OF BEAUFORT

S.C. SUPREME COURT

Civil Action No.: 2013-CP-07-00080

DOMAINSNEWMEDIA.COM, LLC

Plaintiff/Respondent,

vs.

Hilton Head Island-Bluffton
Chamber of Commerce

Defendant/Petitioner.

**PETITION FOR SUPREME COURT TO ASSERT
ORIGINAL JURISDICTION AND TO REMOVE THIS CASE
FROM THE CIRCUIT COURT**

The Hilton Head Island-Bluffton Chamber of Commerce, ("the Chamber"), by and through its undersigned attorneys, hereby petitions this Court to remove from the circuit court and exercise its original jurisdiction over the matter of *Domainsnewmedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce*, Civil Action Number 2013-CP-07-00080, a case currently pending in the Court of Common Pleas, Beaufort County, South Carolina. This Court may assert its original jurisdiction over this matter pursuant to Article V, § 5 of the South Carolina Constitution, which states: "The Supreme Court shall have the power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other

original and remedial writs.” S.C. Const. Art. V. § 5; *see also* S.C. Code Ann. § 14-3-310.

The grounds for this petition are that the pending case affects the public interest and that emergency circumstances exist that require the case to be finally litigated in an expedited manner. *See* Rule 245(a), SCACR (providing that original jurisdiction is appropriate if “the public interest is involved, or if special grounds of emergency or other good reasons exist”). In support of this Petition, the Chamber more specifically alleges as follows:

1. The Chamber is a 501(c)(6), non-profit corporation organized under the laws of the State of South Carolina. The Chamber’s purpose is to advance the common interests of its membership, stimulate the expanding regional economy, and enhance the quality of life for all. (*See* Affidavit of William G. Miles ¶ 2, incorporated herein and attached hereto as **Exhibit A**.)

2. Calvin “Skip” Hoagland (“Hoagland”) is a principal of Plaintiff and upon information and belief directs and controls its activities. Hoagland and Plaintiff are collectively referred to herein as “Plaintiff.”

3. For months on end, Plaintiff has engaged in a very public campaign against the Chamber and its Board of Directors and officers. This campaign challenges the private non-profit status of the Chamber, and asserts that the Chamber is instead a public body and subject to the provisions of the Freedom of Information Act (“FOIA”), S.C. Code Ann. § 30-4-10 *et seq.* (2007). The campaign includes many allegations of wrongdoing, including, but not limited to, the misuse of and failure to account for public funds received by the Chamber in various capacities. (Miles Aff. ¶¶ 13-15.) For

example, in sixteen half or full-page newspaper ads, as well as numerous private emails to various persons, Plaintiff asserts that the Chamber is “in violation of IRS tax codes governing non profits by selling any advertising on websites or in magazines that make a profit.” (See a representative sampling of the communications made by Plaintiff and/or Hoagland, about the Chamber and its current and former Board members incorporated herein by reference and attached hereto as **Exhibit B**).¹ Plaintiff claims that the Chamber “refuses full transparency . . . and declines opening its books to its membership” and is a “hoax” that takes “huge chunks of money from public funds and then builds a 26-employee, self-serving empire in the name of being a ‘non-profit’ organization” (*Id.*) Plaintiff has constantly harassed the Chamber’s board members and “challenge[d] all of [them] . . . to debate the validity of all this.” (*Id.*) He has threatened to “cc all major medias to expose this [alleged] abuse and [alleged] abusive salaries as well just more stealing” in the hopes that “[t]he Chamber will lose membership as my ads continue and word spreads on abuse.” (*Id.*)

As noted above, a portion of these attacks are based upon the assertion that the Chamber is a “public body” and has a statutory duty to disclose information under the Freedom of Information Act (“FOIA”), S.C. Code Ann. § 30-4-10 *et seq.* (2007). See, e.g., Advertisement published on February 3, 2013 in *The Island Packet*, included in Exhibit B (stating the Chamber attorneys “base their argument on a claim our Chamber is not ‘public’ under the definition, but merely a ‘contractor’ acting on behalf of local townships – and therefore not subject to FOIA. **Yet who is going to believe that ruse**

¹ The attached communications represent both public accusations of wrongdoing and private threats to the Chamber and its Board regarding various issues, including its duty to publicly account and its status as a 501(c)(6) organization. Certain personal data identifiers and privileged material have been redacted from these communications.

when the Chamber in a self-incriminating manner itself calls its V&CB a 'division' (not a separate entity)." (emphasis in original)). Mr. Hoagland gleefully proclaims that because of his efforts, "[i]t is very possible all of this is headed for litigation, major press coverage, IRS investigations, legal rulings and even [p]erhaps many lawsuits nationwide. *Supreme Court is even a possibility.*" (Ex. B (emphasis added).)

3. On November 28, 2012, an attorney acting for Plaintiff or Hoagland requested that the Chamber provide it with the following information, purportedly pursuant to FOIA:

- All documents pertaining to a proposed Welcome Center for the Hilton Head Island-Bluffton Chamber of Commerce on any property owned by the Town of Hilton Head;
- The names, sex, race, title and dates of employment of all employees and officers of the Hilton Head Island-Bluffton Chamber of Commerce;
- All administrative staff manuals and written instructions to staff that affect a member of the public;
- All statements of policy and interpretations of policy, statute and the constitution that have been adopted by Hilton Head Island-Bluffton Chamber of Commerce;
- All written planning policies and final planning decisions;
- All information in or taken from all accounts, vouchers, or contracts dealing with the receipt or expenditure of public or other funds of the Hilton Head Island-Bluffton Chamber of Commerce, including all bank accounts and contracts pertaining to the receipt and use of any accommodation tax funds or state or local grants received and/or used by the Hilton Head Island-Bluffton Chamber of Commerce, including any funds allocated to or used by the Hilton Head Island Visitor and Convention Bureau; and
- The minutes of all meetings, including Board of Director meetings, and all votes taken at such meetings, except as exempted pursuant to S.C. Code § 30-4-70.

See Compl., Ex. A. (For the Court's convenience, a copy of the Complaint is attached hereto as **Exhibit C.**)

4. On December 17, 2012, the Chamber declined Plaintiff's FOIA request on two grounds: (a) the Chamber's status as the Designated Marketing Organization ("DMO") for the Town of Hilton Head does not convert a non-profit organization into a public body for purposes of FOIA; and (b) the Chamber's operating funds are accounted for separately from any public funds that it may receive. The Chamber also provided Plaintiff or its representative with legal authority that establishes that a chamber of commerce that receives public funds under the Accommodations Tax Act does not become a public body for purposes of FOIA. (*See* Compl., Ex. B.)

5. Plaintiff then filed this action in the Beaufort County Court of Common Pleas alleging that the Chamber is a "public body" as that term is defined in FOIA and seeking an order declaring that the Chamber, or its division, the Visitor and Convention Bureau, is a "public body" as defined under section 30-4-20(a). Additionally, Plaintiff seeks an order requiring the Chamber to produce the previously requested records. Plaintiff further contends that it is entitled to an order declaring the rights and legal relations of the parties pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. 15-53-10 *et seq.* (2005) and FOIA. Finally, Plaintiff seeks attorney's fees and costs incurred in connection with this matter.

6. The facts underlying this controversy are not in dispute, and there is no need for discovery. The Chamber does not deny that it receives public funds under the Accommodations Tax Act, S.C. Code Ann. § 6-1-500 *et seq.* (2004 & Supp. 2012) and a grant from the South Carolina Department of Parks, Recreation, and Tourism ("PRT").

The sole question presented in this case is whether the Chamber's receipt of such funds renders it subject to FOIA.

7. All parties have a particular and urgent interest in obtaining a definitive answer to this issue in the most expeditious manner possible. This matter cannot be determined in the lower court without material prejudice to the rights of the Chamber because the delay associated with proceeding in the lower court will cause unfair prejudice to the Chamber in light of the relentless public attacks and accusations of wrongdoing made by Plaintiff and/or its principal, Mr. Hoagland. (Miles Aff. ¶ 17.) Public confidence in the Chamber's honesty and integrity, as well as the willingness of persons to serve on its Board, may be diminished so long as the issue remains unresolved. (*Id.* ¶¶ 16-17.) Additionally, if the Chamber is deemed to be public body, it needs to begin as soon as possible to provide notice of meetings and otherwise govern itself in accordance with FOIA, which may require certain changes to its by-laws and other governing documents. (*Id.* ¶ 17.)

8. The public interest is also directly affected by this proceeding because many non-profit entities receive public funds in exchange for providing services or otherwise. For instance, many non-profits receive public funds under the Accommodations Tax Act and/or grants from PRT, both of which require certain levels of disclosure that accomplish certain goals of FOIA. The Chamber is informed and believes that most, if not all, of these non-profits do not govern themselves in accordance with FOIA and are therefore potentially in violation of the law if Plaintiff's position is correct. (*Id.* ¶¶ 9, 17.) There is a significant public interest in ensuring that all entities

receiving public funds are aware of the implications of such funding so that they may comply as necessary with the requirements of FOIA. (*Id.* ¶ 17.)

9. A final, non-appealable, and binding determination of this issue is important to the parties and to the State as a whole so that the Chamber, along with hundreds of other non-profits, may properly govern themselves.

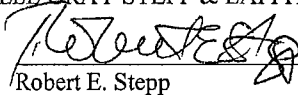
10. Because this case presents only issues of law, requires no factual development, justifies expedited treatment, and affects the public interest, the Chamber asks this Court to exercise its original jurisdiction and decide the pending matter.

WHEREFORE, the Hilton Head Island-Bluffton Chamber of Commerce respectfully requests that the Court assert original jurisdiction over this matter and expedite a hearing on the merits.²

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, LLC

By:


Robert E. Stepp
(S.C. Bar No. 5337)
Roland M. Franklin, Jr.
(S.C. Bar No. 14247)
Bess J. DuRant
(S.C. Bar No. 77920)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

**Attorneys for Hilton Head Island-Bluffton
Chamber of Commerce**

Columbia, South Carolina

February 15, 2013

² Because this matter involves a question of law, the Chamber seeks to have this case expedited and will comply with the Court's instructions toward that end.

Exhibit A

Affidavit of William G. Miles

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION

COUNTY OF BEAUFORT

Civil Action No.: 2013-CP-07-00080

DOMAINSNEWMEDIA.COM, LLC

Plaintiff,

vs.

Hilton Head Island-Bluffton
Chamber of Commerce

Defendant/Petitioner.

AFFIDAVIT OF WILLIAM G. MILES

Personally appeared before me William G. Miles, who, first being duly sworn,
deposes and says as follows:

1. I am William G. Miles. I am the president and chief executive officer for the Hilton Head Island-Bluffton Chamber of Commerce ("Chamber"). This affidavit is based upon my personal knowledge.

2. The Chamber is a 501(c)(6), non-profit corporation organized under the laws of South Carolina. The Chamber's purpose is to advance the common interests of its membership, stimulate the expanding regional economy, and enhance the quality of life for all.

W/GM

3. To further this purpose, the Chamber receives funds under the Accommodations Tax Act ("ATAX") and a grant from the Department of Parks, Recreation, and Tourism ("PRT Grant").

4. ATAX requires that the received funds be used for advertising and the promotion of tourism. S.C. Code Ann. § 6-4-10(3). Additionally, ATAX requires that such funds are segregated. S.C. Code Ann. § 6-1-520(B). The Chamber strictly adheres to all provisions of ATAX.

5. ATAX also contains certain reporting requirements. Under ATAX, the Chamber submits for approval a budget of planned expenditures before the beginning of each fiscal year. *See* S.C. Code Ann. § 6-4-10(3). Additionally, at the end of each fiscal year, the Chamber submits an accounting of its expenditures to the State of South Carolina, Beaufort County, the Town of Hilton Head Island, and the Town of Bluffton. *See id.*

6. Like ATAX, the PRT Grant also requires that any received funds be used for tourism purposes. Additionally, the PRT Grant imposes certain reporting requirements. Specifically, the PRT Grant requires recipients to provide "an annual report by November first, to the Chairman of the Senate Finance Committee and the House Ways and Means Committee and the director of the Department of Parks, Recreation and Tourism on the expenditure of the grants funds and on the proposed outcome measures." Proviso 39.2 of the Appropriations Act for Budget Year 2012-13. The Chamber strictly adheres to all terms and provisions of the PRT Grant.

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7. As a nonprofit corporation, the Chamber also provides access to certain records for its members in accordance with the Nonprofit Corporation Act. *See, e.g.*, S.C. Code Ann. §§ 33-31-1601, -1602.

8. The Chamber does not consider itself subject to the Freedom of Information Act ("FOIA"). The Chamber is not a "public body" as defined under FOIA, and therefore, does not conduct itself as a "public body." For example, the Chamber does not make its records or minutes of its meetings available to the public at large to inspect or copy. *See* S.C. Code Ann. §§ 30-4-30(a), (d)(1). The Chamber does not open its meetings to the public. *See* S.C. Code Ann. § 30-4-60. Similarly, it does not provide written public notice of its regular meetings at the beginning of each calendar year, and it does not post public notice for any called, special, or rescheduled meetings. *See* S.C. Code Ann. § 30-4-80. Complying with these requirements would place tremendous burden on the Chamber, a private, nonprofit organization.

9. Upon information and belief, other chambers of commerce or convention and visitors bureaus throughout South Carolina do not consider themselves "public bodies," and therefore, subject to FOIA.. In fact, I do not know of any chamber of commerce or convention and visitors bureau in South Carolina that considers itself subject to FOIA.

10. The Chamber has received two requests for information under FOIA. One request, dated November 26, 2012, was from Dean B. Bell, on "behalf of several interested Persons," requesting several documents, ranging from documents regarding a proposed Welcome Center to "all statements policy and interpretations of policy, statute and the Constitution which have been adopted by" the Chamber. A copy of Mr. Bell's

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request is attached hereto as **Exhibit A**. Skip Hoagland and his entity, DOMAINSNEWMEDIA.COM, LLC, were the interested persons for whom Mr. Bell sent the request. The other request was from Fitz McAden with *The Island Packet* and dated December 28, 2012. Mr. McAden requested similar information, and a copy of his request is attached hereto as **Exhibit B**.

11. The Chamber responded to both requests, declining to produce the requested documents, on the ground that it is not a "public body" or otherwise subject to FOIA. Specifically, the Chamber believes it is not a "public body" because it is merely a contractor that provides services for any public funds it may receive. The Chamber's responses to Mr. Bell and Mr. McAden are attached hereto as **Exhibits C and D**, respectively.

12. The Chamber is not a "public body." Rather, it is a private, non-profit corporation and complies with all provisions of the Nonprofit Corporation Act. Additionally, as a recipient of funds under ATAX and the PRT Grant, the Chamber complies with all requirements, including all reporting requirements, of ATAX and the PRT Grant. The Nonprofit Corporation Act, ATAX, and the PRT Grant do not impose any of the rigorous reporting standards or open meeting requirements as imposed by FOIA.

13. Mr. Hoagland has engaged in a relentless attack against the Chamber. He claims that the Chamber misuses and fails to account for the funds it receives under the Act. For example, in a full-page newspaper advertisement published after the Chamber declined Hoagland's FOIA request, he claims that the Chamber is "in violation of IRS tax codes governing non profits by selling any advertising on websites or in magazines that

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made a profit." Further, he labels the Chamber as a "hoax" and a "self-serving empire in the name of being a 'non-profit' organization. . . ." He continues that "[t]he Chamber's decision to hire out-of-town lawyers to arrogantly refuse FOIA (Freedom of Information Act) transparency requests speaks volumes about things they are trying to hide from our community." See Advertisement published on January 13, 2013 in *The Island Packet* and *The Beaufort Gazette* attached hereto as **Exhibit E**. A sample of other public comments about the Chamber that Hoagland has made after filing this lawsuit are as follows:

- "The Chamber attorneys . . . base their argument on a claim our Chamber is not 'public' under the definition, but merely a 'contractor' acting on behalf of local townships – and therefore not subject to FOIA. **Yet who is going to believe that ruse when the Chamber in a self-incriminating manner itself calls its V&CB a 'division' (not a separate entity).**" (emphasis in original). Hoagland advertisement published on February 3, 2013 in *The Island Packet*, attached hereto as **Exhibit F**;
- "As you all know by now . . . this all will continue until its [sic] totally cleaned up one way or the other. . . . What I have been forced to do now is take this to litigation and SC Supreme Court if necessary. I will continue full Page ads educating and updating those who are interested. Will launch a direct mail piece to be sent out. . . . I have instructed my lawyers and accountants to put together additional Lawsuits that will be filed at the appropriate times as this Foia case moves forward in the courts . . ." Hoagland email, entitled "Today's letter to the editor," attached hereto as **Exhibit G**; and,
- "[M]y efforts, as a Chamber Member, to uncover abuses have been rebuffed at every turn, and I have finally been forced to seek help from the South Carolina court system." Hoagland Advertisement published on February 10, 2013, in *The Island Packet*, attached hereto as **Exhibit H**.

14. Even before the Chamber declined his request, he publically announced that his feud with the Chamber "is headed for litigation, major press coverage, IRS investigations, legal rules and even [p]erhaps many lawsuits nationwide. *Supreme Court is even a possibility.*" See Hoagland email dated May 3, 2012 (emphasis added) attached

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hereto as **Exhibit I**. A few of his other public statements regarding the Chamber and this lawsuit are as follows:

- “[i]f our Chamber is a 501C-6 organization that accepts public funds, why does it ignore Freedom of Information Act (FOIA) requests and have two attorneys from Charleston to refuse information requests from its own members?” Hoagland advertisement published on December 9, 2012 in *The Island Packet*, attached hereto as **Exhibit J**;
- “Who will join me in my lawsuit based on transparency and information only. [sic] Nothing else!! All you have to do is join me and I pay for All!!” Email from Hoagland, dated Nov. 12, 2012, attached hereto as **Exhibit K**;
- “It seems those in Charge [sic] have easy choices and that is simply do whats [sic] right, if not all we will see is more problems and conflict, more full page ads in the Island Packet, HHI Monthly, TV prime news, coverage in surrounding city newspapers etc. . . . This will not stop until I and others are convinced the abuse has ended on all fronts for all of us.” Email from Hoagland, dated Nov. 7, 2011, attached hereto as **Exhibit L**; and,
- “The HHI Chamber and Bill Miles has [sic] hired two lawyers to deal with me [sic] Why what reason? . . . The Hilton Head case is important because it will set the stage to expose the abuse in other cities across America.” Email from Hoagland, dated Sept. 12, 2012, attached hereto as **Exhibit M**.

15. These are only a few of the many public attacks he has made against the Chamber, and I anticipate the severity and volume of his attacks will only increase with the filing of the present lawsuit, considering he threatened Chamber board members with the following: “Those who continue to sit on this board will lose business and credibility for themselves and the companies they represent as the abuse is allowed to continue and gets exposed in the press. It seems lawsuits are inevitable as well.” See Hoagland email dated Sept. 2, 2012 attached hereto as **Exhibit N**.

16. His aggressive campaign against the Chamber has the capacity to undermine the public confidence in the Chamber. Consequently, it could affect the

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Chamber's membership and its ability to serve as the organization charged to promote tourism under ATAX and the PRT Grant. Hoagland's attacks undercut the Chamber's purpose of contributing to the preservation and economic growth of Beaufort County. These actions implicate the public interest.

17. This Court should exercise its original jurisdiction because Hoagland's incessant harassment of the Chamber involves the public interest and provides a special ground for this Court to entertain this case in its original jurisdiction. Additionally, this Court should take this case in its original jurisdiction because of the importance of the issue to the Chamber as well as other similarly non-profits across South Carolina. Upon information and belief, other chambers of commerce and other private, non-profit corporations are not governing themselves as if they are subject to FOIA. The Chamber would be prejudiced by permitting this case to proceed in the trial court because the delay associated with trial courts would leave the issue unanswered possibly for years and allow Hoagland to continue his public crusade against the Chamber. If this Court determines that the Chamber is subject to FOIA, it must quickly change its operations so that it can comply with FOIA's requirements. The Chamber needs a final, non-appealable decision reached expeditiously so that it, along with other non-profits, can proceed with certainty.

FURTHER AFFIANT SAYETH NOT.

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William G. Miles
William G. Miles

Sworn to before me this 2th day of February, 2013

Mary C. Killmar
Notary Public for South Carolina
My commission expires:

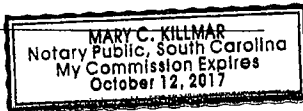


Exhibit A

FOIA Request Letter from Dean Bell
Dated November 26, 2012

The Law Office of Dean B. Bell, LLC

1 Corpus Christi Place
Bldg. 105, Executive Center
Post Office Box 7401
Hilton Head Island, SC 29928

Dean B. Bell*
Joseph DuBois
R. Myers Truluck, Jr.
Zach S. Naert

Telephone* (843) 785-9772
Fax * (843) 785-9773
Website* www.deanbell-law.com

* Certified Arbitrator & Mediator

November 26, 2012

D. Jay Davis, Jr., Esquire
Young Clement Rivers, LLP
25 Calhoun Street, Ste. 400
P. O. Box 993
Charleston, SC 29402

Re: FOIA Request/Hilton Head/Bluffton Chamber of Commerce

Dear Jay:

On behalf of several interested Persons, as that term is defined pursuant to S.C. Code §30-4-20(b), and in accordance with the remaining provisions of the South Carolina Freedom of Information Act, S.C. Code §30-40-10, *et seq.*, (as amended), I hereby request the following records be provided or made available for inspection:

- 1) Copies of any and all documents pertaining to a proposed Welcome Center for the Hilton Head Island - Bluffton Chamber of Commerce on any property owned by the Town of Hilton Head, including but not limited to any proposed lease documents, correspondence, email communications, memoranda, building plans, cost estimates, development agreements, meeting minutes, building permit applications, conceptual plans, or proposals or plans of any nature whatsoever pertaining to the planned Welcome Center or renovation of any existing structure for that use on any property owned by the Town of Hilton Head.
- 2) The names, sex, race, title and dates of employment of all employees and officers of the Hilton Head Island - Bluffton Chamber of Commerce, pursuant to S.C. Code §30-4-50(1) and all compensation paid by the Hilton Head Island - Bluffton Chamber of Commerce as provided in S.C. Code §30-4-40(a)(6).
- 3) All administrative staff manuals and written instructions to staff that affect a member of the public;



D. Jay Davis, Jr. Esquire
November 26, 2012
Page 2 of 3

- 4) All statements of policy and interpretations of policy, statute and the Constitution which have been adopted by the Hilton Head Island - Bluffton Chamber of Commerce.
- 5) All written planning policies and goals and final planning decisions;
- 6) All information in or taken from all accounts, vouchers, or contracts dealing with the receipt or expenditure of public or other funds of the Hilton Head Island - Bluffton Chamber of Commerce to include but not be limited to all bank accounts and contracts pertaining to the receipt and use of any accommodation tax funds or state or local grants received and/or used by the Hilton Head Island - Bluffton Chamber of Commerce, including any funds allocated to or used by the Hilton Head Island Visitor and Convention Bureau.
- 7) The minutes of all meetings (including but not limited to Board of Director meetings) and all votes taken at such meetings except as exempted pursuant to S.C. Code §30-4-70.

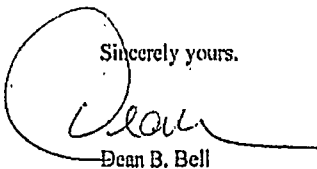
I am sure that I do not need to point out that the Hilton Head Island - Bluffton Chamber of Commerce, Inc. is a "Public Body" as defined in S.C. Code §30-4-20(a) due to the fact that as a Designated Marketing Organization for the Town of Hilton Head, it receives significant amounts of public funds that it appears to expense through its Visitor and Convention Bureau. The organization also receives other significant public funds in the form of various grants. Additionally, I do not believe there is an exception to Board meetings being required to be open to the public pursuant to S.C. Code §30-4-60. I welcome your thoughts on that. Barring an exception, it would appear that all Board meetings must be open to the public and all the notices required by S.C. Code §30-4-80 must be given. As such, I would appreciate your providing me directly with the date, time, location, and agenda for the next Board meeting or meeting of any subcommittee of the Board.

I look forward to your response within fifteen days of the date of your receipt of this request. If a deposit is required for the costs associated with searching for these documents and making them available for inspection, or for copying should you prefer to provide them directly to me, please let me know. Should you have any questions or comments, please do not hesitate to contact me.

D. Jay Davis, Jr. Esquire
November 26, 2012
Page 3 of 3

With kind regards, I am

Sincerely yours.

A handwritten signature in cursive script, appearing to read "Dean B. Bell", is written over a circular stamp. The signature extends to the right, crossing the vertical line of the stamp.

Dean B. Bell

Exhibit B

FOIA Request Letter from
Fitz McAden
Dated December 28, 2012

THE ISLAND PACKET

The Beaufort Gazette

Dec. 28, 2012

Bill Miles
President & CEO
Hilton Head Island-Bluffton Chamber of Commerce
PO Box 5647
Hilton Head Island, SC 29938

Dear Bill:

I hope you are doing well and I wish you a happy and prosperous new year.

This is a request for information under the South Carolina Freedom of Information Act.

I am seeking documents that show:

- Each source of revenue for the chamber and the Visitor and Convention Bureau, and the amount of money from each source for the past three years.
- Each organization or individual paid by the chamber and the VCB for goods and services, along with the amounts paid, for the past three years.
- A list of all chamber and VCB employees whose total compensation is \$50,000 or more, along with the amounts of their total compensation.
- A copy of the chamber's bylaws, plus any revisions, amendments, etc., made to the bylaws over the past three years.

We believe that the records we seek are accessible to the public because the chamber and VCB are "public bodies" as defined by South Carolina law, which deems organizations that receive money from the public to be subject to the provisions of the FOIA. The chamber and VCB receive a substantial amount of their revenue from public sources.

Thank you very much.

Sincerely,



Fitz McAden
Executive Editor
The Island Packet, Hilton Head Island & Bluffton, SC
The Beaufort Gazette, Beaufort, SC
Work: 843-706-8110
E-mail: fmcaden@islandpacket.com

The Island Packet | islandpacket.com • The Beaufort Gazette | beaufortgazette.com
(843) 706.8100, main • (877) 706.8100, toll free
(843) 706.3070, newsroom fax • (843) 706.5050, advertising fax • (843) 706.8239, circulation/finance fax
P.O. Box 5727 • Hilton Head Island, South Carolina 29928 • 10 Buck Island Road, Bluffton, South Carolina 29910

Exhibit C

Chamber's Response to Dean Bell
Dated December 17, 2012



ROBERT E. STEPP
Direct Dial 803 231.7886
Direct Fax 803 231.7886
Email rstepp@sowellgray.com

December 17, 2012

Dean D. Bell, Esquire
The Law Office of Dean D. Bell, LLC
Post Office Box 7401
Hilton Head Island, SC 29928

Re: FOIA Request to Hilton Head Island-Bluffton Chamber of Commerce
SGS&L File No.: 6515/1500

Dear Mr. Bell:

I represent the Hilton Head Island-Bluffton Chamber of Commerce ("Chamber") in connection with the request made in your letter dated November 26, 2012. Please be advised that the Chamber is not a public body or otherwise subject to the provisions of S.C. Code Ann. §30-40-10 *et seq.*, and therefore will not be providing the requested documents to you.

In your letter, you refer to the status of the Chamber as the Designated Marketing Organization for the Town of Hilton Head as the basis for your request. The Chamber's status as the DMO for the Town of Hilton Head does not convert a private non-profit organization into a public body under well established law. This precise issue has previously been litigated and decided in Horry County under facts that are identical to the present matter. I enclose a copy of the Order in *Sun Publishing Co., Inc. v. The Board of Directors of the Myrtle Beach Chamber of Commerce* for your review. Just as in *Sun Publishing*, the Chamber merely serves as a contractor providing services to local governments, and does not rely on public funds for its operations except to defray direct costs of the services provided. Additionally, the Chamber's operating funds are accounted for separately from any public funds that it may receive. See also *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 404, 401 S.E.2d 161, 165 (1991) (holding FOIA does not "apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms length basis."); *Woods v. Boeing Co.*, 841 F. Supp. 2d 925, 929 (D.S.C. 2012) (holding that even though Boeing receives millions of dollars from the State of South

1310 Gadsden Street PO Box 11449 Columbia, SC 29211
Phone 803 929.1400 Fax 803 929.0300 sowellgray.com

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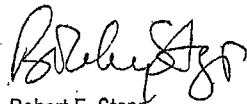
Litigation Is our Business.

Carolina, Boeing is not a "public body" under the Whistleblower Act, which uses the same definition of "public body" as FOIA, because it provides the service of providing jobs to the State).

Based upon these authorities, the Chamber declines to respond further to your request.

Please call me if you have any questions or would like to discuss this issue.

Very truly yours,



Robert E. Stepp

Enclosure

Chamber's Order

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 88-CF-26-1851

Sun Publishing Co., Inc.,
Plaintiff,

versus

FINAL ORDER

The Board of Directors of the
Myrtle Beach Area Chamber of
Commerce,
Defendant.

This matter comes before me pursuant to an Order of Reference executed by the Honorable Dan F. Laney, Jr., Circuit Judge for the Fifteenth Judicial Circuit, dated March 10, 1989. The Plaintiff is represented by William L. Pope of Pope and Rodgers of Columbia, South Carolina, and the Defendant is represented by Edward T. Kelaher of Kelaher, Haar, Bass & Connell of Surfside Beach, South Carolina. A hearing was scheduled to be held on June 21, 1989, at 9:30 a.m. At the commencement of the proceedings, the attorneys for the parties advised the Court that they had reached an agreement by which a complete stipulation of all facts and exhibits would be presented to the Court. These stipulations with attachments have been executed by the attorneys and are hereby adopted as the record of this case.

The stipulations provide that the Myrtle Beach Area Chamber of Commerce (hereinafter referred to as "the Chamber")

receives funds which are distributed by county and municipal governments as proceeds of the Accommodations Tax Act of South Carolina, Section 12-35-710, et seq. Under the Act, the Chamber and any other interested entity or person submits a plan for the management of Accommodations Tax Act proceeds and county and municipal governments designate from among the applicants those which are to manage the funds. At the end of each fiscal year, the entities involved are to render accountings of the funds so distributed.

On May 11, 1988, the Chamber's Board of Directors held an officially called meeting without giving public notice and closed the meeting to the public over the objections of a reporter for the Plaintiff. The Plaintiff alleges that the receipt of funds from the Accommodations Tax Act renders the Chamber a "public body" as that term is defined in the South Carolina Freedom of Information Act, Section 30-4-10, et seq. Plaintiff commenced this action by filing a Complaint seeking a declaration of this Court that the Chamber has violated the Freedom of Information Act and for injunction relief prohibiting the Chamber from scheduling and holding future meetings from which the public is excluded.

The Chamber argues in opposition that it is a contractor which performs services to local governments in the advertising and promotional fields. The Chamber contends that it competes against several entities in a bidding/budgetary process on an arms-length basis after which it provides a

function at least equal to the value of sums paid to it. The Chamber asserts that it in no manner relies upon such income for "support" as defined by the Act. The Chamber further contends that it does not "expend" funds, but rather that county and municipal governments expend the funds upon payment to the Chamber which is to ministerially perform predetermined services. The Chamber further avers that payments to it are not a gift, grant, subsidy, maintenance or support and that all of its operating expenses are paid by the dues and other private revenues it receives from its 1,800 members.

The parties have stipulated that the sole issue to be determined by this Court is whether the Chamber is a "public body" as defined by the Act.

Based upon the following discussion, it is clear to the Court that the Chamber is not a public body as defined by the Act.

THE SOUTH CAROLINA ACCOMMODATIONS TAX ACT

The South Carolina Accommodations Tax Act, Section 12-35-710, et seq., Code of Laws of South Carolina, 1976, provides for the collection of a tax on the proceeds of rentals of transient accommodations. The Act further provides for the allocation of such funds to various governments (as opposed to the Chamber of Commerce), and the administration of these taxes. The Act contemplates the involvement of a Chamber of Commerce, or other such organization, by requiring local governments to select such an organization to manage and direct the expenditure

of tourism promotional funds upon the submission of a budget of planned expenditures. See, Section 12-35-720(1). The Section cited clearly contemplates:

1. That more than one organization may compete for the management job;
2. That such organization shall have already been existing, ongoing, and in the tourism promotion business;
3. That the entity must demonstrate to the municipality or county that it has an existing, ongoing tourism program or can develop an effective program.

In phrasing these applicable statutes, the General Assembly clearly recognized that the activities of a Chamber of Commerce are not those within a normal government function and that such services are to be properly contracted out to those who are qualified to handle such matters. The situation at hand is no different than the government using collected tax proceeds to pay engineering companies for studies, paving companies for paving, consulting companies for opinions, or any of the myriad other contexts and situations involving services and purposes recognized as important by the government, yet handled by private entities. Indeed, few, if any, would argue that an engineering company, paving company, consulting company, or other entity is subject to the Freedom of Information Act merely because it provides services and is paid government funds for those services.

Further, Section 12-35-720 imposes a rigid business procedure which mandates that all information which is relevant and of public interest be deposited with local governments, thusly

becoming subject to the Freedom of Information Act,

EXPENDITURE OF PUBLIC FUNDS

Upon the government's approval of the Chamber's budget and plan, or the budget and plan of any other approved entity, the municipality or county is effectively exercising its discretion as to how the funds are to be spent. Thus, all "discretionary spending" is conducted at the government level, based upon bidding documents deposited with the governments, and a final accounting of any such spending. The following procedure is required to be followed before an entity can be retained by the county to conduct the work required by the act:

1. All organizations vying to be selected as a management entity must submit a budget of planned expenditures.
2. The municipality or county must approval all expenditures prior to any spending. Thus, all discretion as to spending is on the government level providing further emphasis that the Chamber does not "expend" or "receive" public funds as contemplated by the Freedom of Information Act. The Chamber is provided with government funds for the purpose of contractually carrying out governmentally predetermined functions.*
3. At the end of each fiscal year, any organization managing for the government under the Accommodations Tax Act must render an accounting of the expenditure of such funds. The statute does not require the organization to render an accounting of its entire operations, but only that portion of its operations related to the government's purpose.

* Again, this is not unlike a government providing a paving contractor with specific details, standards and locations for new roads to be built. The fact that government money is given to the paving contractor and that it completes the work would hardly expose the contractor to public scrutiny despite the fact that the contractor may take the funds he is given and hire subcontractors, purchase materials, and exercise a significant amount of discretion as to the methods and procedures which may be followed in performing the governmentally directed work.

4. The act goes on to provide that municipalities or county governments may issue bonds or enter other financial obligations to construct facilities for civic activities and the like. No one would argue that contractors who are paid funds to effect such construction would be subject to the Freedom of Information Act.
5. Further, Section 12-35-720(3) provides that an advisory committee must be appointed to make recommendations on the expenditure of revenue generated from the accommodations tax.

THE CHAMBER IS NOT "SUPPORTED" IN WHOLE OR IN PART

BY GOVERNMENT FUNDS

The money the Chamber receives is not a grant, gift, or subsidy. The Chamber is required to perform certain services and would indeed be liable to the municipalities and county governments if it did not do so properly. The Chamber must agree on terms and conditions of expenditure, which terms and conditions include payment for services rendered by the organization.

The Chamber of Commerce receives no profit for its services as is amply illustrated by the financial documents, budgets and accountings contained in the stipulations of the parties. The records further illustrate that the Chamber completely segregates its operating funds from the funds of the Accommodations Tax Act. This segregation--a complete absence of commingling--is the ultimate evidence of the Chamber's lack of reliance on government funds for "support." Conversely, the records stipulated into evidence demonstrate that the Chamber actually supports the governments by using Chamber overhead for

services to governments with a resultant net loss to the Chamber.

Further, in the Attorney General Opinion cited hereinabove, (Op. No.82-15, SUPRA), it was emphasized that the money received by a hospital was but a portion of its revenue and at best did not cover the actual costs of the services rendered, as is the case now before the Court. From the record of this case, it appears that one hundred percent of Chamber operating revenues are received from the dues paid by its 1,800 members and other privately earned or paid sources.

The Attorney General defines "support" as "to maintain and to 'maintain' generally means to keep up, to supply with what is needed, to furnish with funds or means for maintenance." Id., at page 20. It is clear from the record before the Court that the Chamber is not "supported" by government applying this definition.

WESTON, ET AL. V. CAROLINA RESEARCH AND
DEVELOPMENT FOUNDATION

In the matter of Chris Weston and Multimedia, Inc. d/b/a The Greenville News-Piedmont Company v. Carolina Research and Development Foundation, et al., in the Court of Common Pleas of Richland County, 88-CF-40-5322, Circuit Court Judge Carol Connor issued an opinion dated June 26, 1989, holding that the Defendant Foundation was a public body under the Freedom of Information Act. However, the decision of the Court is extremely helpful and supportive of the Chamber's position in this case.

2010

Judge Connor ruled against the Foundation because of its pervasive and, at times, indistinguishable relationship with the University of South Carolina and the fact that it received funds from the University en masse to expend at its own discretion (a situation wholly unlike the extensive budgeting and accounting process the Chamber is required to endure in the instant case). Most notably, Judge Connor wrote:

"Nor should this Order be read to suggest that the Act would apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms'-length basis. In that situation, there is an exchange of money for identifiable goods or services of equal value, and public oversight (the intent of the Act) is ensured by access to the public bodies' records, which would provide the detail necessary to show how the money was spent." Id., at page 7, emphasis added.

Applying Judge Connor's standards:

1. The Chamber is a private business enterprise which provides goods or services in exchange for funds it receives.
2. The funds it receives, in exchange for goods and services, are received on an "arms'-length basis" as the Chamber must compete with other entities for the funds it receives and must satisfy the local governments, both in the bidding and accounting stages, that the Chamber is effective and acting properly in the performance of its services.
3. Judge Connor's criteria regarding services of equal value appears to be surpassed by the Chamber in that the services it renders may be more valuable than the funds it receives as the Chamber's overhead, which is not supported by any public funds, is used to perform the services requested by the governments.
4. Perhaps, most significant is Judge Connor's acknowledgment that public scrutiny is ensured by access to "the public bodies' records which would provide the detail necessary to show how the money was spent". (Id., at page 7, emphasis added).

The Court is of the opinion that the discretionary spending of funds is effected at the point in time when the County and Municipal Governments decide which budget/bid to accept among all competitors and is verified upon the receipt of an accounting from any selected competitor for such funds. The mere payment of money to the entity selected is contractual in nature and the work performed by the entity subsequent to receiving the funds is a wholly autonomous, independent and government-free activity save the specifications for the use of the funds as previously determined by the local governments.

Finally, Judge Connor's decision was made with clear recognition that the foundation did not perform any service in exchange for its share of funds, a clear distinguishing factor from the case at Bar. *Id.*, at page 4.

THE CHAMBER IS NOT A "PUBLIC BODY" UNDER THE ACT

Section 30-4-20(a) Code of Laws of South Carolina, 1976, defines a public body as follows:

"...any department of the state, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the state, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds..."

Clearly, the Chamber is not a department of the state, a state board, commission, agency or authority. It is not a governmental body, a political subdivision, a county, municipality, township, school district, or special purpose

district. The fact that the Chamber was not created by a provision of the South Carolina constitution, or by a statute, ordinance or resolution of the General Assembly supports this conclusion.

Rather, as to the issue of this case, the Chamber is a contractor performing advertising and promotional services for local governments. Pursuant to the Accommodations Tax Act, supra, the Chamber competes against several entities in a bidding/budgetary process for such work. Local governments select the most qualified or desirable entities. The work to be performed is specified by the local government involved and is not at the Chamber's discretion. The county or municipality thereafter pays the Chamber to perform the predetermined services. Upon completion of the work, the Chamber (or other selected organization) must provide an accounting to the government. This proposal/budget/acceptance/payment/services/accounting process is absolutely contractual in nature. The Chamber receives no gift, grant, subsidy, maintenance or support by this procedure. The local governments and the Chamber conduct an arms' length bidding/acceptance exercise and the Chamber must work in exchange for payment. Should the Chamber fail to perform as agreed upon, it would be liable for damages for breach of contract.

Perhaps the strongest statement supporting the Chamber's position is that contained in Opinion No. 82-15 of the Attorney General of South Carolina dated March 12, 1982. In that

case, the Attorney General was presented with a private hospital corporation which contracted with a county government to provide certain services for the county which services were paid for by public funds, a situation analogous to the case at Bar. The Attorney General found that the hospital was not subject to the Freedom of Information Act holding that:

A private entity, by entering into a contract for services with a public body, does not itself thereby also assume the status of a public body in its stead. The law, as written, encompasses only such bodies which are "supported in whole or in part by public funds or which expend public funds", and it is the opinion of this office that the receipt of specific funds on a contractual basis for services rendered to a public body does not render a private corporation subject to the South Carolina Freedom of Information Act. *Id.*, at page 21.

CONCLUSION

Based upon the foregoing discussion, I hold that the Myrtle Beach Area Chamber of Commerce is not a "public body" as defined by the South Carolina Freedom of Information Act. Therefore, the relief sought by the Plaintiff in its Complaint is denied.

John L. Breeden
Master in Equity

Conway, South Carolina

July __, 1989

Exhibit D

Chamber's Response to
Fitz McAden
Dated January 14, 2012

SOWELL **SG** GRAY

ROBERT E. STEPP
Direct Dial 803 231.7836
Direct Fax 803 231.7886
Email rstapp@sowellgray.com

January 14, 2012

Mr. Fitz McAden
The Island Packet
Post Office Box 5727
Hilton Head Island, SC 29928

Re: FOIA Request to Hilton Head Island-Bluffton Chamber of Commerce
SGS&L File No.: 6515/1500

Dear Mr. McAden:

I represent the Hilton Head Island-Bluffton Chamber of Commerce ("Chamber") in connection with the request made in your letter dated December 28, 2012. Please be advised that the Chamber is not a public body or otherwise subject to the provisions of S.C. Code Ann. §30-40-10 *et seq.*, and therefore will not be providing the requested documents to you under the Freedom of Information Act.

In your letter, you refer to the fact that the Chamber receives a portion of its revenue from public sources as the basis for your request. Neither the Chamber's receipt of such funds nor its status as the DMO for the Town of Hilton Head converts it from a private non-profit organization into a public body under well established law. This precise issue has previously been litigated and decided in Horry County under facts that are identical to the present situation. I enclose a copy of the Order in *Sun Publishing Co., Inc. v. The Board of Directors of the Myrtle Beach Chamber of Commerce* for your review. Just as in *Sun Publishing*, the Chamber merely serves as a contractor providing services to local governments, and does not rely on public funds for its operations except to defray direct costs of the services provided. Additionally, the Chamber's operating funds are accounted for separately from any public funds that it may receive. See also *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 404, 401 S.E.2d 161, 165 (1991) (holding FOIA does not "apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms length basis."); *Woods v. Boeing Co.*, 841 F. Supp. 2d 925, 929 (D.S.C. 2012) (holding that even though Boeing receives millions of dollars from the State of

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SOWELL **SG** GRAY

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South Carolina, Boeing is not a "public body" under the Whistleblower Act, which uses the same definition of "public body" as FOIA, because it provides the service of providing jobs to the State).

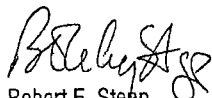
Based upon these authorities, the Chamber is not a public body or otherwise subject to FOIA, and therefore declines to comply with your request under that statute.

The Chamber routinely accounts to public bodies for its receipt and expenditure of public funds, however. In order to be completely transparent with respect to its use of those funds, the Chamber is happy to provide you with the same information that it reports to the public bodies to which it is accountable. Accordingly, I enclose the following documents:

- Hilton Head Island – Bluffton Chamber of Commerce Audit Fiscal Year 2010
- Hilton Head Island – Bluffton Chamber of Commerce Audit Fiscal Year 2011
- Hilton Head Island – Bluffton Chamber of Commerce Audit Fiscal Year 2012
- Hilton Head Island – Bluffton Chamber of Commerce Town Budget Fiscal Year 2010
- Hilton Head Island – Bluffton Chamber of Commerce Town Budget Fiscal Year 2011
- Hilton Head Island – Bluffton Chamber of Commerce Town Budget Fiscal Year 2012
- Hilton Head Island – Bluffton Chamber of Commerce Town Budget Fiscal Year 2013

Please call me if you have any questions or would like to discuss this issue.

Very truly yours,


Robert E. Stepp

Enclosures

Chamber's Order

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 88-CF-26-1851

Sun Publishing Co., Inc.,)
Plaintiff,)

versus

FINAL ORDER

The Board of Directors of the)
Myrtle Beach Area Chamber of)
Commerce,)
Defendant.)

This matter comes before me pursuant to an Order of Reference executed by the Honorable Dan F. Laney, Jr., Circuit Judge for the Fifteenth Judicial Circuit, dated March 10, 1989. The Plaintiff is represented by William L. Pope of Pope and Rodgers of Columbia, South Carolina, and the Defendant is represented by Edward T. Kelaheer of Kelaheer, Haar, Bass & Connell of Surfside Beach, South Carolina. A hearing was scheduled to be held on June 21, 1989, at 9:30 a.m. At the commencement of the proceedings, the attorneys for the parties advised the Court that they had reached an agreement by which a complete stipulation of all facts and exhibits would be presented to the Court. These stipulations with attachments have been executed by the attorneys and are hereby adopted as the record of this case.

The stipulations provide that the Myrtle Beach Area Chamber of Commerce (hereinafter referred to as "the Chamber")

receives funds which are distributed by county and municipal governments as proceeds of the Accommodations Tax Act of South Carolina, Section 12-35-710, et seq. Under the Act, the Chamber and any other interested entity or person submits a plan for the management of Accommodations Tax Act proceeds and county and municipal governments designate from among the applicants those which are to manage the funds. At the end of each fiscal year, the entities involved are to render accountings of the funds so distributed.

On May 11, 1988, the Chamber's Board of Directors held an officially called meeting without giving public notice and closed the meeting to the public over the objections of a reporter for the Plaintiff. The Plaintiff alleges that the receipt of funds from the Accommodations Tax Act renders the Chamber a "public body" as that term is defined in the South Carolina Freedom of Information Act, Section 30-4-10, et seq. Plaintiff commenced this action by filing a Complaint seeking a declaration of this Court that the Chamber has violated the Freedom of Information Act and for injunction relief prohibiting the Chamber from scheduling and holding future meetings from which the public is excluded.

The Chamber argues in opposition that it is a contractor which performs services to local governments in the advertising and promotional fields. The Chamber contends that it competes against several entities in a bidding/budgetary process on an arms-length basis after which it provides a

function at least equal to the value of sums paid to it. The Chamber asserts that it in no manner relies upon such income for "support" as defined by the Act. The Chamber further contends that it does not "expend" funds, but rather that county and municipal governments expend the funds upon payment to the Chamber which is to ministerially perform predetermined services. The Chamber further avers that payments to it are not a gift, grant, subsidy, maintenance or support and that all of its operating expenses are paid by the dues and other private revenues it receives from its 1,800 members.

The parties have stipulated that the sole issue to be determined by this Court is whether the Chamber is a "public body" as defined by the Act.

Based upon the following discussion, it is clear to the Court that the Chamber is not a public body as defined by the Act.

THE SOUTH CAROLINA ACCOMMODATIONS TAX ACT

The South Carolina Accommodations Tax Act, Section 12-38-710, et seq., Code of Laws of South Carolina, 1976, provides for the collection of a tax on the proceeds of rentals of transient accommodations. The Act further provides for the allocation of such funds to various governments (as opposed to the Chamber of Commerce), and the administration of these taxes. The Act contemplates the involvement of a Chamber of Commerce, or other such organization, by requiring local governments to select such an organization to manage and direct the expenditure

of tourism promotional funds upon the submission of a budget of planned expenditures. See, Section 12-35-720(1). The Section cited clearly contemplates:

1. That more than one organization may compete for the management job;
2. That such organization shall have already been existing, ongoing, and in the tourism promotion business;
3. That the entity must demonstrate to the municipality or county that it has an existing, ongoing tourism program or can develop an effective program.

In phrasing these applicable statutes, the General Assembly clearly recognized that the activities of a Chamber of Commerce are not those within a normal government function and that such services are to be properly contracted out to those who are qualified to handle such matters. The situation at hand is no different than the government using collected tax proceeds to pay engineering companies for studies, paving companies for paving, consulting companies for opinions, or any of the myriad other contexts and situations involving services and purposes recognized as important by the government, yet handled by private entities. Indeed, few, if any, would argue that an engineering company, paving company, consulting company, or other entity is subject to the Freedom of Information Act merely because it provides services and is paid government funds for those services.

Further, Section 12-35-720 imposes a rigid business procedure which mandates that all information which is relevant and of public interest be deposited with local governments, thusly

becoming subject to the Freedom of Information Act.

EXPENDITURE OF PUBLIC FUNDS

Upon the government's approval of the Chamber's budget and plan, or the budget and plan of any other approved entity, the municipality or county is effectively exercising its discretion as to how the funds are to be spent. Thus, all "discretionary spending" is conducted at the government level, based upon bidding documents deposited with the governments, and a final accounting of any such spending. The following procedure is required to be followed before an entity can be retained by the county to conduct the work required by the act:

1. All organizations vying to be selected as a management entity must submit a budget of planned expenditures.
2. The municipality or county must approval all expenditures prior to any spending. Thus, all discretion as to spending is on the government level providing further emphasis that the Chamber does not "expend" or "receive" public funds as contemplated by the Freedom of Information Act. The Chamber is provided with government funds for the purpose of contractually carrying out governmentally predetermined functions.*
3. At the end of each fiscal year, any organization managing for the government under the Accommodations Tax Act must render an accounting of the expenditure of such funds. The Statute does not require the organization to render an accounting of its entire operations, but only that portion of its operations related to the government's purpose.

* Again, this is not unlike a government providing a paving contractor with specific details, standards and locations for new roads to be built. The fact that government money is given to the paving contractor and that it completes the work would hardly expose the contractor to public scrutiny despite the fact that the contractor may take the funds he is given and hire subcontractors, purchase materials, and exercise a significant amount of discretion as to the methods and procedures which may be followed in performing the governmentally directed work.

4. The act goes on to provide that municipalities or county governments may issue bonds or enter other financial obligations to construct facilities for civic activities and the like. No one would argue that contractors who are paid funds to effect such construction would be subject to the Freedom of Information Act.
5. Further, Section 12-35-720(3) provides that an advisory committee must be appointed to make recommendations on the expenditure of revenue generated from the accommodations tax.

THE CHAMBER IS NOT "SUPPORTED" IN WHOLE OR IN PART

BY GOVERNMENT FUNDS

The money the Chamber receives is not a grant, gift, or subsidy. The Chamber is required to perform certain services and would indeed be liable to the municipalities and county governments if it did not do so properly. The Chamber must agree on terms and conditions of expenditure, which terms and conditions include payment for services rendered by the organization.

The Chamber of Commerce receives no profit for its services as is amply illustrated by the financial documents, budgets and accountings contained in the stipulations of the parties. The records further illustrate that the Chamber completely segregates its operating funds from the funds of the Accommodations Tax Act. This segregation--a complete absence of commingling--is the ultimate evidence of the Chamber's lack of reliance on government funds for "support." Conversely, the records stipulated into evidence demonstrate that the Chamber actually supports the governments by using Chamber overhead for

services to governments with a resultant net loss to the Chamber.

Further, in the Attorney General Opinion cited hereinabove, (Op. No.82-15, supra), it was emphasized that the money received by a hospital was but a portion of its revenue and at best did not cover the actual costs of the services rendered, as is the case now before the Court. From the record of this case, it appears that one hundred percent of Chamber operating revenues are received from the dues paid by its 1,800 members and other privately earned or paid sources.

The Attorney General defines "support" as "to maintain and to 'maintain' generally means to keep up, to supply with what is needed, to furnish with funds or means for maintenance." Id., at page 20. It is clear from the record before the Court that the Chamber is not "supported" by government applying this definition.

WESTON, ET AL, V. CAROLINA RESEARCH AND
DEVELOPMENT FOUNDATION

In the matter of Chris Weston and Multimedia, Inc.
d/b/a The Greenville News-Piedmont Company v. Carolina Research
and Development Foundation, et al., in the Court of Common Pleas
of Richland County, 88-CP-40-5322, Circuit Court Judge Carol
Connor issued an opinion dated June 26, 1989, holding that the
Defendant Foundation was a public body under the Freedom of
Information Act. However, the decision of the Court is extremely
helpful and supportive of the Chamber's position in this case.

Judge Connor ruled against the Foundation because of its pervasive and, at times, indistinguishable relationship with the University of South Carolina and the fact that it received funds from the University en masse to expend at its own discretion (a situation wholly unlike the extensive budgeting and accounting process the Chamber is required to endure in the instant case).

Most notably, Judge Connor wrote:

"Nor should this Order be read to suggest that the Act would apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms'-length basis. In that situation, there is an exchange of money for identifiable goods or services of equal value, and public oversight (the intent of the Act) is ensured by access to the public bodies' records, which would provide the detail necessary to show how the money was spent." *Id.*, at page 7, emphasis added.

Applying Judge Connor's standards:

1. The Chamber is a private business enterprise which provides goods or services in exchange for funds it receives.
2. The funds it receives, in exchange for goods and services, are received on an "arms'-length basis" as the Chamber must compete with other entities for the funds it receives and must satisfy the local governments, both in the bidding and accounting stages, that the Chamber is effective and acting properly in the performance of its services.
3. Judge Connor's criteria regarding services of equal value appears to be surpassed by the Chamber in that the services it renders may be more valuable than the funds it receives as the Chamber's overhead, which is not supported by any public funds, is used to perform the services requested by the governments.
4. Perhaps, most significant is Judge Connor's acknowledgment that public scrutiny is ensured by access to "the public bodies' records which would provide the detail necessary to show how the money was spent". (*Id.*, at page 7, emphasis added).

The Court is of the opinion that the discretionary spending of funds is effected at the point in time when the County and Municipal Governments decide which budget/bid to accept among all competitors and is verified upon the receipt of an accounting from any selected competitor for such funds. The mere payment of money to the entity selected is contractual in nature and the work performed by the entity subsequent to receiving the funds is a wholly autonomous, independent and government-free activity save the specifications for the use of the funds as previously determined by the local governments.

Finally, Judge Connor's decision was made with clear recognition that the foundation did not perform any service in exchange for its share of funds, a clear distinguishing factor from the case at Bar. *Id.*, at page 4.

THE CHAMBER IS NOT A "PUBLIC BODY" UNDER THE ACT

Section 30-4-20(a) Code of Laws of South Carolina, 1976, defines a public body as follows:

"...any department of the state, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the state, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds..."

Clearly, the Chamber is not a department of the state, a state board, commission, agency or authority. It is not a governmental body, a political subdivision, a county, municipality, township, school district, or special purpose

district. The fact that the Chamber was not created by a provision of the South Carolina constitution, or by a statute, ordinance or resolution of the General Assembly supports this conclusion.

Rather, as to the issue of this case, the Chamber is a contractor performing advertising and promotional services for local governments. Pursuant to the Accommodations Tax Act, supra, the Chamber competes against several entities in a bidding/budgetary process for such work. Local governments select the most qualified or desirable entities. The work to be performed is specified by the local government involved and is not at the Chamber's discretion. The county or municipality thereafter pays the Chamber to perform the predetermined services. Upon completion of the work, the Chamber (or other selected organization) must provide an accounting to the government. This proposal/budget/acceptance/payment/services/accounting process is absolutely contractual in nature. The Chamber receives no gift, grant, subsidy, maintenance or support by this procedure. The local governments and the Chamber conduct an arms' length bidding/acceptance exercise and the Chamber must work in exchange for payment. Should the Chamber fail to perform as agreed upon, it would be liable for damages for breach of contract.

Perhaps the strongest statement supporting the Chamber's position is that contained in Opinion No. 82-15 of the Attorney General of South Carolina dated March 12, 1982. In that

case, the Attorney General was presented with a private hospital corporation which contracted with a county government to provide certain services for the county which services were paid for by public funds, a situation analogous to the case at Bar. The Attorney General found that the hospital was not subject to the Freedom of Information Act holding that:

A private entity, by entering into a contract for services with a public body, does not itself thereby also assume the status of a public body in its stead. The law, as written, encompasses only such bodies which are "supported in whole or in part by public funds or which expend public funds", and it is the opinion of this office that the receipt of specific funds on a contractual basis for services rendered to a public body does not render a private corporation subject to the South Carolina Freedom of Information Act. Id., at page 21.

CONCLUSION

Based upon the foregoing discussion, I hold that the Myrtle Beach Area Chamber of Commerce is not a "public body" as defined by the South Carolina Freedom of Information Act. Therefore, the relief sought by the Plaintiff in its Complaint is denied.

John L. Breeden
Master in Equity

Conway, South Carolina

July __, 1989

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

FINANCIAL STATEMENTS
WITH ADDITIONAL INFORMATION
YEARS ENDED JUNE 30, 2010 AND 2009
AND
INDEPENDENT AUDITORS' REPORT

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

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J. W. HUNT AND COMPANY, LLP

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Members
of Hilton Head Island - Bluffton
Chamber of Commerce

We have audited the accompanying statements of financial position of Hilton Head Island - Bluffton Chamber of Commerce, as of June 30, 2010 and 2009, and the related statements of activities and cash flows for the years then ended. These financial statements are the responsibility of the Organization's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Hilton Head Island - Bluffton Chamber of Commerce, as of June 30, 2010 and 2009, and the changes in its net assets and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

J.W. Hunt and Company, LLP

Columbia, South Carolina
September 16, 2010

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

STATEMENTS OF FINANCIAL POSITION AS OF JUNE 30, 2010 AND 2009

	<u>2010</u>	<u>2009</u>
ASSETS		
Current assets:		
Cash	\$ 1,370,392	\$ 1,053,645
Accounts receivable	128,445	110,886
Less, allowance for uncollectible accounts	(4,695)	(3,021)
Prepaid expenses	13,993	21,194
Other	<u>17,042</u>	<u>5,150</u>
Total current assets	1,525,177	1,187,854
Property and equipment - net	1,161,544	1,252,525
Other assets:		
Investment in Welcome Center joint venture	<u>9,276</u>	<u>6,129</u>
Total assets	<u>\$ 2,695,997</u>	<u>\$ 2,446,508</u>
LIABILITIES AND NET ASSETS		
Current liabilities:		
Accounts payable	\$ 336,630	\$ 141,680
Deferred revenue	538,268	438,144
Current portion of long-term debt	38,322	35,847
Other liabilities	<u>137,681</u>	<u>153,059</u>
Total current liabilities	<u>1,050,901</u>	<u>768,730</u>
Long-term liabilities:		
Long-term debt	<u>788,133</u>	<u>826,457</u>
Total long-term liabilities	<u>788,133</u>	<u>826,457</u>
Unrestricted net assets	<u>856,963</u>	<u>851,321</u>
Total liabilities and net assets	<u>\$ 2,695,997</u>	<u>\$ 2,446,508</u>

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THE FINANCIAL STATEMENTS

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

STATEMENTS OF ACTIVITIES FOR THE YEARS ENDED JUNE 30, 2010 AND 2009

	<u>2010</u>	<u>2009</u>
Unrestricted revenues and other support:		
Visitor and Convention Bureau projects	\$ 3,494,809	\$ 4,061,281
Membership dues	712,353	759,021
Membership projects	937,948	980,047
Brochure advertising	204,282	194,497
Building rent and common share	107,357	107,757
Income (loss) from Welcome Center joint venture	(27,444)	685,521
Interest income	25,390	25,620
	<u>5,454,695</u>	<u>6,813,744</u>
Total unrestricted revenues and other support		
Expenses:		
Visitor and Convention Bureau	2,509,685	3,123,011
Salaries and related benefits	1,998,922	1,968,441
General and administrative	314,800	318,348
Membership projects	320,322	321,159
Bluffton Office	29,742	26,581
Depreciation	125,078	145,221
Building	93,757	102,952
Interest	56,747	61,862
	<u>5,449,053</u>	<u>6,067,575</u>
Total expenses		
Change in unrestricted net assets	5,642	746,169
Unrestricted net assets at beginning of year	<u>851,321</u>	<u>105,152</u>
Unrestricted net assets at end of year	<u>\$ 856,963</u>	<u>\$ 851,321</u>

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THE FINANCIAL STATEMENTS

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

STATEMENTS OF CASH FLOWS FOR THE YEARS ENDED JUNE 30, 2010 AND 2009

	<u>2010</u>	<u>2009</u>
Cash flows from operating activities:		
Change in unrestricted net assets	\$ 5,642	\$ 746,169
Adjustments to reconcile change in unrestricted net assets to net cash provided (used) by operating activities:		
Depreciation	125,078	145,221
(Gain) loss from Welcome Center joint venture	27,444	(685,521)
Changes in assets and liabilities:		
(Increase) decrease in accounts receivable	(15,885)	200,724
Decrease in unconditional promises to give	-	20,000
(Increase) decrease in prepaid expenses and other assets	(4,691)	(743)
Increase (decrease) in accounts payable	194,950	(143,285)
Increase (decrease) in other liabilities	(15,379)	(1,437)
Increase (decrease) in deferred revenue	100,124	(350,901)
Net cash provided (used) by operating activities	<u>417,283</u>	<u>(69,773)</u>
Cash flows from investing activities:		
Distributions from Welcome Center joint venture	-	1,120,456
Investment in Welcome Center joint venture	(30,591)	(35,400)
Purchase of property and equipment	(34,098)	(55,584)
Net cash provided (used) by investing activities	<u>(64,689)</u>	<u>1,029,472</u>
Cash flows from financing activities:		
Principal payments on notes payable	(35,847)	(1,054,003)
Proceeds from issuance of notes payable	-	874,000
Net cash used for financing activities	<u>(35,847)</u>	<u>(180,003)</u>
Net increase in cash	316,747	779,696
Cash at beginning year	1,053,645	273,949
Cash at end of year	<u>\$ 1,370,392</u>	<u>\$ 1,053,645</u>
Supplemental disclosure of cash flow information:		
Cash paid during the year for interest	<u>\$ 56,747</u>	<u>\$ 61,862</u>

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THE FINANCIAL STATEMENTS

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

NOTES TO FINANCIAL STATEMENTS, JUNE 30, 2010 AND 2009

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING
POLICIES:

The Hilton Head Island - Bluffton Chamber of Commerce (the "Chamber"), formerly the Hilton Head Island Chamber of Commerce is a not-for-profit organization established February 5, 1957, to represent, serve and promote the common interests of its membership and the business community and to contribute to the preservation and prudent economic growth of southern Beaufort County of South Carolina area as a healthy place to live and do business.

Date of Management's Review:

Subsequent events were evaluated through September 16, 2010 which is the date the financial statements were available to be issued.

Basis of Presentation:

The accompanying financial statements have been prepared on the accrual basis of accounting. The Chamber's activities and net assets are classified in the financial statements as unrestricted, temporarily restricted, or permanently restricted based on the existence or absence of donor-imposed restrictions. These classifications are described below:

Unrestricted net assets - resources not subject to donor-imposed restrictions.

Temporarily restricted net assets - resources that can be expended subject to donor-imposed restrictions as to use and timing. The Chamber has no temporarily restricted net assets.

Permanently restricted net assets - resources that a donor requires to be retained in perpetuity. Generally, the donor of these assets permits the use of all or part of the income and gains earned on the gifted assets. The Chamber has no permanently restricted net assets.

The statement of activities presents expenses categorized in accordance with the overall mission of the Chamber. Accordingly, no allocation has been made between categories.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING
POLICIES (CONTINUED):

Basis of Presentation (Continued):

Revenues are reported as increases in unrestricted net assets unless use of the related assets is limited by donor-imposed restrictions. Expirations of temporary restrictions on net assets (i.e., the donor-stipulated purpose has been fulfilled and/or the stipulated time period has elapsed) are reported as net assets released from restrictions. Expenses are reported as decreases in unrestricted net assets. Gains and losses on investments and other assets or liabilities are reported as increases or decreases in unrestricted net assets unless their use is restricted by explicit donor stipulations or by law.

Cash and cash equivalents:

For purposes of the Statement of Cash Flows, the Chamber considers all highly liquid investments with an initial maturity of three months or less to be cash equivalents.

Welcome Center Joint Venture:

Investment in the Welcome Center joint venture (see Note 8) is accounted for under the equity method.

Property and equipment:

Land donated to the Chamber is recorded at fair value on the date of donation. All other property and equipment is recorded at cost, less accumulated depreciation, computed by the straight-line method. Estimated useful lives range from three to ten years for furniture, equipment, and capital improvements, three to five years for computer software, and twenty-five years for the building.

The Chamber generally capitalizes all expenditures for property and equipment in excess of \$1,000.

Membership dues:

Membership dues are recognized as revenue ratably over the periods which members are entitled to services.

Visitor and Convention Bureau (V&CB):

The V&CB is a division of the Chamber. Funding for the V&CB is provided by the state of South Carolina and the Town of Hilton Head Island and Town of Bluffton through accommodations taxes (ATAX) and the Department of Parks, Recreation and Tourism (PRT) funds. Revenue is recognized as services are performed.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING
POLICIES (CONTINUED):

Membership Projects:

The Chamber conducts various training, educational seminars and promotions for its members. Tickets and sponsorships are sold to cover the expenses of conducting these functions. Project revenue is recognized on an accrual basis as earned.

Advertising Revenue:

Advertising revenue is collected in advance and is deferred and recognized over the period the advertisement runs.

Income taxes:

The Chamber is a not-for-profit corporation organized under Section 501(c)(6) of the Internal Revenue Code and is not subject to federal or state income taxes.

Use of estimates:

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

NOTE 2 - BANK DEPOSITS:

During the year, the Chamber's bank balances were in excess of federal depository insurance coverage. Management believes the credit risk associated with exceeding the insurance coverage is balanced by the stability of the financial institution involved.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
 NOTES TO FINANCIAL STATEMENTS

NOTE 3 - PROPERTY AND EQUIPMENT:

Components of property and equipment were as follows:

	JUNE 30,	
	<u>2010</u>	<u>2009</u>
Land	\$ 364,230	\$ 364,230
Building	1,758,131	1,758,131
Furniture and equipment	611,522	637,331
Capital improvements	44,063	44,063
Computer software	61,653	63,092
Construction in progress	27,300	-
Total	<u>2,866,899</u>	<u>2,866,847</u>
Less: Accumulated depreciation	<u>(1,705,355)</u>	<u>(1,614,322)</u>
Property and equipment, net	<u>\$ 1,161,544</u>	<u>\$ 1,252,525</u>

Depreciation expense for the year ended June 30, 2010 was \$125,078.

NOTE 4 - DEFERRED REVENUE:

Components of deferred revenue were as follows:

	JUNE 30,	
	<u>2010</u>	<u>2009</u>
Membership dues	\$ 270,549	\$ 324,736
Visitor and Convention Bureau revenue	42,071	25,143
Chamber Champion program	28,450	11,250
Leadership Hilton Head revenue	16,356	15,954
Other	56,297	(48,979)
Internet sales	119,399	103,477
Welcome Center sales	5,146	6,563
Totals	<u>\$ 538,268</u>	<u>\$ 438,144</u>

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 5 - NOTES PAYABLE AND LONG-TERM DEBT:

Notes payable and long-term debt consists of the following:

	JUNE 30,	
	<u>2010</u>	<u>2009</u>
Operating line of credit, Bank of America, collateralized by land and building, interest due monthly, interest rate is based on bank's prime rate plus 5%, and expires October 20, 2010. The line of credit is \$200,000.	\$ -	\$ -
Mortgage note payable, bank, secured by land and building, 6.6%, interest and fixed principal payment of \$7,706 due monthly, note matures February 20, 2024.	826,455	862,304
Total notes payable and long-term debt	<u>826,455</u>	<u>862,304</u>
Less, current portion	<u>38,322</u>	<u>35,847</u>
Total, long-term portion	<u>\$ 788,133</u>	<u>\$ 826,457</u>

Maturities of long-term debt are as follows:

YEAR ENDING	
<u>JUNE 30,</u>	<u>AMOUNT</u>
2011	\$ 38,322
2012	40,824
2013	43,783
2014	46,805
2015	50,034
2016 and later	<u>606,687</u>
Total	<u>\$ 826,455</u>

Interest paid during the years ending June 30, 2010 and 2009 amounted to \$56,747 and \$61,862, respectively.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 6 - LEASE COMMITMENTS:

The Chamber leases certain office equipment under noncancelable operating lease agreements. Lease expense charged to operations under lease agreements was approximately \$10,322 and \$10,652 for the years ended June 30, 2010 and 2009, respectively. Future minimum lease payments under these leases are as follows:

<u>YEAR ENDING</u> <u>JUNE 30,</u>	<u>AMOUNT</u>
2011	\$ 9,944
2012	9,944
2013	5,647
2014	4,788
2015	4,788
2016 and later	<u>1,197</u>
Total	<u>\$ 36,308</u>

The Chamber is lessor under a rental agreement for office space in the Chamber's building. The lease expires on June 30, 2017. Future minimum lease payments receivable under the new lease agreement total approximately \$643,843. The lessee is responsible for its direct utilities and maintenance expenses.

The Chamber has an operating lease on its Bluffton office space that expires effective February 28, 2011. The lease is for one year with an option for an additional year. Monthly rent is \$1,000. The Chamber will also be responsible for its pro-rata share of property taxes, insurance and common area maintenance charges.

Rent expense (including charges for operating expense, insurance and taxes of \$13,600) was \$25,600.

NOTE 7 - EMPLOYEE BENEFITS:

The Chamber is a participant in the American Chamber of Commerce 401(k) Retirement/Savings Plan (the Plan). The Chamber contributes a percentage of each eligible employee's salary and matches each employee's contribution to a fixed maximum percentage. The Plan covers employees who have one or more years of service with the Chamber. The Chamber contributed \$72,149 and \$62,649 to the Plan for the years ended June 30, 2010 and 2009, respectively.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
 NOTES TO FINANCIAL STATEMENTS

NOTE 8 - WELCOME CENTER JOINT VENTURE:

During October 1993, the Chamber and the Environmental and Historical Museum of Hilton Head Island (the Museum), a not-for-profit organization, formed a joint venture for the purpose of acquiring, developing, and improving certain land and building located on Hilton Head Island. The intentions of the joint venture partners are that such use and occupancy of the building should be conducted in partnership form for the shared use as a Welcome Center of the Chamber and as an exhibition, retail and administrative center for the Museum with each party to share in operating and maintenance expenses and in the joint venture's gains/losses.

Unaudited financial information related to the joint venture is as follows:

	JUNE 30,	
	2010	2009
Property and equipment - net	\$ -	\$ -
Other assets	21,258	15,312
Total assets	21,258	15,312
Debt and other liabilities	(4,339)	(4,431)
Net assets	\$ 16,919	\$ 10,881
Revenues	\$ 238	\$ 1,508,985
Expenses	(61,400)	(78,919)
Net gain (loss)	\$ (61,162)	\$ 1,430,066

NOTE 9 - SALE OF THE CHAMBER/MUSEUM PARTNERSHIP PROPERTY:

The Chamber/Museum Partnership sold 3.3 acres of land located at 100 William Hilton Parkway to the Town of Hilton Head Island for \$2,300,000. This transaction occurred on July 15, 2008 and closed on October 2, 2008. The Chamber will be able to occupy the site for a period of 50 years after which time the property and any building will revert to the Town.

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**INDEPENDENT AUDITORS' REPORT
ON ADDITIONAL INFORMATION**

To the Board of Directors and Members
of Hilton Head Island - Bluffton
Chamber of Commerce

Our report on our audits of the basic financial statements of Hilton Head Island - Bluffton Chamber of Commerce, for the years ended June 30, 2010 and 2009 appears on page 2. These audits were conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The accompanying additional information presented on pages 14 through 17 is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

J.W. Hunt and Company, LLP

Columbia, South Carolina
September 16, 2010

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES,
YEAR ENDING JUNE 30, 2010

	ACCOMMODATIONS TAX
Revenues - Town of Hilton Head Island - DMO	\$ 1,058,339
Town of Hilton Head Island - Supplemental Grant 2010	219,049
Town of Hilton Head Island - Supplemental Grant 2009	97,841
Town of Hilton Head Island - Crisis Recovery Plan	300,000
Total revenue	<u>1,675,229</u>
Expenses:	
Direct marketing:	
Leisure:	
Print media	81,515
Fulfillment	130,955
Brand grant	97,716
Seasonal arts promotions	12,444
800 Toll-free number	4,513
Sports Commission	500
Internet promotions	88,048
Calendar of events	5,580
Vacation Planner	23,646
Total leisure	<u>444,917</u>
Crisis Recovery Plan	<u>300,000</u>
Public relations:	
Public relations firm	84,042
Contingency	20,030
Special projects/photography	8,442
Total public relations	<u>112,514</u>
Meetings and group:	
Trade shows	26,202
Sales blitz and site inspections	1,235
Meetings internet	9,000
Trade sponsorships	20,416
HHI Difference	78,264
Select Service Co-op	3,875
Lead Prospecting Program	9,575
Total meetings and group	<u>148,567</u>

(Continued) - 1.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES,
YEAR ENDING JUNE 30, 2010

	ACCOMMODATIONS TAX
Expenses (continued):	
Direct marketing (continued):	
International:	
Coastal South Carolina	\$ 32,042
Coastal South Carolina - staff	11,017
Pow Wow International	6,909
Sales mission	1,500
Total international	<u>51,468</u>
Contingency:	
Research and strategic planning	55,541
General contingency	9,936
Total contingency	<u>65,477</u>
Group tour marketing:	
Group tour trade shows	5,119
Group tour co-op advertising	4,128
Total group tour marketing	<u>9,247</u>
Ad agency fees and expenses	<u>10,165</u>
Total direct marketing expenses	<u>1,142,355</u>
Sales, marketing, visitor services, and administration:	
Salaries and payroll taxes	330,382
Operations	159,862
Employee benefits	42,630
Total sales, marketing, visitor services, and administration	<u>532,874</u>
Total expenses	<u>1,675,229</u>
Excess of revenues over expenses	<u>-</u>

(Concluded) - 2.

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

DESTINATION MARKETING ORGANIZATION OF THE TOWN OF BLUFFTON

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES,
YEAR ENDING JUNE 30, 2010

	ACCOMMODATIONS TAX
Revenues - Town of Bluffton DMO	\$ 32,961
SCPRT DMO Grant	18,000
Total revenue	<u>50,961</u>
Expenses:	
Direct marketing:	
Leisure:	
Media	20,256
Visitbluffton.org website	15,000
Digital and print ad design and production	2,951
Printing	116
Total leisure	<u>38,323</u>
Total direct marketing expenses	<u>38,323</u>
Administrative:	
Salaries and payroll taxes	7,836
Operations	3,791
Employee benefits	1,011
Total administrative	<u>12,638</u>
Total expenses	<u>50,961</u>
Excess of revenues over expenses	<u>-</u>

HILTON HEAD ISLAND-BLUFFTON CHAMBER OF COMMERCE

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES,
YEAR ENDING JUNE 30, 2010

	ACCOMMODATIONS TAX		PARKS, RECREATION AND TOURISM	MARKETING	MEMBERSHIP	TOTAL
	TOWN OF HHI	BLUFFTON & B/C DMO				
Revenues:						
Town of Hilton Head Island DMO	\$ 1,058,339	\$ -	\$ -	\$ -	\$ -	\$ 1,058,339
Town of Hilton Head Island Supplemental Grant (2009)	97,841	-	-	-	-	97,841
Town of Hilton Head Island Supplemental Grant (2010)	219,049	-	-	-	-	219,049
Town of Hilton Head Island - Crisis Recovery Plan	300,000	-	-	-	-	300,000
Beaufort County DMO	-	69,037	-	-	-	69,037
Beaufort County Grants	-	105,000	-	-	-	105,000
Town of Bluffton DMO and Arts Grant	-	32,961	-	-	-	32,961
SCPRT DMO Grants	-	-	900,000	-	-	900,000
SCPRT Co-op Grants	-	-	300,000	-	-	300,000
Member funding	-	-	-	616,865	1,755,603	2,372,468
Total revenues	1,675,229	206,998	1,200,000	616,865	1,755,603	5,454,695
Expenses:						
Leisure	444,917	-	365,307	-	-	810,224
Town of HHI Crisis Recovery Plan	300,000	-	-	-	-	300,000
Town of Bluffton Marketing	-	20,313	18,000	-	-	38,313
Beaufort County Marketing - Bluffton	-	48,353	44,497	-	-	92,850
Beaufort County Marketing - Daufuskie	-	15,835	-	-	-	15,835
Beaufort County - Welcome Center	-	60,000	-	-	-	60,000
Meetings and group	148,567	-	33,295	-	-	181,862
Public relations	112,514	-	58,452	-	-	170,966
International	51,468	-	-	-	-	51,468
Market planning and research	55,541	-	88,065	-	-	143,606
Group tour marketing	9,247	-	-	-	-	9,247
Ad agency fees and expenses	10,165	-	-	-	-	10,165
Membership related expenses	-	-	-	-	380,520	380,520
General contingency	9,936	-	4,968	-	-	14,904
Marketing alliance (CY 2009)	-	-	72,344	144,688	-	217,032
Marketing Co-op (CY 2010)	-	-	131,072	262,143	-	393,215
Sales, marketing, and administrative	532,874	62,497	384,000	210,034	1,369,441	2,558,846
Total expenses	1,675,229	206,998	1,200,000	616,865	1,749,961	5,449,053
Excess of revenues over expenses	-	-	-	-	5,642	5,642

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

FINANCIAL STATEMENTS
WITH ADDITIONAL INFORMATION
YEARS ENDED JUNE 30, 2011 AND 2010
AND
INDEPENDENT AUDITORS' REPORT

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Members
of Hilton Head Island - Bluffton
Chamber of Commerce

We have audited the accompanying statements of financial position of Hilton Head Island - Bluffton Chamber of Commerce, as of June 30, 2011 and 2010, and the related statements of activities and cash flows for the years then ended. These financial statements are the responsibility of the Organization's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Hilton Head Island - Bluffton Chamber of Commerce, as of June 30, 2011 and 2010, and the changes in its net assets and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

J. W. Hunt and Company, LLP

October 25, 2011

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

STATEMENTS OF FINANCIAL POSITION AS OF JUNE 30, 2011 AND 2010

	<u>2011</u>	<u>2010</u>
ASSETS		
Current assets:		
Cash	\$ 850,519	\$ 1,370,392
Accounts receivable	23,637	128,445
Less, allowance for uncollectible accounts	(2,673)	(4,695)
Prepaid expenses	27,395	13,993
Other	21,339	17,042
Total current assets	920,217	1,525,177
Property and equipment - net	1,204,436	1,161,544
Other assets:		
Investment in Welcome Center joint venture	9,816	9,276
Total assets	<u>\$ 2,134,469</u>	<u>\$ 2,695,997</u>
LIABILITIES AND NET ASSETS		
Current liabilities:		
Accounts payable	\$ 87,550	\$ 336,630
Deferred revenue	384,956	538,268
Notes payable and current portion of long-term debt	90,824	38,322
Other liabilities	136,269	137,681
Total current liabilities	699,599	1,050,901
Long-term liabilities:		
Long-term debt	747,310	788,133
Total long-term liabilities	747,310	788,133
Unrestricted net assets	687,560	856,963
Total liabilities and net assets	<u>\$ 2,134,469</u>	<u>\$ 2,695,997</u>

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THE FINANCIAL STATEMENTS

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

STATEMENTS OF ACTIVITIES FOR THE YEARS ENDED JUNE 30, 2011 AND 2010

	<u>2011</u>	<u>2010</u>
Unrestricted revenues and other support:		
Visitor and Convention Bureau projects	\$ 2,498,835	\$ 3,494,809
Membership dues	699,886	712,353
Membership projects	996,134	937,948
Brochure advertising	223,982	204,282
Building rent and common share	108,691	107,357
Income (loss) from Welcome Center joint venture	(33,060)	(27,444)
Interest income	16,620	25,390
	<u>4,511,088</u>	<u>5,454,695</u>
Total unrestricted revenues and other support		
Expenses:		
Visitor and Convention Bureau	1,779,959	2,509,685
Salaries and related benefits	2,050,894	1,998,922
General and administrative	286,792	314,800
Membership projects	287,280	320,322
Bluffton Office	20,538	29,742
Depreciation	108,642	125,078
Building	91,675	93,757
Interest	54,711	56,747
	<u>4,680,491</u>	<u>5,449,053</u>
Total expenses		
Change in unrestricted net assets	(169,403)	5,642
Unrestricted net assets at beginning of year	856,963	851,321
Unrestricted net assets at end of year	<u>\$ 687,560</u>	<u>\$ 856,963</u>

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THE FINANCIAL STATEMENTS

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

STATEMENTS OF CASH FLOWS FOR THE YEARS ENDED JUNE 30, 2011 AND 2010

	<u>2011</u>	<u>2010</u>
Cash flows from operating activities:		
Change in unrestricted net assets	\$ (169,403)	\$ 5,642
Adjustments to reconcile change in unrestricted net assets to net cash provided (used) by operating activities:		
Depreciation	108,642	125,078
(Gain) loss from Welcome Center joint venture	33,060	27,444
Changes in assets and liabilities:		
(Increase) decrease in accounts receivable	102,786	(15,885)
(Increase) decrease in prepaid expenses and other assets	(17,699)	(4,691)
Increase (decrease) in accounts payable	(249,080)	194,950
Increase (decrease) in other liabilities	(1,412)	(15,379)
Increase (decrease) in deferred revenue	(153,312)	100,124
Net cash provided (used) by operating activities	<u>(346,418)</u>	<u>417,283</u>
Cash flows from investing activities:		
Investment in Welcome Center joint venture	(33,600)	(30,591)
Purchase of property and equipment	<u>(151,533)</u>	<u>(34,098)</u>
Net cash used by investing activities	<u>(185,133)</u>	<u>(64,689)</u>
Cash flows from financing activities:		
Principal payments on notes payable	(38,322)	(35,847)
Proceeds from issuance of notes payable	<u>50,000</u>	<u>-</u>
Net cash provided (used) for financing activities	<u>11,678</u>	<u>(35,847)</u>
Net increase (decrease) in cash	(519,873)	316,747
Cash at beginning year	<u>1,370,392</u>	<u>1,053,645</u>
Cash at end of year	<u>\$ 850,519</u>	<u>\$ 1,370,392</u>
Supplemental disclosure of cash flow information:		
Cash paid during the year for interest	<u>\$ 54,711</u>	<u>\$ 56,747</u>

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THE FINANCIAL STATEMENTS

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

NOTES TO FINANCIAL STATEMENTS, JUNE 30, 2011 AND 2010

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING
POLICIES:

The Hilton Head Island - Bluffton Chamber of Commerce (the "Chamber") is a not-for-profit organization established February 5, 1957, to represent, serve and promote the common interests of its membership and the business community and to contribute to the preservation and prudent economic growth of southern Beaufort County of South Carolina area as a healthy place to live and do business.

Date of Management's Review:

Subsequent events were evaluated through October 25, 2011 which is the date the financial statements were available to be issued.

Basis of Presentation:

The accompanying financial statements have been prepared on the accrual basis of accounting. The Chamber's activities and net assets are classified in the financial statements as unrestricted, temporarily restricted, or permanently restricted based on the existence or absence of donor-imposed restrictions. These classifications are described below:

Unrestricted net assets - resources not subject to donor-imposed restrictions.

Temporarily restricted net assets - resources that can be expended subject to donor-imposed restrictions as to use and timing. The Chamber has no temporarily restricted net assets.

Permanently restricted net assets - resources that a donor requires to be retained in perpetuity. Generally, the donor of these assets permits the use of all or part of the income and gains earned on the gifted assets. The Chamber has no permanently restricted net assets.

The statement of activities presents expenses categorized in accordance with the overall mission of the Chamber. Accordingly, no allocation has been made between categories.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING
POLICIES (CONTINUED):

Basis of Presentation (Continued):

Revenues are reported as increases in unrestricted net assets unless use of the related assets is limited by donor-imposed restrictions. Expirations of temporary restrictions on net assets (i.e., the donor-stipulated purpose has been fulfilled and/or the stipulated time period has elapsed) are reported as net assets released from restrictions. Expenses are reported as decreases in unrestricted net assets. Gains and losses on investments and other assets or liabilities are reported as increases or decreases in unrestricted net assets unless their use is restricted by explicit donor stipulations or by law.

Cash and cash equivalents:

For purposes of the Statement of Cash Flows, the Chamber considers all highly liquid investments with an initial maturity of three months or less to be cash equivalents.

Welcome Center Joint Venture:

Investment in the Welcome Center joint venture (see Note 8) is accounted for under the equity method.

Property and equipment:

Land donated to the Chamber is recorded at fair value on the date of donation. All other property and equipment is recorded at cost, less accumulated depreciation, computed by using the straight-line method. Estimated useful lives range from three to ten years for furniture, equipment, and capital improvements, three to five years for computer software, and thirty years for the building.

The Chamber generally capitalizes all expenditures for property and equipment in excess of \$1,000.

Membership dues:

Membership dues are recognized as revenue ratably over the periods which members are entitled to services.

Visitor and Convention Bureau (V&CB):

The V&CB is a division of the Chamber. Funding for the V&CB is provided by membership investment, the state of South Carolina and the Town of Hilton Head Island and Town of Bluffton through accommodations taxes (ATAX) and the Department of Parks, Recreation and Tourism (PRT) funds. Revenue is recognized as services are performed.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING
POLICIES (CONTINUED):

Membership Projects:

The Chamber conducts various training, educational seminars and promotions for its members. Tickets and sponsorships are sold to cover the expenses of conducting these functions. Project revenue is recognized on an accrual basis as earned.

Advertising Revenue:

Advertising revenue is collected in advance and is deferred and recognized over the period the advertisement runs.

Use of estimates:

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Income taxes:

The Chamber has received a determination letter from the Internal Revenue Service (IRS) indicating it is a not-for-profit corporation organized under Section 501(c)(6) of the Internal Revenue Code and is subject to federal income tax only on net unrelated business income. Management has determined that the Chamber has no current obligations for unrelated business income tax. Accordingly, no provisions for federal and state income taxes are required. The Chamber is not classified as a private foundation.

Accounting principles generally accepted in the United States of America require management to evaluate tax positions taken by the Chamber and recognize a tax liability (or asset) if the Chamber has taken an uncertain position that more likely than not would not be sustained upon examination by the IRS. Management has analyzed the tax positions taken by the Chamber, and has concluded that as of June 30, 2011, there are no uncertain positions taken or expected to be taken that would require recognition of a liability (or asset) or disclosure in the financial statements. The Chamber is subject to routine audits by taxing jurisdictions; however there are currently no audits for any tax periods in progress. Management believes it is no longer subject to income tax examinations prior to 2008.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 2 - BANK DEPOSITS:

During the year, the Chamber's bank balances were in excess of federal depository insurance coverage. Management believes the credit risk associated with exceeding the insurance coverage is balanced by the stability of the financial institution involved.

NOTE 3 - PROPERTY AND EQUIPMENT:

Components of property and equipment were as follows:

	JUNE 30,	
	<u>2011</u>	<u>2010</u>
Land	\$ 364,230	\$ 364,230
Building	1,769,222	1,758,131
Furniture and equipment	620,980	611,522
Capital improvements	50,936	44,063
Computer software	67,169	61,653
Construction in progress	145,896	27,300
Total	<u>3,018,433</u>	<u>2,866,899</u>
Less: Accumulated depreciation	<u>(1,813,997)</u>	<u>(1,705,355)</u>
Property and equipment, net	<u>\$ 1,204,436</u>	<u>\$ 1,161,544</u>

Depreciation expense for the year ended June 30, 2011 was \$108,642.

NOTE 4 - DEFERRED REVENUE:

Components of deferred revenue were as follows:

	JUNE 30,	
	<u>2011</u>	<u>2010</u>
Membership dues	\$ 281,298	\$ 270,549
Visitor and Convention Bureau revenue	(37,290)	42,071
Chamber Champion program	9,975	28,450
Leadership Hilton Head revenue	21,134	16,356
Other	8,303	56,297
Internet sales	97,036	119,399
Welcome Center sales	4,500	5,146
Totals	<u>\$ 384,956</u>	<u>\$ 538,268</u>

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 5 - NOTES PAYABLE AND LONG-TERM DEBT:

Notes payable and long-term debt consists of the following:

	JUNE 30, <u>2011</u>	<u>2010</u>
Operating line of credit, Bank of America, collateralized by land and building, interest due monthly, interest rate is based on bank's prime rate plus 5%, and expires October 20, 2011. The line of credit is \$200,000.	\$ 50,000	\$ -
Mortgage note payable, bank, secured by land and building, 6.6%, interest and fixed principal payment of \$7,706 due monthly, note matures February 20, 2024.	788,134	826,455
Total notes payable and long-term debt	838,134	826,455
Less, current portion	90,824	38,322
Total, long-term portion	<u>\$ 747,310</u>	<u>\$ 788,133</u>

Maturities of long-term debt are as follows:

YEAR ENDING <u>JUNE 30,</u>	<u>AMOUNT</u>
2012	\$ 90,824
2013	43,783
2014	46,805
2015	50,034
2016	53,470
2017 and later	553,218
Total	<u>\$ 838,134</u>

Interest paid during the years ending June 30, 2011 and 2010 amounted to \$54,711 and \$56,747, respectively.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 6 - LEASE COMMITMENTS:

The Chamber leases certain office equipment under noncancelable operating lease agreements. Lease expense charged to operations under lease agreements was approximately \$11,094 and \$10,322 for the years ended June 30, 2011 and 2010, respectively. Future minimum lease payments under these leases are as follows:

YEAR ENDING <u>JUNE 30.</u>	<u>AMOUNT</u>
2012	\$ 4,788
2013	4,788
2014	4,788
2015	<u>4,788</u>
Total	<u>\$ 19,152</u>

The Chamber is lessor under a rental agreement for office space in the Chamber's building. The lease expires on June 30, 2017. Future minimum lease payments receivable under the new lease agreement total approximately \$568,477. The lessee is responsible for its direct utilities and maintenance expenses.

The Chamber had an operating lease on its Bluffton office space that expired effective February 28, 2011.

Rent expense (including charges for operating expense, insurance and taxes of \$9,052) was \$17,052.

NOTE 7 - EMPLOYEE BENEFITS:

The Chamber is a participant in the American Chamber of Commerce 401(k) Retirement/Savings Plan (the Plan). The Chamber contributes a percentage of each eligible employee's salary and matches each employee's contribution to a fixed maximum percentage. The Plan covers employees who have one or more years of service with the Chamber. The Chamber contributed \$69,270 and \$72,149 to the Plan for the years ended June 30, 2011 and 2010, respectively.

NOTE 8 - WELCOME CENTER JOINT VENTURE:

During October 1993, the Chamber and the Environmental and Historical Museum of Hilton Head Island (the Museum), a not-for-profit organization, formed a joint venture for the purpose of acquiring, developing, and improving certain land and building located on Hilton Head Island. The intentions of the joint venture partners are that such use and occupancy of the building should be conducted in partnership form for the shared use as a Welcome Center of the Chamber and as an exhibition, retail and administrative center for the Museum with each party to share in operating and maintenance expenses and in the joint venture's gains/losses.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 8 - WELCOME CENTER JOINT VENTURE (CONTINUED):

Unaudited financial information related to the joint venture is as follows:

	JUNE 30,	
	<u>2011</u>	<u>2010</u>
Property and equipment - net	\$ -	\$ -
Other assets	<u>22,557</u>	<u>21,258</u>
Total assets	<u>22,557</u>	<u>21,258</u>
Debt and other liabilities	<u>(4,557)</u>	<u>(4,339)</u>
Net assets	<u>\$ 18,000</u>	<u>\$ 16,919</u>
Revenues	\$ 208	\$ 238
Expenses	<u>(66,328)</u>	<u>(61,400)</u>
Net gain (loss)	<u>\$ (66,120)</u>	<u>\$ (61,162)</u>

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**INDEPENDENT AUDITORS' REPORT
ON ADDITIONAL INFORMATION**

To the Board of Directors and Members
of Hilton Head Island - Bluffton
Chamber of Commerce

Our report on our audits of the basic financial statements of Hilton Head Island - Bluffton Chamber of Commerce, for the years ended June 30, 2011 and 2010 appears on page 2. These audits were conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The accompanying additional information presented on pages 14 through 17 is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

J.W. Hunt and Company, LLP

October 25, 2011

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES,
YEAR ENDING JUNE 30, 2011

	ACCOMMODATIONS TAX
Revenues - Town of Hilton Head Island - DMO	\$ 1,040,935
Town of Hilton Head Island - Supplemental Grant 2011	273,007
Town of Hilton Head Island - Heritage Marketing	24,791
Total revenue	<u>1,338,733</u>
Expenses:	
Direct marketing:	
Leisure:	
Print media	11,067
Fulfillment	78,143
Golf marketing	86,255
Culinary marketing	57,483
Biking/Cycling marketing	1,712
Leisure Insider, festivals and event promotions	63,900
Arts promotions	6,762
800 Toll-free number	4,810
Sports promotions	500
Digital media and promotions	168,250
Calendar of events	656
Vacation Planner	49,489
Total leisure	<u>529,027</u>
Heritage promotion/marketing	<u>24,791</u>
Public relations:	
Public relations firm	81,281
Contingency	12,412
Special projects/photography	7,206
Total public relations	<u>100,899</u>
Meetings and group:	
Trade shows	16,595
Sales blitz and site inspections	609
Giveaways	517
Trade sponsorships	28,350
HHI Difference	23,242
Select Service Co-op	2,166
Lead Prospecting Program	18,900
Total meetings and group	<u>90,379</u>

(Continued) - 1.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES,
YEAR ENDING JUNE 30, 2011

	ACCOMMODATIONS TAX
Expenses (continued):	
Direct marketing (continued):	
International:	
Coastal South Carolina	\$ 37,444
Coastal South Carolina - staff	3,607
Pow Wow International	9,064
Total international	<u>50,115</u>
Contingency:	
Research and strategic planning	64,490
General contingency	7,357
Total contingency	<u>71,847</u>
Group tour marketing:	
Group tour trade shows	5,861
Group tour co-op advertising	4,385
Total group tour marketing	<u>10,246</u>
Ad agency fees and expenses	<u>22,686</u>
Total direct marketing expenses	<u>899,990</u>
Sales, marketing, visitor services, and administration:	
Salaries and payroll taxes	272,021
Operations	131,623
Employee benefits	35,099
Total sales, marketing, visitor services, and administration	<u>438,743</u>
Total expenses	<u>1,338,733</u>
Excess of revenues over expenses	<u>\$ -</u>

(Concluded) - 2.

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

DESTINATION MARKETING ORGANIZATION OF THE TOWN OF BLUFFTON

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES,
YEAR ENDING JUNE 30, 2011

	ACCOMMODATIONS TAX
Revenues - Town of Bluffton DMO	\$ 46,986
SCPRT DMO Grant	-
Total revenue	<u>46,986</u>
Expenses:	
Direct marketing:	
Leisure:	
Bluffton specific leisure/media	16,930
Select service sales blitz and promotions	1,642
Visitbluffton.org website and e-promos	5,351
Digital and print ad design and production	2,275
Bluffton group tour promotions	2,562
Bluffton fulfillment	6,479
Total leisure	<u>35,239</u>
Total direct marketing expenses	<u>35,239</u>
Administrative:	
Salaries and payroll taxes	7,283
Operations	3,524
Employee benefits	940
Total administrative	<u>11,747</u>
Total expenses	<u>46,986</u>
Excess of revenues over expenses	<u>\$ -</u>

HILTON HEAD ISLAND-BLUFFTON CHAMBER OF COMMERCE

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES,
YEAR ENDING JUNE 30, 2011

	ACCOMMODATIONS TAX		PARKS, RECREATION AND TOURISM	MARKETING	MEMBERSHIP	TOTAL
	TOWN OF HHI	BLUFFTON & B/C DMO				
Revenues:						
Town of Hilton Head Island DMO	\$ 1,040,935	\$ -	\$ -	\$ -	\$ -	\$ 1,040,935
Town of Hilton Head Island Supplemental Grant (FY2011)	273,007	-	-	-	-	273,007
Town of Hilton Head Island - Heritage Marketing	24,791	-	-	-	-	24,791
Beaufort County DMO / Grants	-	291,899	-	-	-	291,899
Town of Bluffton DMO	-	46,986	-	-	-	46,986
SCPRT DMO Grants	-	-	353,027	-	-	353,027
SCPRT Co-op Grants	-	-	75,000	-	-	75,000
Member funding	-	-	-	617,172	1,821,331	2,438,503
Total revenues	1,338,733	338,885	428,027	617,172	1,821,331	4,544,148
Expenses:						
Leisure	529,027	90,539	130,096	121,820	-	871,482
Town of Hilton Head Island - Heritage Marketing	24,791	-	-	-	-	24,791
Town of Bluffton Marketing	-	20,215	-	-	-	20,215
Beaufort County Marketing - Bluffton	-	87,106	-	-	-	87,106
Beaufort County Marketing - Daufuskie	-	10,348	-	-	-	10,348
Meetings and group	90,379	-	7,457	15,138	-	112,974
Public relations	100,899	-	29,829	-	-	130,728
International	50,115	-	1,756	-	-	51,871
Market planning and research	64,490	-	6,097	-	-	70,587
Group tour marketing	10,246	10,247	-	-	-	20,493
Ad agency fees and expenses	22,686	-	-	-	-	22,686
Membership related expenses	-	-	-	-	340,877	340,877
General contingency	7,357	1,840	-	-	-	9,197
Marketing Co-op (CY 2011)	-	-	115,824	231,647	-	347,471
Sales, marketing, and administrative	438,743	118,590	136,968	248,567	1,649,857	2,592,725
Total expenses	1,338,733	338,885	428,027	617,172	1,990,734	4,713,551
Excess of revenues over expenses	\$ -	\$ -	\$ -	\$ -	\$ (169,403)	\$ (169,403)

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

FINANCIAL STATEMENTS
WITH SUPPLEMENTARY INFORMATION
YEARS ENDED JUNE 30, 2012 AND 2011
AND
INDEPENDENT AUDITORS' REPORT

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Members
of Hilton Head Island - Bluffton
Chamber of Commerce

We have audited the accompanying statements of financial position of Hilton Head Island - Bluffton Chamber of Commerce, as of June 30, 2012 and 2011, and the related statements of activities and cash flows for the years then ended. These financial statements are the responsibility of the Organization's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Hilton Head Island - Bluffton Chamber of Commerce, as of June 30, 2012 and 2011, and the changes in its net assets and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

J. W. Hunt and Company, LLP

September 18, 2012

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

STATEMENTS OF FINANCIAL POSITION AS OF JUNE 30, 2012 AND 2011

	<u>2012</u>	<u>2011</u>
ASSETS		
Current assets:		
Cash	\$ 1,398,514	\$ 850,519
Accounts receivable	63,622	23,637
Less, allowance for uncollectible accounts	(3,708)	(2,673)
Prepaid expenses	49,131	27,395
Other	<u>20,638</u>	<u>21,339</u>
Total current assets	1,528,197	920,217
Property and equipment - net	1,186,325	1,204,436
Other assets:		
Investment in Welcome Center joint venture	<u>-</u>	<u>9,816</u>
Total assets	<u>\$ 2,714,522</u>	<u>\$ 2,134,469</u>
LIABILITIES AND NET ASSETS		
Current liabilities:		
Accounts payable	\$ 400,956	\$ 87,550
Deferred revenue	736,193	384,956
Notes payable and current portion of long-term debt	43,783	90,824
Other liabilities	<u>126,630</u>	<u>136,269</u>
Total current liabilities	<u>1,307,562</u>	<u>699,599</u>
Long-term liabilities:		
Long-term debt	<u>703,527</u>	<u>747,310</u>
Total long-term liabilities	<u>703,527</u>	<u>747,310</u>
Unrestricted net assets	<u>703,433</u>	<u>687,560</u>
Total liabilities and net assets	<u>\$ 2,714,522</u>	<u>\$ 2,134,469</u>

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THE FINANCIAL STATEMENTS

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

STATEMENTS OF ACTIVITIES FOR THE YEARS ENDED JUNE 30, 2012 AND 2011

	<u>2012</u>	<u>2011</u>
Unrestricted revenues and other support:		
Visitor and Convention Bureau projects	\$ 3,520,501	\$ 2,498,835
Membership dues	677,373	699,886
Membership projects	806,305	996,134
Brochure advertising	225,405	223,982
Building rent and common share	111,955	108,691
Income (loss) from Welcome Center joint venture	(8,124)	(33,060)
Interest income	7,382	16,620
	<u>5,340,797</u>	<u>4,511,088</u>
Total unrestricted revenues and other support		
Expenses:		
Visitor and Convention Bureau	2,525,285	1,779,959
Salaries and related benefits	1,943,548	2,050,894
General and administrative	330,840	286,792
Membership projects	312,544	287,280
Bluffton Office	1,542	20,538
Depreciation	56,397	108,642
Building	103,085	91,675
Interest	51,683	54,711
	<u>5,324,924</u>	<u>4,680,491</u>
Total expenses		
Change in unrestricted net assets	15,873	(169,403)
Unrestricted net assets at beginning of year	687,560	856,963
Unrestricted net assets at end of year	<u>\$ 703,433</u>	<u>\$ 687,560</u>

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THE FINANCIAL STATEMENTS

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

STATEMENTS OF CASH FLOWS FOR THE YEARS ENDED JUNE 30, 2012 AND 2011

	2012	2011
Cash flows from operating activities:		
Change in unrestricted net assets	\$ 15,873	\$ (169,403)
Adjustments to reconcile change in unrestricted net assets to net cash provided (used) by operating activities:		
Depreciation	56,397	108,642
(Gain) loss from Welcome Center joint venture	8,124	33,060
Changes in assets and liabilities:		
(Increase) decrease in accounts receivable	(38,950)	102,786
(Increase) decrease in prepaid expenses and other assets	(21,035)	(17,699)
Increase (decrease) in accounts payable	313,406	(249,080)
Increase (decrease) in other liabilities	(9,639)	(1,412)
Increase (decrease) in deferred revenue	351,237	(153,312)
Net cash provided (used) by operating activities	<u>675,413</u>	<u>(346,418)</u>
Cash flows from investing activities:		
Investment in Welcome Center joint venture	1,691	(33,600)
Purchase of property and equipment	(38,285)	(151,533)
Net cash used by investing activities	<u>(36,594)</u>	<u>(185,133)</u>
Cash flows from financing activities:		
Principal payments on notes payable	(90,824)	(38,322)
Proceeds from issuance of notes payable	-	50,000
Net cash provided (used) for financing activities	<u>(90,824)</u>	<u>11,678</u>
Net increase (decrease) in cash	547,995	(519,873)
Cash at beginning year	<u>850,519</u>	<u>1,370,392</u>
Cash at end of year	<u>\$ 1,398,514</u>	<u>\$ 850,519</u>
Supplemental disclosure of cash flow information:		
Cash paid during the year for interest	<u>\$ 51,683</u>	<u>\$ 54,711</u>

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THE FINANCIAL STATEMENTS

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

NOTES TO FINANCIAL STATEMENTS, JUNE 30, 2012 AND 2011

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING
POLICIES:

The Hilton Head Island - Bluffton Chamber of Commerce (the "Chamber") is a not-for-profit organization established February 5, 1957, to represent, serve and promote the common interests of its membership and the business community and to contribute to the preservation and prudent economic growth of southern Beaufort County of South Carolina area as a healthy place to live and do business.

Date of Management's Review:

Subsequent events were evaluated through September 18, 2012, which is the date the financial statements were available to be issued.

Basis of Presentation:

The accompanying financial statements have been prepared on the accrual basis of accounting. The Chamber's activities and net assets are classified in the financial statements as unrestricted, temporarily restricted, or permanently restricted based on the existence or absence of donor-imposed restrictions. These classifications are described below:

Unrestricted net assets - resources not subject to donor-imposed restrictions.

Temporarily restricted net assets - resources that can be expended subject to donor-imposed restrictions as to use and timing. The Chamber has no temporarily restricted net assets.

Permanently restricted net assets - resources that a donor requires to be retained in perpetuity. Generally, the donor of these assets permits the use of all or part of the income and gains earned on the gifted assets. The Chamber has no permanently restricted net assets.

The statement of activities presents expenses categorized in accordance with the overall mission of the Chamber. Accordingly, no allocation has been made between categories.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING
POLICIES (CONTINUED):

Basis of Presentation (Continued):

Revenues are reported as increases in unrestricted net assets unless use of the related assets is limited by donor-imposed restrictions. Expirations of temporary restrictions on net assets (i.e., the donor-stipulated purpose has been fulfilled and/or the stipulated time period has elapsed) are reported as net assets released from restrictions. Expenses are reported as decreases in unrestricted net assets. Gains and losses on investments and other assets or liabilities are reported as increases or decreases in unrestricted net assets unless their use is restricted by explicit donor stipulations or by law.

Cash and Cash Equivalents:

For purposes of the Statement of Cash Flows, the Chamber considers all highly liquid investments with an initial maturity of three months or less to be cash equivalents.

Welcome Center Joint Venture:

Investment in the Welcome Center joint venture (see Note 8) is accounted for under the equity method.

Property and Equipment:

Land donated to the Chamber is recorded at fair value on the date of donation. All other property and equipment is recorded at cost, less accumulated depreciation, computed by using the straight-line method. Estimated useful lives range from three to ten years for furniture, equipment, and capital improvements, three to five years for computer software, and thirty years for the building.

The Chamber generally capitalizes all expenditures for property and equipment in excess of \$1,000.

Membership Dues:

Membership dues are recognized as revenue ratably over the periods which members are entitled to services.

Visitor and Convention Bureau (V&CB):

The V&CB is a division of the Chamber. Funding for the V&CB is provided by membership investment, the state of South Carolina and the Town of Hilton Head Island and Town of Bluffton through accommodations taxes (ATAX) and the Department of Parks, Recreation and Tourism (PRT) funds. Revenue is recognized as services are performed.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 1 - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING
POLICIES (CONTINUED):

Membership Projects:

The Chamber conducts various training, educational seminars and promotions for its members. Tickets and sponsorships are sold to cover the expenses of conducting these functions. Project revenue is recognized on an accrual basis as earned.

Advertising Revenue:

Advertising revenue is collected in advance and is deferred and recognized over the period the advertisement runs.

Use of Estimates:

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Income Taxes:

The Chamber has received a determination letter from the Internal Revenue Service (IRS) indicating it is a not-for-profit corporation organized under Section 501(c)(6) of the Internal Revenue Code. However, income from certain activities not directly related to the Chamber's tax exempt purpose is subject to federal and state income tax as unrelated business income. Management has determined that the Chamber has no current obligations for unrelated business income tax. Accordingly, no provisions for federal and state income taxes are required. The Chamber is not classified as a private foundation.

Accounting principles generally accepted in the United States of America require management to evaluate tax positions taken by the Chamber and recognize a tax liability (or asset) if the Chamber has taken an uncertain position that more likely than not would not be sustained upon examination by the IRS. Management has analyzed the tax positions taken by the Chamber, and has concluded that as of June 30, 2012, there are no uncertain positions taken or expected to be taken that would require recognition of a liability (or asset) or disclosure in the financial statements. The Chamber is subject to routine audits by taxing jurisdictions; however there are currently no audits for any tax periods in progress. Management believes it is no longer subject to income tax examinations prior to 2009.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
 NOTES TO FINANCIAL STATEMENTS

NOTE 2 - BANK DEPOSITS:

During the year and at year end, the Chamber's bank balances were in excess of federal depository insurance coverage. Management believes the credit risk associated with exceeding the insurance coverage is balanced by the stability of the financial institution involved.

NOTE 3 - PROPERTY AND EQUIPMENT:

Components of property and equipment were as follows:

	JUNE 30,	
	<u>2012</u>	<u>2011</u>
Land	\$ 364,230	\$ 364,230
Building	1,770,293	1,769,222
Furniture and equipment	621,910	620,980
Capital improvements	50,936	50,936
Computer software	69,792	67,169
Construction in progress	168,168	145,896
Total	<u>3,045,329</u>	<u>3,018,433</u>
Less: Accumulated depreciation	<u>(1,859,004)</u>	<u>(1,813,997)</u>
Property and equipment, net	<u>\$ 1,186,325</u>	<u>\$ 1,204,436</u>

Depreciation expense for the years ended June 30, 2012 and June 30, 2011 was \$56,397 and \$108,642, respectively.

NOTE 4 - DEFERRED REVENUE:

Components of deferred revenue were as follows:

	JUNE 30,	
	<u>2012</u>	<u>2011</u>
Membership dues	\$ 266,486	\$ 281,298
Visitor and Convention Bureau revenue	-	(37,290)
Chamber Champion program	7,200	9,975
Leadership Hilton Head revenue	23,534	21,134
PGA Tour Advertising	250,000	-
Other	76,048	8,303
Internet sales	108,217	97,036
Welcome Center sales	4,708	4,500
Totals	<u>\$ 736,193</u>	<u>\$ 384,956</u>

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 5 - NOTES PAYABLE AND LONG-TERM DEBT:

Notes payable and long-term debt consists of the following:

	<u>2012</u>	<u>JUNE 30,</u> <u>2011</u>
Operating line of credit, Bank of America, collateralized by land and building, interest due monthly, interest rate is based on bank's prime rate plus 5%, and expires October 20, 2012. The line of credit is \$200,000.	\$ -	\$ 50,000
Mortgage note payable, bank, secured by land and building, 6.6%, interest and fixed principal payment of \$7,706 due monthly, note matures February 20, 2024.	<u>747,310</u>	<u>788,134</u>
Total notes payable and long-term debt	<u>747,310</u>	<u>838,134</u>
Less, current portion	<u>43,783</u>	<u>90,824</u>
Total, long-term portion	<u>\$ 703,527</u>	<u>\$ 747,310</u>

Maturities of long-term debt are as follows:

YEAR ENDING <u>JUNE 30,</u>	<u>AMOUNT</u>
2013	\$ 43,783
2014	46,805
2015	50,034
2016	53,381
2017	57,171
2018 and later	<u>496,136</u>
Total	<u>\$ 747,310</u>

Interest paid during the years ending June 30, 2012 and 2011 amounted to \$51,683 and \$54,711, respectively.

The Chamber has an unused line of credit with a bank in the amount of \$2,700,000, collateralized by pledges receivable, interest rate is the bank's prime rate plus 1% and expires on January 3, 2013.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 6 - LEASE COMMITMENTS:

The Chamber leases certain office equipment under noncancelable operating lease agreements. Lease expense charged to operations under lease agreements was approximately \$11,602 and \$11,094 for the years ended June 30, 2012 and 2011, respectively. Future minimum lease payments under these leases are as follows:

YEAR ENDING JUNE 30,	AMOUNT
2013	\$ 5,708
2014	4,788
2015	4,788
2016	798
Total	<u>\$ 16,082</u>

The Chamber is lessor under a rental agreement for office space in the Chamber's building. The lease expires on June 30, 2017. Future minimum lease payments receivable under the new lease agreement total approximately \$473,731. The lessee is responsible for its direct utilities and maintenance expenses.

The Chamber's lease on the Bluffton office in the Liberty Savings Building expired during 2011 and the office was closed. The Chamber entered into a lease effective July 1, 2012, and the Bluffton office will be reopened in 2012.

NOTE 7 - EMPLOYEE BENEFITS:

The Chamber is a participant in the American Chamber of Commerce 401(k) Retirement/Savings Plan (the Plan). The Chamber contributes a percentage of each eligible employee's salary and matches each employee's contribution to a fixed maximum percentage. The Plan covers employees who have one or more years of service with the Chamber. The Chamber contributed \$69,614 and \$69,270 to the Plan for the years ended June 30, 2012 and 2011, respectively.

NOTE 8 - WELCOME CENTER JOINT VENTURE:

During October 1993, the Chamber and the Environmental and Historical Museum of Hilton Head Island (the Museum), a not-for-profit organization, formed a joint venture for the purpose of acquiring, developing, and improving certain land and building located on Hilton Head Island. The intentions of the joint venture partners are that such use and occupancy of the building should be conducted in partnership form for the shared use as a Welcome Center of the Chamber and as an exhibition, retail and administrative center for the Museum with each party to share in operating and maintenance expenses and in the joint venture's gains/losses.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
NOTES TO FINANCIAL STATEMENTS

NOTE 8 - WELCOME CENTER JOINT VENTURE (CONTINUED):

The Welcome Center joint venture was terminated in August, 2011 and the remaining assets were distributed to the members of the joint venture.

Unaudited financial information related to the joint venture is as follows:

	JUNE 30,	
	<u>2012</u>	<u>2011</u>
Property and equipment - net	\$ -	\$ -
Other assets	-	22,557
Total assets	<u>-</u>	<u>22,557</u>
Debt and other liabilities	<u>-</u>	<u>(4,557)</u>
Net assets	<u>\$ -</u>	<u>\$ 18,000</u>
Revenues	\$ -	\$ 208
Expenses	(16,248)	(66,328)
Net gain (loss)	<u>\$ (16,248)</u>	<u>\$ (66,120)</u>

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**INDEPENDENT AUDITORS' REPORT
ON SUPPLEMENTARY INFORMATION**

To the Board of Directors and Members
of Hilton Head Island - Bluffton
Chamber of Commerce

Our report on our audits of the basic financial statements of Hilton Head Island - Bluffton Chamber of Commerce, for the years ended June 30, 2012 and 2011 appears on page 2. These audits were conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The accompanying additional information presented on pages 14 through 17 is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

J.W. Hunt and Company, LLP

September 18, 2012

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF REVENUES AND FUNCTIONAL EXPENSES,
YEAR ENDING JUNE 30, 2012

	TOWN OF HILTON HEAD ISLAND ACCOMMODATIONS TAX
Revenues - Town of Hilton Head Island - DMO	\$ 1,050,472
Town of Hilton Head Island - Supplemental Grant 2012	171,725
Town of Hilton Head Island - Crisis Fund	1,863
Total revenue	<u>1,224,060</u>
Expenses:	
Direct marketing:	
Leisure:	
Print media	18,660
Fulfillment	40,775
Golf marketing	98,655
Culinary marketing	69,043
Biking/Cycling marketing	310
Cultural/Heritage marketing	8,352
Digital media and marketing	107,744
Vacation Planner	77,820
800 Toll-free number	4,077
Total leisure	<u>425,436</u>
Ad agency fees and expenses	1,544
Total - Ad agency fees and expenses	<u>1,544</u>
Public relations:	
Public relations firm	111,625
Special projects/photography	11,032
Total public relations	<u>122,657</u>
Meetings and group:	
Trade shows	13,169
Sales blitz and site inspections	1,685
Giveaways	3,603
Trade sponsorships	27,901
HHI Difference	8,172
Select Service Co-op	3,464
Lead Prospecting Program	26,532

(Continued) - 1.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE
HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF REVENUES AND FUNCTIONAL EXPENSES,
YEAR ENDING JUNE 30, 2012

	TOWN OF HILTON HEAD ISLAND ACCOMMODATIONS TAX
Expenses (continued):	
Direct marketing (continued):	
Meetings and group (continued):	
Business Cluster Initiative	\$ 2,500
Weddings promotion	1,000
Travel trade	3,465
Total meetings and group	<u>91,491</u>
International:	
Coastal South Carolina	46,890
Coastal South Carolina - staff	13,420
Pow Wow International	10,560
UK sales mission	9,404
Total international	<u>80,274</u>
Market research:	60,371
Strategic planning	10,620
General contingency	7,209
Total market research	<u>78,200</u>
Group tour marketing:	
Group tour trade shows	1,992
Group tour FAMS	414
Total group tour marketing	<u>2,406</u>
Town of Hilton Head Island Crisis Recovery Fund:	
Beach Renourishment Brochure	<u>1,863</u>
Total direct marketing expenses	<u>803,871</u>
Sales, marketing, visitor services and administrative:	
Salaries and payroll taxes	260,517
Operations	126,057
Employee benefits	33,615
Total sales, marketing, visitor services and administrative	<u>420,189</u>
Total expenses	<u>1,224,060</u>
Excess of revenues over expenses	<u>\$ -</u>

(Concluded) - 2.

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

DESTINATION MARKETING ORGANIZATION OF THE TOWN OF BLUFFTON

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF REVENUES AND FUNCTIONAL EXPENSES,
YEAR ENDING JUNE 30, 2012

	BLUFFTON ACCOMMODATIONS TAX
Revenues - Town of Bluffton DMO	\$ 69,710
Town of Bluffton special grant	10,500
Total Revenue	<u>80,210</u>
Expenses:	
Bluffton billboard photography	605
Bluffton specific leisure/media	25,346
Town of Bluffton special grant	10,500
Select service sales blitz and promotions fulfillment	3,464
VisitBluffton.org website and e-promos	2,932
Digital and print ad design and production	3,450
Bluffton group tour promotions	1,054
Bluffton fulfillment	1,860
Bluffton visitor research	6,600
Total leisure	<u>55,811</u>
Total direct marketing expenses	<u>55,811</u>
Administrative:	
Salaries and payroll taxes	15,127
Operations	7,320
Employee benefits	1,952
Total administrative	<u>24,399</u>
Total expenses	<u>80,210</u>
Excess of revenues over expenses	<u>\$ -</u>

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF REVENUES AND FUNCTIONAL EXPENSES,
YEAR ENDING JUNE 30, 2012

	ACCOMMODATIONS TAX			PARKS, RECREATION AND TOURISM		MARKETING	MEMBERSHIP	TOTAL
	TOWN OF HHI	BLUFFTON	B/C DMO					
Revenues:								
Town of Hilton Head Island DMO	\$ 1,050,472	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,050,472
Town of Hilton Head Island Supplemental Grant (FY2012)	171,725	-	-	-	-	-	-	171,725
Town of Hilton Head Island - Heritage marketing	1,863	-	-	-	-	-	-	1,863
Beaufort County DMO / Grants	-	-	306,638	-	-	-	-	306,638
Town of Bluffton DMO	-	80,210	-	-	-	-	-	80,210
SCPRT DMO grants	-	-	-	598,430	-	-	-	598,430
SCPRT Co-op grants	-	-	-	500,000	-	-	-	500,000
Member funding	-	-	-	-	1,036,570	-	1,603,014	2,639,584
Total revenues	1,224,060	80,210	306,638	1,098,430	1,036,570	-	1,603,014	5,348,922
Expenses:								
Leisure	425,436	2,793	8,414	248,546	-	-	-	685,189
Town of Hilton Head Island - Crisis	1,863	-	-	-	-	-	-	1,863
Town of Bluffton marketing	-	41,900	7,653	-	-	-	-	49,553
Beaufort County marketing - Bluffton	-	-	109,101	-	-	-	-	109,101
Beaufort County marketing - Daufuskie	-	-	18,133	-	-	-	-	18,133
Beaufort County - Golf/Biking/Culinary	-	-	46,037	-	-	-	-	46,037
Meetings and group	91,491	3,464	-	49,303	20,385	-	-	164,643
Public relations	122,657	-	7,571	58,500	-	-	-	188,728
International	80,274	-	-	29,904	-	-	-	110,178
Market planning and research	70,992	6,600	-	23,949	-	-	-	101,541
Group tour marketing	2,405	1,054	1,352	-	-	-	-	4,811
Ad agency fees and expenses	1,544	-	-	-	-	-	-	1,544
Marketing Co-op programs	-	-	-	479,536	550,915	-	-	1,030,451
Membership related expenses	-	-	-	-	-	-	322,210	322,210
General contingency	7,209	-	1,054	-	5,250	-	-	13,513
Sales, marketing and administrative	420,189	24,399	107,323	208,692	460,020	-	1,264,931	2,485,554
Total expenses	1,224,060	80,210	306,638	1,098,430	1,036,570	-	1,587,141	5,333,049
Excess of revenues over expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 15,873	\$ 15,873

HILTON HEAD ISLAND CHAMBER OF COMMERCE, INC.

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES
FISCAL YEAR 2009-2010

	Accommodations Tax	Parks, Recreation and Tourism	Marketing Funds	Total
Revenues				
Town of Hilton Head Island DMO	\$ 1,078,673			\$ 1,078,673
Beaufort County Grants	\$ 190,000			\$ 190,000
Town of Hilton Head Island Mkt Grant	\$ 350,000			\$ 350,000
Town of Bluffton	\$ 51,550			\$ 51,550
Public-Private Mkt Alliance		\$ 250,000	\$ 500,000	\$ 750,000
SCPRT Grants		\$ 300,000		\$ 300,000
Member Funding			\$ 479,550	\$ 479,550
Sub-Total	\$ 1,670,223	\$ 550,000	\$ 979,550	\$ 3,199,773
Expenses:				
Leisure:				
Calendar of Events	1,000	4,000		5,000
Fulfillment	45,500			45,500
Visitor Inquiry Program	500			500
Vacation Planner	15,000	35,500	37,300	87,800
Print & Broadcast Media	87,713	37,000		124,713
Email Promos	12,000	26,500	2,500	41,000
Town of HHI Brand Grant	252,450			252,450
800 Toll-Free Number	3,800			3,800
Internet Media & Promotions	6,500	104,700	62,876	174,076
Beaufort County - Bluffton	81,000	10,000		91,000
Beaufort County - Daufuskie	25,500	1,300		26,800
Town of Bluffton	34,000	10,000		44,000
Destination Event Promotions	5,000	5,000		10,000
Agency Creative & Production	25,000			25,000
Sports Council	1,000	2,500		3,500
Seasonal Arts Promotions	8,000	5,500	550	14,050
Total Leisure	603,963	242,000	103,226	949,189

HILTON HEAD ISLAND CHAMBER OF COMMERCE, INC.

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES
FISCAL YEAR 2009-2010

	Accommodations Tax	Parks, Recreation and Tourism	Marketing Funds	Total
Meetings and Group:				
Trade Shows	15,000	7,200	6,000	28,200
In-Market Fams	1,000		1,000	2,000
E-Marketing & Promotions	2,000			2,000
Give-Away Items	1,500			1,500
Select Service	5,000		10,000	15,000
Trade Media	500			500
Site Inspections	1,000			1,000
Family Reunion Market PDF	1,200	1,600		2,800
Trade Sponsorships	7,000		2,000	9,000
Internet Promotions	1,500			1,500
				-
Total Meetings and Group	35,700	8,800	19,000	63,500
Public Relations:				
Public Relations Firm	90,000	40,000		130,000
Special Projects	2,000			2,000
PR Contingency	9,050			9,050
Total Public Relations	101,050	40,000	-	141,050
Group Tour Marketing:				
Group Tour Trade Shows	2,500	1,200		3,700
Group Tour Fams	200			200
Group Tour Co-op Programs	500	1,500	500	2,500
				-
Total Group Tour Marketing	3,200	2,700	500	6,400
International Marketing:				
Coastal South Carolina, USA	35,500			35,500
Coastal South Carolina-Staff	6,200			6,200
Website Translations	5,000	2,500		7,500

HILTON HEAD ISLAND CHAMBER OF COMMERCE, INC.

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES
FISCAL YEAR 2009-2010

	Accommodations Tax	Parks, Recreation and Tourism	Marketing Funds	Total
POW WOW Show	6,875			6,875
Total International Marketing	53,575	2,500	-	56,075
Research:				
Research	22,000			22,000
Strategic Planning	8,000	4,000		12,000
General Contingency	10,154			10,154
Total Research & Contingency	40,154	4,000	-	44,154
Public - Private Marketing Alliance		250,000	500,000	750,000
Administrative:				
Salaries, Commissions and Payroll Taxes	507,875		217,663	725,538
Employee Benefits	74,932		32,114	107,046
Operations	249,774		107,047	356,821
Total administrative	832,581	-	356,824	1,189,405
Total Expenses	1,670,223	550,000	979,550	3,199,773
Excess of Revenue over Expenses	-	-	-	-

HILTON HEAD ISLAND CHAMBER OF COMMERCE, INC.

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES
FISCAL YEAR 2010-2011

	Town HHI DMO ATAX State Fund	Town HHI Supplm Grant ATAX State Fund	Other ATAX B/C & Town Bluffton	Parks, Recreation and Tourism	Marketing Funds	Total
Revenues						
Town of Hilton Head Island DMO	\$ 1,056,464					\$ 1,056,464
Beaufort County Grants			\$ 286,000			\$ 286,000
Town of Hilton Head Island Mkt Grant		\$ 368,000				\$ 368,000
Town of Bluffton			\$ 45,000			\$ 45,000
Public-Private Mkt Alliance				\$ 275,000	\$ 550,000	\$ 825,000
SCPRT Grants				\$ 575,000		\$ 575,000
Member Funding					\$ 476,064	\$ 476,064
Sub-Total	\$ 1,056,464	\$ 368,000	\$ 331,000	\$ 850,000	\$ 1,026,064	\$ 3,631,528
Expenses:						
Leisure:						
Digital Media	219,750	67,500	-	275,750	195,000	758,000
Broadcast Media		11,900				11,900
Print Media	10,378			5,190		15,568
Mobile Marketing & Visit HHI	15,000		4,200	37,000	18,000	74,200
Outdoor & Biking Guide - Online & Print	-	4,000	4,000	-	-	8,000
Fulfillment	52,000		6,000			58,000
Insider Program	-	38,000	-	22,000	-	60,000
Vacation Planner	4,000	4,000		54,800	60,200	123,000
Toll-Free Number	4,000		800			4,800
Website Upgrades	5,000			5,000	5,000	15,000
Golf Specific Marketing						
HHI Golf Media & Marketing		102,000	-	75,000	100,000	277,000
Bluffton Golf Media & Marketing			25,000	-	-	25,000
Art, Cultural, Festival & Event Specific Marketing						
Festivals and Events E-Promotions		18,000				18,000
Public Art Event	-	20,500			-	20,500
Art Around Town Promotion	-	7,600	9,000		2,500	19,100
BRAVO Celebrate the Arts	14,000	-	3,000	-	-	17,000
Calendar of Events	3,500	-	1,500	-	-	5,000
HHI Historic Guide - Online & Print	1,500	-	-	1,000	-	2,500
HHI Gullah Guide - Online & Print	1,500	-	-	1,000	-	2,500
Bluffton Leisure Media & Marketing	-	-	88,375	-	-	88,375
Daufuskie Leisure Media & Marketing	-	-	30,125	-	-	30,125
						-
						-
						-
Total Leisure	330,628	273,500	172,000	476,740	380,700	1,633,568

HILTON HEAD ISLAND CHAMBER OF COMMERCE, INC.

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES
FISCAL YEAR 2010-2011

	Town HHI DMO ATAX State Fund	Town HHI Supplm Grant ATAX State Fund	Other ATAX B/C & Town Bluffton	Parks, Recreation and Tourism	Marketing Funds	Total
Meetings and Conferences						
Trade Shows	10,750	-	-	19,310	9,440	39,500
Select Service	3,000	-	5,000	-	2,000	10,000
E-Marketing & Promotions	-	6,000	-	2,000	-	8,000
Planner FAMS during Marquee Events	-	-	-	25,000	50,000	75,000
HHI Difference Social Respon. Initiative	-	38,000	-	15,000	-	53,000
Trade Media	-	20,000	-	20,000	40,000	80,000
APEX Sustainability Workshop	500	-	-	1,000	1,500	3,000
SDR Lead Generation	-	4,000	-	12,000	-	16,000
Trade Sponsorships	5,000	-	1,500	2,000	-	8,500
Backyard Marketing Program	-	2,500	-	-	-	2,500
Total Meetings and Conferences	19,250	70,500	6,500	96,310	102,940	295,500
Public Relations:						
Public Relations Firm	70,000	-	5,000	55,000	-	130,000
Social Media	-	15,000	5,000	-	-	20,000
PR Contingency	7,500	-	-	2,500	-	10,000
Total Public Relations	77,500	15,000	10,000	57,500	-	160,000
Group Tour Marketing:						
Group Tour Trade Shows	-	-	10,000	-	-	10,000
Group Tour Fairs	500	-	500	-	500	1,500
Group Tour Co-op Programs	4,560	-	4,500	1,450	3,130	13,640
Total Group Tour Marketing	5,060	-	15,000	1,450	3,630	25,140
International Marketing:						
Coastal South Carolina, USA	54,500	-	-	-	-	54,500
Coastal South Carolina-Staff	8,000	-	-	-	-	8,000
France Initiative	-	-	-	10,000	-	10,000
International Receptives Promotion	5,000	-	-	5,000	-	10,000
POW WOW Show	7,000	-	-	-	-	7,000
Total International Marketing	74,500	-	-	15,000	-	89,500
Research:						
Research	23,000	9,000	-	18,000	-	50,000
Strategic Planning	2,000	-	-	10,000	-	12,000
General Contingency	9,915	-	-	-	1,500	11,415
Total Research & Contingency	34,915	9,000	-	28,000	1,500	73,415

HILTON HEAD ISLAND CHAMBER OF COMMERCE, INC.

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES
FISCAL YEAR 2010-2011

	Town HHI DMO ATAX State Fund	Town HHI Supplm Grant ATAX State Fund	Other ATAX B/C & Town Bluffton	Parks, Recreation and Tourism	Marketing Funds	Total
Marketing, Sales, Visitor Services, Administration & Operations						
Personnel - wages & benefits	408,696	-	43,669		402,251	854,616
Operations	105,915	-	23,831		135,043	264,789
Sub-total						1,119,405
Welcome Center Support - B/C			60,000			60,000
VCB Marketing & Sales - SCPRT grant				175,000		175,000
Total Personnel and Operations	514,611	-	127,500	175,000	537,294	1,354,405
Total Expenses	1,058,464	368,000	331,000	850,000	1,026,064	3,631,528
Excess of Revenue over Expenses	-	-	-	-	-	-

HILTON HEAD ISLAND-BLUFFTON CHAMBER OF COMMERCE, INC.

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES,
YEAR ENDING JUNE 30, 2012 - BUDGET

	ACCOMMODATIONS TAX		PARKS, RECREATION AND TOURISM	MARKETING	MEMBERSHIP	TOTAL
	TOWN OF HHI	BLUFFTON & B/C DMO				
Revenues						
Town of Hilton Head Island DMO	1,075,000					1,075,000
Town of HHHI Supplemental Grant (2011)	208,850					208,850
Town of HHHI Supplemental Grant (2012)	225,000					225,000
Beaufort County HTAX		85,000				85,000
Beaufort County DMO		120,000				120,000
Beaufort County Grants		175,000				175,000
Town of Bluffton DMO & Walking Tour Grant		48,500				48,500
SCPRT DMO Grants			400,000			400,000
SCPRT Public-Private Co-op			125,000	325,000		450,000
Member Funding				550,000	1,750,000	2,300,000
Total Revenues	1,508,850	428,500	525,000	875,000	1,750,000	5,087,350
Expenses:						
Leisure Media & Promotions	263,792		100,000			363,792
Digital Database Marketing	174,704		50,000			224,704
Town of Bluffton Marketing		35,000				35,000
Beaufort County - Bluffton Promotions		94,600				94,600
Beaufort County - Daufuskie Promotions		20,400				20,400
Bluffton Market Planning & Research		15,000				15,000
Meetings and group	79,042		5,000	35,684		119,726
Public relations	95,000	5,000	14,000			114,000
International	28,000		20,000			48,000
HHI Market Planning & Research	48,500		30,000			78,500
Group tour marketing	10,000	15,000				25,000
Collateral, Fulfillment & Photography	118,000	10,000	50,000			178,000
Marketing Co-ops	35,000		125,000	290,000		450,000
General Contingency	12,373	2,000				14,373
Culinary Promotions	63,850	40,000	6,000			109,850
Biking Promotions	5,000	5,000				10,000
Golf Promotions	120,000	50,000		100,000		270,000
Sales, Marketing, Visitor Serv, Adm & Ops	455,589	136,500	125,000	449,316		1,166,405
Membership Related Expenses					1,748,000	1,748,000
Total expenses	1,508,850	428,500	525,000	875,000	1,748,000	5,085,350
Excess of revenues over expenses					2,000	2,000

HILTON HEAD ISLAND - BLUFFTON
CHAMBER OF COMMERCE, INC.

HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES,
YEAR ENDING JUNE 30, 2012 - BUDGET

	ACCOMMODATIONS TAX
Revenues - Town of Hilton Head Island - DMO	\$ 1,075,000
Town of Hilton Head Island - Supplmt Grant 2011	\$ 208,850
Town of Hilton Head Island - Supplmt Grant 2012	225,000
Total Revenue	<u>1,508,850</u>
Expenses:	
Direct marketing:	
Leisure	
Digital Media	125,553
Pay Per Click Marketing	59,820
Consumer Promotions	56,661
Creative, Production & Tracking	21,758
SEO	29,142
Social Media & Marketing	25,269
Video Content Development	7,775
Email Marketing	6,438
Website Enhancements & Special Landing Pages	27,990
Digital hosting, analytics & reporting	12,006
Leisure Co-op	10,000
Database Development & Mobile	66,085
Vacation Planner	76,234
Photography	6,630
Toll-Free Number	3,315
Fulfillment	31,820
Culinary Promotions	63,850
Biking Promotions	5,000
Total leisure	<u>635,346</u>
Golf Promotions	120,000
Total - Golf Promotions	<u>120,000</u>
Public relations:	
Public Relations Firm & Expenses	74,170
Digital Photo Library & Special Projects	20,830
Total public relations	<u>95,000</u>

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE, INC.
HILTON HEAD ISLAND VISITOR AND CONVENTION BUREAU
SCHEDULE OF FUNCTIONAL REVENUES AND EXPENDITURES,
YEAR ENDING JUNE 30, 2012 - BUDGET

Expenses (continued):	
Meetings and conferences:	
Travel Trade Shows	19,121
HHI Difference Promotion	6,690
Business Cluster Initiative	3,500
Trade Sponsorships	15,000
E-mail Marketing	6,690
Mobile website	3,842
Sales Blitz	2,400
Site Inspections	2,345
Select Service co-op	3,400
Lead Prospecting Program	16,054
Meetings Co-op	25,000
Total meetings and group	<u>104,042</u>
International:	
Coastal South Carolina	\$ 15,000
Coastal South Carolina-staff	2,500
Pow Wow International	4,700
International Receptives Promotion	5,800
Total international	<u>28,000</u>
Market Research	31,975
Strategic Planning	16,525
General Contingency	12,373
Total Research, Planning & Contingency	<u>60,873</u>
Group Tour & AAA marketing:	
AAA Ohio Promotion	5,000
Group Tour co-op advertising	5,000
Total Group Tour and AAA	<u>10,000</u>
Total direct marketing expenses	<u>1,053,261</u>
Sales, Marketing, Visitor Services & Admin	
Salaries and payroll taxes	282,465
Operations	136,677
Employee benefits	36,447
Total Sales, Marketing, Visitor Services & Admin	<u>455,589</u>
Total expenses	<u>1,508,850</u>
Excess of revenues over expenses	<u>-</u>

(Concluded) - 2.

Hilton Head Island-Bluffton Chamber of Commerce

Hilton Head Island Visitor Convention Bureau Schedule of Functional Revenues Expenditures
FY 2012-13 Budget

Revenues	VCB TOTALS	Town of HHI DMO	VCB Private Sector	SCPRT Destination Specific	SCPRT Coop	Private Match Coop	Town of Bluffton DMO	B/C Bluffton & Daufuskie	Membership
Town of HHI DMO	109,500	109,500							
Town of HHI Supplemental Grant	240,000	240,000							
VCB Private Sector	368,500		368,500						
SCPRT Destination Specific	770,000			770,000					
SCPRT Coop	130,000				130,000				
Private Match Coop	860,000					860,000			
Town of Bluffton DMO	65,000						65,000		
B/C Bluffton & Daufuskie	305,000							305,000	
Total Revenues	4,133,500	1,335,000	368,500	770,000	130,000	860,000	65,000	305,000	
Membership									1,700,000
Total Revenues with Membership	5,833,500								
Expenses									
Research & Planning	88,000	88,000							
Packaging/Promotions									
Webinars/Workshops	10,000								
Facebook Promos	10,000								
Sub-total	20,000	20,000							
Destination PR									
Agency Fees	144,000								
Out-of-Pocket/ Promos	18,000								
UK Culinary Promo	8,000								
Sub-total	170,000	170,000							
Destination Photography	90,000	90,000							
Social Media									
Agency Promotions	40,000								
Blog/Writers	27,000								
Video Production	12,000								
Sub-total	79,000	79,000							
Digital Marketing									
VERB Daily Site Work	36,000								
Special Section Updates	20,000								
SEO/Ad Serve/Hosting	24,000								
SEM Marketing	105,000								
Trip Advisor DMO Promo	50,000								
Mobile site/App Updates	12,000								
Mobile Promotions	12,000								
YouTube Promos	12,000								
SCPRT Coops	25,000								
Media Contingency	15,000								
Sub-total	311,000	311,000							

Hilton Head Island-Bluffton Chamber of Commerce

Hilton Head Island Visitor Convention Bureau Schedule of Functional Revenues Expenditures FY 2012-13 Budget

	VCB TOTALS	Town of HHI DMO	VCB Private Sector	SCPR1 Best Specialty	SCPR1 Co-Sponsor	Town of Bluffton DMO	Bluffton DMO	Membership
Consumer Promos & Lead Gen:								
Oprah Magazine	34,988							
America's Best Vacations	9,990							
Ad Production	12,000							
Sub-total	56,978							
Sweet Tea Partnership:								
Atlanta Dining App	15,000							
Collaborate	5,000							
NY Fall Media Promo	15,000							
Sub-total	35,000							
Insiders/Collateral/Fulfillment:								
E-Promos/E-News	24,000							
Vacation Planner	140,000							
Envelopes	6,000							
Digital VP	5,000							
Fulfillment Mail Ops/								
Postage/Visitor Database	55,000							
Toll-Free Phone	3,600							
Sub-total	233,600							
Group Sales & Marketing:								
Lead Prospecting/SDR	42,000							
Trade Sponsorships	33,000							
Healthcare Events	10,000							
Backyard Marketing	5,000							
Select Service Sales Blitz	10,000							
Select Service FAM	5,000							
Site inspections	3,000							
Sales Industry Dues	2,600							
Website Refresh	15,000							
Mobile Template	6,000							
Social Media	5,000							
Promotional Giveaways	6,000							
Trade Shows	29,350							
Sub-total	171,950							
International:								
Coastal SC USA Coop	48,000							
Brand USA Coops	25,000							
ITB Trade Show	6,000							
Ontario Motorcoach Show	2,500							
Pow Wow Trade Show	8,000							
Web SEO & Translations	6,000							
Sub-total	95,500							
VCB Contingency	22,000							

Hilton Head Island-Bluffton Chamber of Commerce

Hilton Head Island Visitor Convention Bureau Schedule of Functional Revenues Expenditures FY 2012-13 Budget

	VCB TOTALS	Town of Hilton Head DMO	VCB Private Sector	SCPRT Dest. Specific	SCPRT CA Dest. Specific	Town of Bluffton DMO	Bluffton ConDO	Membership
H/I Destination Marketing Operations & Management								
VCB Sales, Mkt, Visitor Services, Admin & Ops:								
Personnel	577,280							
Benefits	144,320							
Operations	180,400							
Sub-total	902,000	422,500	148,500	310,919				
H/I Supplemental Grants								
Golf	150,000							
Culinary	65,000							
Cultural Heritage	25,000							
VCB Sales, Mkt, Visitor Services & Operations	0							
Sub-total	240,000	240,000						
SCPRT Coops								
RBC Heritage	675,000							
Leisure Coops	196,500							
Specialty Market Coops	75,000							
Meetings & Group Coops	150,000							
VCB Sales, Mkt, Visitor Services & Operations	193,500							
Sub-total	1,290,000							
Town of Bluffton DMO								
Promotions	42,250							
VCB Sales, Mkt, Visitor Services & Operations	22,750							
Sub-total	65,000							
B/C Bluffton & Daufuskie DMO								
Promotions	198,250							
VCB Sales, Mkt, Visitor Services & Operations	106,750							
Sub-total	305,000							
TOTAL EXPENSES	4,133,500	1,335,000	368,500	770,000	1,290,000	65,000	305,000	
Membership								1,700,000
Total Expenses with Membership	5,833,500							
Revenues Minus Expenses:	0	0	0	0	0	0	0	0
= Expenses for Hilton Head Island Specific Programs								
= Expenses for Other Marketing Programs								

Exhibit E

Advertisement published on
January 23, 2013
In *The Island Packet* and
The Beaufort Gazette

StopChamberAbuse.com

Chamber's Recent Survey: What Questions Aren't Being Asked?

The Hilton Head Island/Bluffton Chamber of Commerce recently sent a 29-Question Survey to members asking for opinions about how they have been doing.

Interestingly, The Chamber has never sent out a questionnaire asking members who they would nominate and select for their board of directors. *(Is it because the current CEO and Board*

prefers to keep things tightly controlled with their own "buddy board"?)

Most of this new survey was multiple choice, so it went on for 8 pages—too much to cover in my one-page ad. Therefore, I will just comment briefly, about how I would have answered some of the more pertinent questions, and what questions should have been asked, but weren't.

For Example, for some reason, they didn't bother to ask:

What do you think of your CEO making over \$320,000 salary with a pay package of \$400,000?

☐ Very Satisfied ☐ Satisfied ☐ Neutral ☐ Dissatisfied ☐ Very Dissatisfied

Since I didn't receive a questionnaire, I felt this ad space would be a great place for my answers to some of their 29 questions, plus important ones NOT asked.

QUESTION - Please select your primary reason for being a member of the chamber.

MY ANSWER - To be involved with others in the business community and be supportive of their needs. It is not to support a "for-profit" organization which operates under the guise of a "non-profit" entity at the expense of many of its members. I like "Business After Hours," but where is all the money generated by "The Chamber Ball" and "Taste of the Season" going?

QUESTION - Evaluating your chamber membership what are the most important benefits?

MY ANSWER - It is difficult for me to comment on the importance of what the chamber claims it is doing, when the chamber refuses full transparency, as any publicly-funded organization must do, and declines opening its books to its membership and appoints its own board without input from the entire membership.

QUESTION - Please rate your satisfaction with the chamber in areas such as "value received" for your annual investment and "overall effectiveness of advancing the common interests of membership."

MY ANSWER - My issue is not rating levels of satisfaction, but rather levels of dissatisfaction. I presume the Chamber has many fine, hard-working employees. That's not the point. The reality is that the way this Chamber has been set up in our community is a hoax. It takes huge chunks of money from public funds and then builds a 26-employee, self-serving empire in the name of being a "non-profit" organization - and, at the expense of local media companies.

QUESTION - What efforts are you interested in your chamber pursuing?

MY ANSWER - Promoting all members' products and services— not competing with its own members.

QUESTION - Do you plan to renew your membership?

MY ANSWER - Not until all Chamber abuses are cleaned up as stated in my recent 6-point STOP-CHAMBER-ABUSE Plan.

Questions Not Asked, But Should Have Been.

QUESTION - Should the Chamber also be a Convention & Visitors Bureau attracting tourism?

MY ANSWER - Definitely NOT. By doing so, the opportunity to mix and mingle funds for the wrong purposes are too great. Each entity should be separate, with distinct and separate missions and transparency.

QUESTION - What should be the mission of the Chamber?

MY ANSWER - It should be a membership organization dedicated to meeting identified needs of the Hilton Head Island/Bluffton area by fostering economic opportunity and a favorable business climate through the promotion of community growth and development of support programs that improve the overall business environment.

The Chamber's decision to hire out-of-town lawyers to arrogantly refuse FOIA (Freedom of Information Act) transparency requests speaks volumes about things they are trying to hide from our community. How are those attorney bills being paid? Thanks again for your continued support, and understanding of the importance of fixing our Chamber. Please keep sending your emails of support to SpeakUp@StopChamberAbuse.com. Write to your council members and local editors. And, take me at my word. I will not stop until every rock is turned over . . . every abuse brought to light.

Skip Hoagland

(*NOTE - because of space restrictions, some of the Chamber's survey questions have been paraphrased).

Paid for by StopChamberAbuse.com and Skip Hoagland
P.O. Box 21787 • HHI, SC 29925

Exhibit F

Advertisement published on
February 3, 2013 in
The Island Packet

Chamber Lawsuit Filed

StopChamberAbuse.com

What My Recent Lawsuit Is Seeking to Uncover.

Although I don't attend last night's "Chamber Ball", my company is indeed a dues paying member of The Hilton Head Island/Bluffton Chamber of Commerce. And, as such, it would only seem right that as a "member in good standing" I should have access to inspect how my organization is being operated.

Yet, after expressing my concerns for over a year about certain Chamber policies, and its alleged "non-profit" status, as well as its secretive executive committee meetings, and

how it continues to misuse and mingle the public funds it receives from South Carolina Accommodations Tax (ATAX) revenues and Parks Recreation & Tourism (PRT) funds, I have been repeatedly and vehemently rebuffed. (Thus, I'm discovering that I'm not the only member to be treated so arrogantly.) Therefore, being a person of stubborn upbringing, I have pushed forward into the courts with a formal request as is my right under South Carolina Law and its Freedom of Information Act (FOIA).

The Chamber attorneys from Charleston (there are no qualified lawyers locally?) have pushed back. They base their argument on a claim our Chamber is not "public" under the definition, but merely a "contractor" acting on behalf of local townships - and therefore not subject to FOIA. Yet who is going to believe that rose when the Chamber in a self-incriminating manner itself calls its V&CB a "division" (not a separate entity). The SC Code (30-4-206) is quite clear. It doesn't mince words when it defines a "public body" as: "any organization.... supported in whole or in part by public funds or expending public funds..."

Little doubt, it's smoke and mirrors by Chamber Chiefs, because they do have much to hide!

Here are a few of the things I'm trying to uncover:

1. When were the bylaws changed to allow an appointed board with no term limits? By who?
2. Total cost and breakdown of all 26 employee salaries and what percentages is allocated to "public funds."
3. How did Bill Miles' CEO pay package reach \$400,000 plus gratis golf club memberships and family trips overseas?
4. Who decided to use consultants, agencies and web companies in New York, Canada and elsewhere when there is ample talent locally?
5. How was it decided to generate chamber revenue for its own pockets in direct competition with local chamber members? How much money is being generated from this abuse?
6. What's the real story behind the \$600/sq.ft. construction costs of the Welcome Center?
7. What are the revenues from all chamber programs and how is the money then being used?
8. How much of Hilton Head's ATAX money is co-mingled for Bluffton?

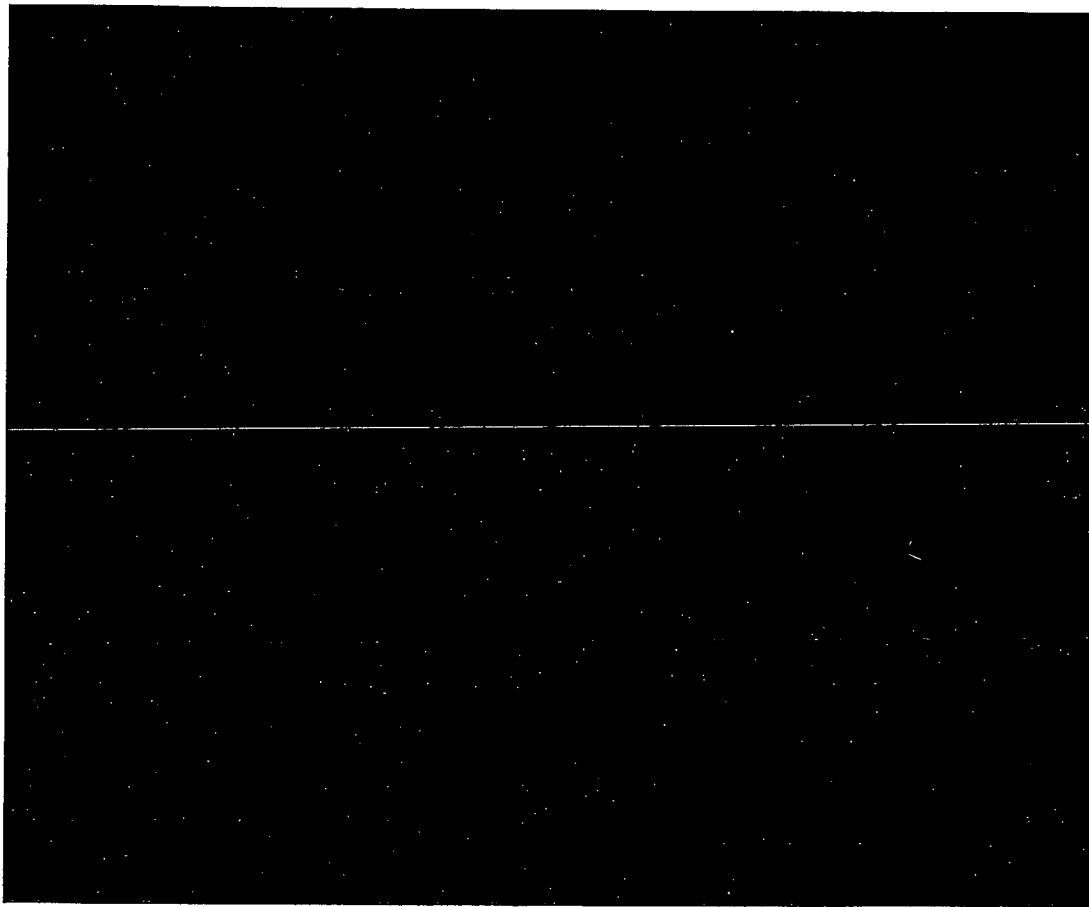
Once more I thank you for your growing support and your understanding that we must fix our chamber for the overall good of our community. It must separate from the V&CB to have clean hands. Please keep sending your emails of support to SpeakUp@StopChamberAbuse.com. Write to your council members and local editors. And, take me at my word, I will not stop until every rock is turned over, and every abuse brought to light.

Skip Hongland

Paid for by StopChamberAbuse.com and Skip Hongland
P.O. Box 21787 • HHI, SC 29923

Exhibit G

Email from Skip Hoagland, entitled
"Today's letter to the editor"



From: "Skiphoagland" <skiphoagland@...>
To: "drew laughlin" <drew.laughlin@...>, "Leece" <leee@...>, "wdharkins2hh" <mailto:wdharkins2hh@...>, drew.laughlin@... <mailto:drew.laughlin@...>, drew@... <mailto:drew@...>, wrightor@... <mailto:wrightor@...>, MarcG@... <mailto:MarcG@...>, kim@... <mailto:kim@...>, johnn@... <mailto:johnn@...>, "Leece" <mailto:leee@...>, "wdharkins2hh" <mailto:wdharkins2hh@...>, "drew.laughlin" <mailto:drew.laughlin@...>, "drew.laughlin@..." <mailto:drew.laughlin@...>, "drew" <mailto:drew@...>, "drew" <mailto:drew@...>, "wrightor" <mailto:wrightor@...>, "MarcG" <mailto:MarcG@...>, "MarcG" <mailto:MarcG@...>, "kim" <mailto:kim@...>, "kim" <mailto:kim@...>, "johnn" <mailto:johnn@...>, "johnn" <mailto:johnn@...>, "Duane Parrish" <mailto:dparrish@...>, "Katherine Veldran" <mailto:KatherineVeldran@...>, "Nikki Haley" <mailto:nikkihaley@...>, "Nikki Haley" <mailto:nikkihaley@...>, "Billy Keyserling" <billyk@...>, "Tom Upshaw" <mailto:tomupshaw@...>, "sarah borton" <sborton@...>, "Fitz Mcaden" <mailto:fbmcaden@...>

2/14/2013

<fmcader@...> <mailto:fmcader@...> >> "gsmith" <mailto:gsmith@...> >
 <gsmith@...> <mailto:gsmith@...> >>> "dean bell" <dbell@...> <mailto:dbell@...> >
 "gerardmahieu" <mailto:gerardmahieu@...> >> "gerardmahieu" <mailto:gerardmahieu@...> >>, "Peter
 Buonaio" <netel@...> <mailto:netel@...> >> "Rob Martin"
 <rmartin@...> <mailto:rmartin@...> >> "Gary Sadowski"
 <gsadowski@...> <mailto:gsadowski@...> >> "tom gardo"
 <tomgardo@...> <mailto:tomgardo@...> >> "Paul Cifaldi"
 <paulecifaldi@...> <mailto:paulecifaldi@...> >> "John Munro"
 <JMunro@...> <mailto:JMunro@...> >> "Cathy Hoagland Hoagland" <chh@...> <mailto:hh@...> >
 "John Barnwell" <jbarnwell@...> <mailto:jbarnwell@...> >> "travis rocky"
 <trockey@...> <mailto:trockey@...> >>
 Subject: Today's letter to the editor

Drew hope all is well . Wanted to send an update to you and all members of town council . I am now receiving wide spread support for transparency on how public monies and member monies are used and spent , including cleaning up and getting answers to all forms of abuse and corruption . I am even receiving to my surprise checks in the mail donating to my efforts .

As you all know by now and Drew as my past corporate lawyer can tell you this all will continue until its totally cleaned up one way or the other . I attempted to do this over the last year to avoid litigation and that did not work well . I have filed a lawsuit on this Chamber refusing Foia request as the DMO / Cvb , State grants etc . Bill Miles , David Tigges , Tom Upshaw and the small group of appointed buddy board members have refused this request and transparency . They refused the Island Packet staff who asked for info only wanting to confirm if all my allegations were true . This sent a bad message to many by refusing transparency even if the lawyers can find some bad written so law to hide and postpone the inevitable .

" My big question" am I to assume and believe that you Drew , Duane Parrish and all other members of this Chamber will accept non transparency and refusals from Bill Miles , two lawyers in Charleston and two guys in Gold Jackets with a Hollywood theme at the recent Chamber ball which you Attended to tell you after you hand them our tax payer and public monies you have no rights to certain financial info and transparency ?? Drew/ Duane you both cant believe this is right? This is like both of you as my partner in a business . I am the managing partner and I tell you that under SC law you are not entitled to certain financial information . This partnership would be short lived correct ?

What I have been forced to do now is take this to litigation and SC Supreme Court if necessary . I will continue full Page ads educating and updating those

who are interested . Will launch a direct mail piece to be sent out . I have filed an IRS Whistle Blower case and have put extreme pressure on IRS to enforce the 100% proven violations to 501-c6 tax codes governing non profits by our Chamber . IRS has been told by me and my team of lawyers and accountants if they do not enforce their own tax codes , I and other media nationwide will and can simply set up parts of our media companies the exact same way as the Hilton Head Bluffton Chamber with our media assets and stop paying corporate taxes and do so fully transparent and legally in their face not offshore facing prison . This was a shocking revelation for IRS and they have never in the history of IRS been faced with this situation or someone telling them this . Further my case has spread nationwide and is being called one of the largest Whistle Blower cases in US history and now followed by many big media

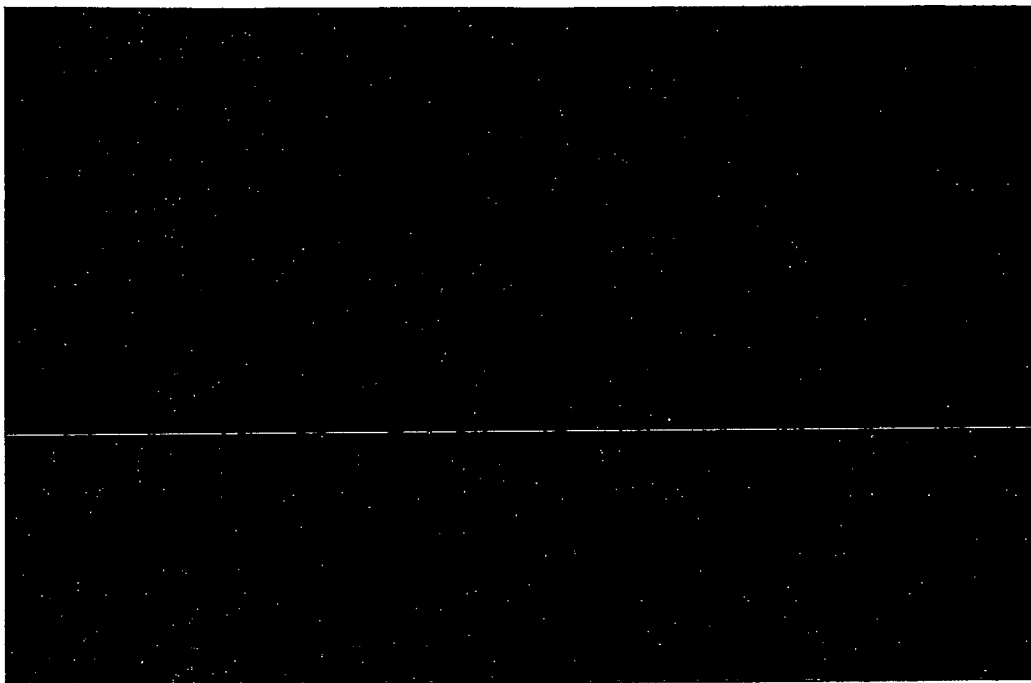
I have instructed my lawyers and accountants to put together additional

Lawsuits that will be filed at the appropriate times as this Foia case moves forward in the courts and we receive the response we fully expect from the lawyers in Charleston and the current buddy board and Bill Miles . Lawsuits to come and explored will be on the 600 00 sqft welcome center with 18kt Gold Faucets , this case will be simple who is the estimator ??? the architect told me Bill Miles ??? , unfair trade , business and competitive practices with damage claims , violations to Chamber media members under chamber mission statements , intent and non profit structure, bylaws etc , violation of its own current bylaws , abuse to all members , tax payers with excessive salaries and overhead , abuse to local companies bidding on jobs for the chamber that took other bids and our money to another country could have damage claims to local companies for this bidding process , all travel and cost abuses involved . The only way to prove some of this is with a total complete third party audit not the audit the Chamber hired to do . Note much of this can and will be proven thru litigation , depositions and discovery . Ray Deal the chamber in house controller and others will have lots of questions and detailed answers needed .

Town council , this State must think about its fiduciary responsibilities before just handing out money to someone without fully understanding how this money is being used . Drew you just got a raise to 30k annually , Gov Haley at 106k , President Obama 400k , Bill Miles at who knows exactly 400k could be more after we see Real numbers . Duane Parrish is he same or more than the Gov ? Just this alone not counting all the rest is simply out of control . By Bill Miles and his band of lawyers refusing information and transparency makes it all 10x worse . Who pays for the lawyers ? Who now pays for the Chamber ads in the local magazines that say "I Am The Chamber" using local businesses to say how great the Chamber is when we all know this is because Chamber membership is dropping fast , how does this help promote our island ? . 1000x 400 just to pay one salary , not even 26 more employees and all the rest . We will now see if litigation can fix it all . Thanks

[cid.5.1025.0]

2/14/2013



2/14/2013

Exhibit H

Advertisement published on
February 10, 2013 in
The Island Packet

findosave
smart shopping starts here.

FindnSave>Local Ads>All Advertisers>StopChamberAbuse.com>StopChamberAbuse.com Ad - 2/10/2013

StopChamberAbuse.com
CEmail

StopChamberAbuse.com

Shedding Light to Halt Abuse Against Taxpayers.

I have always been a staunch believer that as a taxpayer I have an inherent right to know how my hard-earned dollars are being spent and who is accountable when public trust is misplaced for personal gain. That's one of the key reasons I have pushed so hard for over 15 months to uncover what I believe are financial abuses by the Hilton Head Island/Hilton Chamber of Commerce (a non-profit organization) which receives hundreds of thousands of taxpayer dollars from state grants and via accommodations tax revenue.

Yet my efforts, as a Chamber Member, to uncover abuses have been rebuffed at every turn, until I have finally been forced to seek help from the South Carolina court system. The Island Packet of Beaufort Gazette referenced my lawsuit on its editorial page January 23rd and noted how its own reporters have been bluffed as well, even getting Chamber information. For those who didn't see that editorial, I have reprinted it below.

Thank you for your continued support and your understanding that we must fix our chamber for the overall good of our community. Please keep sending your emails of support to SpeakUp@StopChamberAbuse.com. Write to your council members and local electeds. I will not stop until every rock is turned over, and every abuse brought to light.

Skip Hargland

Reprinted from the Island Packet, Beaufort Gazette

OUTR VIEW

High court must clarify 'public body' definition.

The S.C. Supreme Court should resolve the issues in which those occupying public money are subject to the state's open records law.

A recent ruling clarifies the definition of a "public body" under the state's open records law would be welcome, but it would take the S.C. Supreme Court working as to give us the certainty needed on this important subject.

Hilton Head Island/Hilton Chamber of Commerce might also seek an injunction. I brought this suit for financial and personnel records from the hotel chamber saying the chamber is a public body. A significant portion—over 30 percent—of its annual income comes from accommodations tax revenue and state grants.

The Freedom of Information Act is one that is widely supported. It is the whole idea of public funds to be subject to the law. A 1991 Supreme Court ruling confirmed this.

The chamber's attorneys say that even though the chamber is the designated marketing organization for the Town of Hilton Head Island, it doesn't charge to serve as a public body. The chamber's attorneys say it is a chamber providing services and using state public money to defray the costs of the services provided. They point, in part, to an Horry County court ruling involving the North Beach Chamber of Commerce.

But we were told before—before the ruling—never involving rights on non-profit who gaming revenues. I believe public in different parts of the state can look at similar determinations and come to very different conclusions. That's where the state's legal system lives.

An opportunity to shed light on this important topic could come from another case already before the Supreme Court.

A lower court judge, in a lawsuit challenging the S.C. School Administration of Association, ruled by association was a public body, but not every subject to the Freedom of Information Act. Creating with records requests would interfere with its ability to work and would keep on its Top Administration rights, the judge said.

State Attorney General Alan Wilson weighed in on the side of open records in this case, saying the association takes public an easy and therefore should be subject to the law.

At an October hearing before the Supreme Court, the association's attorney didn't dispute the 1991 ruling that came in the case of a private university of South Carolina. But he argued the chamber, while technically a public body, was an issue-oriented advocacy group that shouldn't be subject to the law.

Chief Justice John G. Heise said it then could be fairly said if an organization is not a public body.

"For where the public body is run by a religious group, which is a public body, it is not a public body. I don't believe the majority of the members would be subject to public inspection," he said in a case by The Charleston City Paper.

If the Supreme Court rules on this, it will be a major step. It will be a major step. It will be a major step. It will be a major step.

But, that's where the court can offer guidance and resolve conflicting lower court rulings.

We hope the justices, as they have done in the past, come down on the side of disclosure and the stated goal of the law that public bodies be transparent in the open.

One of the issues in our case with Hargland's lawsuit is when information that is released and what information can be held back. The chamber makes a lot of decisions on its records.

But a recent Hargland's lawsuit against the chamber's request for information that included employees' pay, a list of officers and organizations paid by the chamber for goods and services, and its revenue sources.

The Village and Council in Beaufort, which control and spend the accommodations tax money the chamber gets, is a public body.

The question raised by Hargland's lawsuit and the chamber's denial of this newspaper's request had nothing to do with the fact that the Village and Council in Beaufort should spend money from the chamber, but on the basis of the public money on the chamber's master operations would have to be an issue if there were also on.

The chamber could be a better public organization, but it is not, we the general public.

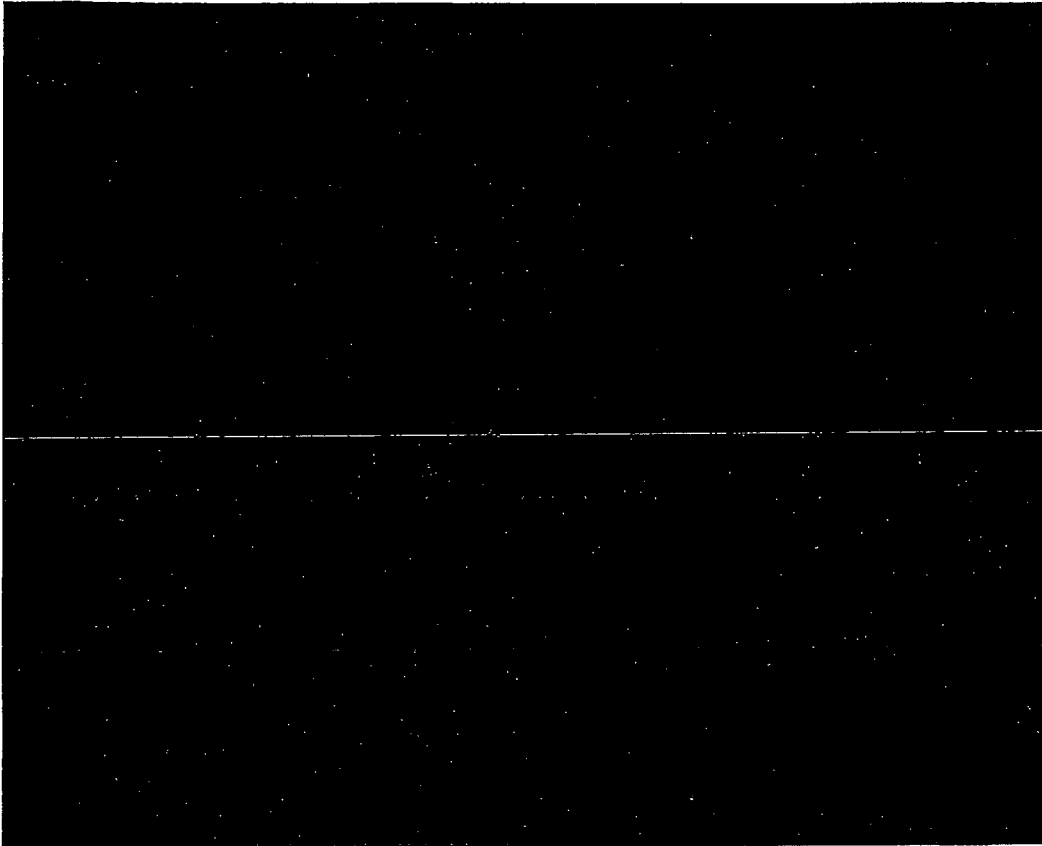
Paid for by StopChamberAbuse.com and Skip Hargland
P.O. Box 21787 • HHI, SC 29925

Published on Sunday, February 10, 2013

This Political ad in Beaufort, Bluffton & Hilton Head Island may contain time-sensitive information and offer. Please check with StopChamberAbuse.com to confirm availability.

Exhibit I

Email from Skip Hoagland
Dated May 3, 2012



-----Original Message-----

From: Skipphoagland [mailto: [REDACTED]]
Sent: Thursday, May 03, 2012 7:08 PM
To: Duane Parrish
Cc: dean bell; drew laughlin; Billy Keyserling; Haley, Nikki; sarah borton; Fitz
Meaden; Gary Sadowski; Terry Finger; Chuck Scarminach
Subject: HHIB Chamber and PRT funds

Duane can you call to discuss Southcarolina.Com .843-384-7260

Also my lawyer needs to know exactly how much money PRT has giving to the HHI Chamber ? We also need to know how much in advertising sales does PRT Receive for its website and magazines etc ? I guess we need to formally request this under the FOIA versus form 990 as we have for many Chambers. Duane sorry to have to do this , but like the Hospitality Association except different set of problems we need to leave no stone unturned .

The lawyers are now involved as well as many others watching this case nationwide . It is very possible all of this is headed for litigation , major press

2/14/2013

coverage , IRS investigations , legal rulings and even Perhaps many lawsuits nationwide . Supreme Court is even a possibility .
Thanks

Please excuse all typos and misspellings from my Iphone, now 80% mobile.

Skip Hoagland / CEO / Founder
DomainsNewMedia.ComLLC / USA 843-384-7260
Buenos Aires / Free Call 404-478-6388 ext 1 or 011-54-9-11-5942-3202 direct

OUR LEADING BRANDS -- <http://domainsnewmedia.com/dnm.pdf>
OUR COMPANY PHILOSOPHY -<http://dnjournal.com/cover/2008/july.htm>
Our 2000 Global Domain Brands-- DomainsNewMedia.com

Our Local Travel Network -- www.Portland.com/travel-network.php.

LATEST COMPANY NEWS

<http://www.dnjournal.com/archive/lowdown/2010/dailyposts/20100716.htm>

<http://fragerfactor.blogspot.com/2010/10/he-partners-with-best-designers.html>

<http://dnjournal.com/archive/lowdown/2010/dailyposts/20100920.htm>



2/14/2013

Exhibit J

Advertisement published on
December 9, 2012 in
The Island Packet

StopChamberAbuse.com

Is Our Chamber of Commerce Out of Control?

Think about these bullet points
and come to your conclusion.

- What do Chamber members get for their not-inconsiderable fees?
A normal small business for 1-3 employees annual membership fee is \$320 plus \$35 application fee. For that members get their name listed in a publication and a sticker for their door—(plus invites to gatherings paid for by local host companies not even the Chamber).
- Why does the Chamber president's compensation package equate to approximately 30% of what is spent for marketing of Hilton Head Island? (that's his \$400,000 salary + benefits). It's triple the salary of South Carolina's governor, 11x above our mayor's salary and equal to President Obama—taking 1,000 members to pay just one person!
- If our Chamber is a 501C-6 organization that accepts public funds, why does it ignore Freedom of Information Act (FOIA) requests and have two attorneys from Charleston to refuse information requests from its own members?
- Why does our Chamber outsource major projects (funded by SC tax dollars) to companies in New York, Florida, Canada and elsewhere outside of the local community, outside of South Carolina, and even outside of our country—to the obvious detriment of fully qualified firms both locally and in South Carolina?

Some Chamber members are like the old newspaper industry. When they hear the word "change" they say, "We'll be right back!"

- Why does our Chamber charge highly respected civic volunteer organizations, like Zonta, \$1,000 for the "privilege" of announcing their own "Woman of the Year" award at The Chamber Banquet/Ball?
- Why does our Chamber compete with many of its own members for advertising revenues?

How long will these and other abuses continue? I for one will not stop until every rock is turned over, and every abuse brought to light.

I sincerely appreciate the growing list of local residents and businesses who have been calling, writing and encouraging my efforts to shine more light on the abuses that continue month after month. Please keep sending your emails to SpeakUp@StopChamberAbuse.com and let me know what additional suggestions you might have. You may also send letters to our address noted below, or contact your town council representative or favorite news editor with your opinion.

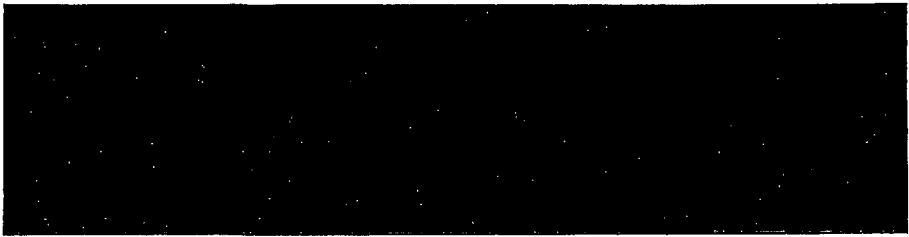
My continued thanks for your support and understanding the importance of fixing our Chamber.

Skip Hoagland
Skip Hoagland

Paid for by StopChamberAbuse.com and Skip Hoagland
P.O. Box 21787 • HH, SC 29925

Exhibit K

Email from Skip Hoagland
Dated November 12, 2012



From: hh
Sent: Monday, November 12, 2012 3:44 PM
To: [hoagland skip](#)
Subject: to all media

Who will join me in my lawsuit based on transparency and information only.
Nothing else !! All you have to do is join me and I pay for All !!

I have someone designing 6 new half page ads, a new full page and 1/2 format on asking who will join me in a lawsuit demanding transparency and full accounting for members. I am saying in ad: I ask for no money, I will pay all legal fees and any cost. I only ask for your public support in standing with me to clean our Chamber up. I feel once we get all information, the next step is to get the bylaws changed and get democratic elections for members to elect board members with term limits, not the abuse of our current appointed buddy board. Next, we must separate the Chamber and CvB totally with separate boards and executive directors with proper salaries, number of employees and overhead. David Tigges and Bill Miles continued attempt to control and abuse this community must end. David Tigges' comment that its more efficient to keep all together is simply a lie and he knows it.

Thanks

Please excuse all typos from my iPhone !!! 80% mobile

Skip Hoagland / CEO
[DomainsNewMedia.Com](#) llc

2/14/2013

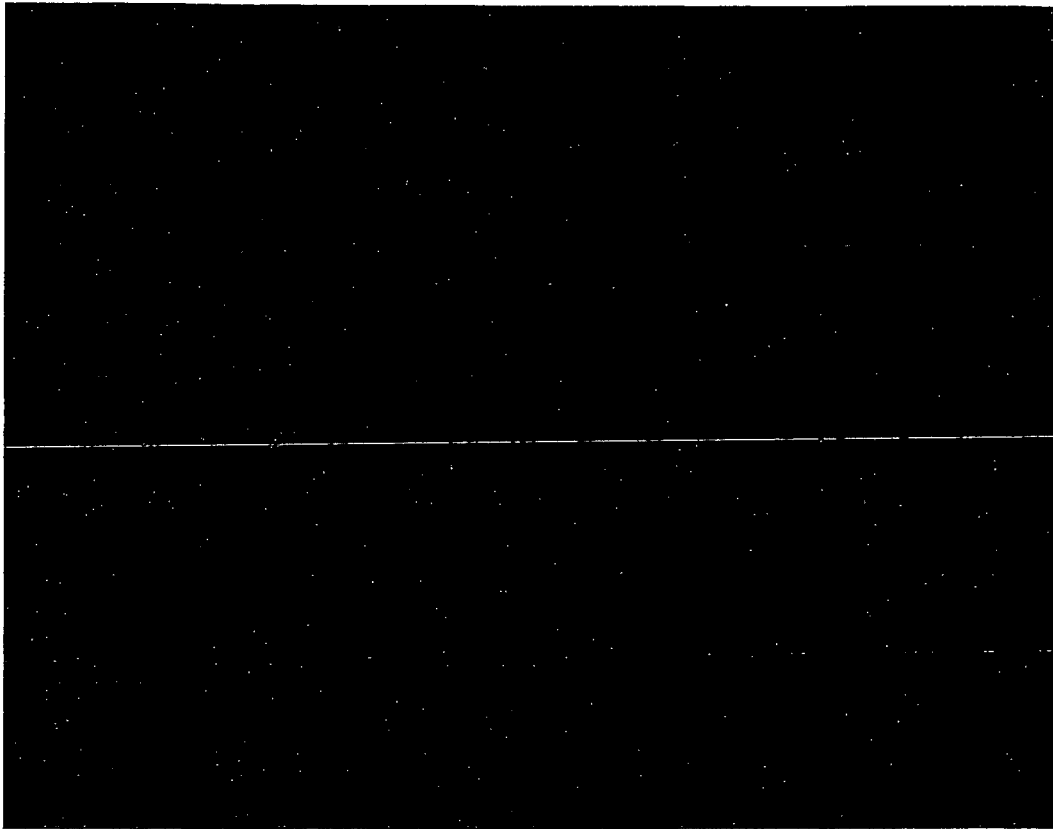
US cell 843-384-7260

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2/14/2013

Exhibit L

Email from Skip Hoagland
Dated November 7, 2011



From: Skip Hoagland [mailto:skiphoagland@]

Sent: Monday, November 07, 2011 3:38 PM

To: willis shay; drew laughlin; stopchamberabuse@ ; Billy Keyserling; Cary Corbitt; bill miles; Tigges, David; john vann

Cc: dean bell; gary sadowski; marsha gentner; linda rew; sarah borton; Marc Frey; tom gardo; Michael Gottdenker

Subject: Many Answers Needed on Chamber/CVB abuse

Is it true or false David Tigges is not only a Board Member but also Chairman of the Chamber ? Is it true David Tigges is also the lawyer of record for the Chamber, is this not a conflict ?? Who is behind Bill Miles ridiculous total compensation package including golf membership of approx 400k per year, Paula Betha, David Tigges, John Vann, others Who ? Where is the accounting details on this abuse ? Who is behind all the rest 583.00 per sq ft to build a welcome center which is totally abusive in the age of the internet and all the rest outlined in my full page ads in the Island Packet Newspaper ?

Is it true or false David Tigges and Bill Miles did not want to give Mayor Peebles task force access to all information about the Chamber, but did eventually do so, what information in detail exactly was received, what was not ? Is it true or false that the Task Force did not get access to the chamber Budget details ?

2/14/2013

Is it true or false from approx 4 m marketing budget only 1m actually gets spent on third party marketing to promote Hilton Head ? who has all this info ? How has this impacted local media ? What is considered competitive to media members services in every ones opinion ? How many local ad dollars have been depleted from local member company ad budgets that could have been sold by media members versus the Chamber for profit arms length for ventures. What actually has Hilton Head gained or lost over the last 8 yrs that can be directly contributed to the Chamber ? Lets let the Hotels, media companies and resorts answer this.

Is it true or false Bill Miles and David Tigges talked Mayor Peebles and town council to run all A Tax monies through the Chamber, it was not always this way. Based on all the abuse I have outlined should the Town Council revoke this until we all understand more and all info and details are seen.

It seems those in Charge have easy choices and that is simply do whats right, if not all we will see is more problems and conflict, more full page ads in the Island Packet, HHI Monthly, TV prime time news, coverage in surrounding city newspapers etc. I also see massive loss of current Membership and to keep funding Mr Miles salary as well as all the other abuse will either have to get funded by A Tax which I could not imagine how this can be justified now or in the future or like any properly run For Profit company be forced to downsize and cut waste and abuse on their own . I can tell you again I suspect most 1600 members will have no interest funding Bill Miles 400k per year Salary and compensation package and all the rest of the abuse much longer , as they follow all of this in the media.

This will not stop until I and others are convinced the abuse has ended on all fronts for all of us. Yes again I have self motivation as alot of this abuse is happening in over 20 markets in the USA where our company is located . I have shared this info with many large Newspaper Media nationwide and they are all following the outcome of this Hilton Head case and honestly an extreme example because of all the abuse involved. Many of these large media groups are also in many markets where this is happening as well. In fact Savannah, Charleston and Atlanta, just pick a city good chances are some form of abuse is happening.

Mr Tigges if it is in fact true you are the current Chairman and lawyer of record for the Chamber my advice for you is simple. Clean it all up, you have alot to contemplate and many questions to answer it seems. I think the days of selling and justifying Chamber actions are over. Thanks

Please excuse all typos and misspellings from my Iphone, now 80% mobile.

Skip Hoagland / CEO / Founder

DomainsNewMedia.Com LLC / USA 843-384-7260

Buenos Aires / Free Call 404-478-6388 ext 1 or 011-54-9-11-5942-3202 direct

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OUR COMPANY PHILOSOPHY -- <http://dnjournal.com/cover/2008/july.htm>

Our 2000 Global Domain Brands-- DomainsNewMedia.com

Our Local Travel Network -- www.Portland.com/travel-network.php

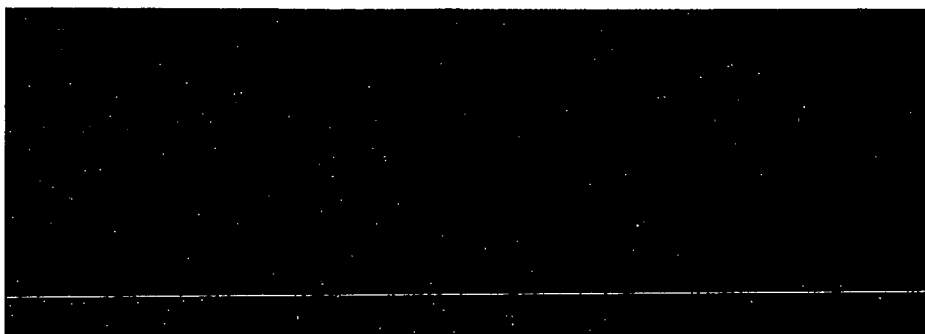
LATEST COMPANY NEWS

<http://www.dnjournal.com/archive/lowdown/2010/dailyposts/20100716.htm>

<http://fragerfactor.blogspot.com/2010/10/he-partners-with-best-designers.html>

<http://dnjournal.com/archive/lowdown/2010/dailyposts/20100920.htm>

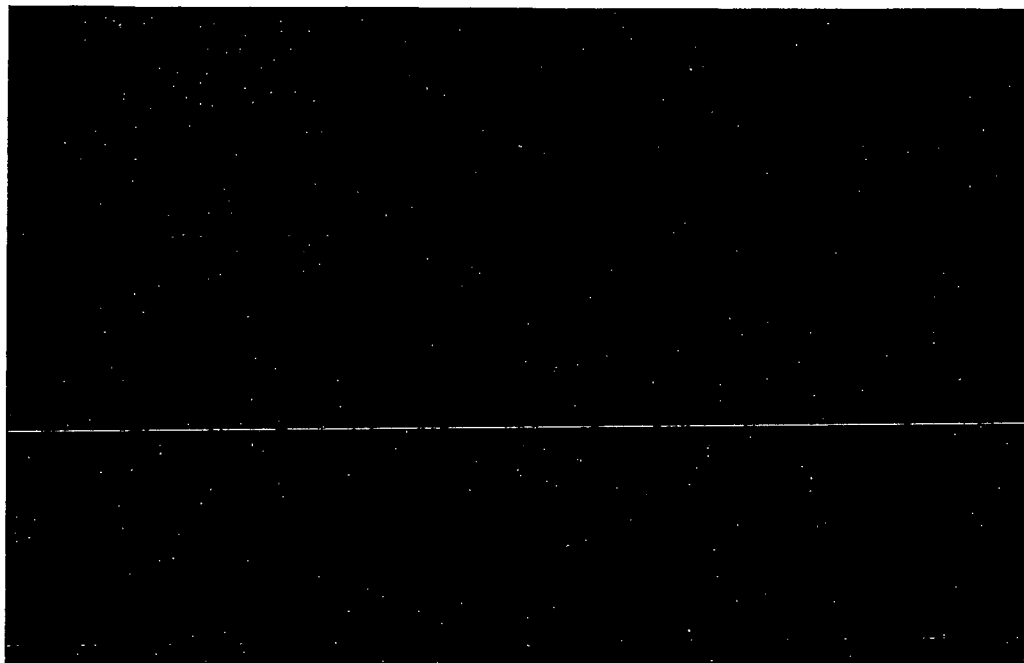
2/14/2013



2/14/2013

Exhibit M

Email from Skip Hoagland
Dated September 12, 2012



-----Original Message-----

From: Skip Hoagland

Sent: Wednesday, September 12, 2012 1:07 PM

To: gary sadowski; Rob Martin; dean bell

Cc: sarah borton; Fitz Meaden; Chuck Scarminach; Terry Finger; Tom Upshaw; carlos a bianchi; Carolyn Vanagel; david tigges; Katherine Veldran; Nikki Haley; drew laughlin; Billy Keyserling; Duane Parrish; Michael Gottdenker

Subject: Chambers and CVBs Whistle Blower case

Headline news today in papers across America including our local Island Packet on latest Whistle Blower case for avoiding taxes . Headline news in WallStreet Journal as well . Chambers and CVBs could easily reach and exceed 1billion with back taxes owed and violations to 501-c6 IRS tax codes . . This does not even include unfair competition damages to all local media and past media forced out of business , excessive salaries and abuse to local tax payers , violation of its mission statement and bylaws, abuse and possible violations to all members and local tax payers for misuse of funds with self serving interest and excessive salaries . Attempt to fraud everyone with a proposed 600 per sqft welcome center on Hilton Head and according to Architect all estimated cost done in-house by Bill Miles.

A Chamber Board appointed not elected by members ,no term limits that have allowed for all this abuse to happen to all of us . Members are owners and the owners have lost control and abused by a totally non democratic process and even some Board members it seems have no clue on what has been allowed to happen by a few in control. One board member resigned would never return my calls, others I called seems powerless or to scared to act.

Do we not all need answers on all this as well as how Bill Miles compensation was approved with a compensation committee headed by Paula Betha as acting Chairman and now find out God Mother to Bill Miles Children ? Do we not need details of Bill Miles trips to China , Pebble Beach to attend Concours De Elegance Do we not need answers from Duane Parrish on this trip to London to meet the Queen? How much was this ? How much did the State pay to take Bill Miles ? Is this not sheer insanity when England is in recession and in the age of the Internet when you could buy a banner ad on websites targeting British Subjects for less than perhaps one plane ticket.

2/14/2013

I called both Paula Betha refused to comment , and she runs our State lottery now . I called Carolyn Vanagel head of HHI concours de elegance and asked if she paid for Bills trip to Concours she said no and asked why did he go she did not know. I called Architect of welcome center asked how he arrived at 600.00 per sq ft cost asked him how many 18 karat Gold facets were part of The job, his answer was call Bill Miles all estimation done by him.

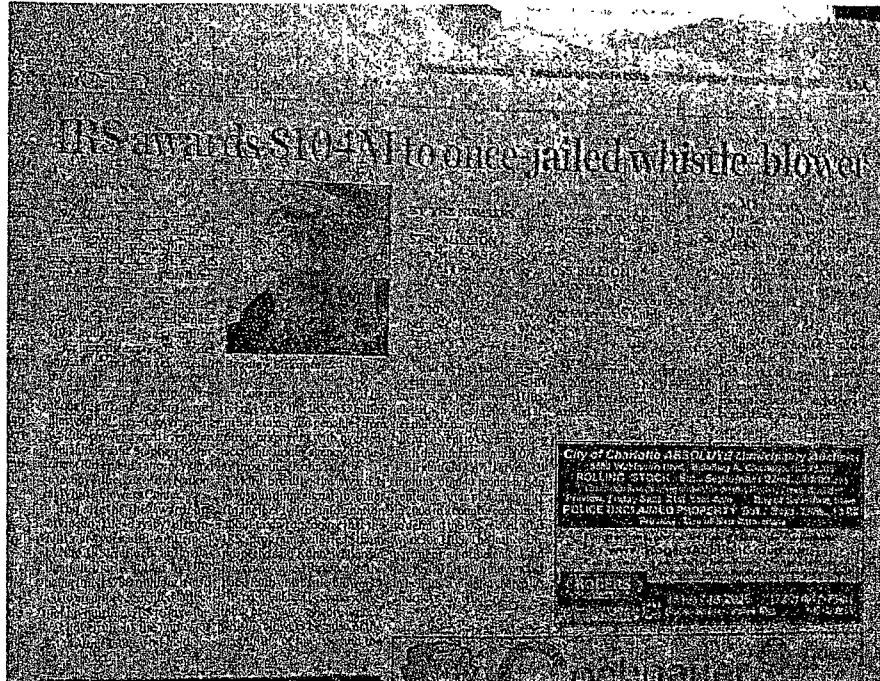
Is it now time to file a lawsuit against this Chamber , Bill Miles and certain current and past board members before Statue of limitations runs out. My answer is yes it's time.

For all of you to just turn your heads, is not only abuse to yourself ,but also to your families and kids , our communities and business's on Hilton Head and this State who depend on our leaders to do what's right. The time is near and many questions will need to be answered.

The HHI Chamber and Bill Miles has hired two lawyers to deal with me Why what reason? By who ? Who is paying the lawyers ? Why will they not turn over all accounting info my lawyer has requested ? How much does the State give Bill Miles and Grants ? How many dues paying members are there left after reading my full page ads ? What is the position of each current board member when its time to be deposed in a lawsuit ? How much did they know ? Many board members i have on record and talked to claim very little. In fact one past board member told me and others i knew more than he did . This Hilton Head case is important because it will set the stage to expose the abuse in other cities across America . The recent IRS Whistle Blower case I have Filed against not only the Hilton Head Bluffton Chamber but 50 of the biggest cities in America will also be important to help clean this all up for all of us nationwide. I have detailed info on other national organizations like the ACCE , Destination Marketing Association and perhaps the most abusive of all to small business, tax payers , members across America the 4.7 million 2010 salary of Tom Donahue current president of the non profit US Chamber. It seems Bill Miles has learned well running a small city chamber and paid 3 times Gov Nikki Haley at 106k and equal to President Obama at 400k Plus Bill Miles has no term limit , no performance based, surrounded by a board appointed , no elections or say so by members and can run forprofit media businesses and pay no taxes , appointed DMO of our City to spend our local tax dollars , receive state funds , take free trips to London, China , Pebble beach, price welcome centers at 600sq ft. I am in the wrong business and better off shutting down my company and becoming the Head of a Chamber. I have learned well and based on the IRS case in Ogden , Utah and the Hilton Head / Bill Miles abuse and violations I in fact will appoint myself as head of the Hilton Head Island Chamber and Hilton Head CVB which I have registered as a 501-c6 , registered with the SC secretary of state, pay myself 400 per year, run for profit media and pay no taxes . In fact I will encourage others to do the same across America if by some fluke the IRS says 501-c6 can be in the Forprofit media business. It seems Win or lose is a huge WIN !!! In fact a dream come true on the fact all any of us need to do is start a local Chamber with exact bylaws , mission and run our media companies as always and legally avoid taxes in America. This is certainly better than going to Switzerland , Cayman Islands and then to Prison !!!! Agreed ? Take note anyone can start or form a Chamber for any reason, no franchise , not tied to any government , each totally independent , run and owned by members in a community , can be set up for profit or non profit 501-c6. No One can deny your rights to do this. No trademark rights by anyone to Chamber of Commerce brand. I will debate and challenge anyone or any lawyer nationwide including IRS to prove me wrong and in fact am and have already. All those who have disputed my claims have lost . I base my success and my companies success on doing and representing what's right and my professional career and track record proves this.

Thanks

2/14/2013



Please excuse all typos from my iPhone !!! 80% mobile

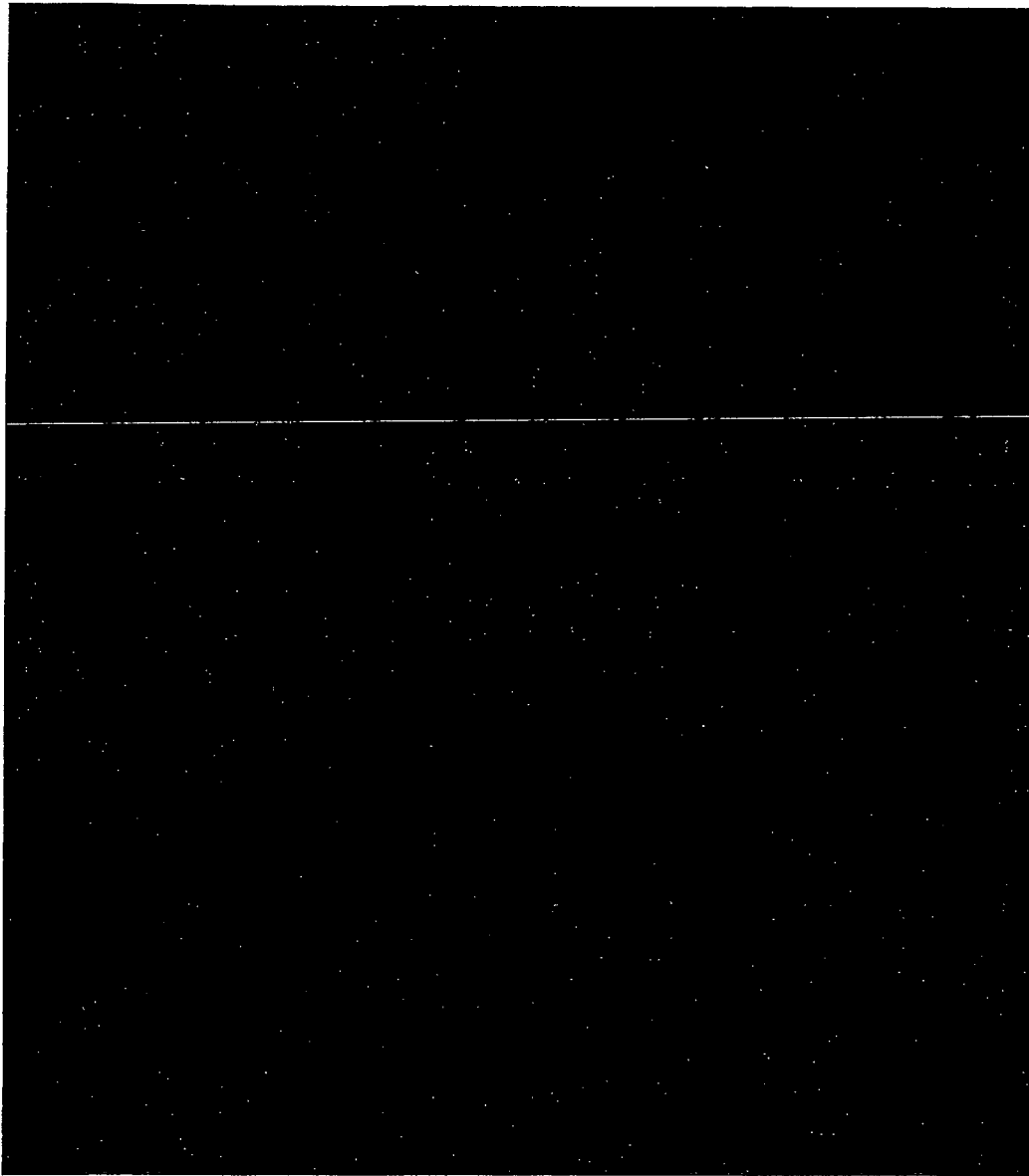
Skip Hoagland / CEO
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Our 2000 domains
Domainsnewmedia.com

2/14/2013

Exhibit N

Email from Skip Hoagland
Dated September 2, 2012



From: hh
Date: September 26, 2012, 1:22:36 PM CDT
To: sbirdwell, ccorbitt
cliff.delorey, aifazzini
wdanielholland, nanny
bmartin, saulsfunera
rstenhammer, rstenhammer

2/14/2013

steve [REDACTED], scottgina [REDACTED],
andy [REDACTED], Andrew.czarnacki [REDACTED],
bob.krype [REDACTED], Helen.simmons [REDACTED], iupshaw [REDACTED]
chris.mccorkendale [REDACTED], hhh-cec [REDACTED],
dtigges [REDACTED], t.jvann@ [REDACTED], tupshaw [REDACTED],
rwarco [REDACTED], mazallior [REDACTED],
tom [REDACTED], patricia [REDACTED],
bmiles [REDACTED],
Cc: dparrish [REDACTED], laughlin drew
<drew.laughlin@ [REDACTED]>, billyk [REDACTED], bell dean
<dbel [REDACTED]>, martin rob <rmartin [REDACTED]>,
Sadowski Gary <gsadowski [REDACTED]>
Subject: whistleblower article in Island Packet

Those who continue to sit on this board will lose business and credibility for themselves and the companies they represent as the abuse is allowed to continue and gets exposed in the press. It seems lawsuits are inevitable as well. I was shocked at how much dislike there was for how the Hilton Head Chamber operates, after attending the Bluffton Chamber business expo yesterday. Many people simply do not understand how so many business leaders sitting on this board do nothing and allow the abuse to continue. Further, if tax violations are proven, I am afraid this will also spill over to the board members that allowed and approved how this Chamber was allowed to operate. I think many of you are decent hard working people and have just found themselves in the middle of something they have not taken the time to fully understand.

Charlie, your rebuttal is shallow and misguided as Official Spokeswoman of the Hilton Head Bluffton Chamber of Commerce in the recent Island Packet article. I have nothing personal against you or anyone else. In fact I am not alone, there are hundreds who agree with me and evident of the continued drop in your membership from 1600 to 1250 members, as I understand it. One of the problems is lack of transparency on many issues which makes for a guessing game for many of us who are members/owners of this organization. Interesting question - if members are not owners, who is the owner? Let's be clear, 95% of this island is totally opposed to just several items of abuse I have exposed and can't imagine you and other board members don't agree with.

Bill Miles' salary/ Pay Package/ Travel Expenses, total expenses and overhead, 26 employees, no elections or term limits of board members, subbing out work to Canada. The unfair competition to media members and all the rest of media related issues, 99% of the local Media I have spoken to agree with my position. I will continue to prove all this and in fact have already. Again, surprised you and other board members are not clear on this, after all the facts have been presented.

What I have are facts of abuse and attempted abuse on many fronts

2/14/2013

by our local Chamber and its leadership that you keep defending as the spokesman and I guess only reason is to keep your job, understandable. You claim in the latest article, the Chamber is abiding by IRS tax codes for 501-c6 non profits and I can tell you 100% you are wrong and the final IRS ruling will prove this, if IRS in fact enforces their very own tax laws. If not myself and other media can and will also be able to avoid taxes by just converting our companies to a non profit 501-c6 and run for profit media as such. There is no escape for IRS ruling favorably and if they do not rule favorably, the future tax loss will be perhaps in the hundreds of millions by losing for profit media tax paying companies that run these tourism magazines and destination marketing websites, like Hilton Head Bluffton Chamber is doing with its Vacation Guide and its website Hiltonheadisland.org that you are defending and is clearly a for profit media website. What I see is the Chamber combined with the VCB, has become nothing more than a huge local 26 employee media company selling ads, sponsorships along with all the rest. I feel with bylaw changes with elections and term limits of Board members alone will clean most all of abuse this up.

Charlie, I look at you as nothing more than a woman who has become a victim of circumstances, in the wrong place at the wrong time and just trying to do a job not much different than a lawyer representing someone they know deep down inside is wrong and guilty. The facts are facts, truth is truth, and makes no difference if my attacks are personal or not.

I invite you as the spokesman, to a private debate at the Island Packet offices on issue by issue as asked by the Packet reporter giving detailed answers backed up with real facts or where those facts can be obtained. Would this not help and settle everything for everyone involved? When people refuse to debate or answer questions in detail, all it does is prove there is something to hide and fuels the opposition to even try harder to get answers.

Explain one point, what exactly do you feel is my personal and disgruntled feelings all about? This would be a good start. Thanks

Please excuse all typos from my iPhone !! 80% mobile

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Buenos Aires 404-478-6388 ext 1 Direct -011-54-9-11-5942-3202

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Our 2000 domains

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Exhibit B

Representative Sampling of Communications Made by Plaintiff and/or Skip Hoagland



From: Skip Hoagland
<skiphogland [REDACTED] <mailto:skiphogland [REDACTED]>>
Date: July 8, 2012 12:51:59 AM EDT
To: billy morris <wsmii [REDACTED] <mailto:w [REDACTED]>>
Cc: will morris
<mayme.walsh [REDACTED] <mailto:mayme.walsh [REDACTED]>>, Will
Morris <morris [REDACTED] <mailto:morris [REDACTED]>>, michael
romaner
<Michael.romane [REDACTED] <mailto:Michael [REDACTED]>>,
charles morris <chr [REDACTED] <mailto:chr [REDACTED]>>,
dean bell <dbel [REDACTED] <mailto:dbel [REDACTED]>>,
mike mcdonnell
<mike [REDACTED] <mailto:mike [REDACTED]>>, gary
sadowski <gary [REDACTED] <mailto:gary [REDACTED]>>, Rob
Martin <rmartin [REDACTED] <mailto:rmartin [REDACTED]>>
Subject: Re: Atlanta Now Magazine / Where Atlanta / Where Atlanta Map

Here is a perfect example and growth on ad revenues for CVBs and this will only grow . Our local Chamber has already attempted to offer Free classifieds and distribute local dining guides . Other cities like Atlanta and many others just do it , justify being entitled to do so and go unchallenged. . As they gain power and continue to spend tax monies ,Members dues including local media members dues and profits etc to rank # 1 on Google , it will just get much uglier unless all medias take this threat serious and work together to stop this from expanding and depleting local ad dollars . To sit back and fear or be intimidated to speak the truth and allow this to continue is simply irresponsible for all of us. Look at this link
<http://www.atlanta.net/acvb/advertising.html>

Atlanta.Net<<http://Atlanta.Net>> ,

2/14/2013

Visitsavannah.com<<http://Visitsavannah.com>>
, Hiltonheadisland.org<<http://Hiltonheadisland.org>> and any Chamber nationwide site should simply be a member directory site listing all local media on home page for users to click on to get the online info they are looking for. To not do this is again violation of its mission and charter to help local media to prosper not attempt to destroy these members. Or in Morris media case dance with them to get monies, secure an unfair advantage over others in the same business and perhaps silence any bad press or others challenging their direct competition with all local media. Why would Morris complain in this Savannah market? Atlanta and other cities where Morris operates and can't cut this type deal a different story perhaps ???

The chamber member listing should also be free and not charge members additional monies to be on site and be part of membership dues as a benefit. They must get out of the advertising business and depletion of ad revenues in any form or fashion and stop all violations and abuse no exceptions. Agreed? It seems my emails are going unchallenged by even the Hilton Head Chamber lawyers hired to deal with me. ! This just fuels us even more on how right we are. I am excited and with the power of the IRS, the Internet and direct communication with all Media nationwide I feel very confident this will end and Chambers and CVBs will be forced to operate under their original intent to be a local member organization to help all members prosper in their community and be true 501-c6 non profits void of all violations to many. Thanks
Stopchamberabuse.com<<http://Stopchamberabuse.com>> is growing and Expanding

Please excuse all typos and misspellings from my Iphone, now 80% mobile.

Skip Hoagland / CEO / Founder
DomainsNewMedia.ComLLC / USA 843-384-7260
Buenos Aires / Free Call 404-478-6388 ext 1 or 011-54-9-11-5942-3202
direct

OUR LEADING BRANDS -- <http://domainsnewmedia.com/dnm.pdf>
OUR COMPANY PHILOSOPHY -
<http://dnjournal.com/cover/2008/july.htm>
Our 2000 Global Domain Brands--
DomainsNewMedia.com<<http://DomainsNewMedia.com>>

Our Local Travel Network -- www.Portland.com/travel-network.php<<http://www.Portland.com/travel-network.php>>

LATEST COMPANY NEWS
<http://www.dnjournal.com/archive/lowdown/2010/dailyposts/20100716.htm>

<http://fragerfactor.blogspot.com/2010/10/he-partners-with-best-designers.html>

<http://dnjournal.com/archive/lowdown/2010/dailyposts/20100920.htm>

2/14/2013



-----Original Message-----

From: Skiphoagland [mailto:skiphoagland@skiphogland.com]

Sent: Sunday, February 12, 2012 9:13 AM

To: linda rew; Marc Frey; dean bell; Chuck Scarminach; sarah borton;
gordon borrell; chris hendricks; danny greenspun; billy morris; Michael
Romaner; gmartin@skiphogland.com; Fitz Mcaden; John Barnwell; travis
rocky; Kyle Evans; Russell Lively; Jason Taylor; Michael Redding; Andrew

2/14/2013

Martin; David Bayer; Tyler Shears; mike mcdonnell; gaston piarrette;
Jeffrey Greer; Fred Mercaldo; josh metnick; Jeremy Koch; jeremia
froyland; don ham; Don Jones; DNJournal.com; Mike Mann; Jessica
Bookstaff; Elliot Silver; leland hardy; miller sean; Billy Keyserling;
drew laughlin; mark burgess; Mark Hinueber
Subject: Guide to golf and hiltonheadgolfisland. Com

To continue distributing local chamber publications thru our
distribution company and supporting the Chamber and ex die bill miles
who is attempting to destroy all our businesses is abusive and must end
. Linda our company is dancing with the devil . We are all
Dancing with the devil. This includes the island packet and hargray .
Bottom

Line when the chamber Sells advertising this depletes ad dollars to be
spent with islandpacket.com and hhisland.com , phone directory ,
Hiltonheadisland.com etc. the parent company of the island packet
mcclatchy with assets like Miami.Com also being effected by other
chambers and cvbs allowed to be in the forprofit business .Bottom line
the Chamber/CVBs should not be in any business period it's sole purpose
is to promote members yes or no ? If this is yes then why sit back and
allow it? Certainly I am not the only guy willing to fight for whats
right and if I am who is going to help you ????

We need to all meet and make a decision on how we will stop this cancer
from growing and that eventually will hurt or will kill us all online.

Just type in your City

Name into Google see what local media comes up . Who ever comes up first
under keywords gets the most traffic which converts to money that simple
To allow non profits and an organization we are members of to
Compete with us all and use our members dues and tax dollars is complete
massive insanity . The only way to stop this is an offensive attack like
i have launched not a passive position and allowing them to intimidate
and control you. A local lawsuit will cost 50-100 you keep dancing with
the devil it will cost you in loss of revenue millions over the next 10
yrs . You better all listen to what I say and if you don't understand
all of this than happy to explain in person. I have and will continue to
mount a massive offensive against our local Chamber, ex dir Bill Miles,
all Chambers and CVBs who abuse other media across the USA , Us Chamber
, American Chamber and the Destinationmarketing.org associations. I will
email their boards and cc all major medias to expose this abuse and
abusive salaries as well just more stealing . Bill miles at 400 k plus
what he can steal is bad enough , plus trying to destroy us , but this
bandit

Tom Donahue at 4.7 m per year as President of the US chamber in
criminal.

They all do the same surround themselves with David Tigges and Paula
Betha types and what I call buddy boards or worse like we have on
Hilton Head puppet boards controlled by buddy boards . Folks at 64 yrs
old I simply have nothing to

Lose by telling the truth . Perfect form of capitalism is helping
yourself and others along the way. Finally one person of passion can do

2/14/2013

more than 100k who just have an interest . I highly suggest you all get passionate your online Internet future depends on this. Thanks
I ask all of you to use and abuse me I will be glad to be the bad guy send this to all of interest, give this local headline news consideration . Save this email and open it back up 10 Yrs from now.

If anyone has a contact at Google please ask them why they would assist non profits and Chambers/CVBs to help put private enterprise for profit companies Like them out of business .
They like all of us are trying to support free enterprise system, is bigger Chamber and allowing these organizations to be in the Forprofit advertising / media business really what we all want to allow ???

Please excuse all typos and misspellings from my Iphone, now 80% mobile.

Skip Hoagland / CEO / Founder
DomainsNewMedia.ComLLC / USA 843-384-7260
Buenos Aires / Free Call 404-478-6388 ext 1 or 011-54-9-11-5942-3202 direct

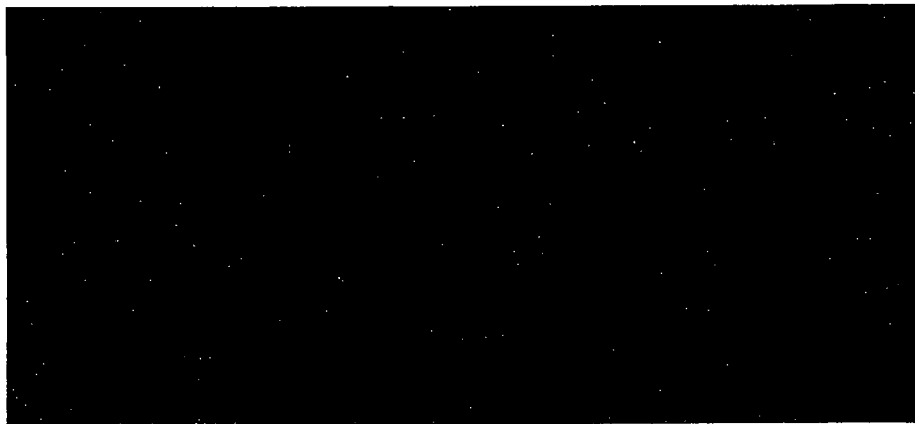
OUR LEADING BRANDS -- <http://domainsnewmedia.com/dnm.pdf>
OUR COMPANY PHILOSOPHY -<http://dnjournal.com/cover/2008/july.htm>
Our 2000 Global Domain Brands-- DomainsNewMedia.com

Our Local Travel Network -- www.Portland.com/travel-network.php

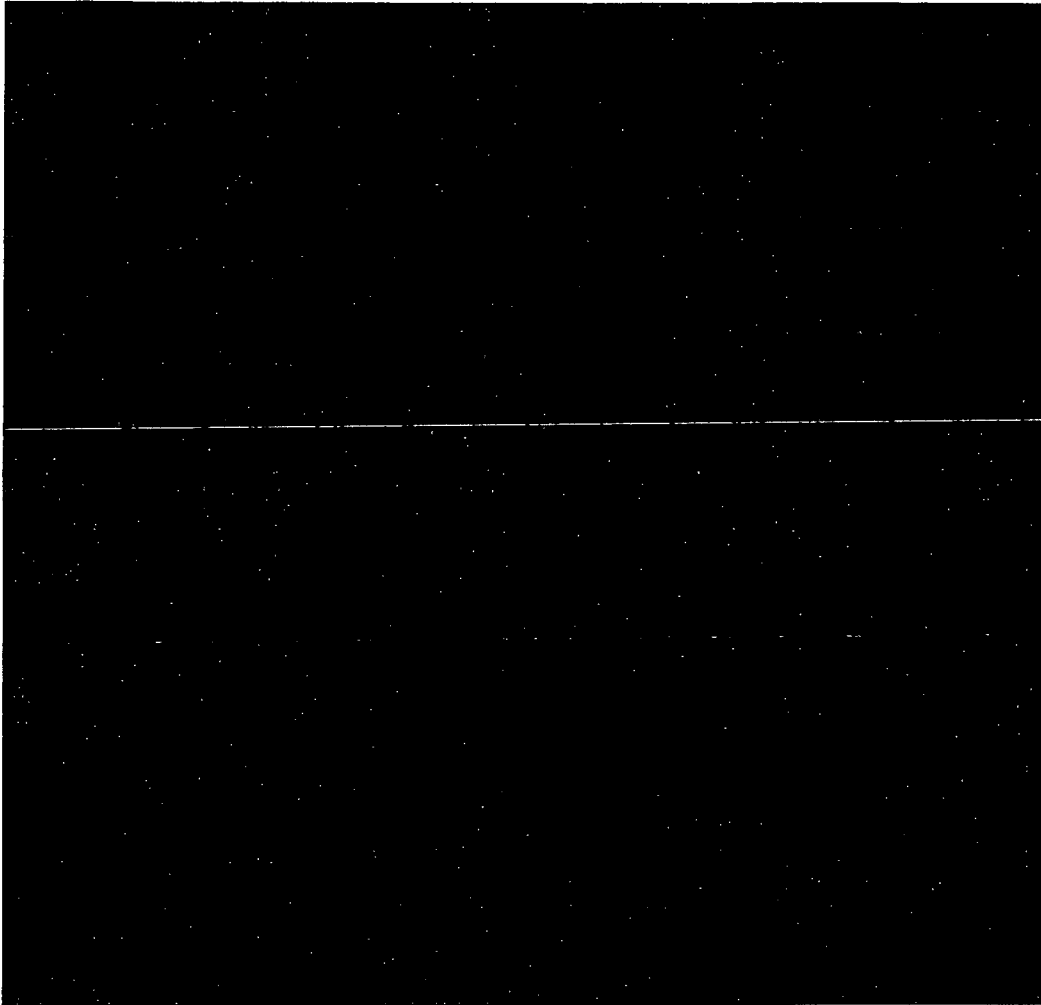
LATEST COMPANY NEWS
<http://www.dnjournal.com/archive/lowdown/2010/dailyposts/20100716.htm>

<http://fragerfactor.blogspot.com/2010/10/he-partners-with-best-designers.html>

<http://dnjournal.com/archive/lowdown/2010/dailyposts/20100920.htm>



2/14/2013



-----Original Message-----

From: Skiphoagland [mailto:skiphoagland@] [redacted]

Sent: Wednesday, February 13, 2013 10:37 AM

To: drew laughlin; dean bell; psommerville [redacted]; srodman [redacted]

sbaer [redacted]; cbensch [redacted]; rcaporale [redacted]; gdawson [redacted]

brianf [redacted]; wmcbride [redacted]; istewart [redacted]; tvaux [redacted]

lvonharten [redacted]; LeeE [redacted]; MarcG [redacted]

WilliamH [redacted]; DrewL [redacted]

KimL [redacted]; JohnM [redacted]

wrighton [redacted]; srodman [redacted]; sbaer [redacted]; cbensch [redacted]

rcaporale [redacted]; gdawson [redacted]; brianf@ [redacted]; wmcbride [redacted]

istewart [redacted]; tvaux [redacted]; lvonharten [redacted]

LeeE [redacted]; MarcG [redacted]

WilliamH [redacted]; DrewL [redacted]

2/14/2013

KimL@ [REDACTED]; JohnM [REDACTED];
wrighton [REDACTED]; Tom Upshaw
Cc: Billy Keyserling; sarah borton; Fitz Mcaden; gsmith [REDACTED];
gerardmahieu [REDACTED]; Peter Buonaiuto; Duane Parrish; Katherine Veldran; Nikki Haley
Subject: Bluffton parkway flyover / lawsuits filed against Local Chamber

To all Beaufort and Hilton Head Town Councils

To begin I am opposed to a flyover that is built larger than the road capacity that is feeding into it from the other side of the bridge / Hilton Head side. I guess best explained you can't expect it to work well trying to put 10 pounds of material into a 5 lb capacity bag. I also rather see Hilton Head remain and promoted as a High end resort and not try and compete with Myrtlebeach, Daytona, Pananacitybeach, etc. I rather try and keep the original Charles Fraser vision and compete with Naples, Kiawah, Destin and other high end resorts. We can't nor want to try to be everything to everybody. This is a small island and don't want to ruin the very charm and tranquility people come here for and live here for. Again 10lbs of material in a 5 lb bag just will not work well. I will leave this debate to others.

On another note you each have been elected for many reasons and the main interest for me is spending other peoples monies namely the tax payers money as you would your own. I for one appreciate your dedication; service and also feel you all deserve more compensation than you receive not less.

Update: I have recently filed a lawsuit against the Hilton Head Bluffton Chamber of Commerce who receives public monies from our town and state and this particular lawsuit is based simply on the fact this Chamber and its current abusive leadership has refused financial info under a FOIA request by my lawyers as well as refused the Island Packet newspaper simply wanting to confirm all my allegations.

I will take this to SC Supreme Court if need be. This Chamber has redrafted its bylaws, has violated its bylaws, has an appointed buddy board with no term limits not elected with term limits. It violates members, tax payers, IRS non profit tax laws as written governing 501-c6 organizations, it violates its own mission statement, it violates business, trade and competitive practices against its own media members. It has attempted over charges of a past proposed 600 per sq ft welcome center, the buddy board has in secret 3 person compensation committee approved a salary and pay package for 1 paid employee of 400k almost 4 times the SC Governor, excessive overhead and expenses, excessive travel cost, taking our money to Canada not doing a bidding process and supporting local companies, 26 employees and as I understand it also refused to provide all financial info to the Hilton Head Town Council under Tom Peebles when mayor ????

I now ask again for my lawyer and our current working lawyer Mayor Drew Laughlin to respond back to all of us on if before handing 1 penny to Bill Miles and the few buddy board members who are controlling and continue this abuse can our town legally require this Chamber and its now group of lawyers from Charleston to refuse this transparency and request to our elected officials? If this is even possible and we have Current SC laws that allow the lawyers to hide behind and refuse transparency we are all in huge trouble.

I fully intend on filing additional lawsuits against this Chamber once this Foia request lawsuit is answered by the Chamber lawyers in 2 weeks. Lawsuits will be based on 600.00 sqft proposed welcome center and Architect claiming to me Bill Miles was in charge of this estimation cost, unfair trade, business and competitive practices, unfair local Bidding

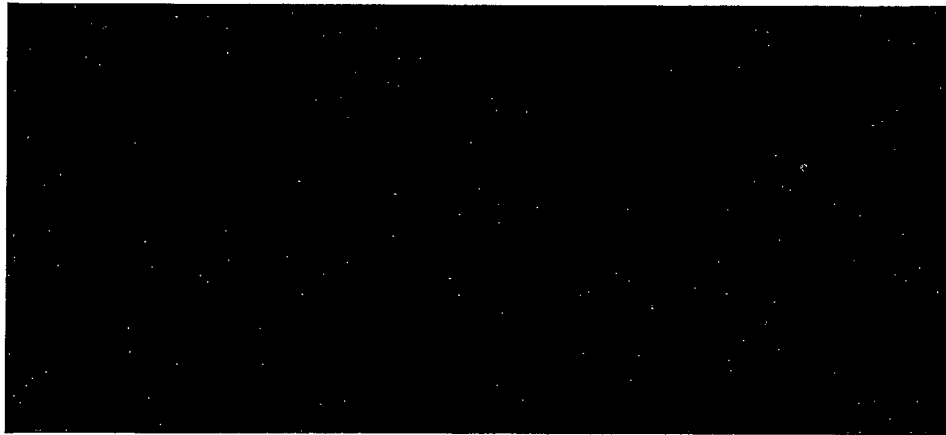
2/14/2013

process taking our money to Canada and more. I see damage claims by some local media from loss of income from all this as well. Some media perhaps forced out of business from this chamber directly competing unfairly with them as members expecting to be fully supported not looked at like a competitor or worse the enemy .

I have filed a IRS Whistle Blower case against this Chamber as well. This case is being reviewed in Ogdon ,Utah and Washington DC. I have told IRS if they do not enforce their own 501-c6 tax codes , I will set my company up as a 501-c6 and no longer pay corporate taxes from our company forprofit ventures . IRS is not in a good position at this point , neither are the Chambers and CVBs who are in 100% violation of these 501-c6 tax codes. I have read these tax codes 10 times .

Last point if you add up all salaries of all council members and both mayors you reach barely 50% of the compensation of Bill Miles at 400k pay package which Includes his salary , free golf membership and all travel .He does not have to perform , keeps getting monies giving to him and could entertain on the golf course daily and still pick up his check on Friday . Their is no one to fire him because the appointed buddy board surrounds him. It takes 1000 local members to pay one salary .

I have laid out my 6 point plan on how this Chamber and all Chambers must operate . First action must be complete separation of the Chamber and CVB this will clean up 80% of the abuses and stop Bill Miles and this buddy board from commingling funds Ladies and Gentlemen as the saying goes "Houston we have a problem "
Again thanks for your service to



2/14/2013

StopChamberAbuse.com

Chamber's Recent Survey: What Questions Aren't Being Asked?

The Hilton Head Island/Bluffton Chamber of Commerce recently sent a 29-Question Survey to members asking for opinions about how they have been doing.

Interestingly, The Chamber has never sent out a questionnaire asking members who they would nominate and select for their board of directors. (*Is it because the current CEO and Board*

prefers to keep things tightly controlled with their own "buddy board"?)

Most of this new survey was multiple choice, so it went on for 8 pages—too much to cover in my one-page ad. Therefore, I will just comment briefly, about how I would have answered some of the more pertinent questions, and what questions should have been asked, but weren't.

For Example, for some reason, they didn't bother to ask:

What do you think of your CEO making over \$320,000 salary with a pay package of \$400,000?

☐ Very Satisfied ☐ Satisfied ☐ Neutral ☐ Dissatisfied ☐ Very Dissatisfied

Since I didn't receive a questionnaire, I felt this ad space would be a great place for my answers to some of their 29 questions, plus important ones NOT asked.

QUESTION - Please select your primary reason for being a member of the chamber.

MY ANSWER - To be involved with others in the business community and be supportive of their needs. It is not to support a "for-profit" organization which operates under the guise of a "non-profit" entity at the expense of many of its members. I like "Business After Hours," but where is all the money generated by "The Chamber Ball" and "Taste of the Season" going?

QUESTION - Evaluating your chamber membership what are the most important benefits?

MY ANSWER - It is difficult for me to comment on the importance of what the chamber claims it is doing, when the chamber refuses full transparency, as any publicly-funded organization must do, and declines opening its books to its membership and appoints its own board without input from the entire membership.

QUESTION - Please rate your satisfaction with the chamber in areas such as "value received" for your annual investment and "overall effectiveness of advancing the common interests of membership."

MY ANSWER - My issue is not rating levels of satisfaction, but rather levels of dissatisfaction. I presume the Chamber has many fine, hard-working employees. That's not the point. The reality is that the way this Chamber has been set up in our community is a hoax. It take huge chunks of money from public funds and then builds a 26-employee, self-serving empire in the name of being a "non-profit" organization - and, at the expense of local media companies.

QUESTION - What efforts are you interested in your chamber pursuing?

MY ANSWER - Promoting all members' products and services— not competing with its own members.

QUESTION - Do you plan to renew your membership?

MY ANSWER - Not until all Chamber abuses are cleaned up as stated in my recent 6-point STOP-CHAMBER-ABUSE Plan.

Questions Not Asked, But Should Have Been.

QUESTION - Should the Chamber also be a Convention & Visitors Bureau attracting tourism ?

MY ANSWER - Definitely NOT. By doing so, the opportunity to mix and mingle funds for the wrong purposes are too great. Each entity should be separate, with distinct and separate missions and transparency.

QUESTION - What should be the mission of the Chamber?

MY ANSWER - It should be a membership organization dedicated to meeting identified needs of the Hilton Head Island/Bluffton area by fostering economic opportunity and a favorable business climate through the promotion of community growth and development of support programs that improve the overall business environment.

The Chamber's decision to hire out-of-town lawyers to arrogantly refuse FOIA (Freedom of Information Act) transparency requests speaks volumes about things they are trying to hide from our community. How are those attorney bills being paid? Thanks again for your continued support, and understanding of the importance of fixing our Chamber. Please keep sending your emails of support to SpeakUp@StopChamberAbuse.com. Write to your council members and local editors. And, take me at my word. I will not stop until every rock is turned over . . . every abuse brought to light.

Skip Hoagland

(*NOTE - because of space restrictions, some of the Chamber's survey questions have been paraphrased).

Paid for by StopChamberAbuse.com and Skip Hoagland
P.O. Box 21787 • HHI, SC 29925

Chamber Lawsuit Filed

StopChamberAbuse.com

What My Recent Lawsuit Is Seeking to Uncover.

Although I didn't attend last night's "Chamber Ball", my company is indeed a dues paying member of The Hilton Head Island/Bluffton Chamber of Commerce. And, as such, it would only seem right that as a "member in good standing" I should have access to inspect how my organization is being operated.

Yet, after expressing my concerns for over a year about certain Chamber policies, and its alleged "non-profit" status, as well as its secretive executive committee meetings, and

how it continues to misuse and mingle the public funds it receives from South Carolina Accommodations Tax (ATAX) revenues and Parks Recreation & Tourism (PRT) funds, I have been repeatedly and vehemently rebuffed. (Plus, I'm discovering that I'm not the only member to be treated so arrogantly.) Therefore, being a person of stubborn upbringing, I have pushed forward into the courts with a formal request as is my right under South Carolina Law and its Freedom of Information Act (FOIA).

The Chamber attorneys from Charleston (there are no qualified lawyers locally???) have pushed back. They base their argument on a claim our Chamber is not "public" under the definition, but merely a "contractor" acting on behalf of local townships - and therefore not subject to FOIA. Yet who is going to believe that rise when the Chamber in a self-incriminating manner itself calls its V&CB a "division" (not a separate entity). The SC Code (30-4-204c) is quite clear. It doesn't mince words when it defines a "public body" as "any organization supported in whole or in part by public funds or expending public funds"

Little doubt, it's smoke and mirrors by Chamber Chiefs, because they do have much to hide!

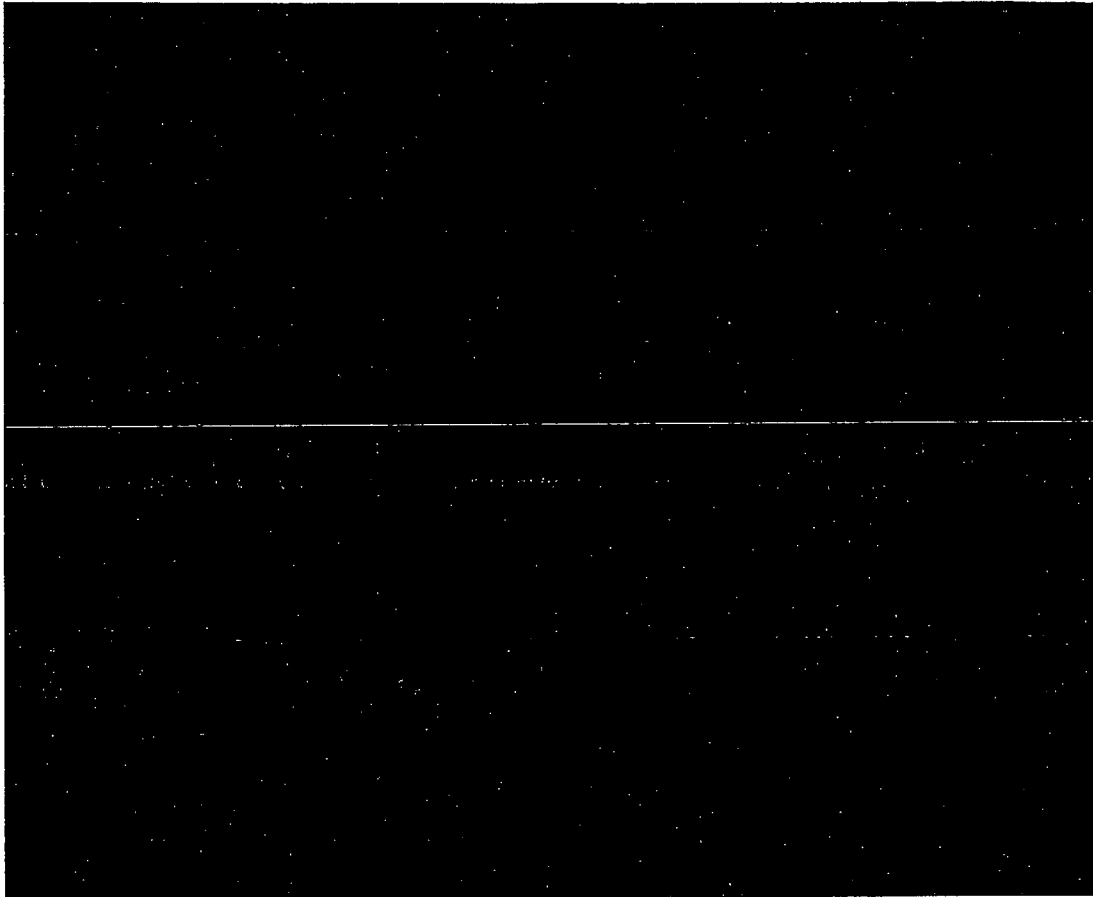
Here are a few of the things things I'm trying to uncover:

1. When were the bylaws changed to allow an appointed board with no term limits? By who?
2. Total cost and breakdown of all 26 employee salaries and what percentage is allocated to "public funds."
3. How did Bill Miles' CEO pay package reach \$400,000 plus gratis golf club memberships and family trips overseas?
4. Who decided to use consultants, agencies and web companies in New York, Canada and elsewhere when there is ample talent locally?
5. How was it decided to generate chamber revenue for its own pockets in direct competition with local chamber members? How much money is being generated from this abuse?
6. What's the real story behind the \$600/sq.ft. construction costs of the Welcome Center?
7. What are the revenues from all chamber programs and how is the money then being used?
8. How much of Hilton Head's ATAX money is co-mingled for Bluffton?

Once more I thank you for your growing support and your understanding that we must fix our chamber for the overall good of our community. It must separate from the V&CB to have clean hands. Please keep sending your emails of support to SpeakUp@StopChamberAbuse.com. Write to your council members and local editors. And, take me at my word, I will not stop until every rock is turned over and every abuse brought to light.

Skip Hoagland

Paid for by StopChamberAbuse.com and Skip Hoagland
P.O. Box 21787 • HH, SC 29925



From: "Skiphoagland" <skiphoagland@...>
To: "drew laughlin" <drew.laughlin@...>
"lee" <lee@...>
drew laughlin <drew.laughlin@...>
drew <drew@...>
wrighton <wrighton@...>
kim <kim@...>
john <john@...>
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KatherineVeldman <KatherineVeldman@...>
nikkihailey <nikkihailey@...>
upshaw <upshaw@...>
Cc: "sarah borton" <sborton@...>
>> "wdharkins2hh" <mailto:wdharkins2hh@...>
>> "MarcG" <mailto:MarcG@...>
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>> "john" <mailto:john@...>
>> "Duane Parrish" <mailto:dparrish@...>
>> "Katherine Veldman" <mailto:KatherineVeldman@...>
>> "Nikki Haley" <mailto:nikkihailey@...>
>> "Billy Keyserling" <mailto:billyk@...>
>> "Tom Upshaw" <mailto:upshaw@...>
>> "Fitz Meaden" <mailto:fborton@...>

2/14/2013

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 <gsmith> <mailto:gsmith> >>> "dean bell" <dbell@> <mailto:dbell@>
 "gerardmahieu" <mailto:gerardmahieu> >>, "Rob Martin"
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 <paulcifaldi> <mailto:paulcifaldi@> >>, "Cathy Hoagland Hoagland" <hh@> <mailto:hh@>
 <JMunro> <mailto:JMunro@> >>, "John Bamwell" <jbamwell@> <mailto:jbamwell@>
 <trockey> <mailto:trockey> >>, "travis rocky"
 Subject: Today's letter to the editor

Drew hope all is well. Wanted to send an update to you and all members of town council. I am now receiving wide spread support for transparency on how public monies and member monies are used and spent, including cleaning up and getting answers to all forms of abuse and corruption. I am even receiving to my surprise checks in the mail donating to my efforts.

As you all know by now and Drew as my past corporate lawyer can tell you this all will continue until its totally cleaned up one way or the other. I attempted to do this over the last year to avoid litigation and that did not work well. I have filed a lawsuit on this Chamber refusing Foia request as the DMO / Cvb, State grants etc. Bill Miles, David Tigges, Tom Upshaw and the small group of appointed buddy board members have refused this request and transparency. They refused the Island Packet staff who asked for info only wanting to confirm if all my allegations were true. This sent a bad message to many by refusing transparency even if the lawyers can find some bad written sc law to hide and postpone the inevitable.

"My big question" am I to assume and believe that you Drew, Duane Parrish and all other members of this Chamber will accept non transparency and refusals from Bill Miles, two lawyers in Charleston and two guys in Gold Jackets with a Hollywood theme at the recent Chamber bell which you Attended, to tell you after you hand them our tax payer and public monies you have no rights to certain financial info and transparency ?? Drew/ Duane you both cant believe this is right? This is like both of you as my partner in a business, I am the managing partner and I tell you that under SC law you are not entitled to certain financial information. This partnership would be short lived correct?

What I have been forced to do now is take this to litigation and SC Supreme Court if necessary. I will continue full Page ads educating and updating those

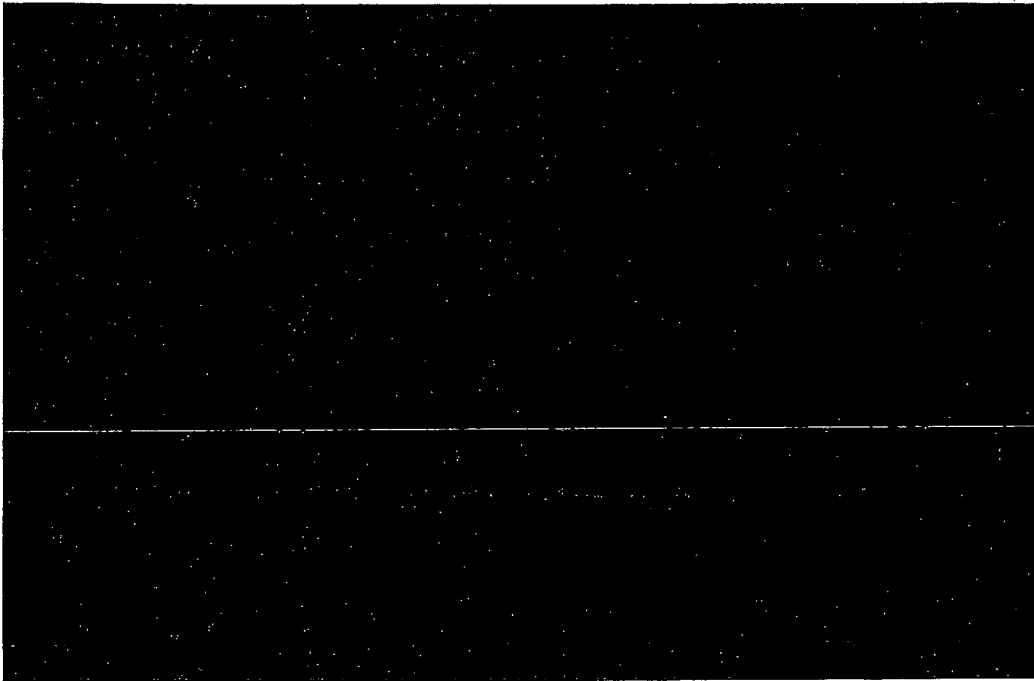
who are interested. Will launch a direct mail piece to be sent out. I have filed an IRS Whistle Blower case and have put extreme pressure on IRS to enforce the 100% proven violations to 501-c6 tax codes governing non profits by our Chamber. IRS has been told by me and my team of lawyers and accountants if they do not enforce their own tax codes, I and other media nationwide will and can simply set up parts of our media companies the exact same way as the Hilton Head Bluffton Chamber with our media assets and stop paying corporate taxes and do so fully transparent and legally in their face not offshore facing prison. This was a shocking revelation for IRS and they have never in the history of IRS been faced with this situation or someone telling them this. Further my case has spread nationwide and is being called one of the largest Whistle Blower cases in US history and now followed by many big media

I have instructed my lawyers and accountants to put together additional Lawsuits that will be filed at the appropriate times as this Foia case moves forward in the courts and we receive the response we fully expect from the lawyers in Charleston and the current buddy board and Bill Miles. Lawsuits to come and explored will be on the 600 00 sqft welcome center with 18kt Gold Faucets, this case will be simple who is the estimator ??? the architect told me Bill Miles ???, unfair trade, business and competitive practices with damage claims, violations to Chamber media members under chamber mission statements, intent and non profit structure, bylaws etc, violation of its own current bylaws, abuse to all members, tax payers with excessive salaries and overhead, abuse to local companies bidding on jobs for the chamber that took other bids and our money to another country could have damage claims to local companies for this bidding process, all travel and cost abuses involved. The only way to prove some of this is with a total complete third party audit not the audit the Chamber hired to do. Note much of this can and will be proven thru litigation, depositions and discovery. Ray Deal the chamber in house controller and others will have lots of questions and detailed answers needed.

Town council, this State must think about its fiduciary responsibilities before just handing out money to someone without fully understanding how this money is being used. Drew you just got a raise to 30k annually, Gov Haley at 106k, President Obama 400k, Bill Miles at who knows exactly 400k could be more after we see Real numbers. Duane Parrish is he same or more than the Gov? Just this alone not counting all the rest is simply out of control. By Bill Miles and his band of lawyers refusing information and transparency makes it all 10x worse. Who pays for the lawyers? Who now pays for the Chamber ads in the local magazines that say "I Am The Chamber" using local businesses to say how great the Chamber is when we all know this is because Chamber membership is dropping fast, how does this help promote our island? 1000x 400 just to pay one salary, not even 26 more employees and all the rest. We will now see if litigation can fix it all. Thanks

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2/14/2013



2/14/2013

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smart shopping starts here.

Findosave Local Ads > All Advertisers > StopChamberAbuse.com > StopChamberAbuse.com Ad - 2/10/2013

StopChamberAbuse.com
Email

StopChamberAbuse.com

Shedding Light on Halt Abuse Against Taxpayers.

I have always been a staunch believer that as a taxpayer I have an inherent right to know how my hard-earned dollars are being spent and who it is accountable when public trust is exploited for personal gain. That's one of the key reasons I have pushed so hard for over 15 months to uncover what I believe are financial abuses by the Hilton Head Island/Bluffton Chamber of Commerce (a non-profit organization) which receives hundreds of thousands of taxpayer dollars from state grants and via accommodation tax revenue.

Yet my efforts, as a Chamber Member, to uncover abuses have been rebuffed at every turn, and I have finally been forced to seek help from the South Carolina court system. The Island Packet Beaufort Gazette referenced my lawsuit on its editorial page January 23rd and noted how its own reporters have been blocked as well from getting Chamber information. For those who didn't see that editorial, I have reprinted it below.

Thank you for your continued support and your understanding that we must fix our chamber for the overall good of our community. Please keep sending your emails of support to SpeakUp@StopChamberAbuse.com. Write to your council members and local editors. I will not stop until every rock is turned over, and every abuse brought to light.

Skip Hoagland

Reprinted from the Island Packet, Beaufort County

OUR VIEW

High court must clarify 'public body' definition.

The S.C. Supreme Court should resolve the extent to which those accepting public money are subject to the state's open records law.

A recent ruling that renders clear the definition of a "public body" under the state's open records law would be welcome, but it would take the S.C. Supreme Court's ruling to give us the certainty needed on this important subject.

Hilton Head Island's tourism "top management" is now subject to the Freedom of Information Act. The Hilton Head Island/Bluffton Chamber of Commerce made a public body under the state's open records law, and it is now subject to the state's open records law. The chamber is a public body. A significant portion—nearly 30 percent—of its annual income comes from accommodation tax revenue and state grants.

The Freedom of Information Act means that no more approved "in whole or in part by public funds" is subject to the law. A 1991 Supreme Court ruling confirmed this.

The chamber's attorneys say that even though the chamber is the designated marketing organization for the town of Hilton Head Island that should change its status to a private nonprofit organization. The chamber's attorneys say it is a corporation providing services and only uses public money to defray the costs of the services provided. They point, in part, to an 1899 County order naming services the Myrtle Beach Chamber of Commerce.

But as we've been looking—shedding recent conflicting rulings on newspaper video gaming machines—individual policy in different parts of the state has led to greater transparency and come to very different conclusions. That's where the state's high court comes in.

An open records law that gives the open records law could mean that neither can already before the Supreme Court.

A lower court judge, in a lawsuit challenging the S.C. School Administrative Association, ruled the association was a public body, but still wasn't subject to the Freedom of Information Act. The court's ruling was a significant step toward greater transparency and would set an example for other public bodies.

State Attorney General Alvin Wilson weighed in on the side of open records in his own, saying the state's state public money and interests should be subject to the law.

As an October hearing before the Supreme Court, the association's attorneys didn't dispute the 1991 ruling that came at the case of a private University of South Carolina foundation. But he argued the association, while technically a public body, was an issue-oriented advocacy group that shouldn't be subject to the law.

Chief Justice John G. Sikes said that there could be three cases if an association is a public body.

"Problems of public bodies are not by a separate group as a lot of public money... I don't believe the savings of that money would be subject to public intervention," Bull said in a way by The Charleston Post-Herald.

If the Supreme Court rules in favor of the state, it might require chambers under the Freedom of Information Act, against private groups who accept any public money.

But, that's where the court can offer guidance and resolve conflicting lower court rulings.

We hope the justice, as they have done in the past, come down on the side of the citizen and the state's goal of the law that public money be transparent to the public.

One of the issues to say one with the chamber's attorneys is when information must be disclosed and when information can be withheld. The chamber's attorneys say it's a public body, but it's not a public body.

For a school district, the newspaper's opinion and the newspaper's opinion for information that included employees' pay, a list of members and organized on paid by the chamber for goods and services, and its response to requests.

The Video and Commerce Bureau, which makes and spends the accommodation tax money the chamber gets, is a division of the chamber.

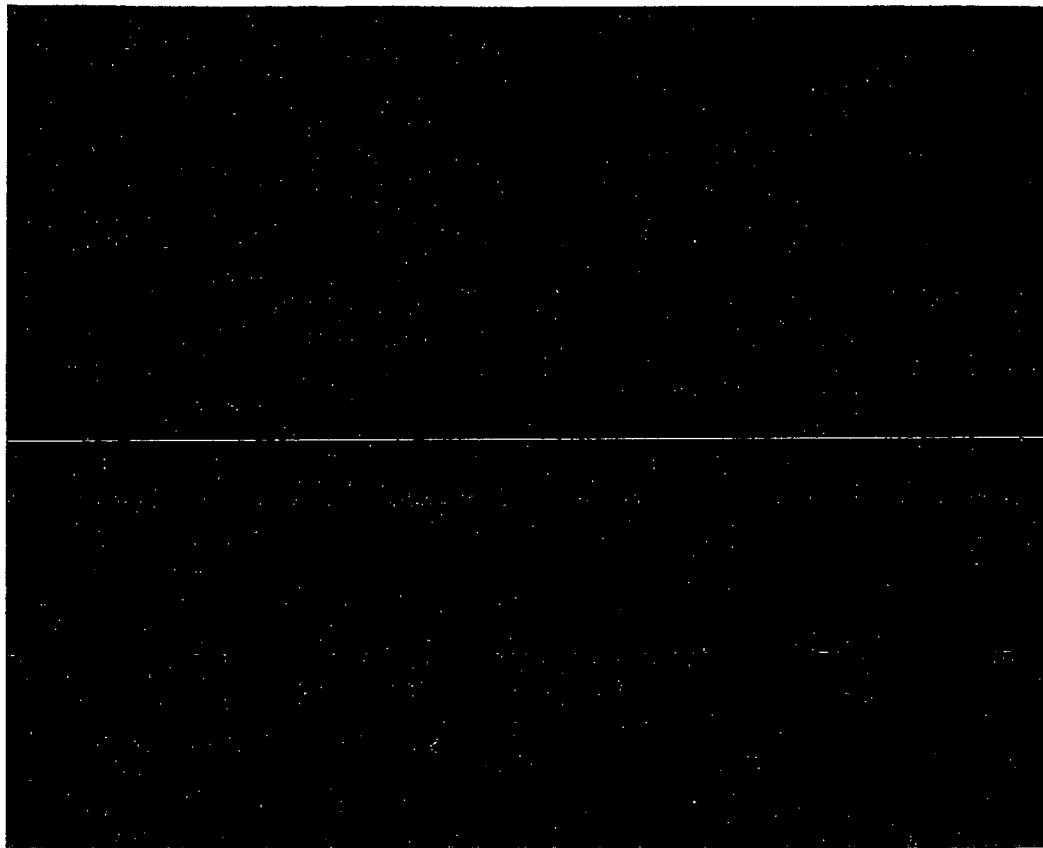
The questions raised by the Hilton Head Island and the chamber's board of directors' request had nothing to do with the Supreme Court. The Video and Commerce Bureau should operate separately from the chamber. Sorting out the impact of the public money on the chamber's center operations would not be an issue of the case.

The chamber could be a wholly owned organization, but it is not a member, nor the general public.

Paid for by StopChamberAbuse.com and Skip Hoagland
P.O. Box 21747 • JHU, SC 29525

Published on Sunday, February 10, 2013

This Political ad in Beaufort, Bluffton & Hilton Head Island may contain time-sensitive information and offer. Please check with StopChamberAbuse.com to confirm availability



-----Original Message-----

From: Skiphoagland [mailto: [REDACTED]]
Sent: Thursday, May 03, 2012 7:08 PM
To: Duane Parrish
Cc: dean bell; drew laughlin; Billy Keyserling; Haley, Nikki; sarah borton; Fitz Mcaden; Gary Sadowski; Terry Finger; Chuck Scarminach
Subject: HHIB Chamber and Prt funds

Duane can you call to discuss Southcarolina.Com .843-384-7260

Also my lawyer needs to know exactly how much money PRT has giving to the HHI Chamber ? We also need to know how much in advertising sales does PRT Receive for its website and magazines etc ? I guess we need to formally request this under the FOIA versus form 990 as we have for many Chambers. Duane sorry to have to do this , but like the Hospitality Association except different set of problems we need to leave no stone unturned .

The lawyers are now involved as well as many others watching this case nationwide . It is very possible all of this is headed for litigation , major press

2/14/2013

coverage , IRS investigations , legal rulings and even Perhaps many lawsuits nationwide . Supreme Court is even a possibility .
Thanks

Please excuse all typos and misspellings from my Iphone, now 80% mobile.

Skip Hoagland / CEO / Founder
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LATEST COMPANY NEWS
<http://www.dnjournal.com/archive/lowdown/2010/dailyposts/20100716.htm>

<http://fragerfactor.blogspot.com/2010/10/he-partners-with-best-designers.html>

<http://dnjournal.com/archive/lowdown/2010/dailyposts/20100920.htm>



2/14/2013

islandpacket.com • beaufortgazette.com • Sunday, December 9, 2012 \$2A

StopChamberAbuse.com

Is Our Chamber of Commerce Out of Control?

Think about these bullet points
and come to your conclusion.

- What do Chamber members get for their not-inconsiderable fees?
A normal small business for 1-3 employees annual membership fee is \$320 plus \$35 application fee. For that members get their name listed in a publication and a sticker for their door—(plus invites to gatherings paid for by local host companies not even the Chamber).
- Why does the Chamber president's compensation package equate to approximately 30% of what is spent for marketing of Hilton Head Island? (that's his \$400,000 salary + benefits). It's triple the salary of South Carolina's governor, 11x above our mayor's salary and equal to President Obama—taking 1,000 members to pay just one person!
- If our Chamber is a 501C-6 organization that accepts public funds, why does it ignore Freedom of Information Act (FOIA) requests and have two attorneys from Charleston to refuse information requests from its own members?
- Why does our Chamber outsource major projects (funded by SC tax dollars) to companies in New York, Florida, Canada and elsewhere outside of the local community, outside of South Carolina, and even outside of our country—to the obvious detriment of fully qualified firms both locally and in South Carolina?

Some people hypocritically claim they place the highest priority on "keeping the money local" while saying "Stop Local from the dollars" that would go to them.

- Why does our Chamber charge highly respected civic volunteer organizations, like Zonta, \$1,000 for the "privilege" of announcing their own "Woman of the Year" award at The Chamber Banquet/Ball?
- Why does our Chamber compete with many of its own members for advertising revenues?

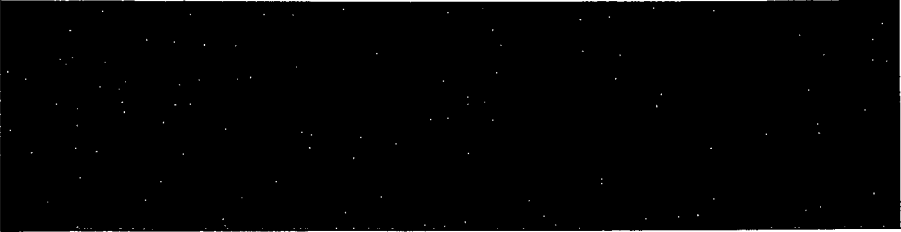
How long will these and other abuses continue? I for one will not stop until every rock is turned over, and every abuse brought to light.

I sincerely appreciate the growing list of local residents and businesses who have been calling, writing and encouraging my efforts to shine more light on the abuses that continue month after month. Please keep sending your emails to SpunkUp@StopChamberAbuse.com and let me know what additional suggestions you might have. You may also send letters to our address noted below, or contact your town council representative or favorite news editor with your opinion.

My continued thanks for your support and understanding the importance of fixing our Chamber.

Skip Hoagland
Skip Hoagland

Paid for by StopChamberAbuse.com and Skip Hoagland
P.O. Box 21787 • HH, SC 29925



From: hh [REDACTED]
Sent: Monday, November 12, 2012 3:44 PM
To: [hoagland skip](#)
Subject: to all media

Who will join me in my lawsuit based on transparency and information only.
Nothing else !! All you have to do is join me and I pay for All !!

I have someone designing 6 new half page ads, a new full page and 1/2 format on asking who will join me in a lawsuit demanding transparency and full accounting for members. I am saying in ad: I ask for no money, I will pay all legal fees and any cost. I only ask for your public support in standing with me to clean our Chamber up. I feel once we get all information, the next step is to get the bylaws changed and get democratic elections for members to elect board members with term limits, not the abuse of our current appointed buddy board. Next ,we must separate the Chamber and Cvb totally with separate boards and executive directors with proper salaries, number of employees and overhead. David Tigges and Bill Miles continued attempt to control and abuse this community must end. David Tigges' comment that its more efficient to keep all together is simply a lie and he knows it.

Thanks

Please excuse all typos from my iPhone !!! 80% mobile

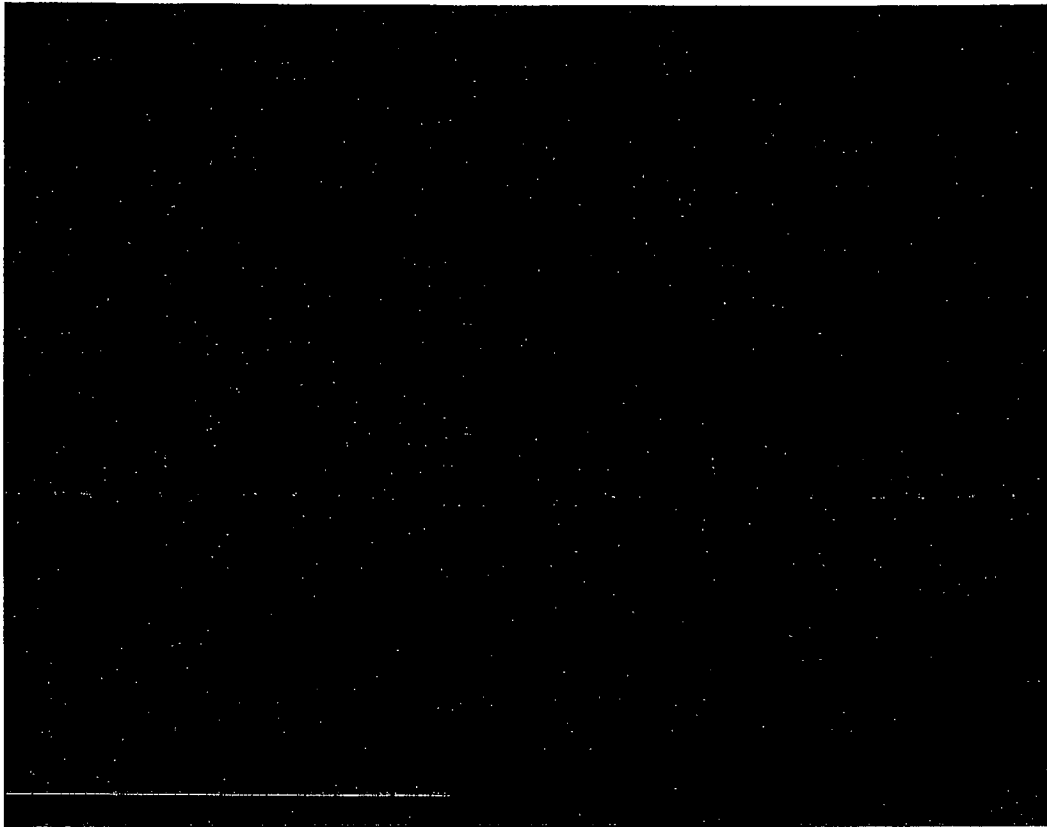
Skip Hoagland / CEO
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From: Skip Hoagland [mailto:skiphoagland@redacted]

Sent: Monday, November 07, 2011 3:38 PM

To: willis shay; drew laughlin; stopchamberabuse@redacted; Billy Keyserling; Cary Corbitt; bill miles; Tigges, David; john vann

Cc: dean bell; gary sadowski; marsha gentner; linda rew; sarah borton; Marc Frey; tom gardo; Michael Gottdenker

Subject: Many Answers Needed on Chamber/CVB abuse

Is it true or false David Tigges is not only a Board Member but also Chairman of the Chamber ? Is it true David Tigges is also the lawyer of record for the Chamber, is this not a conflict ?? Who is behind Bill Miles ridiculous total compensation package including golf membership of approx 400k per year, Paula Betha, David Tigges, John Vann, others Who ? Where is the accounting details on this abuse ? Who is behind all the rest 583.00 per sq ft to build a welcome center which is totally abusive in the age of the internet and all the rest outlined in my full page ads in the Island Packet Newspaper ?

Is it true or false David Tigges and Bill Miles did not want to give Mayor Peebles task force access to all information about the Chamber, but did eventually do so, what information in detail exactly was received, what was not ? Is it true or false that the Task Force did not get access to the chamber Budget details ?

2/14/2013

Is it true or false from approx 4 m marketing budget only 1m actually gets spent on third party marketing to promote Hilton Head ? who has all this info ? How has this impacted local media ? What is considered competitive to media members services in every ones opinion ? How many local ad dollars have been depleted from local member company ad budgets that could have been sold by media members versus the Chamber for profit arms length for ventures. What actually has Hilton Head gained or lost over the last 8 yrs that can be directly contributed to the Chamber ? Lets let the Hotels, media companies and resorts answer this.

Is it true or false Bill Miles and David Tigges talked Mayor Peebles and town council to run all A Tax monies through the Chamber, it was not always this way. Based on all the abuse I have outlined should the Town Council revoke this until we all understand more and all info and details are seen.

It seems those in Charge have easy choices and that is simply do whats right, if not all we will see is more problems and conflict, more full page ads in the Island Packet, HHI Monthly, TV prime time news, coverage in surrounding city newspapers etc. I also see massive loss of current Membership and to keep funding Mr Miles salary as well as all the other abuse will either have to get funded by A Tax which I could not imagine how this can be justified now or in the future or like any properly run For Profit company be forced to downsize and cut waste and abuse on their own . I can tell you again I suspect most 1600 members will have no interest funding Bill Miles 400k per year Salary and compensation package and all the rest of the abuse much longer , as they follow all of this in the media.

This will not stop until I and others are convinced the abuse has ended on all fronts for all of us. Yes again I have self motivation as alot of this abuse is happening in over 20 markets in the USA where our company is located . I have shared this info with many large Newspaper Media nationwide and they are all following the outcome of this Hilton Head case and honestly an extreme example because of all the abuse involved. Many of these large media groups are also in many markets where this is happening as well. In fact Savannah, Charleston and Atlanta, just pick a city good chances are some form of abuse is happening.

Mr Tigges if it is in fact true you are the current Chairman and lawyer of record for the Chamber my advice for you is simple. Clean it all up, you have alot to contemplate and many questions to answer it seems. I think the days of selling and justifying Chamber actions are over. Thanks

Please excuse all typos and misspellings from my Iphone, now 80% mobile.

Skip Hoagland / CEO / Founder

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LATEST COMPANY NEWS

<http://www.dnjournal.com/archive/lowdown/2010/dailyposts/20100716.htm>

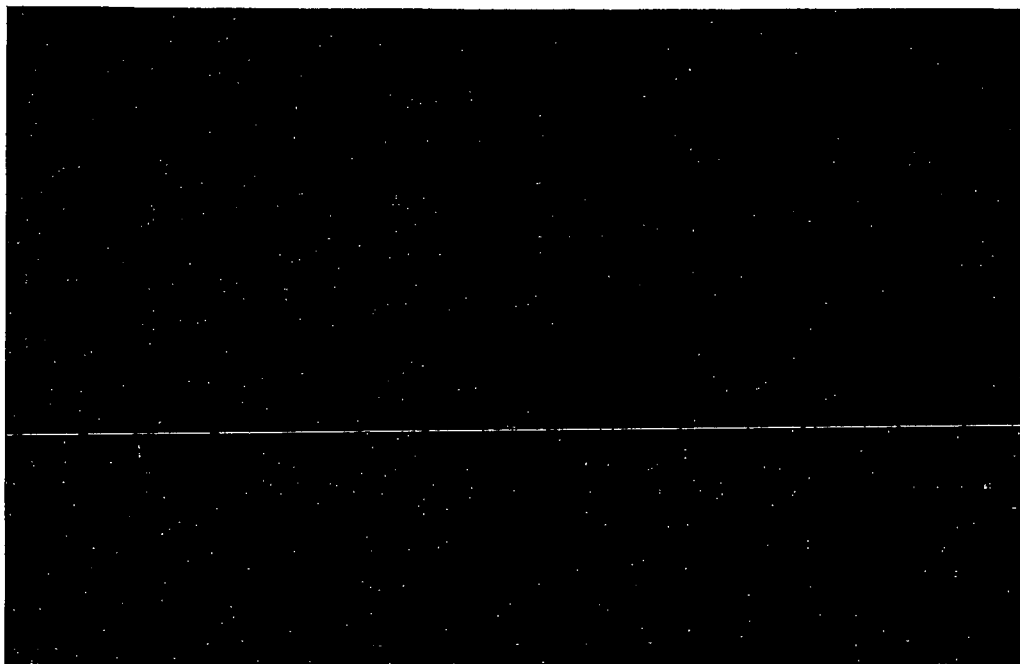
<http://fragerfactor.blogspot.com/2010/10/he-partners-with-best-designers.html>

<http://dnjournal.com/archive/lowdown/2010/dailyposts/20100920.htm>

2/14/2013



2/14/2013



-----Original Message-----

From: Skip Hoagland [REDACTED]

Sent: Wednesday, September 12, 2012 1:07 PM

To: gary sadowski; Rob Martin; dean bell

Cc: sarah borton; Fitz Meaden; Chuck Scarminach; Terry Finger; Tom Upshaw; carlos a bianchi; Carolyn Vanagel; david tigges; Katherine Veldran; Nikki Haley; drew laughlin; Billy Keyserling; Duane Parrish; Michael Gottdenker

Subject: Chambers and CVBs Whistle Blower case

Headline news today in papers across America including our local Island Packet on latest Whistle Blower case for avoiding taxes . Headline news in WallStreet Journal as well . Chambers and CVBs could easily reach and exceed 1billion with back taxes owed and violations to 501-c6 IRS tax codes . . This does not even include unfair competition damages to all local media and past media forced out of business , excessive salaries and abuse to local tax payers , violation of its mission statement and bylaws, abuse and possible violations to all members and local tax payers for misuse of funds with self serving interest and excessive salaries . Attempt to fraud everyone with a proposed 600 per sqft welcome center on Hilton Head and according to Architect all estimated cost done in-house by Bill Miles.

A Chamber Board appointed not elected by members ,no term limits that have allowed for all this abuse to happen to all of us . Members are owners and the owners have lost control and abused by a totally non democratic process and even some Board members it seems have no clue on what has been allowed to happen by a few in control. One board member resigned would never return my calls, others I called seems powerless or to scared to act.

Do we not all need answers on all this as well as how Bill Miles compensation was approved with a compensation committee headed by Paula Betha as acting Chairman and now find out God Mother to Bill Miles Children ? Do we not need details of Bill Miles trips to China , Pebble Beach to attend Concours De Elegance. Do we not need answers from Duane Parrish on this trip to London to meet the Queen? How much was this ? How much did the State pay to take Bill Miles ? Is this not sheer insanity when England is in recession and in the age of the Internet when you could buy a banner ad on websites targeting British Subjects for less than perhaps one plane ticket.

2/14/2013

I called both Paula Betha refused to comment , and she runs our State lottery now . I called Carolyn Vanagel head of HHI concours de elegance and asked if she paid for Bills trip to Concours she said no and asked why did he go she did not know. I called Architect of welcome center asked how he arrived at 600.00 per sq ft cost asked him how many 18 karat Gold facets were part of The job, his answer was call Bill Miles all estimation done by him.

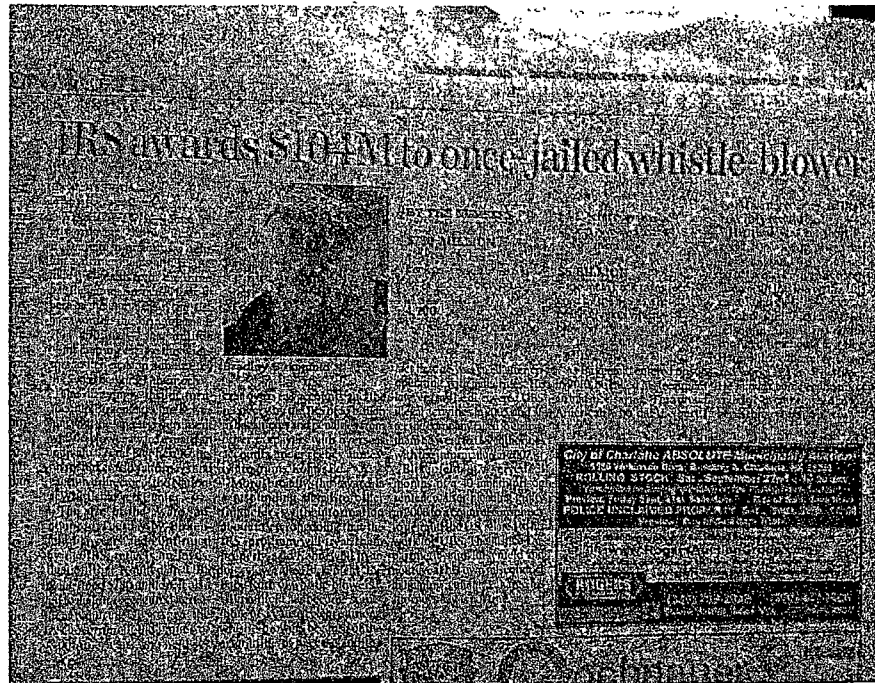
Is it now time to file a lawsuit against this Chamber , Bill Miles and certain current and past board members before Statue of limitations runs out. My answer is yes it's time.

For all of you to just turn your heads, is not only abuse to yourself, but also to your families and kids , our communities and business's on Hilton Head and this State who depend on our leaders to do what's right. The time is near and many questions will need to be answered.

The HHI Chamber and Bill Miles has hired two lawyers to deal with me Why what reason? By who ? Who is paying the lawyers ? Why will they not turn over all accounting info my lawyer has requested ? How much does the State give Bill Miles and Grants ? How many dues paying members are there left after reading my full page ads ? What is the position of each current board member when its time to be deposed in a lawsuit ? How much did they know ? Many board members i have on record and talked to claim very little. In fact one past board member told me and others i knew more than he did . This Hilton Head case is important because it will set the stage to expose the abuse in other cities across America . The recent IRS Whistle Blower case I have Filed against not only the Hilton Head Bluffton Chamber but 50 of the biggest cities in America will also be important to help clean this all up for all of us nationwide. I have detailed info on other national organizations like the ACCE , Destination Marketing Association and perhaps the most abusive of all to small business, tax payers , members across America the 4.7 million 2010 salary of Tom Donahue current president of the non profit US Chamber. It seems Bill Miles has learned well running a small city chamber and paid 3 times Gov Nikki Haley at 106k and equal to President Obama at 400k Plus Bill Miles has no term limit , no performance based, surrounded by a board appointed , no elections or say so by members and can run forprofit media businesses and pay no taxes , appointed DMO of our City to spend our local tax dollars , receive state funds , take free trips to London, China , Pebble beach, price welcome centers at 600sq ft. I am in the wrong business and better off shutting down my company and becoming the Head of a Chamber. I have learned well and based on the IRS case in Ogden , Utah and the Hilton Head / Bill Miles abuse and violations I in fact will appoint myself as head of the Hilton Head Island Chamber and Hilton Head CVB which I have registered as a 501-c6 , registered with the SC secretary of state, pay myself 400 per year, run for profit media and pay no taxes . In fact I will encourage others to do the same across America if by some fluke the IRS says 501-c6 can be in the Forprofit media business. It seems Win or lose is a huge WIN !!! In fact a dream come true on the fact all any of us need to do is start a local Chamber with exact bylaws , mission and run our media companies as always and legally avoid taxes in America. This is certainly better than going to Switzerland , Cayman Islands and then to Prison !!!! Agreed ? Take note anyone can start or form a Chamber for any reason, no franchise , not tied to any government , each totally independent , run and owned by members in a community , can be set up for profit or non profit 501-c6. No One can deny your rights to do this. No trademark rights by anyone to Chamber of Commerce brand. I will debate and challenge anyone or any lawyer nationwide including IRS to prove me wrong and in fact am and have already. All those who have disputed my claims have lost . I base my success and my companies success on doing and representing what's right and my professional career and track record proves this.

Thanks

2/14/2013



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From: hh
Date: September 26, 2012, 1:22:36 PM CDT
To: sbirdwell, ccorbitt
cliff.delorey, ajfazzini,
wdanielholland, nanny,
bmartin, saulsfuneral,
rstenhammer, rstenhammer

2/14/2013

steve [REDACTED], scottgina [REDACTED],
andy [REDACTED], Andrew.czarnacki [REDACTED],
bob.krypel [REDACTED], Helen.simmons [REDACTED], iupshaw [REDACTED]
chris.mccorkendale [REDACTED], hhh-cec [REDACTED],
dtigges [REDACTED], t.ivann@ [REDACTED], tupshaw [REDACTED],
rwarco [REDACTED], mazallion [REDACTED],
tom [REDACTED], patricia [REDACTED],
bmiles [REDACTED] g
Cc: dparrish [REDACTED], laughlin drew
<drew.laughlin@ [REDACTED]>, billyk [REDACTED], bell dean
<dbell [REDACTED]>, martin rob <rmartin [REDACTED]>,
Sadowski Gary <gsadowski [REDACTED]>
Subject: whistleblower article in Island Packet

Those who continue to sit on this board will lose business and credibility for themselves and the companies they represent as the abuse is allowed to continue and gets exposed in the press. It seems lawsuits are inevitable as well. I was shocked at how much dislike there was for how the Hilton Head Chamber operates, after attending the Bluffton Chamber business expo yesterday. Many people simply do not understand how so many business leaders sitting on this board do nothing and allow the abuse to continue. Further, if tax violations are proven, I am afraid this will also spill over to the board members that allowed and approved how this Chamber was allowed to operate. I think many of you are decent hard working people and have just found themselves in the middle of something they have not taken the time to fully understand.

Charlie, your rebuttal is shallow and misguided as Official Spokeswoman of the Hilton Head Bluffton Chamber of Commerce in the recent Island Packet article. I have nothing personal against you or anyone else. In fact I am not alone, there are hundreds who agree with me and evident of the continued drop in your membership from 1600 to 1250 members, as I understand it. One of the problems is lack of transparency on many issues which makes for a guessing game for many of us who are members/owners of this organization. Interesting question - if members are not owners, who is the owner? Let's be clear, 95% of this island is totally opposed to just several items of abuse I have exposed and can't imagine you and other board members don't agree with.

Bill Miles' salary/ Pay Package/ Travel Expenses, total expenses and overhead, 26 employees, no elections or term limits of board members, subbing out work to Canada. The unfair competition to media members and all the rest of media related issues, 99% of the local Media I have spoken to agree with my position. I will continue to prove all this and in fact have already. Again, surprised you and other board members are not clear on this, after all the facts have been presented.

What I have are facts of abuse and attempted abuse on many fronts

2/14/2013

by our local Chamber and its leadership that you keep defending as the spokesman and I guess only reason is to keep your job, understandable. You claim in the latest article, the Chamber is abiding by IRS tax codes for 501-c6 non profits and I can tell you 100% you are wrong and the final IRS ruling will prove this, if IRS in fact enforces their very own tax laws. If not myself and other media can and will also be able to avoid taxes by just converting our companies to a non profit 501-c6 and run for profit media as such. There is no escape for IRS ruling favorably and if they do not rule favorably, the future tax loss will be perhaps in the hundreds of millions by losing for profit media tax paying companies that run these tourism magazines and destination marketing websites, like Hilton Head Bluffton Chamber is doing with its Vacation Guide and its website Hiltonheadisland.org that you are defending and is clearly a for profit media website. What I see is the Chamber combined with the VCB, has become nothing more than a huge local 26 employee media company selling ads, sponsorships along with all the rest. I feel with bylaw changes with elections and term limits of Board members alone will clean most all of abuse this up.

Charlie, I look at you as nothing more than a woman who has become a victim of circumstances, in the wrong place at the wrong time and just trying to do a job not much different than a lawyer representing someone they know deep down inside is wrong and guilty. The facts are facts, truth is truth, and makes no difference if my attacks are personal or not.

I invite you as the spokesman, to a private debate at the Island Packet offices on issue by issue as asked by the Packet reporter giving detailed answers backed up with real facts or where those facts can be obtained. Would this not help and settle everything for everyone involved? When people refuse to debate or answer questions in detail, all it does is prove there is something to hide and fuels the opposition to even try harder to get answers.

Explain one point, what exactly do you feel is my personal and disgruntled feelings all about? This would be a good start. Thanks

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Exhibit C

Complaint

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DOMAINSNEWMEDIA.COM, LLC,

Plaintiff(s)

vs.

HILTON HEAD ISLAND - BLUFFTON CHAMBER OF
COMMERCE

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 07- 00090

2013 JAN 15 AM 9:35
JENNIFER ROSENBAUM
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Submitted By: Dean B. Bell
The Law Office of Dean B Bell, LLC
Address: 1 Corpus Christi Place, Bldg. 105
PO Box 7401, Hilton Head Island, SC 29938

SC Bar #: 66467
Telephone #: 843-785-9772
Fax #: 843-785-9773
Other:
E-mail: dbell@deanbell-law.com

NOTE: The coversheet 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 coversheet must be served on the defendant(s) along with the Summons and Complaint.

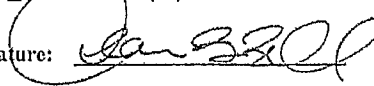
DOCKETING INFORMATION (Check all that apply)

*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)	☐ Administrative Law/Relief ☐ Reinstato Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	☐ 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) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	☐ 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 Comm. (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)		

Submitting Party Signature: 

Date: 01/14/2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, 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, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, 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) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-07- ~~0000~~

DOMAINSNEWMEDIA.COM, LLC,)

Plaintiff,)

v.)

HILTON HEAD ISLAND - BLUFFTON)
CHAMBER OF COMERCE)

Defendant.)

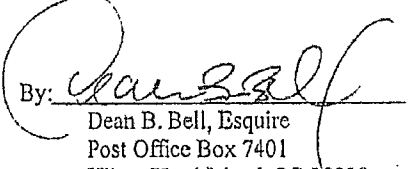
SUMMONS
(Non-Jury)

2013 JAN 15 AM 9:35
J. ARI NICH ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at The Law Office of Dean B. Bell, LLC, 1 Corpus Christi Place, Bldg. 105 Executive Center, Post Office Box 7401, Hilton Head Island, South Carolina 29938, within thirty (30) days after service hereof, exclusive of the day of such 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 this Complaint.

The Law Office of Dean B. Bell, LLC

By: 

Dean B. Bell, Esquire
Post Office Box 7401
Hilton Head Island, SC 29938
(843) 785-9772 (843) 785-9773 Fax
ATTORNEYS FOR PLAINTIFF

Hilton Head Island, SC
January 14, 2013

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2013-CP-07- 00000
)

DOMAINSNEWMEDIA.COM, LLC,)
) Plaintiff,)
v.)
HILTON HEAD ISLAND - BLUFFTON)
CHAMBER OF COMERCE)
) Defendant.)

COMPLAINT
FOR DECLARATORY JUDGMENT
AND INJUNCTION
(Non-Jury)

2013 JAN 15 AM 9:35
TAMM H. ROSEBAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

THE PLAINTIFF, DOMAINSNEWMEDIA.COM, LLC, complaining of the Defendant, Hilton Head Island - Bluffton Chamber of Commerce, would respectfully show unto the Court and allege as follows:

GENERAL FACTUAL ALLEGATIONS

1. The Plaintiff DomainsNewMedia.com, LLC ("DNM") is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business being located in Beaufort County, South Carolina.
2. Upon information and belief, the Defendant Hilton Head Island - Bluffton Chamber of Commerce ("Chamber") f/k/a Hilton Head Island Chamber of Commerce is a non-profit corporation organized and existing under the laws of the State of South Carolina and Section 501(c)(6) of the Internal Revenue Code with its principal place of business being located in the Town of Hilton Head, Beaufort County, South Carolina.
3. According to the Certificate of Incorporation for the Chamber, its purpose "is to promote the civic, commercial, and industrial welfare of Hilton Head Island, South Carolina.
4. According to the Chamber's audited financial statements, the Visitor and Convention Bureau ("V&CB") is a division of the Chamber and funding for the V&CB is provided by the State of South Carolina and Town of Hilton Head Island and Town of Bluffton though

accommodations taxes ("ATAX") and the Department of Parks, Recreation and Tourism ("PRT") funds.

5. The audited financial statements for the Chamber for the years 2009, 2010 and 2011 reflect that the V&CB incurred Administrative Expenses (salaries, payroll, operations, and employee benefits of \$497,030, \$532,874, and \$438,743, respectively.

6. Upon information and belief, the V&CB has no separate employees but instead allocates expenses of the Chamber to the V&CB and Chamber employees provide all of the services performed by the V&CB. Upon further information and belief, other expenses of the Chamber are likewise allocated to the V&CB.

7. According to the audited financial statements for the Chamber for the years 2009, 2010 and 2011, the V&CB reported revenues in the form of ATAX funds and grants from the Town of Hilton Head of \$1,694,139, \$1,675,229, and \$1,338,733, respectively.

8. According to the audited financial statements for the Chamber for the years 2009, 2010, and 2011, the V&CB also received grants from the PRT of \$603,355, \$1,200,000, and \$428,027, respectively.

9. According to the audited financial statements for the Chamber for the years 2009, 2010, and 2011 V&CB also received funds as the Direct Marketing Organization ("DMO") for the Town of Bluffton in the amounts of \$59,048, \$50,961, and \$46,986, respectively.

10. The audited financial statements for the Chamber for the years 2009, 2010 and 2011 reflect that the V&CB incurred Administrative Expenses as the DMO for the Town of Bluffton (salaries, payroll, operations, and employee benefits of \$10,145, \$12,638, and \$11,747, respectively.

11. Upon information and belief, the V&CB has no separate employees but instead allocates expenses of the Chamber to the V&CB and Chamber employees provide all of the services performed by the V&CB. Upon further information and belief, other expenses of the Chamber are likewise allocated to the V&CB for services performed as the DMO for the Town of Bluffton.

12. The audited financial statements for the Chamber for the years 2009, 2010 and 2011 reflect the following: total revenue for 2009 of \$6,813,744 and total expenses of \$6,067,575 with a net excess of revenue over expenses of \$746,169 (which includes a one-time gain from the sale of real estate of \$722,309), total revenue for 2010 of \$5,454,695 and total expenses of

\$5,449,053 with a net excess of \$5,642, and total revenue for 2011 of \$4,544,148 and total expenses of \$4,713,551 with a net shortfall of \$169,403.

13. Upon information and belief, in the absence of receipt of the significant sums referenced above as ATAX funds and grants from the Town of Hilton Head, Town of Bluffton and PRT, the Chamber would not be able to meet its ongoing operating expenses and overhead.

14. S.C. Code §30-5-10, *et seq.* contains the various provisions of South Carolina's 'Freedom of Information Act.' S.C. Code §30-4-15 provides in part "The General Assembly finds that it is vital in a democratic society that the public business be performed in an open and public manner so that the citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy."

15. S.C. Code §30-4-20(a) defines "Public Body" to include "any organization, corporation, or agency supported in whole or in part by public funds, or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body"

16. The Plaintiff is informed and believes that the ATAX funds and various grants the Chamber and V&CB receives from Town of Hilton Head, Town of Bluffton and PRT constitute public funds.

17. The Plaintiff is further informed and believes that the Chamber, through allocations of various expenses and overhead is "supported in whole or part by public funds" because the funds provided to it and the V&CB by the Town of Hilton Head, Town of Bluffton and PRT go directly to providing support in the form of paying various expenses and overhead.

18. S.C. Code §30-4-20(c) defines "Public Record" to include "all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of the physical form or characteristics prepared, owned, used, in the possession of, or retained by the public body."

19. S.C. Code §30-4-30(a) provides that "[a]ny person has the right to inspect or copy any public record of a public body, except as otherwise provided by §30-4-40, in accordance with reasonable rules concerning time and place of access," and §30-4-30(d) provides: "[t]he following records of a public body must be made available for public inspection and copying during the hours of operations of the public body without the requestor being required to make a

written request to inspect or copy the records when the requestor appears in person; (1) the minutes of the meeting of the public body for the proceeding six months."

20. On or about November 26, 2012, the Plaintiff, through its counsel forwarded a written request to the Hilton Head Island - Bluffton Chamber of Commerce pursuant to S.C. Code §30-5-10, *et seq.* that certain records be made available for inspection. A copy of that request is attached hereto and incorporated herein as Exhibit "A".

21. The Plaintiff is informed and believes that the records requested fall within the parameters of the documents that a "Public Body" must make available to the public pursuant to the provisions of S.C. Code §30-5-10, *et seq.* and none of those documents fall within the exclusions set forth in S.C. Code §30-4-40.

22. The Plaintiff is further informed and believes that the Chamber is a "Public Body" as defined in S.C. Code §30-4-20(a).

23. On or about December 17, 2012, the Chamber through its counsel formerly rejected the Plaintiff's request for inspection of records. A copy of the denial is attached hereto and incorporated herein as Exhibit "B".

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

25. The Plaintiff repeats and reiterates the forgoing paragraphs as though fully set forth herein verbatim.

24. S.C. Code §30-4-100(a) provides that any person "may apply to the circuit court for either or both declaratory judgment and injunctive relief to enforce the provisions of the [Act]" within one year of the alleged violation and subsection (b) of that section provides that if the person seeking such relief prevails may be awarded reasonable attorney fees and other costs of litigation. It has been less than one year from the date the Chamber refused to allow inspection of the requested records.

25. The Defendant denies it is a "Public Body", as defined in S.C. Code §30-4-20(a) and as such refuses to make the requested documents available for inspection.

26. A justiciable controversy exists between the Plaintiff and Defendant as to the application of the provisions of S.C. Code §30-5-10, *et seq.* to the Chamber and V&CB, one of its divisions.

27. The Plaintiff is informed and believes it is entitled to an Order of the Court declaring the rights and legal relations of the parties pursuant to S.C. Code §15-53-10 *et seq.*, S.C. Code §30-4-10, *et seq.*, and Rule 57 SCRCP, specifically declaring that the Chamber, or at least its division the V&CB is a "Public Body" as that term is defined in S.C. Code §30-4-20(a), and further awarding the Plaintiff attorney fees and cost incurred in connection with this matter, all in accordance with S.C. Code §30-4-100.

FOR A SECOND CAUSE OF ACTION
(Injunctive Relief)

28. The Plaintiff repeats and reiterates the forgoing paragraphs as though fully set forth herein verbatim.

29. In accordance with the provisions of S.C. Code §30-4-100, the Plaintiff is informed and believes that it is entitled to an Order of the Court affirmatively Ordering the Defendant to comply with the Plaintiff's request that it make certain records available for copying and inspection and enjoining the Defendant from further denial of its obligation to make all records subject to disclosure available for copying and inspection in accordance with the provisions of S.C. Code §30-5-10, *et seq.* and further ordering that the Defendant reimburse the Plaintiff for all costs and expenses incurred in this matter including attorney's fees.

WHEREFOR, having fully set forth its Complaint against the Defendant, the Plaintiff, DNM, prays that the Court inquire into the matters set forth herein and issue its Order as follows:

i) Declaring the rights and legal relations of the parties pursuant to S.C. Code §15-53-10 *et seq.*, S.C. Code §30-4-10, *et seq.*, and Rule 57 SCRCP, specifically declaring that the Chamber, or at least its division the V&CB is a "Public Body" as that term is defined in S.C. Code §30-4-20(a);

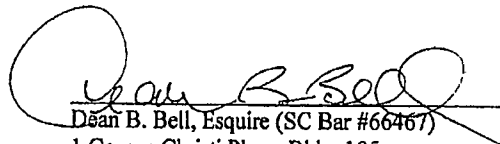
ii) Affirmatively Ordering the Defendant to comply with the Plaintiff's request that it make certain records available for copying and inspection and enjoining the Defendant from further denial of its obligation to make all records subject to disclosure available for copying and inspection in accordance with the provisions of S.C. Code §30-5-10, *et seq.*;

iii) awarding the Plaintiff attorney fees and cost incurred in connection with this matter, all in accordance with S.C. Code §30-4-100; and

iv) granting such other and further relief as the Court deems just and proper.

THE LAW OFFICE OF DEAN B. BELL, LLC

January 14, 2013


Dean B. Bell, Esquire (SC Bar #66467)
1 Corpus Christi Place, Bldg. 105
Hilton Head Island, SC 29928
(843) 785-9772
(843) 785 -9773 (fax)

The Law Office of Dean B. Bell, LLC

1 Corpus Christi Place
Bldg. 105, Executive Center
Post Office Box 7401
Hilton Head Island, SC 29928

Dean B. Bell*
Joseph DuBois
R. Myers Truluck, Jr.
Zach S. Naert

Telephone* (843) 785-9772
Fax *(843) 785-9773
Website* www.deanbell-law.com

* Certified Arbitrator & Mediator

November 26, 2012

D. Jay Davis, Jr., Esquire
Young Clement Rivers, LLP
25 Calhoun Street, Ste. 400
P. O. Box 993
Charleston, SC 29402

Re: FOIA Request/Hilton Head/Bluffton Chamber of Commerce

Dear Jay:

On behalf of several interested Persons, as that term is defined pursuant to S.C. Code §30-4-20(b), and in accordance with the remaining provisions of the South Carolina Freedom of Information Act, S.C. Code §30-40-10, *et seq.*, (as amended), I hereby request the following records be provided or made available for inspection:

- 1) Copies of any and all documents pertaining to a proposed Welcome Center for the Hilton Head Island - Bluffton Chamber of Commerce on any property owned by the Town of Hilton Head, including but not limited to any proposed lease documents, correspondence, email communications, memoranda, building plans, cost estimates, development agreements, meeting minutes, building permit applications, conceptual plans, or proposals or plans of any nature whatsoever pertaining to the planned Welcome Center or renovation of any existing structure for that use on any property owned by the Town of Hilton Head.
- 2) The names, sex, race, title and dates of employment of all employees and officers of the Hilton Head Island - Bluffton Chamber of Commerce, pursuant to S.C. Code §30-4-50(1) and all compensation paid by the Hilton Head Island - Bluffton Chamber of Commerce as provided in S.C. Code §30-4-40(a)(6).
- 3) All administrative staff manuals and written instructions to staff that affect a member of the public;



D. Jay Davis, Jr. Esquire
November 26, 2012
Page 2 of 3

- 4) All statements of policy and interpretations of policy, statute and the Constitution which have been adopted by the Hilton Head Island - Bluffton Chamber of Commerce.
- 5) All written planning policies and goals and final planning decisions;
- 6) All information in or taken from all accounts, vouchers, or contracts dealing with the receipt or expenditure of public or other funds of the Hilton Head Island - Bluffton Chamber of Commerce to include but not be limited to all bank accounts and contracts pertaining to the receipt and use of any accommodation tax funds or state or local grants received and/or used by the Hilton Head Island - Bluffton Chamber of Commerce, including any funds allocated to or used by the Hilton Head Island Visitor and Convention Bureau.
- 7) The minutes of all meetings (including but not limited to Board of Director meetings) and all votes taken at such meetings except as exempted pursuant to S.C. Code §30-4-70.

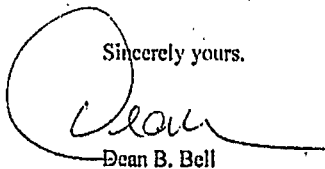
I am sure that I do not need to point out that the Hilton Head Island - Bluffton Chamber of Commerce, Inc. is a "Public Body" as defined in S.C. Code §30-4-20(a) due to the fact that as a Designated Marketing Organization for the Town of Hilton Head, it receives significant amounts of public funds that it appears to expense through its Visitor and Convention Bureau. The organization also receives other significant public funds in the form of various grants. Additionally, I do not believe there is an exception to Board meetings being required to be open to the public pursuant to S.C. Code §30-4-60. I welcome your thoughts on that. Barring an exception, it would appear that all Board meetings must be open to the public and all the notices required by S.C. Code §30-4-80 must be given. As such, I would appreciate your providing me directly with the date, time, location, and agenda for the next Board meeting or meeting of any subcommittee of the Board.

I look forward to your response within fifteen days of the date of your receipt of this request. If a deposit is required for the costs associated with searching for these documents and making them available for inspection, or for copying should you prefer to provide them directly to me, please let me know. Should you have any questions or comments, please do not hesitate to contact me.

D. Jay Davis, Jr. Esquire
November 26, 2012
Page 3 of 3

With kind regards, I am

Sincerely yours.



Dean B. Bell



ROBERT E. STEPP
Direct Dial 803 231.7836
Direct Fax 803 231.7886
Email rstlepp@sowellgray.com

December 17, 2012

Dean D. Bell, Esquire
The Law Office of Dean D. Bell, LLC
Post Office Box 7401
Hilton Head Island, SC 29928

Re: FOIA Request to Hilton Head Island-Bluffton Chamber of Commerce
SGS&L File No.: 6515/1500

Dear Mr. Bell:

I represent the Hilton Head Island-Bluffton Chamber of Commerce ("Chamber") in connection with the request made in your letter dated November 26, 2012. Please be advised that the Chamber is not a public body or otherwise subject to the provisions of S.C. Code Ann. §30-40-10 *et seq.*, and therefore will not be providing the requested documents to you.

In your letter, you refer to the status of the Chamber as the Designated Marketing Organization for the Town of Hilton Head as the basis for your request. The Chamber's status as the DMO for the Town of Hilton Head does not convert a private non-profit organization into a public body under well established law. This precise issue has previously been litigated and decided in Horry County under facts that are identical to the present matter. I enclose a copy of the Order in *Sun Publishing Co., Inc. v. The Board of Directors of the Myrtle Beach Chamber of Commerce* for your review. Just as in *Sun Publishing*, the Chamber merely serves as a contractor providing services to local governments, and does not rely on public funds for its operations except to defray direct costs of the services provided. Additionally, the Chamber's operating funds are accounted for separately from any public funds that it may receive. See also *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 404, 401 S.E.2d 161, 165 (1991) (holding FOIA does not "apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms length basis."); *Woods v. Boeing Co.*, 841 F. Supp. 2d 925, 929 (D.S.C. 2012) (holding that even though Boeing receives millions of dollars from the State of South

1310 Gadsden Street PO Box 11448 Columbia, SC 29211
Phone 803 929.1400 Fax 803 929.0300 sowellgray.com

EXHIBIT
"S"
tabbier
SOWELL GRAY STEPP & LAFITTE, LLC "Litigation is our Business."

Friday, December 14, 2012
Page 2

SOWELL  GRAY

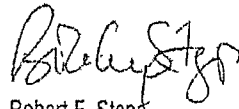
Litigation is our Business.

Carolina, Boeing is not a "public body" under the Whistleblower Act, which uses the same definition of "public body" as FOIA, because it provides the service of providing jobs to the State).

Based upon these authorities, the Chamber declines to respond further to your request.

Please call me if you have any questions or would like to discuss this issue.

Very truly yours,



Robert E. Stepp

Enclosure

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION

COUNTY OF BEAUFORT

Civil Action No.: 2013-CP-07-00080

RECEIVED

FEB 15 2013

S.C. SUPREME COURT

DOMAINSNEWMEDIA.COM, LLC

Plaintiff,

vs.

Hilton Head Island-Bluffton
Chamber of Commerce

Defendant/Petitioner.

AFFIDAVIT OF WILLIAM G. MILES

Personally appeared before me William G. Miles, who, first being duly sworn,
deposes and says as follows:

1. I am William G. Miles. I am the president and chief executive officer for
the Hilton Head Island-Bluffton Chamber of Commerce ("Chamber"). This affidavit is
based upon my personal knowledge.

2. The Chamber is a 501(c)(6), non-profit corporation organized under the
laws of South Carolina. The Chamber's purpose is to advance the common interests of
its membership, stimulate the expanding regional economy, and enhance the quality of
life for all.

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3. To further this purpose, the Chamber receives funds under the Accommodations Tax Act ("ATAX") and a grant from the Department of Parks, Recreation, and Tourism ("PRT Grant").

4. ATAX requires that the received funds be used for advertising and the promotion of tourism. S.C. Code Ann. § 6-4-10(3). Additionally, ATAX requires that such funds are segregated. S.C. Code Ann. § 6-1-520(B). The Chamber strictly adheres to all provisions of ATAX.

5. ATAX also contains certain reporting requirements. Under ATAX, the Chamber submits for approval a budget of planned expenditures before the beginning of each fiscal year. *See* S.C. Code Ann. § 6-4-10(3). Additionally, at the end of each fiscal year, the Chamber submits an accounting of its expenditures to the State of South Carolina, Beaufort County, the Town of Hilton Head Island, and the Town of Bluffton. *See id.*

6. Like ATAX, the PRT Grant also requires that any received funds be used for tourism purposes. Additionally, the PRT Grant imposes certain reporting requirements. Specifically, the PRT Grant requires recipients to provide "an annual report by November first, to the Chairman of the Senate Finance Committee and the House Ways and Means Committee and the director of the Department of Parks, Recreation and Tourism on the expenditure of the grants funds and on the proposed outcome measures." Proviso 39.2 of the Appropriations Act for Budget Year 2012-13. The Chamber strictly adheres to all terms and provisions of the PRT Grant.

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7. As a nonprofit corporation, the Chamber also provides access to certain records for its members in accordance with the Nonprofit Corporation Act. *See, e.g.*, S.C. Code Ann. §§ 33-31-1601, -1602.

8. The Chamber does not consider itself subject to the Freedom of Information Act ("FOIA"). The Chamber is not a "public body" as defined under FOIA, and therefore, does not conduct itself as a "public body." For example, the Chamber does not make its records or minutes of its meetings available to the public at large to inspect or copy. *See* S.C. Code Ann. §§ 30-4-30(a), (d)(1). The Chamber does not open its meetings to the public. *See* S.C. Code Ann. § 30-4-60. Similarly, it does not provide written public notice of its regular meetings at the beginning of each calendar year, and it does not post public notice for any called, special, or rescheduled meetings. *See* S.C. Code Ann. § 30-4-80. Complying with these requirements would place tremendous burden on the Chamber, a private, nonprofit organization.

9. Upon information and belief, other chambers of commerce or convention and visitors bureaus throughout South Carolina do not consider themselves "public bodies," and therefore, subject to FOIA. In fact, I do not know of any chamber of commerce or convention and visitors bureau in South Carolina that considers itself subject to FOIA.

10. The Chamber has received two requests for information under FOIA. One request, dated November 26, 2012, was from Dean B. Bell, on "behalf of several interested Persons," requesting several documents, ranging from documents regarding a proposed Welcome Center to "all statements policy and interpretations of policy, statute and the Constitution which have been adopted by" the Chamber. A copy of Mr. Bell's

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request is attached hereto as **Exhibit A**. Skip Hoagland and his entity, DOMAINSNEWMEDIA.COM, LLC, were the interested persons for whom Mr. Bell sent the request. The other request was from Fitz McAden with *The Island Packet* and dated December 28, 2012. Mr. McAden requested similar information, and a copy of his request is attached hereto as **Exhibit B**.

11. The Chamber responded to both requests, declining to produce the requested documents, on the ground that it is not a "public body" or otherwise subject to FOIA. Specifically, the Chamber believes it is not a "public body" because it is merely a contractor that provides services for any public funds it may receive. The Chamber's responses to Mr. Bell and Mr. McAden are attached hereto as **Exhibits C and D**, respectively.

12. The Chamber is not a "public body." Rather, it is a private, non-profit corporation and complies with all provisions of the Nonprofit Corporation Act. Additionally, as a recipient of funds under ATAX and the PRT Grant, the Chamber complies with all requirements, including all reporting requirements, of ATAX and the PRT Grant. The Nonprofit Corporation Act, ATAX, and the PRT Grant do not impose any of the rigorous reporting standards or open meeting requirements as imposed by FOIA.

13. Mr. Hoagland has engaged in a relentless attack against the Chamber. He claims that the Chamber misuses and fails to account for the funds it receives under the Act. For example, in a full-page newspaper advertisement published after the Chamber declined Hoagland's FOIA request, he claims that the Chamber is "in violation of IRS tax codes governing non profits by selling any advertising on websites or in magazines that

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made a profit.” Further, he labels the Chamber as a “hoax” and a “self-serving empire in the name of being a ‘non-profit’ organization. . . .” He continues that “[t]he Chamber’s decision to hire out-of-town lawyers to arrogantly refuse FOIA (Freedom of Information Act) transparency requests speaks volumes about things they are trying to hide from our community.” See Advertisement published on January 13, 2013 in *The Island Packet* and *The Beaufort Gazette* attached hereto as **Exhibit E**. A sample of other public comments about the Chamber that Hoagland has made after filing this lawsuit are as follows:

- “The Chamber attorneys . . . base their argument on a claim our Chamber is not ‘public’ under the definition, but merely a ‘contractor’ acting on behalf of local townships – and therefore not subject to FOIA. **Yet who is going to believe that ruse when the Chamber in a self-incriminating manner itself calls its V&CB a ‘division’ (not a separate entity).**” (emphasis in original)). Hoagland advertisement published on February 3, 2013 in *The Island Packet*, attached hereto as **Exhibit F**;
- “As you all know by now . . . this all will continue until its [sic] totally cleaned up one way or the other. . . . What I have been forced to do now is take this to litigation and SC Supreme Court if necessary. I will continue full Page ads educating and updating those who are interested. Will launch a direct mail piece to be sent out. . . . I have instructed my lawyers and accountants to put together additional Lawsuits that will be filed at the appropriate times as this Foia case moves forward in the courts” Hoagland email, entitled “Today’s letter to the editor,” attached hereto as **Exhibit G**; and,
- “[M]y efforts, as a Chamber Member, to uncover abuses have been rebuffed at every turn, and I have finally been forced to seek help from the South Carolina court system.” Hoagland Advertisement published on February 10, 2013, in *The Island Packet*, attached hereto as **Exhibit H**.

14. Even before the Chamber declined his request, he publically announced that his feud with the Chamber “is headed for litigation, major press coverage, IRS investigations, legal rules and even [p]erhaps many lawsuits nationwide. *Supreme Court is even a possibility.*” See Hoagland email dated May 3, 2012 (emphasis added) attached

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hereto as **Exhibit I**. A few of his other public statements regarding the Chamber and this lawsuit are as follows:

- “[i]f our Chamber is a 501C-6 organization that accepts public funds, why does it ignore Freedom of Information Act (FOIA) requests and have two attorneys from Charleston to refuse information requests from its own members?” Hoagland advertisement published on December 9, 2012 in *The Island Packet*, attached hereto as **Exhibit J**;
- “Who will join me in my lawsuit based on transparency and information only. [sic] Nothing else!! All you have to do is join me and I pay for All!!” Email from Hoagland, dated Nov. 12, 2012, attached hereto as **Exhibit K**;
- “It seems those in Charge [sic] have easy choices and that is simply do whats [sic] right, if not all we will see is more problems and conflict, more full page ads in the Island Packet, HHI Monthly, TV prime news, coverage in surrounding city newspapers etc. . . . This will not stop until I and others are convinced the abuse has ended on all fronts for all of us.” Email from Hoagland, dated Nov. 7, 2011, attached hereto as **Exhibit L**; and,
- “The HHI Chamber and Bill Miles has [sic] hired two lawyers to deal with me [sic] Why what reason? . . . The Hilton Head case is important because it will set the stage to expose the abuse in other cities across America.” Email from Hoagland, dated Sept. 12, 2012, attached hereto as **Exhibit M**.

15. These are only a few of the many public attacks he has made against the Chamber, and I anticipate the severity and volume of his attacks will only increase with the filing of the present lawsuit, considering he threatened Chamber board members with the following: “Those who continue to sit on this board will lose business and credibility for themselves and the companies they represent as the abuse is allowed to continue and gets exposed in the press. It seems lawsuits are inevitable as well.” See Hoagland email dated Sept. 2, 2012 attached hereto as **Exhibit N**.

16. His aggressive campaign against the Chamber has the capacity to undermine the public confidence in the Chamber. Consequently, it could affect the

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Chamber's membership and its ability to serve as the organization charged to promote tourism under ATAX and the PRT Grant. Hoagland's attacks undercut the Chamber's purpose of contributing to the preservation and economic growth of Beaufort County. These actions implicate the public interest.

17. This Court should exercise its original jurisdiction because Hoagland's incessant harassment of the Chamber involves the public interest and provides a special ground for this Court to entertain this case in its original jurisdiction. Additionally, this Court should take this case in its original jurisdiction because of the importance of the issue to the Chamber as well as other similarly non-profits across South Carolina. Upon information and belief, other chambers of commerce and other private, non-profit corporations are not governing themselves as if they are subject to FOIA. The Chamber would be prejudiced by permitting this case to proceed in the trial court because the delay associated with trial courts would leave the issue unanswered possibly for years and allow Hoagland to continue his public crusade against the Chamber. If this Court determines that the Chamber is subject to FOIA, it must quickly change its operations so that it can comply with FOIA's requirements. The Chamber needs a final, non-appealable decision reached expeditiously so that it, along with other non-profits, can proceed with certainty.

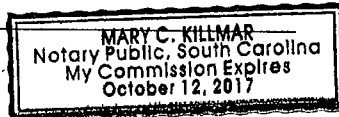
FURTHER AFFIANT SAYETH NOT.

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William G. Miles
William G. Miles

Sworn to before me this 12th day of February, 2013

Mary C. Killmar
Notary Public for South Carolina
My commission expires:



See pp. 45 - 176 of Record
for Exhibits A-N
of Miles Affidavit

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-07-00080

ANSWER

Hilton Head Island-Bluffton Chamber of
Commerce,

Defendant.

FOR A FIRST DEFENSE

1. Defendant lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph one of the Complaint and therefore denies them.
2. Responding to paragraph two of the Complaint, Defendant admits that it is a non-profit corporation organized and existing under the laws of South Carolina and that its principal place of business is located in Beaufort County, South Carolina. Defendant further admits that it is exempt from certain taxes under section 501(c)(6) of the Internal Revenue Code. Defendant denies as stated the remaining allegations of paragraph two of the Complaint.
3. Defendant admits the allegations of paragraph three of the Complaint.
4. Defendant denies the allegations of paragraph four of the Complaint.
5. Defendant denies the allegations of paragraph five of the Complaint.

6. Defendant admits the allegations of paragraph six of the Complaint.
7. Defendant admits the allegations of paragraph seven of the Complaint.
8. Defendant admits the allegations of paragraph eight of the Complaint.
9. Defendant admits the allegations of paragraph nine of the Complaint.
10. Defendant admits the allegations of paragraph ten of the Complaint.
11. Defendant admits the allegations of paragraph eleven of the Complaint.
12. Defendant denies the allegations of paragraph twelve of the Complaint.
13. Defendant denies the allegations of paragraph thirteen of the Complaint.
14. The allegations of paragraph fourteen of the Complaint are conclusions of law that Defendant neither admits nor denies. To the extent these allegations are deemed to be ones of fact, Defendant denies them.
15. The allegation of paragraph fifteen of the Complaint is a conclusion of law that Defendant neither admits nor denies. To the extent this allegation is deemed to be one of fact, Defendant denies it.
16. The allegation of paragraph sixteen of the Complaint is a conclusion of law that Defendant neither admits nor denies. To the extent this allegation is deemed to be one of fact, Defendant denies it.
17. The allegation of paragraph seventeen of the Complaint is a conclusion of law that Defendant neither admits nor denies. To the extent this allegation is deemed to be one of fact, Defendant denies it.
18. The allegation of paragraph eighteen of the Complaint is a conclusion of law that Defendant neither admits nor denies. To the extent this allegation is deemed to be one of fact, Defendant denies it.

19. The allegation of paragraph nineteen of the Complaint is a conclusion of law that Defendant neither admits nor denies. To the extent this allegation is deemed to be one of fact, Defendant denies it:

20. Defendant admits the allegations of paragraph twenty of the Complaint.

21. The allegations of paragraph twenty-one of the Complaint are conclusions of law that Defendant neither admits nor denies. To the extent these allegations are deemed to be ones of fact, Defendant denies them.

22. The allegation of paragraph twenty-two of the Complaint is a conclusion of law that Defendant neither admits nor denies. To the extent this allegation is deemed to be one of fact, Defendant denies it.

23. Defendant admits the allegations of paragraph twenty-three of the Complaint.

24. Paragraph twenty-five (sequentially, twenty-four) of the Complaint incorporates prior paragraphs. To the extent a response is required, Defendant incorporates its responses to prior paragraphs.

25. The allegations of paragraph twenty-four (sequentially, twenty-five) of the Complaint are conclusions of law that Defendant neither admits nor denies. To the extent these allegations are deemed to be ones of fact, Defendant denies them.

26. Defendant admits the allegations of paragraph twenty-five (sequentially, twenty-six) of the Complaint.

27. Defendant admits the allegations of paragraph twenty-six (sequentially, twenty-seven) of the Complaint with respect to the named parties of this action. Defendant denies the remaining allegations of paragraph twenty-six (sequentially, twenty-seven) of the Complaint.

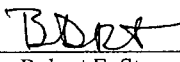
28. Defendant denies the allegations of paragraph twenty-seven (sequentially, twenty-eight) of the Complaint.

29. Paragraph twenty-eight (sequentially, twenty-nine) of the Complaint incorporates prior paragraphs. To the extent a response is required, Defendant incorporates its responses to prior paragraphs.

30. Defendant denies the allegations of paragraph twenty-nine (sequentially, thirty) of the Complaint.

WHEREFORE, having fully answered the allegations of the Complaint, the Defendant prays that this case be removed to the South Carolina Supreme Court in its original jurisdiction, or alternatively, that the Complaint be dismissed with prejudice.

SOWELL GRAY STEPP & LAFFITTE, LLC

By: 
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*Attorneys for Defendant Hilton Head Island-Bluffton
Chamber of Commerce*

Columbia, South Carolina
February 15, 2013

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT**

DOMAINSNEWMEDIA.COM, LLC,

**Plaintiff,
vs.**

**HILTON HEAD ISLAND – BLUFFTON
CHAMBER OF COMMERCE,**

Defendant.

**IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT**

CASE NO. 2013-CP-07-0080

**MOTION FOR SUMMARY
JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that Plaintiff Domainsnewmedia.com, LLC, (hereinafter "Plaintiff") hereby moves pursuant to Rule 56, SCRCP, and all other applicable law for summary judgment on the Plaintiff's claim in the above-captioned action, as more fully discussed below.

The grounds for this motion are as follows:

1. Upon motion, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP.
2. The Plaintiff brought this action seeking a declaratory judgment that Defendant is a public body, as defined in S.C. Code Ann. §30-4-20(a), and an injunction requiring Defendant to make certain records available for copying and inspection (as identified in the letter attached as "Exhibit A" to the Complaint) (hereinafter referred to as "FOIA Request") while enjoining it from further denial of its obligations under S.C. Code Ann. §30-4-10, et seq..
3. Per S.C. Code Ann. §30-4-20(a), a public body is defined as

“any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.”

4. The Supreme Court of South Carolina interpreted §30-4-20(a) in Weston v. Carolina Research and Development Foundation, 401 S.E.2d 161, 303 S.C. 398 (S.C., 1990). The Court said their decision in that case, that the Carolina Research and Development Foundation was a public body for purposes of The South Carolina Freedom of Information Act (hereinafter “FOIA”), “does not mean that the FOIA would apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms length basis.” Weston at 165.
5. But the Court did hold that “when a block of public funds is diverted en masse from a public body to a related organization, or when the related organization undertakes the management of the expenditure of public funds, the only way that the public can determine with specificity how those funds were spent is through access to the records and affairs of the organization receiving and spending the funds.” Id.
6. The Court in Weston identified the test for determining when an otherwise private organization will be considered a public body for purposes of FOIA: that if public funds

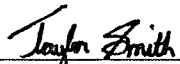
are diverted en masse from a public body to an organization or if an organization undertakes the management of the expenditure of public funds, the organization is a public body.

7. The record in this action shows that Defendant both receives a lump sum of public funds and then undertakes the expenditure of those public funds every year.
8. Per S.C. Code Ann. §30-4-30(a), “[a]ny person has a right to inspect or copy any public record of a public body, except as otherwise provided by Section 30-4-40, in accordance with reasonable rules concerning time and place of access.”
9. S.C. Code Ann. §30-4-20(c) provides the definition of “public record.”
10. The record in this action shows that Plaintiff is entitled to have access to the documents subject to its FOIA request, and that no exemption to disclosure under South Carolina law shall apply.
11. The record in this action shows that there is no genuine issue as to any material fact as to either of Plaintiff’s claims in this action and that the Plaintiff is entitled to judgment in his favor as to both claims.
12. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, there is no duty of consultation prior to this motion, as this is a motion for summary judgment.

[signature next page]

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

September 30, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
DomainsNewMedia.com, LLC,	)	Civil Action No.: 2013-CP-07-00080
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Hilton Head Island-Bluffton	)	
Chamber of Commerce,	)	
	)	
Defendant.	)	

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DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant Hilton Head Island-Bluffton Chamber of Commerce ("the Chamber") hereby moves, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an order granting summary judgment in its favor because there are no genuine issues of material fact and the Chamber is entitled to judgment as a matter of law. The sole issue in this case is whether the Chamber's receipt of funds under the Accommodations Tax Act and a grant from the South Carolina Department of Parks, Recreation, and Tourism renders the Chamber subject to the Freedom of Information Act ("FOIA"). It does not as a matter of law, and therefore, the Chamber is entitled to summary judgment.

FACTS/PROCEDURAL HISTORY

The Chamber is a 501(c)(6) non-profit corporation organized under the laws of the State of South Carolina. The Chamber's purpose is to advance the common interests of its membership, stimulate the expanding regional economy, and enhance the quality of life for all. (See Affidavit of William G. Miles ¶ 2, incorporated herein and attached hereto as **Exhibit A.**) On November 28, 2012, Plaintiff requested that the Chamber provide it with

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the following information pursuant to the South Carolina Freedom of Information Act, S.C.

Code Ann. §§ 30-4-10 to -165 (2007) ("FOIA"):

- All documents pertaining to a proposed Welcome Center for the Hilton Head Island-Bluffton Chamber of Commerce on any property owned by the Town of Hilton Head;
- The names, sex, race, title and dates of employment of all employees and officers of the Hilton Head Island-Bluffton Chamber of Commerce;
- All administrative staff manuals and written instructions to staff that affect a member of the public;
- All statements of policy and interpretations of policy, statutes and the constitution that have been adopted by Hilton Head Island-Bluffton Chamber of Commerce;
- All written planning policies and final planning decisions;
- All information in or taken from all accounts, vouchers, or contracts dealing with the receipt or expenditure of public or other funds of the Hilton Head Island-Bluffton Chamber of Commerce, including all bank accounts and contracts pertaining to the receipt and use of any accommodation tax funds or state or local grants received and/or used by the Hilton Head Island-Bluffton Chamber of Commerce, including any funds allocated to or used by the Hilton Head Island Visitor and Convention Bureau; and
- The minutes of all meetings, including Board of Director meetings, and all votes taken at such meetings, except as exempted pursuant to S.C. Code § 30-4-70.

(Letter from Dean Bell to Jay Davis, dated Nov. 26, 2012, attached hereto as **Exhibit B**.

This letter is attached as Ex. A to Plaintiff's Complaint.) On December 17, 2012, the Chamber declined Plaintiff's FOIA request on the ground that the Chamber was not subject to FOIA because: (a) the Chamber's status as the Designated Marketing Organization ("DMO") for the Town of Hilton Head did not convert a non-profit organization into a public body for purposes of FOIA; and (b) the Chamber's operating funds were accounted

for separately from any public funds that it may receive. The Chamber also provided Plaintiff with legal authority that establishes that a chamber of commerce that receives public funds under the Accommodations Tax Act does not become a public body for purposes of FOIA. (Letter from Bobby Stepp to Dean Bell, dated Dec. 17, 2012, attached hereto as **Exhibit C**. This letter is attached as Ex. B to Plaintiff's Complaint.)

On January 15, 2013, Plaintiff commenced this action with the filing of a Summons and Complaint alleging that the Chamber is a "public body" as that term is defined in FOIA and seeking an order declaring that the Chamber, or its division, the Visitor and Convention Bureau, is a "public body" as defined under section 30-4-20(a). Additionally, Plaintiff seeks an order requiring the Chamber to produce the previously requested records. Plaintiff further contends that it is entitled to an order declaring the rights and legal relations of the parties pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 *et seq.* (2005) and FOIA.

LAW/ANALYSIS

The facts underlying this controversy are not in dispute. The Chamber does not deny that it receives public funds under the Accommodations Tax Act ("ATAX"), S.C. Code Ann. § 6-1-500 *et seq.* (2004 & Supp. 2012) and under a grant from the South Carolina Department of Parks, Recreation, and Tourism ("PRT"). The sole question before this Court is whether the Chamber's receipt of such funds transforms the Chamber into a "public body" that is subject to FOIA. The Chamber is not a public body as a matter of law because the Chamber receives those funds in exchange for providing specific goods and services to local governments on an arm's length basis.

I. The Freedom of Information Act and Its Definition of “Public Body.”

Section 30-4-30(a) of FOIA provides that “[a]ny person has a right to inspect or copy any *public record* of a *public body*, except as otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access.” (Emphasis added.) See S.C. Code Ann. §§ 30-4-30 to -40. “The essential purpose of the FOIA is to protect the public from secret *government* activity.” *Burton v. York Cnty. Sheriff’s Dep’t*, 358 S.C. 339, 347, 594 S.E.2d 888, 892 (Ct. App. 2004) (emphasis added) (citing cases). “South Carolina’s FOIA was designed to guarantee the public reasonable access to certain activities of the *government*.” *Id.* (emphasis added) (quoting *Fowler v. Beasley*, 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996)). “The FOIA creates an affirmative duty on the part of *public bodies* to disclose information.” *Burton*, 358 S.C. at 347, 594 S.E.2d at 892 (emphasis added).

FOIA defines “public body” for purposes of the Act as

any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency *supported in whole or in part by public funds or expending public funds*, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions

S.C. Code Ann. § 30-4-20(a) (2007) (emphasis added).

While “the statute’s unambiguous language brings even a private corporation supported by public funds within the definition of a public body,” *Disabato v. S.C. Ass’n of Sch. Adm’rs*, 404 S.C. 433, 442, 746 S.E.2d 329, 333 (2013), “the application of the FOIA beyond traditional governmental entities is limited to statutorily defined public

bodies, which are only those entities supported by public funds." *Id.* at 454-55, 746 S.E.2d at 340.

II. The Chamber Is Not a "Public Body" Because It is in Arm's Length Transactions with Local Governments.

An entity that engages in an arm's length transaction with the State is not a public body for purposes of FOIA. This distinction is expressly recognized in *Weston v. Carolina Research & Development Foundation*, 303 S.C. 398, 401 S.E.2d 161 (1991). In *Weston*, the University of South Carolina Development Foundation, a private, non-profit organization contended that it was not subject to FOIA even though it received public funds. 303 S.C. at 403, 401 S.E.2d at 164. The South Carolina Supreme Court held that the organization was, in fact, a public body and thus subject to FOIA because it had accepted funds in bulk from the City of Columbia and Richland County, undertook to administer the expenditure of that money, and ultimately acted as the agent of a state university. *Id.* at 401-03, 401 S.E.2d at 162-64. But the court noted that its decision "does not mean that the FOIA would apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms length basis." 303 S.C. at 404, 401 S.E.2d at 165.

In that situation, there is an exchange of money for identifiable goods or services and access to the public body's records would show how much money was spent. However, when a block of public funds is diverted *en masse* from a public body to a related organization, or when the related organization undertakes the management of the expenditure of public funds, the only way the public can determine with specificity how those funds were spent is through access to the records and affairs of the organization receiving and spending the funds.

Id. The Chamber is not a “public body” under FOIA because it is providing identifiable advertising and promotional goods and services in exchange for payment from ATAX and the PRT grant.

The statutory and other requirements of ATAX¹ underscore the conclusion that the Chamber is not a “public body.” As detailed in the ATAX statutory scheme, ATAX specifies (1) the goods and services to be provided, (2) the roles of the local government and the organization selected by the local government (“destination marketing organization” or “DMO”) to receive the ATAX funds, and (3) the reporting requirements for the DMO. First, ATAX states that the goods and services to be provided are advertising and the promotion of tourism. S.C. Code Ann. § 6-4-10(3). Second, the local government receiving the ATAX funds must select a nonprofit organization, “such as a chamber of commerce” with an “existing, ongoing tourist promotion program” to “manage and direct the expenditure of” the ATAX funds. *Id.* The selected DMO must submit a budget of planned expenditures to the local government for its approval. *Id.* If the local government approves the proposed budget, the local government then distributes the ATAX funds that it has collected to the DMO. *Id.* The DMO then spends the ATAX funds in accordance with the plan and budget approved by the local government.² Finally, at the end of the

¹ ATAX allows a county or municipality to impose a local accommodations tax that is a “tax on the gross proceeds derived from the rental or charges for accommodations furnished to transients” S.C. Code Ann. § 6-1-510(A). All of the proceeds from the Tax “must be kept in a separate fund segregated from the imposing entity’s general fund.” § 6-1-520(B). The revenue generated from the Tax must be used for tourism purposes. § 6-1-530.

² If it appears that the expenditures are going to vary materially from the budget, the Chamber seeks the approval of the local government’s representatives (Thomas Dep. 19:25 – 22:16, Feb. 23, 2015, a copy of all cited excerpts from Susan Thomas’ deposition transcript is attached hereto as **Exhibit D**; Deal Dep. 60:13-18, Feb. 23, 2015, a copy of all cited excerpts from Ray Deal’s deposition transcript is attached hereto as **Exhibit E**.) On

year, the DMO submits an accounting of the expenditures to the local government. *Id.* That is exactly what has transpired in the present case.

This process clearly establishes a distinction between the local governments and the DMOs, and sets up exactly the type of arm's length exchange between the government and the DMO that is an exception to FOIA under *Weston*. To be a DMO, an organization must be an organization with an "existing, ongoing tourist promotion program." *Id.* Governments are not in the business of tourism promotion, and marketing is not a normal government function. After all, the General Assembly would not have created ATAX, if governments provided tourism services. *See, e.g.,* S.C. Code Ann. § 6-4-10(3) (requiring local government to select an organization with an "ongoing tourist promotion program" to "develop and increase tourist attendance through the generation of publicity."). It is therefore necessary for the local government to contract with a third party to supply the goods and services that the ATAX funds are designed to fund. The Chamber – like any other contractor with the State – is simply providing goods and services to the government. The Chamber is not the government. It is not a "public body."

III. The Local Governments, Not the Chamber, Are Expending Public Funds.

ATAX allocates the ATAX funds to the local governments, not the DMO. S.C. Code Ann. § 6-4-10(3) (providing that local government to distribute the funds to the organization "selected" by the local government). While ATAX contemplates a role for groups like the Chamber, the local governments are at the center of ATAX – providing a

the other hand, if it appears that the expenditures will slightly vary from the budgeted amount (\$10,000 or less), the Chamber uses its professional judgment to address the variance. (Thomas Dep. 54:16-22, Feb. 23, 2015.)

high level of oversight over the DMOs. First, ATAX establishes a procedure to assist local governments in advertising and promoting their communities. Second, ATAX requires local governments to review plans and budgets of potential DMOs before the local government selects the DMO. *Id.* After the review and approval of the budgets and plans by the local government, ATAX then allows the local government to select the DMO that it so desires. *Id.* The DMO does not become a public body by virtue of its participation in the program.

A circuit court has squarely addressed this issue in *Sun Publishing Co., Inc. v. The Board of Directors of the Myrtle Beach Area Chamber of Commerce*. (A copy of the *Sun Publishing Order* is attached hereto as **Exhibit F**.) The court held as follows:

The municipality or county must approval [sic] all expenditures prior to any spending. Thus, all discretion as to spending is on the government level providing further emphasis that the Chamber does not "expend" or "receive" public funds as contemplated by the Freedom of Information Act. The Chamber is provided with government funds for the purpose of contractually carrying out governmentally predetermined functions.

(*Sun Publishing Order* at 5 (emphasis in original).) The local government, not the Chamber, exercises discretion over the expenditure of the ATAX funds. The Chamber is simply carrying out the services that the local government has already selected through its approval of the Chamber's budget.

Moreover, at all times, the municipality has records reflecting how the ATAX funds are being spent. *See Weston*, 401 S.E.2d at 165 (holding that when the "public body's records would show how the money was spent," the recipient of the funds is not a public body for purposes of FOIA.) The Chamber submits a budget and plan at the beginning of the fiscal year, and it submits an accounting at the end of the fiscal year. S.C. Code Ann. § 6-4-10(3). Any citizen who has any concern about how the local government is spending

the ATAX funds can go to the local government and review the annual accounting. The General Assembly has already provided for transparency in the ATAX statutory scheme through these reporting requirements. The public has access to the public records through the local governments. Moreover, there are public meetings in front of the ATAX committee, where the public can discuss both the budget and the marketing plan. The receipt of ATAX funds to carry out local governments' directions regarding expenditure of the funds does not convert the Chamber into a public body.

IV. The PRT Grant Does Not Subject the Chamber to FOIA.

Receipt of funds under the PRT grant does not transmute the Chamber into a public body. Like ATAX, the PRT grant requires funds to be used for tourism purposes. (Aff. of Miles ¶ 6.) Under the PRT grant, the Chamber receives the funds, and in turn, provides tourism services for the PRT. The PRT enters into an arm's length relationship with the Chamber whereby the Chamber uses its expertise as to promote tourism. Similarly, when State engages a law firm to represent it in litigation, the State is paying the law firm for its judgment and experience. In other words, the State is relying on the law firm to provide legal services to the State in exchange for payment. The Chamber is nothing more than a vendor providing services in exchange for payment.

Like ATAX, the PRT grant also imposes certain reporting requirements. Specifically, the PRT grant requires the Chamber and other recipients to provide "an annual report by November first, to the Chairman of the Senate Finance Committee and the House Ways and Means Committee and the director of the Department of Parks, Recreation and Tourism on the expenditure of the grants funds and on the proposed outcome measures." Proviso 39.2 of the Appropriations Act for Budget Year 2012-13. The Chamber complies

with all requirements imposed by the PRT grant. (Aff. of Miles ¶ 6.) Like ATAX, the PRT approves the expenditure of funds by awarding the grant and requires reporting so that a citizen can review its records to determine how money is being spent. See *Weston*, 303 S.C. at 404, 401 S.E.2d at 165 (noting the importance of a citizen's ability to access a public body's records when goods and services are exchanged for money). The PRT exercises discretion over the expenditure of funds, and therefore, the PRT – not the Chamber – is the public body. The Chamber therefore does not expend public funds.

V. The Chamber is Not “Supported in Whole or in Part by Public Funds” Because It is a Contractor of the Local Governments.

Similarly, the Chamber is not supported by public funds. The *Weston* court explicitly stated its decision “does not mean that the FOIA would apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms length basis” 303 S.C. at 404, 401 S.E.2d at 165. Therefore, it only follows that a private entity like the Chamber is not “supported in whole or in part by public funds” merely because public monies make up a certain percentage of its revenue. “If the relationship is, in fact, a fee-for-services (or goods) agreement then, clearly, an entity is not [supported in whole or in part] by public funds.” *Indianapolis Convention Ctr. & Visitors Ass’n, Inc. v. Indianapolis Newspapers, Inc.*, 577 N.E.2d 208, 212-13 (Ind. 1991). See also *State Defender Union Employees v. Legal Aid & Defender Ass’n*, 584 N.W.2d 359, 432-33 (Mich. 1998) (“[A]n otherwise private organization is not ‘funded by or through state or local authority’ merely because public monies paid in exchange for goods provided or services rendered comprise a certain percentage of the organization’s revenue.”) “Otherwise, any entity who performed any service or provided any good for any governmental entity would find its business records available for public inspection

under the Public Records Act." *Indianapolis Convention Ctr.* 577 N.E.2d at 213.³ As the Supreme Court noted in *Disabato*,

FOIA would not apply to a private entity that receives public funds for a specific purpose. For example, the FOIA would not apply to a private organization that receives public funds to operate a childcare center or healthcare clinic. However, the FOIA does apply to any private organization that is *generally supported* by public funds.

Disabato, 404 S.C. at 456, 746 S.E.2d at 341 (emphasis added).

The Chamber is not "generally supported" or "supported in whole or in part" by public funds because it provides identifiable goods and services in exchange for payment on an arm's length basis. Stated differently, it is a contractor of a public body. The Chamber is only carrying out the local government's and PRT's directives. Therefore, the Chamber is not a "public body" for purposes of FOIA, and this Court should grant summary judgment in favor of the Chamber.

CONCLUSION

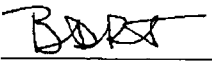
It is clear as a matter of law that the Chamber merely receives public funds in exchange for specified goods and services. It is the actual public bodies, not the Chamber, that have the authority as to how those funds are expended. A complete record of those expenditures is maintained by the public bodies themselves, and recourse to the Chamber's books and records is not necessary. FOIA was never intended to convert a private non-profit entity such as the Chamber into a public body subject to the provisions of FOIA. The Court should therefore enter judgment in favor of the Chamber as matter of law.

³ As the court notes in *State Defender Union Employees*, "it is clear that, in the FOIA, *funded* means something other than an exchange of services or goods for money, even if the source of the money is a governmental entity." 584 N.W.2d at 433 (footnote omitted).

This motion is supported by the pleadings; and by the statutory and common law of the State of South Carolina, to include the South Carolina Rules of Civil Procedure; as well as any affidavits, memoranda, deposition testimony, or other documents which may be submitted in support of this motion.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, LLC

By: 
Robert E. Stepp
(S.C. Bar No. 5337)
Bess J. DuRant
(S.C. Bar No. 77920)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

**Attorneys for Hilton Head Island-Bluffton
Chamber of Commerce**

Columbia, South Carolina

September 30, 2014

EXHIBIT A

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION

COUNTY OF BEAUFORT

Civil Action No.: 2013-CP-07-00080

RECEIVED

FEB 15 2013

S.C. SUPREME COURT

DOMAINSNEWMEDIA.COM, LLC

Plaintiff,

vs.

Hilton Head Island-Bluffton
Chamber of Commerce

Defendant/Petitioner.

AFFIDAVIT OF WILLIAM G. MILES

Personally appeared before me William G. Miles, who, first being duly sworn,
deposes and says as follows:

1. I am William G. Miles. I am the president and chief executive officer for
the Hilton Head Island-Bluffton Chamber of Commerce ("Chamber"). This affidavit is
based upon my personal knowledge.

2. The Chamber is a 501(c)(6), non-profit corporation organized under the
laws of South Carolina. The Chamber's purpose is to advance the common interests of
its membership, stimulate the expanding regional economy, and enhance the quality of
life for all.



WGM

3. To further this purpose, the Chamber receives funds under the Accommodations Tax Act ("ATAX") and a grant from the Department of Parks, Recreation, and Tourism ("PRT Grant").

4. ATAX requires that the received funds be used for advertising and the promotion of tourism. S.C. Code Ann. § 6-4-10(3). Additionally, ATAX requires that such funds are segregated. S.C. Code Ann. § 6-1-520(B). The Chamber strictly adheres to all provisions of ATAX.

5. ATAX also contains certain reporting requirements. Under ATAX, the Chamber submits for approval a budget of planned expenditures before the beginning of each fiscal year. See S.C. Code Ann. § 6-4-10(3). Additionally, at the end of each fiscal year, the Chamber submits an accounting of its expenditures to the State of South Carolina, Beaufort County, the Town of Hilton Head Island, and the Town of Bluffton. See *id.*

6. Like ATAX, the PRT Grant also requires that any received funds be used for tourism purposes. Additionally, the PRT Grant imposes certain reporting requirements. Specifically, the PRT Grant requires recipients to provide "an annual report by November first, to the Chairman of the Senate Finance Committee and the House Ways and Means Committee and the director of the Department of Parks, Recreation and Tourism on the expenditure of the grants funds and on the proposed outcome measures." Proviso 39.2 of the Appropriations Act for Budget Year 2012-13. The Chamber strictly adheres to all terms and provisions of the PRT Grant.

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7. As a nonprofit corporation, the Chamber also provides access to certain records for its members in accordance with the Nonprofit Corporation Act. *See, e.g.*, S.C. Code Ann. §§ 33-31-1601, -1602.

8. The Chamber does not consider itself subject to the Freedom of Information Act ("FOIA"). The Chamber is not a "public body" as defined under FOIA, and therefore, does not conduct itself as a "public body." For example, the Chamber does not make its records or minutes of its meetings available to the public at large to inspect or copy. *See* S.C. Code Ann. §§ 30-4-30(a), (d)(1). The Chamber does not open its meetings to the public. *See* S.C. Code Ann. § 30-4-60. Similarly, it does not provide written public notice of its regular meetings at the beginning of each calendar year, and it does not post public notice for any called, special, or rescheduled meetings. *See* S.C. Code Ann. § 30-4-80. Complying with these requirements would place tremendous burden on the Chamber, a private, nonprofit organization.

9. Upon information and belief, other chambers of commerce or convention and visitors bureaus throughout South Carolina do not consider themselves "public bodies," and therefore, subject to FOIA. In fact, I do not know of any chamber of commerce or convention and visitors bureau in South Carolina that considers itself subject to FOIA.

10. The Chamber has received two requests for information under FOIA. One request, dated November 26, 2012, was from Dean B. Bell, on "behalf of several interested Persons," requesting several documents, ranging from documents regarding a proposed Welcome Center to "all statements policy and interpretations of policy, statute and the Constitution which have been adopted by" the Chamber. A copy of Mr. Bell's

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request is attached hereto as Exhibit A. Skip Hoagland and his entity, DOMAINSNEWMEDIA.COM, LLC, were the interested persons for whom Mr. Bell sent the request. The other request was from Fitz McAden with *The Island Packet* and dated December 28, 2012. Mr. McAden requested similar information, and a copy of his request is attached hereto as Exhibit B.

11. The Chamber responded to both requests, declining to produce the requested documents, on the ground that it is not a "public body" or otherwise subject to FOIA. Specifically, the Chamber believes it is not a "public body" because it is merely a contractor that provides services for any public funds it may receive. The Chamber's responses to Mr. Bell and Mr. McAden are attached hereto as Exhibits C and D, respectively.

12. The Chamber is not a "public body." Rather, it is a private, non-profit corporation and complies with all provisions of the Nonprofit Corporation Act. Additionally, as a recipient of funds under ATAX and the PRT Grant, the Chamber complies with all requirements, including all reporting requirements, of ATAX and the PRT Grant. The Nonprofit Corporation Act, ATAX, and the PRT Grant do not impose any of the rigorous reporting standards or open meeting requirements as imposed by FOIA.

13. Mr. Hoagland has engaged in a relentless attack against the Chamber. He claims that the Chamber misuses and fails to account for the funds it receives under the Act. For example, in a full-page newspaper advertisement published after the Chamber declined Hoagland's FOIA request, he claims that the Chamber is "in violation of IRS tax codes governing non profits by selling any advertising on websites or in magazines that

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made a profit." Further, he labels the Chamber as a "hoax" and a "self-serving empire in the name of being a 'non-profit' organization. . . ." He continues that "[t]he Chamber's decision to hire out-of-town lawyers to arrogantly refuse FOIA (Freedom of Information Act) transparency requests speaks volumes about things they are trying to hide from our community." See Advertisement published on January 13, 2013 in *The Island Packet* and *The Beaufort Gazette* attached hereto as Exhibit E. A sample of other public comments about the Chamber that Hoagland has made after filing this lawsuit are as follows:

- "The Chamber attorneys . . . base their argument on a claim our Chamber is not 'public' under the definition, but merely a 'contractor' acting on behalf of local townships – and therefore not subject to FOIA. Yet who is going to believe that ruse when the Chamber in a self-incriminating manner itself calls its V&CB a 'division' (not a separate entity)." (emphasis in original). Hoagland advertisement published on February 3, 2013 in *The Island Packet*, attached hereto as Exhibit F;
- "As you all know by now . . . this all will continue until its [sic] totally cleaned up one way or the other. . . . What I have been forced to do now is take this to litigation and SC Supreme Court if necessary. I will continue full Page ads educating and updating those who are interested. Will launch a direct mail piece to be sent out. . . . I have instructed my lawyers and accountants to put together additional Lawsuits that will be filed at the appropriate times as this Foia case moves forward in the courts . . ." Hoagland email, entitled "Today's letter to the editor," attached hereto as Exhibit G; and,
- "[M]y efforts, as a Chamber Member, to uncover abuses have been rebuffed at every turn, and I have finally been forced to seek help from the South Carolina court system." Hoagland Advertisement published on February 10, 2013, in *The Island Packet*, attached hereto as Exhibit H.

14. Even before the Chamber declined his request, he publically announced that his feud with the Chamber "is headed for litigation, major press coverage, IRS investigations, legal rules and even [p]erhaps many lawsuits nationwide. *Supreme Court is even a possibility.*" See Hoagland email dated May 3, 2012 (emphasis added) attached

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hereto as Exhibit I. A few of his other public statements regarding the Chamber and this lawsuit are as follows:

- "[i]f our Chamber is a 501C-6 organization that accepts public funds, why does it ignore Freedom of Information Act (FOIA) requests and have two attorneys from Charleston to refuse information requests from its own members?" Hoagland advertisement published on December 9, 2012 in *The Island Packet*, attached hereto as Exhibit J;
- "Who will join me in my lawsuit based on transparency and information only. [sic] Nothing else!! All you have to do is join me and I pay for All!!" Email from Hoagland, dated Nov. 12, 2012, attached hereto as Exhibit K;
- "It seems those in Charge [sic] have easy choices and that is simply do whats [sic] right, if not all we will see is more problems and conflict, more full page ads in the Island Packet, HHI Monthly, TV prime news, coverage in surrounding city newspapers etc. . . . This will not stop until I and others are convinced the abuse has ended on all fronts for all of us." Email from Hoagland, dated Nov. 7, 2011, attached hereto as Exhibit L; and,
- "The HHI Chamber and Bill Miles has [sic] hired two lawyers to deal with me [sic] Why what reason? . . . The Hilton Head case is important because it will set the stage to expose the abuse in other cities across America." Email from Hoagland, dated Sept. 12, 2012, attached hereto as Exhibit M.

15. These are only a few of the many public attacks he has made against the Chamber, and I anticipate the severity and volume of his attacks will only increase with the filing of the present lawsuit, considering he threatened Chamber board members with the following: "Those who continue to sit on this board will lose business and credibility for themselves and the companies they represent as the abuse is allowed to continue and gets exposed in the press. It seems lawsuits are inevitable as well." See Hoagland email dated Sept. 2, 2012 attached hereto as Exhibit N.

16. His aggressive campaign against the Chamber has the capacity to undermine the public confidence in the Chamber. Consequently, it could affect the

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Chamber's membership and its ability to serve as the organization charged to promote tourism under ATAX and the PRT Grant. Hoagland's attacks undercut the Chamber's purpose of contributing to the preservation and economic growth of Beaufort County. These actions implicate the public interest.

17. This Court should exercise its original jurisdiction because Hoagland's incessant harassment of the Chamber involves the public interest and provides a special ground for this Court to entertain this case in its original jurisdiction. Additionally, this Court should take this case in its original jurisdiction because of the importance of the issue to the Chamber as well as other similarly non-profits across South Carolina. Upon information and belief, other chambers of commerce and other private, non-profit corporations are not governing themselves as if they are subject to FOIA. The Chamber would be prejudiced by permitting this case to proceed in the trial court because the delay associated with trial courts would leave the issue unanswered possibly for years and allow Hoagland to continue his public crusade against the Chamber. If this Court determines that the Chamber is subject to FOIA, it must quickly change its operations so that it can comply with FOIA's requirements. The Chamber needs a final, non-appealable decision reached expeditiously so that it, along with other non-profits, can proceed with certainty.

FURTHER AFFIANT SAYETH NOT.

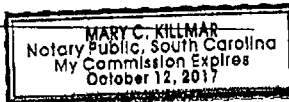
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William G. Miles
William G. Miles

Sworn to before me this 12th day of February, 2013

Mary C. Killmar
Notary Public for South Carolina

My commission expires:



See pp. 45 - 176 of Record
for Exhibits A-N
of Miles Affidavit

EXHIBIT B

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

The Law Office of Dean B. Bell, LLC

1 Corpus Christi Place
Bldg. 105, Executive Center
Post Office Box 7401
Hilton Head Island, SC 29928

Dean B. Bell*
Joseph DuBois
R. Myers Truluck, Jr.
Zach S. Naert

Telephone* (843) 785-9772
Fax * (843) 785-9773
Website* www.deanbell-law.com

* Certified Arbitrator & Mediator

November 26, 2012

D. Jay Davis, Jr., Esquire
Young Clement Rivers, LLP
25 Calhoun Street, Ste. 400
P. O. Box 993
Charleston, SC 29402

Re: FOIA Request/Hilton Head/Bluffton Chamber of Commerce

Dear Jay:

On behalf of several interested Persons, as that term is defined pursuant to S.C. Code §30-4-20(b), and in accordance with the remaining provisions of the South Carolina Freedom of Information Act, S.C. Code §30-40-10, *et seq.*, (as amended), I hereby request the following records be provided or made available for inspection:

- 1) Copies of any and all documents pertaining to a proposed Welcome Center for the Hilton Head Island - Bluffton Chamber of Commerce on any property owned by the Town of Hilton Head, including but not limited to any proposed lease documents, correspondence, email communications, memoranda, building plans, cost estimates, development agreements, meeting minutes, building permit applications, conceptual plans, or proposals or plans of any nature whatsoever pertaining to the planned Welcome Center or renovation of any existing structure for that use on any property owned by the Town of Hilton Head.
- 2) The names, sex, race, title and dates of employment of all employees and officers of the Hilton Head Island - Bluffton Chamber of Commerce, pursuant to S.C. Code §30-4-50(1) and all compensation paid by the Hilton Head Island - Bluffton Chamber of Commerce as provided in S.C. Code §30-4-40(a)(6).
- 3) All administrative staff manuals and written instructions to staff that affect a member of the public;



D. Jay Davis, Jr. Esquire
November 26, 2012
Page 2 of 3

4) All statements of policy and interpretations of policy, statute and the Constitution which have been adopted by the Hilton Head Island - Bluffton Chamber of Commerce.

5) All written planning policies and goals and final planning decisions;

6) All information in or taken from all accounts, vouchers, or contracts dealing with the receipt or expenditure of public or other funds of the Hilton Head Island - Bluffton Chamber of Commerce to include but not be limited to all bank accounts and contracts pertaining to the receipt and use of any accommodation tax funds or state or local grants received and/or used by the Hilton Head Island - Bluffton Chamber of Commerce, including any funds allocated to or used by the Hilton Head Island Visitor and Convention Bureau.

7) The minutes of all meetings (including but not limited to Board of Director meetings) and all votes taken at such meetings except as exempted pursuant to S.C. Code §30-4-70.

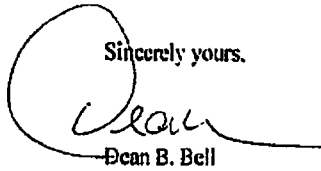
I am sure that I do not need to point out that the Hilton Head Island - Bluffton Chamber of Commerce, Inc. is a "Public Body" as defined in S.C. Code §30-4-20(a) due to the fact that as a Designated Marketing Organization for the Town of Hilton Head, it receives significant amounts of public funds that it appears to expense through its Visitor and Convention Bureau. The organization also receives other significant public funds in the form of various grants. Additionally, I do not believe there is an exception to Board meetings being required to be open to the public pursuant to S.C. Code §30-4-60. I welcome your thoughts on that. Barring an exception, it would appear that all Board meetings must be open to the public and all the notices required by S.C. Code §30-4-80 must be given. As such, I would appreciate your providing me directly with the date, time, location, and agenda for the next Board meeting or meeting of any subcommittee of the Board.

I look forward to your response within fifteen days of the date of your receipt of this request. If a deposit is required for the costs associated with searching for these documents and making them available for inspection, or for copying should you prefer to provide them directly to me, please let me know. Should you have any questions or comments, please do not hesitate to contact me.

D. Jay Davis, Jr. Esquire
November 26, 2012
Page 3 of 3

With kind regards, I am

Sincerely yours.



Dean B. Bell

EXHIBIT C

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**



ROBERT E. STEPP
Direct Dial 803 231.7836
Direct Fax 803 231.7886
Email rslepp@sowellgray.com

December 17, 2012

Dean D. Bell, Esquire
The Law Office of Dean D. Bell, LLC
Post Office Box 7401
Hilton Head Island, SC 29928

Re: FOIA Request to Hilton Head Island-Bluffton Chamber of Commerce
SGS&L File No.: 6515/1500

Dear Mr. Bell:

I represent the Hilton Head Island-Bluffton Chamber of Commerce ("Chamber") in connection with the request made in your letter dated November 26, 2012. Please be advised that the Chamber is not a public body or otherwise subject to the provisions of S.C. Code Ann. §30-40-10 *et seq.*, and therefore will not be providing the requested documents to you.

In your letter, you refer to the status of the Chamber as the Designated Marketing Organization for the Town of Hilton Head as the basis for your request. The Chamber's status as the DMO for the Town of Hilton Head does not convert a private non-profit organization into a public body under well established law. This precise issue has previously been litigated and decided in Horry County under facts that are identical to the present matter. I enclose a copy of the Order in *Sun Publishing Co., Inc. v. The Board of Directors of the Myrtle Beach Chamber of Commerce* for your review. Just as in *Sun Publishing*, the Chamber merely serves as a contractor providing services to local governments, and does not rely on public funds for its operations except to defray direct costs of the services provided. Additionally, the Chamber's operating funds are accounted for separately from any public funds that it may receive. See also *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 404, 401 S.E.2d 161, 165 (1991) (holding FOIA does not "apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms length basis."); *Woods v. Boeing Co.*, 841 F. Supp. 2d 925, 929 (D.S.C. 2012) (holding that even though Boeing receives millions of dollars from the State of South

1310 Gadsden Street PO Box 11449 Columbia, SC 29211
Phone 803 929.1400 Fax 803 929 0300 sowellgray.com

SOWELL GRAY STEPP & LAFFITE, LLC





Friday, December 14, 2012
Page 2

Litigation is our Business.

Carolina, Boeing is not a "public body" under the Whistleblower Act, which uses the same definition of "public body" as FOIA, because it provides the service of providing jobs to the State).

Based upon these authorities, the Chamber declines to respond further to your request.

Please call me if you have any questions or would like to discuss this issue.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert E. Stepp". The signature is written in a cursive, flowing style.

Robert E. Stepp

Enclosure

Chamber's Order

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 88-CF-26-1851

Sun Publishing Co., Inc.,)

Plaintiff,)

versus)

FINAL ORDER

The Board of Directors of the)
Myrtle Beach Area Chamber of)
Commerce,)

Defendant.)

This matter comes before me pursuant to an Order of Reference executed by the Honorable Dan F. Laney, Jr., Circuit Judge for the Fifteenth Judicial Circuit, dated March 10, 1989. The Plaintiff is represented by William L. Pope of Pope and Rodgers of Columbia, South Carolina, and the Defendant is represented by Edward T. Kalaher of Kalaher, Haar, Bass & Connell of Surfside Beach, South Carolina. A hearing was scheduled to be held on June 21, 1989, at 9:30 a.m. At the commencement of the proceedings, the attorneys for the parties advised the Court that they had reached an agreement by which a complete stipulation of all facts and exhibits would be presented to the Court. These stipulations with attachments have been executed by the attorneys and are hereby adopted as the record of this case.

The stipulations provide that the Myrtle Beach Area Chamber of Commerce (hereinafter referred to as "the Chamber")

receives funds which are distributed by county and municipal governments as proceeds of the Accommodations Tax Act of South Carolina, Section 12-35-710, et seq. Under the Act, the Chamber and any other interested entity or person submits a plan for the management of Accommodations Tax Act proceeds and county and municipal governments designate from among the applicants those which are to manage the funds. At the end of each fiscal year, the entities involved are to render accountings of the funds so distributed.

On May 11, 1988, the Chamber's Board of Directors held an officially called meeting without giving public notice and closed the meeting to the public over the objections of a reporter for the Plaintiff. The Plaintiff alleges that the receipt of funds from the Accommodations Tax Act renders the Chamber a "public body" as that term is defined in the South Carolina Freedom of Information Act, Section 30-4-10, et seq. Plaintiff commenced this action by filing a Complaint seeking a declaration of this Court that the Chamber has violated the Freedom of Information Act and for injunction relief prohibiting the Chamber from scheduling and holding future meetings from which the public is excluded.

The Chamber argues in opposition that it is a contractor which performs services to local governments in the advertising and promotional fields. The Chamber contends that it competes against several entities in a bidding/budgetary process on an arms-length basis after which it provides a

function at least equal to the value of sums paid to it. The Chamber asserts that it in no manner relies upon such income for "support" as defined by the Act. The Chamber further contends that it does not "expend" funds, but rather that county and municipal governments expend the funds upon payment to the Chamber which is to ministerially perform predetermined services. The Chamber further avers that payments to it are not a gift, grant, subsidy, maintenance or support and that all of its operating expenses are paid by the dues and other private revenues it receives from its 1,800 members.

The parties have stipulated that the sole issue to be determined by this Court is whether the Chamber is a "public body" as defined by the Act.

Based upon the following discussion, it is clear to the Court that the Chamber is not a public body as defined by the Act.

THE SOUTH CAROLINA ACCOMMODATIONS TAX ACT

The South Carolina Accommodations Tax Act, Section 12-35-710, et seq., Code of Laws of South Carolina, 1976, provides for the collection of a tax on the proceeds of rentals of transient accommodations. The Act further provides for the allocation of such funds to various governments (as opposed to the Chamber of Commerce), and the administration of these taxes. The Act contemplates the involvement of a Chamber of Commerce, or other such organization, by requiring local governments to select such an organization to manage and direct the expenditure

of tourism promotional funds upon the submission of a budget of planned expenditures. See, Section 12-35-720(1). The Section cited clearly contemplates:

1. That more than one organization may compete for the management job;
2. That such organization shall have already been existing, ongoing, and in the tourism promotion business;
3. That the entity must demonstrate to the municipality or county that it has an existing, ongoing tourism program or can develop an effective program.

In phrasing these applicable statutes, the General Assembly clearly recognized that the activities of a Chamber of Commerce are not those within a normal government function and that such services are to be properly contracted out to those who are qualified to handle such matters. The situation at hand is no different than the government using collected tax proceeds to pay engineering companies for studies, paving companies for paving, consulting companies for opinions, or any of the myriad other contexts and situations involving services and purposes recognized as important by the government, yet handled by private entities. Indeed, few, if any, would argue that an engineering company, paving company, consulting company, or other entity is subject to the Freedom of Information Act merely because it provides services and is paid government funds for those services.

Further, Section 12-35-720 imposes a rigid business procedure which mandates that all information which is relevant and of public interest be deposited with local governments, thusly

becoming subject to the Freedom of Information Act.

EXPENDITURE OF PUBLIC FUNDS

Upon the government's approval of the Chamber's budget and plan, or the budget and plan of any other approved entity, the municipality or county is effectively exercising its discretion as to how the funds are to be spent. Thus, all "discretionary spending" is conducted at the government level, based upon bidding documents deposited with the governments, and a final accounting of any such spending. The following procedure is required to be followed before an entity can be retained by the county to conduct the work required by the act:

1. All organizations vying to be selected as a management entity must submit a budget of planned expenditures.
2. The municipality or county must approval all expenditures prior to any spending. Thus, all discretion as to spending is on the government level providing further emphasis that the Chamber does not "expend" or "receive" public funds as contemplated by the Freedom of Information Act. The Chamber is provided with government funds for the purpose of contractually carrying out governmentally predetermined functions.*
3. At the end of each fiscal year, any organization managing for the government under the Accommodations Tax Act must render an accounting of the expenditure of such funds. The Statute does not require the organization to render an accounting of its entire operations, but only that portion of its operations related to the government's purpose.

* Again, this is not unlike a government providing a paving contractor with specific details, standards and locations for new roads to be built. The fact that government money is given to the paving contractor and that it completes the work would hardly expose the contractor to public scrutiny despite the fact that the contractor may take the funds he is given and hire subcontractors, purchase materials, and exercise a significant amount of discretion as to the methods and procedures which may be followed in performing the governmentally directed work.

4. The act goes on to provide that municipalities or county governments may issue bonds or enter other financial obligations to construct facilities for civic activities and the like. No one would argue that contractors who are paid funds to effect such construction would be subject to the Freedom of Information Act.
5. Further, Section 12-35-720(3) provides that an advisory committee must be appointed to make recommendations on the expenditure of revenue generated from the accommodations tax.

THE CHAMBER IS NOT "SUPPORTED" IN WHOLE OR IN PART

BY GOVERNMENT FUNDS

The money the Chamber receives is not a grant, gift, or subsidy. The Chamber is required to perform certain services and would indeed be liable to the municipalities and county governments if it did not do so properly. The Chamber must agree on terms and conditions of expenditure, which terms and conditions include payment for services rendered by the organization.

The Chamber of Commerce receives no profit for its services as is amply illustrated by the financial documents, budgets and accountings contained in the stipulations of the parties. The records further illustrate that the Chamber completely segregates its operating funds from the funds of the Accommodations Tax Act. This segregation--a complete absence of commingling--is the ultimate evidence of the Chamber's lack of reliance on government funds for "support." Conversely, the records stipulated into evidence demonstrate that the Chamber actually supports the governments by using Chamber overhead for

services to governments with a resultant net loss to the Chamber.

Further, in the Attorney General Opinion cited hereinabove, (Op. No.82-15, supra), it was emphasized that the money received by a hospital was but a portion of its revenue and at best did not cover the actual costs of the services rendered, as is the case now before the Court. From the record of this case, it appears that one hundred percent of Chamber operating revenues are received from the dues paid by its 1,800 members and other privately earned or paid sources.

The Attorney General defines "support" as "to maintain and to 'maintain' generally means to keep up, to supply with what is needed, to furnish with funds or means for maintenance." Id., at page 20. It is clear from the record before the Court that the Chamber is not "supported" by government applying this definition.

WESTON, ET AL. V. CAROLINA RESEARCH AND

DEVELOPMENT FOUNDATION

In the matter of Chris Weston and Multimedia, Inc. d/b/a The Greenville News-Piedmont Company v. Carolina Research and Development Foundation, et al., in the Court of Common Pleas of Richland County, 88-CP-40-5322, Circuit Court Judge Carol Connor issued an opinion dated June 26, 1989, holding that the Defendant Foundation was a public body under the Freedom of Information Act. However, the decision of the Court is extremely helpful and supportive of the Chamber's position in this case.

Judge Connor ruled against the Foundation because of its pervasive and, at times, indistinguishable relationship with the University of South Carolina and the fact that it received funds from the University en masse to expend at its own discretion (a situation wholly unlike the extensive budgeting and accounting process the Chamber is required to endure in the instant case). Most notably, Judge Connor wrote:

"Nor should this Order be read to suggest that the Act would apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms'-length basis. In that situation, there is an exchange of money for identifiable goods or services of equal value, and public oversight (the intent of the Act) is ensured by access to the public bodies' records, which would provide the detail necessary to show how the money was spent." *Id.*, at page 7, emphasis added.

Applying Judge Connor's standards:

1. The Chamber is a private business enterprise which provides goods or services in exchange for funds it receives.
2. The funds it receives, in exchange for goods and services, are received on an "arms'-length basis" as the Chamber must compete with other entities for the funds it receives and must satisfy the local governments, both in the bidding and accounting stages, that the Chamber is effective and acting properly in the performance of its services.
3. Judge Connor's criteria regarding services of equal value appears to be surpassed by the Chamber in that the services it renders may be more valuable than the funds it receives as the Chamber's overhead, which is not supported by any public funds, is used to perform the services requested by the governments.
4. Perhaps, most significant is Judge Connor's acknowledgment that public scrutiny is ensured by access to "the public bodies' records which would provide the detail necessary to show how the money was spent". (*Id.*, at page 7, emphasis added).

The Court is of the opinion that the discretionary spending of funds is effected at the point in time when the County and Municipal Governments decide which budget/bid to accept among all competitors and is verified upon the receipt of an accounting from any selected competitor for such funds. The mere payment of money to the entity selected is contractual in nature and the work performed by the entity subsequent to receiving the funds is a wholly autonomous, independent and government-free activity save the specifications for the use of the funds as previously determined by the local governments.

Finally, Judge Connor's decision was made with clear recognition that the foundation did not perform any service in exchange for its share of funds, a clear distinguishing factor from the case at Bar. *Id.*, at page 4.

THE CHAMBER IS NOT A "PUBLIC BODY" UNDER THE ACT

Section 30-4-20(a) Code of Laws of South Carolina, 1976, defines a public body as follows:

"...any department of the state, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the state, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds...."

Clearly, the Chamber is not a department of the state, a state board, commission, agency or authority. It is not a governmental body, a political subdivision, a county, municipality, township, school district, or special purpose

district. The fact that the Chamber was not created by a provision of the South Carolina constitution, or by a statute, ordinance or resolution of the General Assembly supports this conclusion.

Rather, as to the issue of this case, the Chamber is a contractor performing advertising and promotional services for local governments. Pursuant to the Accommodations Tax Act, supra, the Chamber competes against several entities in a bidding/budgetary process for such work. Local governments select the most qualified or desirable entities. The work to be performed is specified by the local government involved and is not at the Chamber's discretion. The county or municipality thereafter pays the Chamber to perform the predetermined services. Upon completion of the work, the Chamber (or other selected organization) must provide an accounting to the government. This proposal/budget/acceptance/payment/services/accounting process is absolutely contractual in nature. The Chamber receives no gift, grant, subsidy, maintenance or support by this procedure. The local governments and the Chamber conduct an arms' length bidding/acceptance exercise and the Chamber must work in exchange for payment. Should the Chamber fail to perform as agreed upon, it would be liable for damages for breach of contract.

Perhaps the strongest statement supporting the Chamber's position is that contained in Opinion No. 82-15 of the Attorney General of South Carolina dated March 12, 1982. In that

case, the Attorney General was presented with a private hospital corporation which contracted with a county government to provide certain services for the county which services were paid for by public funds, a situation analogous to the case at Bar. The Attorney General found that the hospital was not subject to the Freedom of Information Act holding that:

A private entity, by entering into a contract for services with a public body, does not itself thereby also assume the status of a public body in its stead. The law, as written, encompasses only such bodies which are "supported in whole or in part by public funds or which expend public funds", and it is the opinion of this office that the receipt of specific funds on a contractual basis for services rendered to a public body does not render a private corporation subject to the South Carolina Freedom of Information Act. *Id.* at page 21.

CONCLUSION

Based upon the foregoing discussion, I hold that the Myrtle Beach Area Chamber of Commerce is not a "public body" as defined by the South Carolina Freedom of Information Act. Therefore, the relief sought by the Plaintiff in its Complaint is denied.

John L. Breeden
Master in Equity

Conway, South Carolina

July __, 1989

EXHIBIT D

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

1
2 IN THE COURT OF COMMON PLEAS
3 FOURTEENTH JUDICIAL CIRCUIT
4 STATE OF SOUTH CAROLINA
5 COUNTY OF BEAUFORT
6

7 DOMAINSNEWMEDIA.COM, LLC,

8 Plaintiff,
9
10

11 vs. CIVIL ACTION NUMBER
12 2013-CP-07-0080
13

14 HILTON HEAD ISLAND - BLUFFTON CHAMBER OF
15 COMMERCE,
16

17 Defendant.
18 -----/

19 The 30(B)(6) DEPOSITION OF THE DEFENDANT
20 HILTON HEAD ISLAND - BLUFFTON CHAMBER OF
21 COMMERCE, DESIGNEE, SUSAN THOMAS, a witness in
22 the above-entitled cause, taken pursuant to
23 Notice and agreement, before Kyle J. Saniga,
24 Certified Court Reporter and Notary Public, at
25 the McNair Law Firm, 23-B Shelter Cove Lane,
Suite 400, Hilton Head, South Carolina, on the
23rd day of February 2015, commencing at or
about the hour of 10:15 a.m.

1
2 APPEARANCES OF COUNSEL:

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14 ALSO PRESENT:

15 Bill Miles
Ray Deal
16

17 I N D E X

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1 LEDDY THOMAS (DIRECT EXAMINATION)

2 A As I mentioned we typically have a
3 media RFP in advance of or during the process of
4 developing the plan.

5 Q Uh-huh.

6 A And so that gives us a specific price
7 perimeter. If the vendor changes their price
8 then we have a choice of doing one of two
9 things; we can either reduce the amount of
10 exposure to still meet that budget level or
11 change, make a modest change to another program
12 that allows us to make full expenditure and
13 reduce costs in another line item.

14 Q Okay.

15 A Either of those things can and have
16 happened.

17 Q Okay. Because in looking at this, just
18 this one plan, and I've looked a several of
19 them, but they're all very similar. There's a
20 lot of different vendors.

21 A Uh-huh, yes.

22 Q Some of them might go out of business.

23 Has that happened to you before?

24 A Not typically.

25 Q Okay. But obviously what you'd plan at

1 LEDDY THOMAS (DIRECT EXAMINATION)

2 the beginning of the year it's not going to come
3 out exactly like your budget forecast, right?

4 A Neither in revenues or expenditures.

5 Q Okay. So there's going to have to be
6 decisions that are made along the way as far as
7 we're going to cut our spending on Project A
8 because Project B is going to be more expensive
9 than we anticipated?

10 A There's a possibility that can happen.

11 Q Okay. And, if that occurs, is it the
12 policy of your company to go back to any of the
13 funding, state or municipal agencies and say,
14 our budget allowed for this and now we have a
15 different situation and we're going to pull
16 money out of what you previously approved for
17 Project A and put it into Project B, do you do
18 that?

19 A If it's substantial --

20 Q Okay.

21 A -- in scope.

22 Q All right. What would -- how would you
23 describe what that means in terms of the word
24 'substantial'?

25 A If it's under \$10,000, no, typically we

1 LEDDY THOMAS (DIRECT EXAMINATION)

2 would not go back and have any consult with --
3 within the, you know, scope of our overall
4 budget, that's well less than one percent.

5 Q Yeah. How much was your budget for
6 this year, do you know?

7 A 4.9 million.

8 Q 4.9, million, okay, all right. So
9 let's say that you put together the plan, you
10 send it up to the town council, they vote to
11 approve it, how does that go? Do they give you
12 any pushback on, we don't want you to spend this
13 much on this vendor or we don't like this
14 project? Do you typically get much interaction
15 with the council about it?

16 A At times.

17 Q Okay. And is there a specific time,
18 within the last year or so, that you remember?

19 A There was a special grant hearing
20 recently and town council asked us to
21 specifically target \$20,000 of our expenditures
22 on minority marketing, for instance.

23 Q Okay. And that had not previously been
24 in your budget plan?

25 A Correct.

1 LEDDY THOMAS (DIRECT EXAMINATION)

2 Q So then your budget plan, resubmitted
3 it with that taken into account?

4 A We'll execute it that way.

5 Q Oh, okay, all right. And so, if the
6 change is over -- in terms of pulling money from
7 one project, putting it towards another, if it's
8 over \$10,000, then you would -- how would you go
9 back to Town Council and ask them for approval
10 on that, have you ever done that?

11 A The conduit for that, typically, is the
12 marketing council where there is representation
13 from the Town, so we would have a discussion at
14 our upcoming marketing council meeting and have
15 input from both the public and the private
16 sector.

17 Q Okay. Maybe we haven't talked about
18 the marketing council. What is that?

19 A That's a -- that's a group of
20 representatives from the tourism community
21 across all sectors of the tourism community as
22 well as, remember, we said the town staff
23 person --

24 Q Right.

25 A -- also is on that council.

1 LEDDY THOMAS (DIRECT EXAMINATION)

2 A Within -- yeah, within three to
3 five percent.

4 Q Within three to five percent?

5 A Uh-huh, as I recall.

6 Q Now, if you -- if you forecast, we're
7 going to spend \$3.6 million and then prices
8 fluctuate through the course of the year
9 obviously you want to hit as close to
10 3.6 million as you can?

11 A That's correct.

12 Q So along the way you are going to have
13 to make changes to your spending allocation for
14 certain projects, would you agree with that?

15 A That can happen, yes.

16 Q Okay. And what you've testified,
17 earlier, is that you do make those changes
18 independently of any agency's input if it's what
19 you consider to be not a substantial difference
20 in dollars?

21 A Yes, our professional staff will make
22 those decisions.

23 Q And so, if it's less than 10,000 then
24 you'll go ahead and make the call as far as,
25 we're going to move money from Project A to

EXHIBIT E

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

1
2 IN THE COURT OF COMMON PLEAS
3 FOURTEENTH JUDICIAL CIRCUIT
4 STATE OF SOUTH CAROLINA
5 COUNTY OF BEAUFORT
6

7 DOMAINSNEWMEDIA.COM, LLC,

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11 vs. CIVIL ACTION NUMBER
12 2013-CP-07-0080

13 HILTON HEAD ISLAND - BLUFFTON CHAMBER OF
14 COMMERCE,

15 Defendant.
16 -----/

17 The 30(B)(6) DEPOSITION OF THE DEFENDANT
18 HILTON HEAD ISLAND - BLUFFTON CHAMBER OF
19 COMMERCE, DESIGNEE, RAY DEAL, a witness in the
20 above-entitled cause, taken pursuant to Notice
21 and agreement, before Kyle J. Saniga, Certified
22 Court Reporter and Notary Public, at the McNair
23 Law Firm, 23-B Shelter Cove Lane, Suite 400,
24 Hilton Head, South Carolina, on the 23rd day of
25 February 2015, commencing at or about the hour
of 11:37 a.m.

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APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:

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FOR THE DEFENDANT:

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ALSO PRESENT:

Bill Miles

I N D E X

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1 LEDDY - DEAL (DIRECT EXAMINATION)
2 versus the budget?
3 A Not that I can recall.
4 Q Okay. So, I think what my
5 understanding was was that if it's a
6 insignificant variance then we'll just make the
7 change, internally, because we have to make
8 judgement calls, right?
9 A Correct and I would use the word more
10 immaterial versus insignificant.
11 Q Okay.
12 A Okay.
13 Q And Susan's idea of significant was
14 around \$10,000.
15 A Right.
16 Q Would do you peg your level?
17 A I'd agree with Susan, that seems to be
18 a reasonable number.
19 Q Okay. So over that it's going to go
20 back to the marketing council?
21 A (Witness nods head.)
22 Q Right?
23 A Yes.
24 Q And how often would you say -- could
25 you estimate how many times a year you have a

EXHIBIT F

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Chamber's Order

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 88-CP-26-1851

Sun Publishing Co., Inc.,
Plaintiff,

versus

The Board of Directors of the
Myrtle Beach Area Chamber of
Commerce,
Defendant.

FINAL ORDER

This matter comes before me pursuant to an Order of Reference executed by the Honorable Dan F. Laney, Jr., Circuit Judge for the Fifteenth Judicial Circuit, dated March 10, 1989. The Plaintiff is represented by William L. Pope of Pope and Rodgers of Columbia, South Carolina, and the Defendant is represented by Edward T. Kelaher of Kelaher, Haar, Bass & Connell of Surfside Beach, South Carolina. A hearing was scheduled to be held on June 21, 1989, at 9:30 a.m. At the commencement of the proceedings, the attorneys for the parties advised the Court that they had reached an agreement by which a complete stipulation of all facts and exhibits would be presented to the Court. These stipulations with attachments have been executed by the attorneys and are hereby adopted as the record of this case.

The stipulations provide that the Myrtle Beach Area Chamber of Commerce (hereinafter referred to as "the Chamber")

receives funds which are distributed by county and municipal governments as proceeds of the Accommodations Tax Act of South Carolina, Section 12-35-710, et seq. Under the Act, the Chamber and any other interested entity or person submits a plan for the management of Accommodations Tax Act proceeds and county and municipal governments designate from among the applicants those which are to manage the funds. At the end of each fiscal year, the entities involved are to render accountings of the funds so distributed.

On May 11, 1988, the Chamber's Board of Directors held an officially called meeting without giving public notice and closed the meeting to the public over the objections of a reporter for the Plaintiff. The Plaintiff alleges that the receipt of funds from the Accommodations Tax Act renders the Chamber a "public body" as that term is defined in the South Carolina Freedom of Information Act, Section 30-4-10, et seq. Plaintiff commenced this action by filing a Complaint seeking a declaration of this Court that the Chamber has violated the Freedom of Information Act and for injunction relief prohibiting the Chamber from scheduling and holding future meetings from which the public is excluded.

The Chamber argues in opposition that it is a contractor which performs services to local governments in the advertising and promotional fields. The Chamber contends that it competes against several entities in a bidding/budgetary process on an arms-length basis after which it provides a

function at least equal to the value of sums paid to it. The Chamber asserts that it in no manner relies upon such income for "support" as defined by the Act. The Chamber further contends that it does not "expend" funds, but rather that county and municipal governments expend the funds upon payment to the Chamber which is to ministerially perform predetermined services. The Chamber further avers that payments to it are not a gift, grant, subsidy, maintenance or support and that all of its operating expenses are paid by the dues and other private revenues it receives from its 1,800 members.

The parties have stipulated that the sole issue to be determined by this Court is whether the Chamber is a "public body" as defined by the Act.

Based upon the following discussion, it is clear to the Court that the Chamber is not a public body as defined by the Act.

THE SOUTH CAROLINA ACCOMMODATIONS TAX ACT

The South Carolina Accommodations Tax Act, Section 12-35-710, et seq., Code of Laws of South Carolina, 1976, provides for the collection of a tax on the proceeds of rentals of transient accommodations. The Act further provides for the allocation of such funds to various governments (as opposed to the Chamber of Commerce), and the administration of these taxes. The Act contemplates the involvement of a Chamber of Commerce, or other such organization, by requiring local governments to select such an organization to manage and direct the expenditure

of tourism promotional funds upon the submission of a budget of planned expenditures. See, Section 12-35-720(1). The Section cited clearly contemplates:

1. That more than one organization may compete for the management job;
2. That such organization shall have already been existing, ongoing, and in the tourism promotion business;
3. That the entity must demonstrate to the municipality or county that it has an existing, ongoing tourism program or can develop an effective program.

In phrasing these applicable statutes, the General Assembly clearly recognized that the activities of a Chamber of Commerce are not those within a normal government function and that such services are to be properly contracted out to those who are qualified to handle such matters. The situation at hand is no different than the government using collected tax proceeds to pay engineering companies for studies, paving companies for paving, consulting companies for opinions, or any of the myriad other contexts and situations involving services and purposes recognized as important by the government, yet handled by private entities. Indeed, few, if any, would argue that an engineering company, paving company, consulting company, or other entity is subject to the Freedom of Information Act merely because it provides services and is paid government funds for those services.

Further, Section 12-35-720 imposes a rigid business procedure which mandates that all information which is relevant and of public interest be deposited with local governments, thusly

becoming subject to the Freedom of Information Act.

EXPENDITURE OF PUBLIC FUNDS

Upon the government's approval of the Chamber's budget and plan, or the budget and plan of any other approved entity, the municipality or county is effectively exercising its discretion as to how the funds are to be spent. Thus, all "discretionary spending" is conducted at the government level, based upon bidding documents deposited with the governments, and a final accounting of any such spending. The following procedure is required to be followed before an entity can be retained by the county to conduct the work required by the act:

1. All organizations vying to be selected as a management entity must submit a budget of planned expenditures.
2. The municipality or county must approval all expenditures prior to any spending. Thus, all discretion as to spending is on the government level providing further emphasis that the Chamber does not "expend" or "receive" public funds as contemplated by the Freedom on Information Act. The Chamber is provided with government funds for the purpose of contractually carrying out governmentally predetermined functions.*
3. At the end of each fiscal year, any organization managing for the government under the Accommodations Tax Act must render an accounting of the expenditure of such funds. The Statute does not require the organization to render an accounting of its entire operations, but only that portion of its operations related to the government's purpose.

* Again, this is not unlike a government providing a paving contractor with specific details, standards and locations for new roads to be built. The fact that government money is given to the paving contractor and that it completes the work would hardly expose the contractor to public scrutiny despite the fact that the contractor may take the funds he is given and hire subcontractors, purchase materials, and exercise a significant amount of discretion as to the methods and procedures which may be followed in performing the governmentally directed work.

4. The act goes on to provide that municipalities or county governments may issue bonds or enter other financial obligations to construct facilities for civic activities and the like. No one would argue that contractors who are paid funds to effect such construction would be subject to the Freedom of Information Act.
5. Further, Section 12-35-720(3) provides that an advisory committee must be appointed to make recommendations on the expenditure of revenue generated from the accommodations tax.

THE CHAMBER IS NOT "SUPPORTED" IN WHOLE OR IN PART
BY GOVERNMENT FUNDS

The money the Chamber receives is not a grant, gift, or subsidy. The Chamber is required to perform certain services and would indeed be liable to the municipalities and county governments if it did not do so properly. The Chamber must agree on terms and conditions of expenditure, which terms and conditions include payment for services rendered by the organization.

The Chamber of Commerce receives no profit for its services as is amply illustrated by the financial documents, budgets and accountings contained in the stipulations of the parties. The records further illustrate that the Chamber completely segregates its operating funds from the funds of the Accommodations Tax Act. This segregation--a complete absence of commingling--is the ultimate evidence of the Chamber's lack of reliance on government funds for "support." Conversely, the records stipulated into evidence demonstrate that the Chamber actually supports the governments by using Chamber overhead for

services to governments with a resultant net loss to the Chamber.

Further, in the Attorney General Opinion cited hereinabove, (Op. No. 82-15, supra), it was emphasized that the money received by a hospital was but a portion of its revenue and at best did not cover the actual costs of the services rendered, as is the case now before the Court. From the record of this case, it appears that one hundred percent of Chamber operating revenues are received from the dues paid by its 1,800 members and other privately earned or paid sources.

The Attorney General defines "support" as "to maintain and to 'maintain' generally means to keep up, to supply with what is needed, to furnish with funds or means for maintenance." *Id.*, at page 20. It is clear from the record before the Court that the Chamber is not "supported" by government applying this definition.

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DEVELOPMENT FOUNDATION

In the matter of Chris Weston and Multimedia, Inc.
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and Development Foundation, et al., in the Court of Common Pleas
of Richland County, 88-CP-40-5322, Circuit Court Judge Carol
Connor issued an opinion dated June 26, 1989, holding that the
Defendant Foundation was a public body under the Freedom of
Information Act. However, the decision of the Court is extremely
helpful and supportive of the Chamber's position in this case.

Judge Connor ruled against the Foundation because of its pervasive and, at times, indistinguishable relationship with the University of South Carolina and the fact that it received funds from the University en masse to expend at its own discretion (a situation wholly unlike the extensive budgeting and accounting process the Chamber is required to endure in the instant case).

Most notably, Judge Connor wrote:

"Nor should this Order be read to suggest that the Act would apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms'-length basis. In that situation, there is an exchange of money for identifiable goods or services of equal value, and public oversight (the intent of the Act) is ensured by access to the public bodies' records, which would provide the detail necessary to show how the money was spent." Id., at page 7, emphasis added.

Applying Judge Connor's standards:

1. The Chamber is a private business enterprise which provides goods or services in exchange for funds it receives.
2. The funds it receives, in exchange for goods and services, are received on an "arms'-length basis" as the Chamber must compete with other entities for the funds it receives and must satisfy the local governments, both in the bidding and accounting stages, that the Chamber is effective and acting properly in the performance of its services.
3. Judge Connor's criteria regarding services of equal value appears to be surpassed by the Chamber in that the services it renders may be more valuable than the funds it receives as the Chamber's overhead, which is not supported by any public funds, is used to perform the services requested by the governments.
4. Perhaps, most significant is Judge Connor's acknowledgment that public scrutiny is ensured by access to "the public bodies' records which would provide the detail necessary to show how the money was spent". (Id., at page 7, emphasis added).

The Court is of the opinion that the discretionary spending of funds is effected at the point in time when the County and Municipal Governments decide which budget/bid to accept among all competitors and is verified upon the receipt of an accounting from any selected competitor for such funds. The mere payment of money to the entity selected is contractual in nature and the work performed by the entity subsequent to receiving the funds is a wholly autonomous, independent and government-free activity save the specifications for the use of the funds as previously determined by the local governments.

Finally, Judge Connor's decision was made with clear recognition that the foundation did not perform any service in exchange for its share of funds, a clear distinguishing factor from the case at Bar. *Id.*, at page 4.

THE CHAMBER IS NOT A "PUBLIC BODY" UNDER THE ACT

Section 30-4-20(a) Code of Laws of South Carolina, 1976, defines a public body as follows:

"...any department of the state, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the state, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds..."

Clearly, the Chamber is not a department of the state, a state board, commission, agency or authority. It is not a governmental body, a political subdivision, a county, municipality, township, school district, or special purpose

district. The fact that the Chamber was not created by a provision of the South Carolina constitution, or by a statute, ordinance or resolution of the General Assembly supports this conclusion.

Rather, as to the issue of this case, the Chamber is a contractor performing advertising and promotional services for local governments. Pursuant to the Accommodations Tax Act, SUPRA, the Chamber competes against several entities in a bidding/budgetary process for such work. Local governments select the most qualified or desirable entities. The work to be performed is specified by the local government involved and is not at the Chamber's discretion. The county or municipality thereafter pays the Chamber to perform the predetermined services. Upon completion of the work, the Chamber (or other selected organization) must provide an accounting to the government. This proposal/budget/acceptance/payment/services/accounting process is absolutely contractual in nature. The Chamber receives no gift, grant, subsidy, maintenance or support by this procedure. The local governments and the Chamber conduct an arms' length bidding/acceptance exercise and the Chamber must work in exchange for payment. Should the Chamber fail to perform as agreed upon, it would be liable for damages for breach of contract.

Perhaps the strongest statement supporting the Chamber's position is that contained in Opinion No. 82-15 of the Attorney General of South Carolina dated March 12, 1982. In that

case, the Attorney General was presented with a private hospital corporation which contracted with a county government to provide certain services for the county which services were paid for by public funds, a situation analogous to the case at Bar. The Attorney General found that the hospital was not subject to the Freedom of Information Act holding that:

A private entity, by entering into a contract for services with a public body, does not itself thereby also assume the status of a public body in its stead. The law, as written, encompasses only such bodies which are "supported in whole or in part by public funds or which expend public funds", and it is the opinion of this office that the receipt of specific funds on a contractual basis for services rendered to a public body does not render a private corporation subject to the South Carolina Freedom of Information Act. Id., at page 21.

CONCLUSION

Based upon the foregoing discussion, I hold that the Myrtle Beach Area Chamber of Commerce is not a "public body" as defined by the South Carolina Freedom of Information Act. Therefore, the relief sought by the Plaintiff in its Complaint is denied.

John L. Breeden
Master in Equity

Conway, South Carolina

July __, 1989

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT**

DOMAINSNEWMEDIA.COM, LLC,

**Plaintiff,
vs.**

**HILTON HEAD ISLAND – BLUFFTON
CHAMBER OF COMMERCE,**

Defendant.

**IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT**

CASE NO. 2013-CP-07-0080

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

The Plaintiff hereby submits this memorandum in opposition to the Defendant's motion for summary judgment. The Defendant's motion should be denied.

Summary Judgment Standard

Under South Carolina law, "summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Additionally, it must be shown that further inquiry into the facts of the case is not desirable to clarify the application of the law." Folkens v. Hunt, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986).

"All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Nelson v. Charleston County Parks & Recreation Comm., 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004). If "the parties vehemently dispute the inferences and conclusions to be drawn from the undisputed facts, . . . that simply establishes that summary judgment is not appropriate[.]" Montgomery v. CSX Transp., Inc., 656 S.E.2d 20, 29 (S.C. 2008).

“When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Moreover, since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of a trial on disputed factual issues.” Englert, Inc. v. LeafGuard USA, Inc., 377 S.C. 129, 133-34, 659 S.E.2d 496, 498 (2008). “If triable issues exist, those issues must go to the jury.” Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003).

In 2009, the South Carolina Supreme Court clarified earlier confusion about whether a scintilla of evidence is sufficient to defeat summary judgment. Hancock v. Mid-South Management Co., Inc., 381, S.C. 326, 330, 673 S.E.2d 801, 802-3 (S.C. 2009). In Hancock, the Court held that “in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Id. More than a scintilla is required only in cases requiring heightened burdens of proof or applying federal law. Id. Accordingly, when the ordinary burden of proof is applicable, only a scintilla of evidence is required to withstand summary judgment. Id.

Under Rule 56, SCRPC, “the party seeking summary judgment has the initial responsibility of demonstrating the absence of any genuine issue of material fact.” Baughman v. American Telephone & Telegraph Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545-46 (1991). “The party seeking summary judgment has the burden of clearly establishing by the record properly before the court the absence of a triable issue of fact.” Owens v. Magill, 308 S.C. 556, 562, 419 S.E.2d 786, 790 (1992). “A party who fails to show the absence of genuine issue of material fact is not entitled to summary judgment even though his adversary does not come forward with opposing materials.” Standard Fire v. Marine Contracting, 301 S.C. 418, 421, 392 S.E.2d 460, 462 (1990). It is only “when a motion for summary judgment is made and supported as provided in [Rule 56]”

that the non-movant is required to meet the motion with factual material that shows there is a genuine issue for trial. Rule 56(e), SCRCP (emphasis added).

The Chamber Is a "Public Body" Because It Receives And Spends *En Masse* Public Funds

An organization that receives public funds in a lump sum from a governmental entity will be considered a "public body" for purposes of the South Carolina Freedom of Information Act ("FOIA"), SC Code Ann. §30-4-10, *et. seq.*. A public body is defined as

any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

S.C. Code Ann. §30-4-20(a)(emphasis added). The South Carolina Supreme Court considered the Legislature's definition of a public body as it was applied to a research foundation of the University of South Carolina in Weston v. Carolina Research and Development Foundation, 401 S.E.2d 161, 303 S.C. 398 (S.C. 1990). The Court analyzed several transactions of the Foundation including: a) the Foundation's receipt of funds derived from the sale of land by the University, b) the Foundation's acceptance of grant money from the federal government which the Foundation then oversaw the expenditure of, c) the receipt of lands and cash grants from local

governments by the Foundation, and d) “administrative fees” assessed by the Foundation on the university where the foundation claimed it handled third party research contracts. Weston, 303 S.C. at 401-4. The Court found that each transaction alone would bring the Foundation within FOIA’s definition of a public body, but that when taken together, these transactions led to the “unavoidable conclusion” that the foundation was subject to FOIA. Id. at 403. The Court interpreted §30-4-20(a) to mean that an organization will be subject to FOIA “when a block of public funds is diverted en masse from a public body to a related organization, or when the related organization undertakes the management of the expenditure of public funds.” Id. at 404.

The Defendant does not deny that it receives public funds under the Accommodations Tax Act (“ATAX”), S.C. Code Ann. § 6-1-500 *et seq.* and under a grant from the South Carolina Department of Parks, Recreation, and Tourism (“PRT”). Defendant’s Motion for Summary Judgment at 3, *Domainsnewmedia.com v. Hilton Head Island – Bluffton Chamber of Commerce*, No. 2013-CP-07-0080. In fact, the manner of distribution of these public funds is no different than how the Carolina Research and Development Foundation received part of its funding in that case.¹ The Defendant also does not deny that, as the designated marketing organization (“DMO”) for Hilton Head Island, it also manages the expenditure of public funds. See Defendant’s Motion for Summary Judgment at 6, *Domainsnewmedia.com v. Hilton Head Island – Bluffton Chamber of Commerce*, No. 2013-CP-07-0080 (“The DMO then spends the ATAX funds in accordance with the plan and budget approved by local government.”). The two depositions conducted of Defendant, that of Susan Thomas and of Ray Deal, illustrate the internal policies and procedures for the accounting and shifting of public (both ATAX and PRT) funds between Defendant’s

¹ Approximately every three months the Town of Hilton Head presents Defendant with a “lump sum” of cash, derived from ATAX revenue (Deal Dep. 16:11 – 16:13, Feb. 23, 2015, a copy of all cited excerpts from Ray Deal’s deposition transcript is attached hereto as **Exhibit A**).

accounts so they can pay vendors for services rendered. See e.g. Deal Dep. 43:3 – 45:20, Feb. 23, 2015. It is true that Defendant only receives a large part of its public funding after submitting marketing proposals or grant applications that must be first approved the appropriate public entity. Regardless, Defendant has appropriately conceded the fact that it both receives en masse² public funds and undertakes the management of the expenditure of those funds, making Defendant a public body for purposes of FOIA.

The Chamber Is Not A Contractor Of The Public Entities It Serves

The Defendant argues that despite it receiving en masse public funds and paying those funds out to vendors, it maintains an arms-length relationship with the public entity it serves, making it a contractor, not a public body for purposes of FOIA. The Court in Weston also disregarded the Foundation's argument of form over substance, but in doing so, also provided an clarification to its rule. "As the trial judge correctly noted, this decision does not mean that the FOIA would apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms-length basis." Weston at 404 (accord Disabato v. S.C. Association of School Administrators, 404 S.C. 433, 442, 746 S.E.2d 329, 333 (S.C. 2013)). The Court said their policy behind this clarification, in the situation just described, is that "there is an exchange of money for identifiable goods or services and access to the public body's records would show how the money was." Id.

Unfortunately it does not appear that any reported case since Weston in South Carolina has considered the issue of whether an organization was a contractor instead of being a public body

² "En Masse" and "Lump Sum" appear to be synonymous. "En masse – In a mass; in a large group all at once; all together." Black's Law Dictionary 610 (9th ed. 2009). "Lump sum payment – A payment of a large amount all at once, as opposed to a series of smaller payments over time." Black's Law Dictionary 1244 (9th ed. 2009).

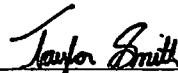
for purposes of FOIA. According to the Black's Law Dictionary, "arms-length³ transaction" is defined as "1. A transaction between two unrelated and unaffiliated parties. 2. A transaction between two parties, however closely related they may be, conducted as if the parties were strangers, so that no conflict of interest arises." Black's at 1635. Under either definition of arms-length transaction it does not appear that Defendant's relationship with either Hilton Head or Bluffton is one of dispassionate differing interests. Before any expenditure budget for an upcoming fiscal year is approved by either town (the arms-length transaction, according to Defendant), South Carolina law provides that the local government receiving ATAX funds must select a nonprofit organization with an "existing, ongoing tourist promotion program" that can be used to "manage and direct the expenditure of" ATAX funds. S.C. Code Ann. §6-4-10(3). Consequently, every year either town approves a proposed expenditure budget, they are choosing to allow their designated marketing organization to fulfill their statutory requirements. This budget approval is certainly not a transaction between unrelated or unaffiliated parties and does not appear to be one where both parties have roughly equal bargaining power – as there can only be one designated marketing organization for a town, city or county, and that is decided before these purported arms-length transactions take place. *Id.* Furthermore, it is difficult to understand how either Hilton Head Island or Bluffton can approach every annual budget approval with their DMO as if they were strangers, especially in light of their previous course of dealing and aforementioned statutory duties.

³ "Arms-length" is defined as "[o]f or relating to dealings between two parties who are not related or not on close terms and who are presumed to have roughly equal bargaining power; not involving a confidential relationship." Black's at 123.

CONCLUSION

The Defendant is not entitled to summary judgment in its favor in this case. The record has established that Defendant receives public funds en masse from the towns of Hilton Head Island and Bluffton, as well as from the County of Beaufort and the State of South Carolina and then undertakes the expenditure of those public funds. Accordingly, there is no issue of material fact so the Court can decide Defendant is a public body for purposes of FOIA, as a matter of law. The Defendant's motion for summary judgment should be denied and Plaintiff's motion for summary judgment should be granted.

Respectfully submitted,



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ATTORNEY FOR DEFENDANT

Columbia, South Carolina
October 30, 2015

- 1 LEDDY - DEAL (DIRECT EXAMINATION)
- 2 quarterly infusions --
- 3 A That's correct.
- 4 Q -- from these various municipalities?
- 5 A Correct.
- 6 Q Every three months you'll get wire
- 7 transfers in?
- 8 A Wire transfers or checks.
- 9 Q Or checks.
- 10 A Depends on the municipality.
- 11 Q Okay. But every three months they
- 12 bring -- they give you a lump sum of cash?
- 13 A Correct.
- 14 Q And that's based on a marketing plan
- 15 that was submitted and approved and also the
- 16 revenues that were actually realized by the
- 17 State?
- 18 A That's correct.
- 19 Q So, regardless of whatever they said
- 20 they would be willing to give you, that number
- 21 might go down if tax revenues are off?
- 22 A That's correct.
- 23 Q Okay. And do they ever pay you more if
- 24 there's more taxes?
- 25 A Absolutely.

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1 LEDDY - DEAL (DIRECT EXAMINATION)

2 plan?

3 A Well, if it's a supplemental grant and
4 it's a very specific, you know, \$150,000 will be
5 paid for golf and then that -- that is what it
6 is but if there's a -- if there's another
7 program that say isn't doing as well as we had
8 expected then we might, you know, cut that short
9 a little bit in order to move funds over to a
10 different program. You know, the environment
11 changes, the world changes and if we have to
12 adapt to that during the year.

13 Q Okay. So just to be clear, at any
14 given moment your balance in your primary
15 account is not broken down into how much money
16 came from each particular source?

17 A No.

18 Q And but at the end of the year when you
19 created this table that's on page 17 of
20 Exhibit 4 --

21 A Uh-huh.

22 Q -- the amount of money that was
23 attributed to total revenues from the Town of
24 Hilton Head is 1.675 million --

25 A Yes.

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1 LEDDY - DEAL (DIRECT EXAMINATION)

2 Q -- and change?

3 A Uh-huh.

4 Q Is that right?

5 A That's correct.

6 Q Okay. And then the total expenses, at
7 the bottom of that page, equal exactly the same
8 dollar figure?

9 A Correct.

10 Q And all of those expenses are broken
11 down into many different line items; including
12 leisure or the recovery plan --

13 A Uh-huh.

14 Q -- or meetings and groups are broken
15 down into a very particular dollar figure of
16 \$148,567, right?

17 A That's correct.

18 Q How do you -- can you explain to me, if
19 you don't know at any given moment where each
20 one of your dollars in your account came from,
21 how do you nail it down to the exact same amount
22 of money that came from Town of Hilton Head from
23 three different -- four different funding
24 sources and then attribute that exact same
25 dollar figure to all of these different line

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1 LEDDY - DEAL (DIRECT EXAMINATION)

2 items, how does that happen?

3 A Because a program -- a program will
4 have an expense code in our Peachtree accounting
5 software and so whether it's trade media or
6 sponsorships or digital co-op or there's
7 multiple -- you know, there's a multitude of
8 programs.

9 When that expense -- when that invoice
10 comes through the Chamber it is looked at by,
11 you know, the person who -- always by Susan
12 Thomas on the VCB side but the person who
13 actually approved the expense, by Susan, by my
14 assistant, by me and by Mr. Miles, so we make
15 sure that that specific expense if it's for a
16 trade show ends up in the trade show line item
17 and then at the end of the year we add up all
18 the expenses that went into the trade show and
19 that's how the Town of Hilton Head gets charged
20 with that trade show.

21 Q Okay. So, you could have a trade
22 show --

23 A Uh-huh.

24 Q -- and that would be coded as a meeting
25 and since it was a trade show where we talked

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)
2015 NOV -2 PM 4:02
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT
DomainsNewMedia.com, LLC,) Civil Action No. 2013-CP-07-00080

) Plaintiff,)

COPY vs.

) Hilton Head Island-Bluffton Chamber of)
Commerce,)

MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

) Defendant.)
)

Defendant Hilton Head Island-Bluffton Chamber of Commerce ("Chamber" or "Defendant") submits this memorandum in opposition to Plaintiff's Motion for Summary Judgment. DomainsNewMedia.com, LLC ("Plaintiff") employs only a superficial analysis of the legal issues relating to the applicability of the Freedom of Information Act ("FOIA") to private entities, and ignores authorities that provide the applicable analytical framework for the issue presented in this case.

First, Plaintiff misconstrues the import of *Weston v. Carolina Research & Development Foundation*, 303 S.C. 398, 401 S.E.2d 161 (1991) in several respects. *Weston* does not support the proposition that the Chamber is a "public body" for purposes of the Freedom of Information Act ("FOIA"). Rather, *Weston* expressly declares that contractors who provide goods and services to public bodies in exchange for payment are not "public bodies" under FOIA. *Weston*, 303 S.C. at 404, 401 S.E.2d at 165. The Chamber is this type of contractor described by *Weston*, and therefore, not subject to FOIA. Second, Plaintiff erroneously contends that because the Chamber expends public funds, it is subject to FOIA. It is the local governments, however, and not the

Chamber, that exercise ultimate discretion over how the public funds are spent. The Chamber is therefore not spending public funds for purposes of FOIA. Third, Plaintiff ignores the rule announced in *Weston* that if the records of the local government reflect how the funds were spent, there is no basis to apply FOIA to the private entity. In sum, the undisputed facts and legal conclusions therefrom establish that the Chamber is not a public body as a matter of law. Therefore, this Court should deny Plaintiff's Motion for Summary Judgment and grant Defendant's Motion for Summary Judgment.

ARGUMENT

I. The Chamber Provides Goods and Services in Exchange for Payment from the Local Governments.

The Chamber supplies tourism and marketing services to the local governments. In return, the Chamber receives payment for these services from the local governments. *Weston* specifically holds that this arrangement does not subject the private business to FOIA. *Weston*, 303 S.C. at 404, 401 S.E.2d at 165 (stating "this decision does not mean that the FOIA would apply to business enterprises that receive payment from public bodies in return for supplying specific goods or services on an arms length basis."). The Chamber is no different than a law firm that provides legal services to the State and receives payment for its advice. This conclusion is on all fours with the decision of the circuit court in *Sun Publishing Co., Inc. v. The Board of Directors of the Myrtle Beach Area Chamber of Commerce*, as cited in and attached to Defendant's Motion for Summary Judgment.

Local governments are not in the business of tourism and marketing. Consequently, they need to work with a designated marketing organization ("DMO"), like the Chamber, to attract visitors to their towns. The General Assembly recognized this need when it created the Accommodations Tax Act ("ATAX") that requires local governments to select a DMO that has

“an existing, ongoing tourist promotion program.” *See* S.C. Code Ann. § 6-4-10(3). If the local governments were in the tourism business, there would be no need for a DMO “to develop and increase tourist attendance” in the various localities. *See id.* Moreover, the General Assembly included reporting requirements within ATAX. The selected DMO must submit a budget of planned expenditures to the local government for approval, and at the end of the fiscal year, it must submit an accounting to the local government. *Id.* If the General Assembly intended for DMOs to be subject to FOIA, the “built in” transparency requirements in ATAX make little sense.

Moreover, Plaintiff overlooks and misconstrues the express language in *Weston* that is the foundation of its argument. *Weston*’s holding that the diversion of money “en masse” may trigger the applicability of FOIA is expressly limited to situations in which the private organization that receives the money is related to the public body. *Weston*, 303 S.C. at 404, 401 S.E.2d at 165 (“However, when a block of public funds is diverted *en masse* from a public body *to a related organization*, or when *the related organization* undertakes the management of the expenditure of public funds, the only way that the public can determine with specificity how those funds were spent is through access to the records and affairs of the organization receiving and spending the funds.”(emphasis added)). In *Weston*, the Carolina Research and Development Foundation was very much a creature of and was related to the University of South Carolina. *Weston*, 303 S.C. at 400, 401 S.E.2d at 162 (“The Foundation operates exclusively for the benefit of the University of South Carolina.”). In the present case, the Chamber is completely separate and independent from the local governments and the South Carolina Department of Parks, Recreation, and Tourism (“PRT”). The portion of *Weston* on which Plaintiff relies is therefore not even facially applicable to the present case.

In sum, ATAX creates a structure in which DMOs provide tourism and advertising services to local governments in exchange for payment. DMOs submit budgets for approval by the local government, and then they report back to the local governments as to how the funds were spent. This process does not transform an unrelated private non-profit organization into a public body that is subject to FOIA. If it did, all businesses that receive any money from the government (both for profit and non-profits) would have to open their books and meetings to any citizen. Such a result is not what the General Assembly intended with either FOIA or ATAX.

II. Spending Authority Lies with the Local Governments.

The Chamber does not “expend” public funds as contemplated by FOIA. The Supreme Court has already determined that the local governments themselves exercise discretion over how ATAX funds are spent. In *Thompson v. County of Horry*, 294 S.C. 81, 362 S.E.2d 646 (1987), community associations sued Horry County, claiming that ATAX funds were not being spent “primarily in the geographical area of the county in which the proceeds of the tax were collected.” *Thompson*, 294 S.C. at 83, 362 S.E.2d at 647-48. The Supreme Court disagreed, and as a part of its ruling against the community associations, held that the county had reasonably exercised its spending discretion.

We do not mean to suggest that a county has unbridled discretion in spending [ATAX] funds. Clearly, it must follow the statutory guidelines which govern such expenditures. However, we are satisfied that in this case the County exercised its discretion in good faith and that its [ATAX] fund expenditures substantially complied with the statute.

Id. at 85, 362 S.E.2d at 649.

Similarly, the Attorney General’s Office has also concluded that it is the local governments that exercise discretion over ATAX funds. In its recent September 3, 2015 opinion, the Attorney General’s Office addressed whether the Tourism Expenditure Review Committee must oversee

the expenditures of ATAX funds that are reserved for a special fund to promote tourism ("30% Fund") with the help of a DMO. (A copy of the Attorney General's Opinion, dated September 3, 2015 is attached hereto as Exhibit A.) In the Opinion, the Attorney General declares that it is the local government that is spending the ATAX funds. After listing the three entities that have "review over the *spending* of revenue from the Local Accommodations Tax by *local governments*["], the Attorney General continues by concluding "[a]ll three levels are administrative checks on *the local government's spending of the money*." (Attorney General's Opinion at 5 (emphasis added).) The Opinion further illustrates the control by the local government over the ATAX funds by detailing the expenditure review process. If there is any question about the expenditure of funds, the local government, not the DMO, must explain the expenditure to the Tourism Expenditure Review Committee. (Opinion at 6 (citing S.C. Code Ann. § 6-4-35(B).) Similarly, the local government, not the DMO, has to submit reports every year to the South Carolina Accommodations Tax Oversight Committee, detailing how the ATAX funds were spent. S.C. Code Ann. § 6-4-25(D). The statutory structure of ATAX reveals that the General Assembly places spending authority and discretion with the local governments, not the DMOs. Because the Chamber does not expend public money, it is not subject to FOIA.

III. The Local Governments Have Records Reflecting How the Funds are Spent.

If a citizen has any concerns over how the funds are spent, he can go to the local government and review the annual accounting. The primary concern of the *Weston* Court was whether the public could obtain information about how public money was spent through the records of the public body. *Weston*, 303 S.C. at 404, 401 S.E.2d at 165 (holding that FOIA may apply if funds are diverted to a related organization and "*the only way that the public can determine with specificity how those funds were spent is through access to the records and*

affairs of the organization receiving and spending the funds." (emphasis added)). This situation, however, is not present in this case. Here, the citizen can go to the local government, review its records, and determine how the funds were spent. Additionally, the citizen can attend public meetings in front of the ATAX committee to discuss the proposed budget and the marketing plan. This is a transparent process. There is no need to open the Chamber – a private enterprise – to non-members when the pertinent information is available through the local government. The local government, not the Chamber, is the public body. Therefore, the predicate to the applicability of FOIA announced by the *Weston* Court is not present in this case, and there is no basis to apply FOIA to the Chamber.

CONCLUSION

Plaintiff's superficial analysis of FOIA misconstrues and/or overlooks the established law of South Carolina that entitles the Chamber to judgment as matter of law. It is apparent that the Chamber is a contractor who is providing tourism services in exchange for payment. The Chamber is not related to a public body, and is not expending any public funds for purposes of FOIA. Moreover, the Chamber is reporting (1) how the ATAX funds may be used and then (2) how the ATAX funds were, in fact, used. Therefore, a citizen can go to the local government to determine how the public funds were spent. The Chamber is not a public body, does not expend public funds, and fully accounts for all the money that it receives. Therefore, this Court should deny Plaintiff's Motion for Summary Judgment and grant Defendant's Motion for Summary Judgment.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, LLC

By:



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**Attorneys for Hilton Head Island-Bluffton Chamber of
Commerce**

Columbia, South Carolina

October 30, 2015

ALAN WILSON
ATTORNEY GENERAL



September 3, 2015



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

Dear Chairman Riggs:

Attorney General Alan Wilson has referred your letter dated May 14, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

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

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

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

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

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

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

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

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

Law/Analysis:

By way of background, South Carolina law imposes a statewide sales tax on accommodations for "transients" equal to seven percent on "the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration." S.C. Code Ann. § 12-36-920 (1976 Code, as amended). South Carolina law also authorizes a local governing body (meaning a county or municipality pursuant to South Carolina Code § 6-1-510(2)) to impose by ordinance a "Local Accommodations Tax" up to 3% on accommodations. S.C. Code Ann. § 6-1-520.¹ The Local Accommodations Tax is levied on up to 3% of the "gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in Section 12-36-920(A) and which is imposed on every person engaged or continuing within the jurisdiction of the imposing local governmental body in the business of furnishing accommodations to transients for consideration." S.C. Code Ann. §§ 6-1-510(1); 6-1-520. The local governing body must transfer all of the revenue from the Local Accommodations Tax (along with interest) into a separate fund and must allocate the revenue "exclusively" for tourism-related needs, as specified by the statute. S.C. Code Ann. §§ 6-1-520(B), 6-1-530. Two percent of the seven percent statewide sales tax on accommodations must be given by the S.C. Department of Revenue to the political subdivisions of the State as Local Accommodations Tax revenue to be spent as Local Accommodation Tax revenue as specified by Chapter 4 of Title 6. S.C. Code Ann. §§ 12-36-2630(3), 12-2-10.

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

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

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

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

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

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

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

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

S.C. Code Ann. §§ 6-4-10 (1976 Code, as amended). This Office usually defers questions regarding administration of a law to the applicable administrative agency. This Office has previously stated:

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

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

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

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

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

Thus, let us begin our review. As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory

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

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

construction is the intent of the legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)). The Local Accommodation Tax statutes provide three levels of administrative review over the spending of revenue from the Local Accommodation Tax by local governments receiving Local Accommodation Tax funds. The three levels of review are:

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

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

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

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

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

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

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

1991 S.C. Acts 147 (eff. July 1, 1991). As stated above, South Carolina Code § 6-4-30 was repealed in 2003.³ 2003 S.C. Acts No. 96 § 3.MM (eff. June 18, 2003). We did not find any legislative background to help us concerning the Oversight Committee other than it serves as another check on the spending of Local Accommodation Tax funds.

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

- (B)(1)(a) The Tourism Expenditure Review Committee shall serve as the oversight authority on all questionable tourism-related expenditures and to that end, all reports filed pursuant to Section 6-4-25(D)(3) must be forwarded to the committee for review to determine if they are in compliance with this chapter. The municipality or county must be notified if an expenditure is questioned, and the committee may consider any further supporting information the municipality or county may provide. If the committee finds an expenditure to be in noncompliance, it shall certify the noncompliance to the State Treasurer, who shall withhold the amount of the expenditure found in noncompliance from subsequent distributions in accommodations tax revenue otherwise due the municipality or county. An appeal from an action of the committee under this subitem lies with the Administrative Law Judge Division.
- (b) If the committee determines that a municipality or county has failed to file the reports required pursuant to Section 6-4-25(D)(3), it may impose a fee of five hundred dollars a month or part of a month for each month the report is

³ Please see Footnote # 3.

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

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

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

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

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

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

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

If [TERC] finds an expenditure to be in noncompliance, it *shall* certify the noncompliance to the State Treasurer, who shall withhold the amount of the expenditure found in noncompliance from subsequent distributions in accommodations tax revenue otherwise due the municipality or county. An appeal from an action of [TERC] under this subitem lies with the Administrative Law Judge Division.

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

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

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

In Thompson v. Horry County, 294 S.C. 81, 362 S.E.2d 646 (1987)], the Court concluded state Accommodations Tax funds must be used for "tourism-related" expenditures and used primarily in the area of the county where the tax is collected where practical. *Id.* Let us examine [] how the South Carolina Accommodations Tax defines tourism-related expenditures in its statute. It includes in "tourism-related expenditures" the following:

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

S.C. Code § 6-4-10(4)(b) (1976 Code, as amended). The statute also defines "travel" and "tourism" as "the action and activities of people taking trips outside their home communities for any purpose, except daily commuting to and from work." S.C. Code § 6-4-5(4) (1976 Code, as amended).

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

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

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

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

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

City of Myrtle Beach at 8.

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

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

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

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

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

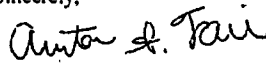
Conclusion: Based on all of the above reasons, this Office believes a court will determine while the Tourism Expenditure Review Committee does not have exclusive authority, they do have an obligation to review expenditures of Local Accommodations Tax funds, including the 30% funds (S.C. Code Ann. § 6-4-10(3)).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

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

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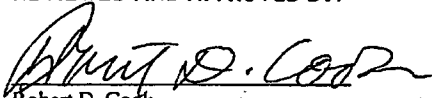
determinations. S.C. Code § 15-53-20. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

DOMAINSNEWMEDIA.COM, LLC,

Plaintiff,
vs.

HILTON HEAD ISLAND – BLUFFTON
CHAMBER OF COMMERCE,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-07-0080

PLAINTIFF'S REPLY
MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

The Plaintiff hereby submits this reply memorandum in opposition to the Defendant's motion for summary judgment. The Defendant's motion should be denied.

Summary Judgment Standard

Under South Carolina law, "summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Additionally, it must be shown that further inquiry into the facts of the case is not desirable to clarify the application of the law." Folkens v. Hunt, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986).

Here summary judgment should be granted in favor of Plaintiff, and not Defendant, but summary judgment should not be denied as to both parties. The material facts in this matter are undisputed: the Defendant receives public monies and then negotiates payment of that money to vendors for goods and services. There are no material factual inferences or conclusions to be drawn from these undisputed facts, instead there is a determination to be made regarding the legal implication of these facts. For instance (and by way of example), does Defendant's payment to

vendors for these goods and services amount to Defendant "expending public funds," pursuant to S.C. Code Ann. §30-4-20(a)?

The Chamber Does Not Supply Goods and Services in Exchange for Payment

Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment accurately and succinctly depicts a facet of the interactions between it and the public entities it serves: "DMOs submit budgets for approval by the local government, and then they report back to the local governments as to how the funds were spent." *Id.* at 4. It is axiomatic that Defendant must receive these funds from the local government before they are spent, as a report of such expenditures is due back to the public entity before the next lump sum payment of public money to Defendant is provided. Consequently, Defendant's earlier attempt at characterizing this relationship cannot also be true: "The Chamber supplies tourism and marketing services to the local governments. In return, the Chamber receives payment for these services from the local governments." *Id.* at 2. Defendant receives public monies then spends those public monies with vendors, they are not reimbursed by the public entity. *See* Deal Dep. 9:1-10:9, Feb. 23, 2015; Thomas Dep. 17:17-19:13.

It is clear that a designated marketing organization's ("DMO") purpose is to work for the benefit of its attached public entity. By accepting public monies and then spending that money in accordance with agreed-upon goals, a DMO fulfills its purpose. The Defendant is incorrect though, that this is akin to a law firm working on behalf of a public entity. While a law firm may accept money to then provide legal advice pursuant to an agreed-upon goal (for example: to provide a legal opinion on whether the public body must retain certain records containing confidential taxpayer information), the law firm will not be handed a budget to then contract with hundreds (if not thousands) of vendors over the course of representation. If asked to do so, the value of the law

firm's representation would not be judged by the competency of its provided legal work, but instead the aggregate value of the lawyer's successful managing of the agreed-upon goal as it relates to what was produced by the hundreds of vendors who presumably supplied both goods and services toward the agreed-upon end. Furthermore, it may be ethically impermissible for a lawyer to allow a variance in the expenditure of trust money without first conferring with the client. See Thomas Dep. 20:5-21:4 ("... If it's under \$10,000, no, typically we would not go back and have any consult with – within the, you know, scope of our overall budget, that's well less than one percent.") The Defendant is right that a typical public entity – lawyer relationship would likely be outside the scope of the South Carolina Freedom of Information Act ("FOIA"), SC Code Ann. §30-4-10, *et. seq.*, but the Defendant is not like a law firm.

The Defendant is incorrect in contending that it is not a "related organization" as identified in the South Carolina Supreme Court's holding in Weston v. Carolina Research and Development Foundation, 401 S.E.2d 161, 303 S.C. 398 (S.C. 1990). In that case the Court held that "when a block of public funds is diverted en masse from a public body to a related organization, or when the related organization undertakes the management of the expenditure of public funds, the only way that the public can determine with specificity how those funds were spent is through access to the records and affairs of the organization receiving and spending the funds." Id. at 404. Later in the opinion, the Court observed "[t]he Foundation operates exclusively for the benefit of the University of South Carolina." Id. at 400. The Defendant then contends that is not a related organization because it does not operate exclusively for the benefit of the public entities it serves and is actually completely separate and independent from the local governments, this contention is incorrect on two grounds. First, the Defendant admits that it is the designated marketing organization for the Town of Hilton Head, the Town of Bluffton, and Beaufort County. These

public entities have no other designated marketing organization and have had a statutorily defined relationship with Defendant for 32, 15, and 7 years, respectively. See Thomas Dep. 12:16-12:20. Second, while the Defendant (Hilton Head Island-Bluffton Chamber of Commerce) may not be working exclusively for the benefit of its public entities, the Visitor and Convention Bureau, a division of Defendant, does work exclusively for the benefit of those public entities. The only reason this lawsuit is against Defendant, and not the Visitor and Convention Bureau, is because the Bureau is not a separate jural personality.

The Chamber Should Be Subject to FOIA

Both South Carolina law and public policy support the Defendant being subject to FOIA. The Defendant first says that it is not a public body, subject to FOIA, because the public entities it represents undertake the management of public funds, not Defendant. It is undisputed that Defendant must submit a budget¹ of planned expenditures to the local government for approval, before the public money is spent. In Weston, the Court said “when a block of public funds is diverted en masse from a public body to a related organization, or when the related organization **undertakes the management of the expenditure of public funds**” the organization will be a public body for purposes of FOIA. Weston at 404 (emphasis added). In either case, an organization will be subject to FOIA. Here, Defendant does not appear to claim it does not receive en masse public funds (only that it is not a related organization), but it does claim that it doesn’t undertake the management of the expenditure² of those funds, which is in direct contradiction with large

¹ Budget is defined as either “1. A statement of an organization’s estimated revenues and expenses for specific period, usu. a year. 2. A sum of money allocated to a particular purpose.” Black’s Law Dictionary 221 (9th ed. 2009).

² Expenditure is defined as either “1. The act or process of paying out; disbursement. 2. A sum paid out.” Black’s Law Dictionary 656 (9th ed. 2009).

swaths of the depositions of its employees, Ray Deal and Susan Thomas. Ray Deal spoke with authority on how those expenditures are accounted and Susan Thomas spoke with authority on who the vendors typically are and how their selection relates to the benefit provided to Defendant's public entities. In essence, the public entities transfer the public monies (collected through accommodations tax ("A-Tax") revenues and grants) to Defendant. The Defendant has already agreed to a budget with the public entities, as an estimate of how the money will be spent, but it is Defendant's responsibility to contract with and negotiate payment the vendors. The Defendant manages the expenditure of public funds, provided by their related public entity.

Defendant's reliance on Thompson v. County of Horry, 294 S.C. 81, 362 S.E.2d 646 (Ct. App. 1987), is misplaced. The Appeals Court was asked to determine whether the A-Tax Funds being spent by Horry County were "primarily in the geographical area of the county in which the proceeds of the tax were collected." Thompson at 647-48. This case did not determine whether it was the County or its DMO spending public funds. In several places the Court of Appeals refers to the County's decision to expend public funds in a certain manner (or in a certain place). Here, the public entities whom Defendant supports do provide guidance suggesting where money should be spent (that appears to be what the aforementioned budget provides) but it is Defendant who actually pays vendors – managing the expenditure of those funds.

The Defendant also cites the September 3, 2015 opinion of the South Carolina Attorney General wherein his office addressed whether the Tourism Expenditure Review Committee ("TERC") must oversee the DMOs' expenditure of A-Tax funds that are reserved for a special fund to promote tourism ("30% Fund") with the help of a DMO. The Attorney General said that although a court will likely determine TERC does not have exclusive authority to review 30% Fund A-Tax expenditures, they do have an obligation to review them. (Attorney General's Opinion

at 10). Regardless of what implications can be drawn from the Attorney General's reminder that any question about the expenditure of funds by TERC should be directed to the public entity (local government) and not the DMO, the Attorney General is not saying it is local government that expending public funds. Actually, it appears the Attorney General is saying the opposite in his opinion's conclusion: "Moreover, South Carolina Code Ann. § 6-4-10(4) (the 65% funds) appears to leave the allocations in the hands of the local government; whereas South Carolina Code Ann. § 6-4-10(3) (the 30% funds) authorizes local government to allocate the funds to **private organizations who then expend the funds.**" (Attorney General's Opinion at 10)(emphasis added).

Finally, public policy and the purpose of the South Carolina Freedom of Information Act support the Defendant being subject to it. The Defendant contends that "[i]f a citizen has any concerns over how public funds are spent, he can go to the local government and review the annual accounting." Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment at 5. While this contention is technically true, it does not aid citizens in the same manner as traditional FOIA compliance does with other public bodies. FOIA provides the right for a person to inspect the records and attend the meetings of a public body. S.C. Code Ann. § 30-4-30 and S.C. Code Ann. § 30-4-60. If the person finds the public body has violated FOIA, the person can then bring an action to enforce its provisions, which includes the ability to seek an injunction and an award of attorney's fees. See S.C. Code Ann. § 30-4-100. The only time restraint is that such an action must be commenced within "one year following the date an alleged violation occurs or one year after a public vote in public session, whichever comes later." Id. Presently, it appears the only time a hypothetical violation will occur is when either the local A-Tax Committee (or public entity) approves proposed expenditures for the next year (the budget) or when the money is actually spent

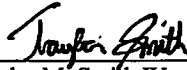
and thus revealed at the year-end accounting. If the A-Tax Committee³ or public entity committed the violation in recommending the expenditure to Defendant, then there would be a year for a person to bring an action against the public entity. But if the violation occurred because Defendant did not spend the money in accordance with the public entity's wishes, then a problem could arise. Because the final accounting is the only opportunity for a citizen to learn about his designated marketing organization's actual spending of public funds, he may have a matter of days or weeks to contemplate filing an action, especially if the expenditure (the violation) occurred early in the reporting period several months prior. The General Assembly could not have intended for citizens to have as little as a few days to understand an accounting, hire a lawyer, and then bring a lawsuit to remedy a violation of FOIA. In either context, an injunction would be impossible as the irreparable harm, a necessary element of injunction, would either be too conjectural in the budget context (the expenditure hasn't occurred yet, so only the vote in favor of the expense could be attacked) or the irreparable harm would have already occurred in the improper expenditure context.

CONCLUSION

The Defendant is not entitled to summary judgment in its favor in this case. The record has established that Defendant receives public funds en masse from the towns of Hilton Head Island and Bluffton, as well as from the County of Beaufort and the State of South Carolina and then undertakes the expenditure of those public funds. Accordingly, there is no issue of material fact so the Court can decide Defendant is a public body for purposes of FOIA, as a matter of law. The Defendant's motion for summary judgment should be denied and Plaintiff's motion for summary judgment should be granted.

³ The undersigned is presently unaware of whether or not such a committee is a "public body" for FOIA purposes.

Respectfully submitted,



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ATTORNEY FOR DEFENDANT

Columbia, South Carolina
November 16, 2015

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEaufort)
JERRY ANN ROSENEAU)
BEaufort COUNTY, S.C.)
DomainsNewMedia.com, LLC) Civil Action No. 2013-CP-07-00080
Plaintiff,)
vs.) **REPLY TO PLAINTIFF'S**
Hilton Head Island-Bluffton Chamber of) **MEMORANDUM IN OPPOSITION TO**
Commerce,) **DEFENDANT'S MOTION FOR**
Defendant.) **SUMMARY JUDGMENT**

Defendant Hilton Head Island-Bluffton Chamber of Commerce ("Chamber" or "Defendant") submits this memorandum in reply to Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment. Although Plaintiff DomainsNewMedia.com, LLC ("Plaintiff") agrees that *Weston v. Carolina Research & Development Foundation*, 303 S.C. 398, 401 S.E.2d 161 (1991) is the controlling authority for the present dispute, it overlooks its most important holding: private entities that supply goods and services in exchange for payment are not subject to the Freedom of Information Act ("FOIA"). *Weston*, 303 S.C. at 404, 401 S.E.2d at 165. The Chamber falls squarely within category. Moreover, Plaintiff fails to address the legal rationale for subjecting certain private entities to FOIA, which is the public's lack of access to records that reveal how public funds were spent. *See id.* The Chamber, as a DMO, presents annually both its proposed budget and an accounting of how the funds were spent. There is therefore no reason to subject the Chamber to FOIA. Consequently, this Court should grant Defendant's Motion for Summary Judgment and deny Plaintiff's Motion for Summary Judgment.

ARGUMENT

I. The Chamber Is Not Akin to the Foundation in *Weston*.

The Chamber and the Carolina Research and Development Foundation ("Foundation") are dissimilar. First, the Chamber does not exist solely for the benefit of the local governments, unlike the Foundation. As found by the court in *Weston*, "[t]he Foundation operates exclusively for the benefit of the University of South Carolina." *Weston*, 303 S.C. at 400, 401 S.E.2d at 162. By contrast, the Chamber is a private, non-profit corporation that is separate and independent from any local government. The Chamber's purpose is "to advance the common interests of its membership, stimulate the expanding regional economy, and enhance the quality of life for all." (See Aff. of William G. Miles ¶ 2, attached as Exhibit A to Defendant's Motion for Summary Judgment.) The Chamber does not operate exclusively for any local government, and is not simply a creature of a public body.

Second, it is not a "related organization" of the local governments. In each of the four transactions described in *Weston*, the University and the Foundation were inexorably intertwined. For example, the University's General Counsel informed the federal government (with respect to a federal grant) that "the University was 'acting through' the Foundation. . . ." *Id.* at 401, 401 S.E.2d at 163. In the present case, the Chamber uses its own professional judgment to provide tourism services to the local governments. In exchange for these professional services, the Chamber receives payment. It is not related in any way to the local governments.

Third, the Chamber submits records to the local governments that reflect the proposed budget and how funds were spent. The Foundation submitted no records. Therefore, access to the Foundation's records was necessary to see how the public money was spent. Here, a citizen can go directly to the public body if he has any questions about the expenditure of funds. The *Weston*

Court's concern about access to records of expenditures is not present here. Consequently, there is no reason to subject the Chamber to FOIA.

II. The Chamber Supplies Tourism Services on an Arm's Length Basis to the Local Governments.

The Chamber provides tourism services to the local governments and the PRT in exchange for payment. Plaintiff tries to distinguish the present case from *Weston* by asserting that the relationship between the Chamber and the local government is not arm's length.

Plaintiff first argues that the relationship is somehow tainted because the local governments are "choosing to allow their designated marketing organization to fulfill their statutory requirements," and therefore, the resulting transactions are somehow not on an arm's length basis. (See Pl.'s Mem. in Opp'n to Def.'s Mot for Summ. J. 6.) There is nothing in the record that establishes or even suggests that the relationship between the Chamber and the local government is anything but arm's length. In fact, the record is to the contrary. For example, section 6-4-10(3) of the South Carolina Code provides that the local government may select more than one DMO, which itself creates a non-exclusive and competitive relationship that by its very nature is arm's length. S.C. Code Ann. § 6-4-10(3) (providing the local government "shall select *one or more organizations* . . . which has an existing, ongoing tourism promotion program." (Emphasis added)). Moreover the local governments may select any organization "which has an existing, ongoing tourist promotion program," and there is therefore no guarantee that the Chamber will be selected at all. See *id.* There is nothing to suggest that there is unequal bargaining power between the Chamber and the local governments or that the Chamber has any undue influence over the local governments. Plaintiff's unproven assertion to the contrary is unfounded.

Next, Plaintiff contends that because the Chamber and the local governments have worked together in the past and are not strangers, it is hard to believe that they are engaging in arm's length

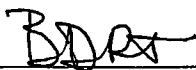
negotiations. (Pl.'s Mem. in Opp'n to Def.'s Mot for Summ. J. 6.) Again, there is no evidence to support this argument, nor is it even logical. The fact that the same parties may regularly enter into recurring transactions does not taint the transactions themselves or mean that each transaction is not negotiated at arm's length. Otherwise, many everyday transactions between persons and entities with a continuing relationship could be unnecessarily called into question. There is no reason to question the good faith or propriety of law firms who regularly represent the same client, customers who routinely order from the same supplier, manufacturers who sell their products to the same customers, or borrowers who deal with the same lender, or to subject those transactions to any higher scrutiny because they are recurring rather than isolated. Familiarity does not preclude an arm's-length relationship. Plaintiff's efforts to distinguish *Weston* fail.

CONCLUSION

Weston acknowledges that private entities that provide goods and services in exchange for payment on an arm's length basis are not subject to FOIA. *Weston*, 303 S.C. at 404, 401 S.E.2d at 165. This is true because "there is an exchange of money for identifiable goods or services and access to the public body's records would show how the money was spent." *Id.* Here, the Chamber is providing tourism services in exchange for money, and access to the local government's records show how the money was spent. The Chamber is not a related organization of the local governments, and although it receives sums of money from the local governments, it accounts for the funds spent in its annual accounting to the local governments. It is not a public body. The local government is. This Court should grant Defendant's Motion for Summary Judgment and deny Plaintiff's Motion for Summary Judgment.

Respectfully submitted,

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**Attorneys for Hilton Head Island-Bluffton Chamber of
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Columbia, South Carolina

November 16, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

RECEIVED

MAR 03 2016

SC Court of Appeals

Case No.: 2013-CP-07-0080

Appellate Case No.:

DomainsNewMedia.com, LLC,

Respondent,

v.

Hilton Head Island-Bluffton Chamber of Commerce,

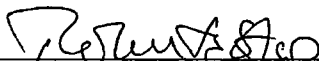
Appellant.

NOTICE OF APPEAL

Hilton Head Island-Bluffton Chamber of Commerce appeals the Order of the Honorable Michael G. Nettles dated and filed February 22, 2016, granting summary judgment for Plaintiff and denying summary judgment for Defendant. Appellant received written notice of the entry of the final order on February 25, 2016. A copy of the Order is attached hereto.

[Signature page follows]

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March 3, 2016

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See pp. 1 - 13 of Record
for Order on Appeal

State of South Carolina) Court of Common Pleas
County of Beaufort) 14th Judicial Circuit

DomainsNewMedia.com, LLC,) Transcript of Record

Plaintiff,) 2013-CP-07-00080

V.)

Hilton Head Island-Bluffton)

Chamber of Commerce,)

Defendant.)

January 27, 2016

Beaufort, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Presiding Judge

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

Taylor Meriwether Smith, IV, Esquire

Attorney for the Plaintiff

Robert E. Stepp, Esquire

Attorney for the Defendant

SHARON L. VIZER

CIRCUIT COURT REPORTER

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****NO EXHIBITS WERE INTRODUCED****

1 Wednesday, January 27, 2016

2 THE COURT: The first case is civil action
3 2013-CP-07-0080, DomainsNewMedia.com, LLC vs. Hilton Head
4 Island-Bluffton Chamber of Commerce. I'll be glad to
5 hear from the moving party.

6 (PAUSE.)

7 I'll be glad to hear from the moving party.

8 MR. STEPP: Your Honor, in the cross-motions for
9 summary judgment Mr. Smith represents the plaintiff, I
10 represent the defendant. I think it suits me for the
11 plaintiff to go first. I think we'll just argue them
12 together rather than separate.

13 THE COURT: Very good. Yes, sir.

14 MR. SMITH: And, Your Honor, just to clarify in
15 terms of the format of this, will we be given any time to
16 reply?

17 THE COURT: Yes.

18 MR. SMITH: Okay. All right.

19 THE COURT: As a matter of fact, you can speak
20 until the spirit moves you otherwise. Everybody can
21 hear.

22 MR. SMITH: Thank you.

23 THE COURT: And you'll be heard in great detail.
24 We've got the luxury of time today. I'll be glad to hear
25 from you.

1 MR. SMITH: Thank you, Your Honor. I appreciate
2 that. As I said, I'm Taylor Smith of the law firm of
3 Harrison and Radeker. I represent the plaintiff,
4 DomainsNewsMedia.com, in this matter.

5 Your Honor, as a little bit of housekeeping first,
6 the copies of the deposition conducted in this case were
7 entered on the record. I'm not sure if you've seen that
8 in the Court's file but I have the original depositions
9 here. There will be brief allusions to those. If you
10 would like for me to go ahead and hand up the sealed
11 copies of the depositions I can, but as I said, we've
12 already briefed this extensively so you've already see
13 the excerpts that I'll be relying on today. And as I
14 furthermore noted, they are of record in this case. So
15 if Your Honor would like I can hand those up, but if not,
16 you can rely on what's of record thus far in this case.

17 THE COURT: Very good. I think that will be
18 sufficient.

19 MR. SMITH: To hand them up, Your Honor, or to --

20 THE COURT: I think what I have here is sufficient.

21 MR. SMITH: Okay. All right, Your Honor. And
22 also, Your Honor, I provided opposing counsel a copy of
23 two cases that I found yesterday that are going to help
24 to illustrate a defense that they have raised in this
25 matter, Your Honor, to them being subject to the Freedom

1 of Information Act. If you would like for me to hand up
2 those cases everything else is in the briefs that you
3 have before you.

4 THE COURT: Very good.

5 (A document was handed to the Court.)

6 MR. SMITH: Because of the late nature of finding
7 those cases, Your Honor, I decided to bold the areas of
8 those cases which I'll be relying on in argument here
9 today.

10 Your Honor, I'll start with going through the brief
11 procedural posture of this case. A FOIA request was sent
12 to the defendant, the Hilton Head Island-Bluffton Chamber
13 of Commerce, on November 26, 2012.

14 The defendant received the request and replied in a
15 timely matter. Their determination was not a final
16 determination of the act but it was a determination
17 nonetheless that they are not subject to the act. They
18 said that we were not a public body for FOIA purposes;
19 therefore, your request is not properly provided to us.

20 Your Honor, upon that determination the summons and
21 complaint were filed January 15th of 2013, and the
22 plaintiff sought a declaratory judgment that the chamber
23 is subject to FOIA or if not the chamber's division, the
24 visitor and conventions bureau, is subject to FOIA, and a
25 declaratory judgment and an order that would establish

1 that either both or either, or the VCB are going to be
2 subject to FOIA. Furthermore, it also sought injunctive
3 relief so as to provide the documents that are requested
4 pursuant to its request.

5 Your Honor, the answer adopted the position in this
6 case that litigation would need to go forward because
7 they did not admit any of the allegations of the
8 complaint. So here today, Your Honor, we are here based
9 upon a case management order that Judge Mullen signed
10 which said that the case should be submitted for decision
11 on these cross-motions for summary judgment, and that the
12 record within, Your Honor, is stipulated to.

13 Your Honor, as you may have noted from the record
14 and you'll also find the briefing that we've done on this
15 matter, memorandum in opposition and reply memoranda, in
16 addition to our original motions for summary judgment.

17 Your Honor, the South Carolina Rule 56 of the South
18 Carolina Rules of Civil Procedure provides that summary
19 judgment may be appropriate where, When taken together
20 with the pleadings, depositions, answers to
21 interrogatories and admissions on file together with
22 affidavits, if any, if it shows that there is no genuine
23 issue of material fact and that the moving party is
24 entitled to a judgment as a matter of law.

25 As I've said, Your Honor, it is the extrapolation

1 and the interpretation of the facts in this case that is
2 at issue because the record is stipulated to. There is
3 no issue of material fact. It's simply down to whether
4 or not Your Honor decides that we should be entitled to
5 relief as a matter of law or the defendant should be
6 entitled to relief as a matter of law.

7 Your Honor, as you'll see from my argument and from
8 the record before you we are going to ask that summary
9 judgment be granted in our favor and denied as to the
10 defendant.

11 Your Honor, Section 30-4-20 defines a public body.
12 This is the South Carolina Freedom of Information Act.
13 In the act, which other case law is established to be
14 liberally construed toward disclosure, it's important to
15 note that we can't get to disclosure unless a body is
16 considered a public body for the act.

17 And as such, 30-4-20(a) defines a public body as
18 any department of the state, a majority of directors or
19 their representatives of the departments within the
20 executive branch of state government as outlined in
21 Section 1-30-10. Any state board, commission, agency and
22 authority, any public or governmental body or political
23 subdivision in the state including counties,
24 municipalities, townships, school districts and special
25 purpose districts, or any organization, corporation or

1 agency supported in whole or in part by public funds or
2 expending public funds. That would be the key language
3 at issue in this case, Your Honor.

4 Unfortunately, this statute has not had this
5 particular subsection explicitly, has not had a great
6 deal of interpretation under the South Carolina law. We
7 do, though, have a case from 1990 by the United States
8 Supreme Court identified as Weston V. Carolina Research
9 and Development Foundation, 303 S.C. 398.

10 In this case, the Court considered whether or not
11 the Carolina Research and Development Foundation was a
12 public body for FOIA purposes. They acknowledged in the
13 case that the foundation worked for the exclusive benefit
14 of the University, and moving forward they were to
15 determine if the foundation was supplied by or expending
16 public funds it needed to examine several transactions
17 within that case.

18 And, Your Honor, in that case, they looked at
19 several things, which I failed to put in front of me but
20 I'll note this. In looking at those cases they found
21 that each transaction in the Weston case exclusively
22 would have brought them under the ambit of the definition
23 of a public body under FOIA, but when taken together
24 those actions of the development foundation provided the
25 unavoidable conclusion that the foundation was expending,

1 managing or receiving, or all of the above, public funds.

2 The test that came from this case, Your Honor, is
3 such that if when a block of public funds is diverted
4 en masse from a public body to a related organization or
5 when the related organization undertakes the management
6 of the expenditure of public funds the only way that the
7 public can determine with specificity how these funds
8 were spent is through access to those records and affairs
9 of the organization receiving and spending public funds.
10 Such that if public funds are diverted en masse or if
11 they manage the expenditure they are a public body for
12 FOIA purposes.

13 Now, Your Honor, it's important to note, and the
14 defendant will certainly bring this up, that the Court
15 did limit its holding saying that it does not apply to
16 business enterprises that receive payment from public
17 bodies in return for supplying specific goods and
18 services at an arm's length.

19 The defendant in this case, as Your Honor can see
20 from the briefing and what's been done thus far, the
21 defendant doesn't deny that it receives en masse public
22 funds from its organization. The defendant denies that
23 it doesn't manage the expenditure because its
24 relationship is such that it is only doing those goods
25 and services for its related public entity on an arm's

1 length basis. In essence, it is like a contractor for a
2 state entity, agency or public body otherwise.

3 Now, Your Honor it's important for us to look at
4 what has been provided thus far in this case and it's
5 important to note that if you look at the depositions of
6 Ray Deal and Susan Thomas there are repeated instances
7 where they talk about the specific actions internally
8 within the chamber and what their internal processes are
9 to account for the money they've received and how they
10 are spent.

11 Your Honor, there's a succinct description by the
12 defendant on page six of their motion for summary
13 judgment that shows you the process by which an entity
14 operates on behalf of a public body for the promotion of
15 tourism.

16 The Accommodations Tax Act, as I'll refer to A Tax
17 moving forward, Your Honor, states that goods and
18 services are to be provided to -- are to be provided for
19 the promotion of tourism.

20 Now, that means that that money must be provided to
21 promote that goal and in doing so a public body must,
22 according to the act, select a designated marketing
23 organization that will act to do that promotion of
24 tourism on behalf of the town, county or other public
25 body that it's working on behalf of.

1 Then, Your Honor, the designated marketing
2 organization submits the budget to the local government
3 for approval every year on the Accommodations Tax funds
4 that it's going to receive. If the local government
5 approves of that planned expenditure of those funds then
6 the public -- then the DMO will attempt to spend those
7 funds in accordance with the budget.

8 Now, Your Honor, as you'll see from the deposition
9 there are times during the year, quarterly it appears,
10 where these lump sums are provided to the chamber and
11 when this has happened, Your Honor, it's important to
12 recognize that the budget has been approved by the town.
13 That has already happened in several of these instances
14 if not all of these instances.

15 At that moment, I think they have even agreed that
16 they have received public funds and that if they are
17 going to manage the expenditure of the public funds it's
18 their position that it is actually the town through the
19 approval of the budget that is managing the expenditure
20 of the public funds for the test provided in the Carolina
21 V. Weston Research case. Excuse me, the Western V.
22 Carolina Research Case. So, Your Honor, it's important
23 to look to the record and see exactly how factually this
24 occurs.

25 There's a great deal of discretion, it appears,

1 that's provided to the chamber from the Town of Hilton
2 Head, Beaufort County, and Bluffton who they operate on
3 behalf of. And, Your Honor, it appears that according to
4 Susan Thomas in her deposition --

5 THE COURT: Let me just interrupt you just so I can
6 get a feel for it. What is the annual budget for the
7 Hilton Head Island-Bluffton Chamber of Commerce? How
8 much money are we talking about?

9 MR. SMITH: Your Honor, I'd have to pull out the
10 deposition.

11 THE COURT: Just ballpark.

12 MR. SMITH: I mean, that may be properly answered
13 by the defendant a little better, Your Honor. I'm sorry.
14 I can look to what they provided but --

15 MR. STEPP: Including membership dues it's about
16 six and a half million dollars.

17 THE COURT: That's what I want to know, just
18 ballpark amount of monies.

19 MR. SMITH: And, Your Honor, one thing I may have
20 failed to mention is this particular chamber of commerce
21 is a hybrid form in the sense that you have the chamber
22 of commerce in its traditional realm that is largely
23 supported by private donations usually from businesses to
24 be a part of the chamber of commerce. Underneath this
25 chamber of commerce you also have the visitor and

1 conventions bureau.

2 The visitor and conventions bureau, as you'll glean
3 from the depositions, is supported almost in whole by the
4 public funds I described earlier. If not through
5 Accommodations Tax then through the parks, recreation and
6 tourism grants that are received by them.

7 So, Your Honor, it's important to note here that
8 the only reason this lawsuit was brought against the
9 chamber of commerce was because there is no separate
10 jural personality for the visitor and conventions bureau
11 which receives by greater percentage public funds than
12 the chamber of commerce does.

13 Your Honor, when looking at how those funds are
14 received you can see from the deposition of Ray Deal that
15 he identifies that they receive these funds as a lump
16 sum. You'll see from my briefing, Your Honor, that I
17 find by looking at Blacks Law Dictionary that lump sum is
18 largely synonymous with en masse, if you are referring to
19 receiving of public funds. So I believe the record
20 establishes, Your Honor, that they receive lump sum
21 public funds en masse in accordance with the rule
22 provided by Carolina V. Western Research, and that those
23 are received about every three months.

24 When they are getting to spending those public
25 funds you can see from the deposition of Susan Thomas the

1 amount of discretion that is provided by the entities
2 which they serve to promote tourism for, as I said, the
3 Town of Hilton Head, Bluffton or Beaufort County, that is
4 such that if there is a vendor change on a particular
5 contract that they may have to help promote tourism,
6 unless that change is greater than \$10,000 different than
7 what the budget called for them to spend they will not
8 notify the town of that change. They will be able to
9 just move forward with the budget and at the end of the
10 year when there is an accounting of how that money was
11 spent it will be seen where the variance was in that
12 particular account and by how much money.

13 So, Your Honor, it's succinctly stated, I believe,
14 in the defendant's memorandum in opposition where he says
15 that the DMO submits budgets for approval and then report
16 back to the town as to how the money was spent. So I see
17 that as an acknowledgment that they are not the ones,
18 they meaning the chamber -- excuse me, the town is not
19 the ones who are managing the expenditure of public
20 funds. It is their budget, the view and their approval
21 of the way they may spend public funds that they are
22 being directioned from the town. But through their
23 admission after they've gotten their budget for approval
24 they then report back to the town as to actually how it
25 was spent. The chamber decides which vendors a lot of

1 times to do. The chamber decides exactly where this
2 money is going to go on a per contract basis with
3 individual vendors with specific facets of promoting
4 tourism globally.

5 Now, Your Honor, the defendant is going to point
6 out that they cannot be a part of this Weston test
7 because they fit the exception the Court provided for
8 organizations that operate at an arm's length.

9 Now, Your Honor, an arm's length transaction is
10 defined in Black's Law Dictionary as one, a transaction
11 between two unrelated and unaffiliated parties; or two, a
12 transaction between two parties however closely related
13 they may be conducted as if the parties were strangers so
14 that no conflict of interest arises.

15 Furthermore, Your Honor, Black's Law defines arm's
16 length separately. It says that arm's length is defined
17 as of relating to dealings between two parties who were
18 not related or not on close terms and who are presumed to
19 have roughly equal bargaining power, not involving a
20 confidential relationship.

21 Your Honor, as I've mentioned, there isn't much
22 case law for us to look at in this context to define a
23 public body so I was unable to find a definition as to
24 arm's length when applied to a relationship between a
25 contractor and a public body.

1 However, there are two cases, Your Honor, where I
2 was able to find some discussion of whether or not a
3 particular relationship as to be considered by the Court
4 was one of arm's length. I won't go into much about
5 these cases from a procedural aspect because it's really
6 the way the Court looked at this definition that I think
7 is appropriate and instructive for this Court.

8 Your Honor, in Davis vs. Davis, 641 S.E.2d 446, a
9 South Carolina Court of Appeals decision from 2006, there
10 was a review of an alimony award provided to a wife. The
11 wife at the time of entering this litigation in the
12 divorce was receiving money from her employ at a school,
13 but she was also receiving money from her father in work
14 she did for her company.

15 The Court said in its opinion when reviewing
16 whether or not the alimony award was proper that the
17 record reflects -- and I'm reading here from the opinion,
18 the record reflects that the family court considered the
19 relevant statutory factors concerning alimony; however,
20 wife's earning history and potential are the heart of the
21 parties' dispute over alimony.

22 Prior to father's retirement wife earned nearly
23 \$85,000 annually but attributed her high salary to the,
24 quote, daddy factor. The family court acknowledged this
25 employer-employee relationship was clearly less than an

1 arm's length transaction.

2 Your Honor, another case involving this
3 interpretation of what an arm's length transaction is
4 Mazloom vs. Mazloom. This is 675 S.E.2d 746, a South
5 Carolina Court of Appeals decision from 2009.

6 This case involved a business divorce, Your Honor,
7 and they were trying to figure out precisely whether or
8 not the interactions of the business when the partner was
9 not a part of it but was suing for disillusion of the
10 business, were those conducted at arm's length and not
11 the kind of close dealing that would allow the business
12 to be opened up on a piercing action.

13 What the Court looked at in this was trying to
14 define whether or not the fair market value was a fair
15 market value to identify whether or not it was an arm's
16 length transaction. I believe by looking at this
17 language, Your Honor, it's also instructive.

18 The Court cited Blacks Law Dictionary in House of
19 Authority of Charleston V. Olasov when it said, Fair
20 market value has been defined as the price that a seller
21 is willing to accept and a buyer is willing to pay on an
22 open market and in an arm's length transaction.

23 It goes on that fair market value is the price
24 which a willing seller will pay a willing -- a willing
25 buyer, excuse me, will pay a willing seller, neither

1 being under compulsion to buy or sell.

2 And later it says in looking at Reid V. Reid, 280
3 S.C. 367, that that case stated that the generally
4 accepted definition of fair market value is the amount a
5 willing but not obligated buyer will pay to a willing but
6 not obligated seller.

7 Your Honor, in considering those cases and the
8 definitions as supplied by Black's Law it appears
9 apparent to the plaintiff that this relationship that the
10 Hilton Head Island-Bluffton Chamber of Commerce has with
11 its public entities is not one that is arm's length.

12 As I've demonstrated through pointing to the
13 depositions and the facts in this case, Your Honor, when
14 the town is going to -- and let's just use Hilton Head as
15 an example here. When they've received the proposed
16 budget and have approved that budget they are already
17 been selected -- they have already selected, rather, the
18 entity who they receive the budget from because every
19 entity in South Carolina under the Accommodations Tax
20 statutory scheme has to have a designated marketing
21 organization, so to receive the budget that will come
22 from their designated marketing organization. There
23 can't be more than one DMO for a municipality accounting
24 but there is just the one. So every time we get to the
25 point at which they are approving this expenditure of

1 public funds, if we assume the defendant is correct in
2 his position that it is the town who is managing the
3 expenditure by approving the public funds, there's no way
4 that can be considered an arm's length transaction
5 because they are always going to only deal with their
6 designated marketing organization.

7 It is not as if that budget will come from or can
8 be approved for anyone other than their designated
9 marketing organization when they receive them. So when
10 they are going to undertake the management of the
11 expenditure of public funds from our position, which
12 would only occur after the budget, they are only doing
13 that as to who they already have a relationship with.

14 And in this case, as you can see from the
15 depositions, Your Honor, these relationships have been
16 going on for a fair amount of time with regards to this
17 chamber, the Town of Hilton Head, the Town of Bluffton,
18 and Beaufort County, many years. So it is not as if they
19 don't know each other and it is also not as if there is
20 equal bargaining power between these two parties because
21 the town, theoretically, could select a different
22 designated marketing organization if they chose to but --

23 THE COURT: Say that again.

24 MR. SMITH: The town could select a different
25 designated marketing organization, another chamber, for

1 instance, Your Honor, if they chose to in a given year.
2 But when we enter this process of the submission of a
3 budget to the chamber, and certainly once they start
4 spending money on behalf of a town, the chamber, they are
5 already not at arm's length but already in a specified
6 statutory relationship with the entity.

7 It's our opinion, Your Honor, that that cannot be
8 one at arm's length because they can only work for the
9 benefit of promotion and promotion of tourism with the
10 entity who has selected them as the designated marketing
11 organization.

12 Your Honor, I'll close with a few last points. It
13 is likely that the defendant will cite to a late 1980's
14 Horry County proposed order that concerned the Myrtle
15 Beach Chamber of Commerce. I say proposed order, Your
16 Honor, because I have not been provided a copy of whether
17 or not this order was ever entered into but I'm going to
18 assume that it was.

19 If this order was entered into, Your Honor, it's
20 interesting because that judge in Horry County was tasked
21 with considering a similar situation to this case, and he
22 held that the chamber was operating in that instance at
23 an arm's length to its public body; and therefore, it was
24 not a public body for FOIA purposes.

25 Now, Your Honor, that's interesting for two main

1 points. The first and most important is that in that
2 case you see in the proposed order that they actually
3 acknowledge a concurrent case where a trial court was
4 considering the Weston V. Carolina Research case. Now,
5 it was at the trial court level at the time, so they
6 cited some language from that case, from an order that
7 was entered on that case which said that you will not be
8 a public body unless you manage the expenditure of public
9 funds or receive en masse public funds, the test that
10 ended up coming out later in the Supreme Court.

11 Well, Your Honor, the Supreme Court decision comes
12 out two years later, two years after this Myrtle Beach
13 order that actually gives us instruction, finally, on
14 what is a public body for FOIA purposes.

15 Basically, they decided to adopt the case, the
16 trial court level's language from that in their opinion
17 and did not go with the Myrtle Beach Court's analysis and
18 opinion in that case. Not that the Myrtle Beach analysis
19 ever before the Court and, Your Honor, I'm not even
20 entirely sure from the record of that Carolina V. Western
21 Research case that they could consider that, but I do
22 know that the test by which will bind this Court in its
23 decision, Your Honor, is that which came from the Supreme
24 Court two years later and not this proposed order that
25 I've been cited with under the Myrtle Beach case.

1 Your Honor, the defendant will likely also say that
2 it is not a related organization, the test as provided in
3 the statute because it doesn't operate exclusively for
4 the benefit of Hilton Head Island, Bluffton, and Beaufort
5 County. Your Honor, that is technically true but it is
6 only technically true based upon the structure of this
7 organization, meaning the chamber, will operate for the
8 benefit of the businesses that are part of the chamber.

9 Technically, that is not likely for tourism and for
10 the towns where those companies reside and operate, but
11 the visitor and conventions bureau is operating to
12 promote the tourism of who they are the designated
13 marketing organization for. So it is our opinion, Your
14 Honor, that they are very much related, especially
15 because of the way in which they chose to organize
16 themselves which is such as to have a chamber and visitor
17 and conventions bureau under the same roof.

18 And, Your Honor, that brings us up basically to
19 what is probably the key question for your decision,
20 which is can an organization which receives by far
21 majority of their funding public funds to operate and
22 then decides to expend those public funds to help and
23 benefit the town upon which they are operating, can that
24 organization avoid being subject to the South Carolina
25 Freedom of Information Act by simply merging with or

1 creating an entity which also has an almost exclusively
2 private funded organ like a chamber of commerce.

3 Your Honor, it's our opinion that that would
4 violate the public policy as set forth by the legislature
5 in the Freedom of Information Act and, Your Honor, we
6 believe then if Your Honor were to decide that that is
7 the case, that they can do that, we would appreciate
8 specific findings of fact as to how this particular
9 entity was such an organization so we can have guidance
10 if we were to appeal this going forward.

11 THE COURT: All right.

12 MR. SMITH: But, Your Honor, it's our opinion that
13 this is not something that is going to be an easy
14 decision for Your Honor and we understand that factually.

15 What we believe and what we've sought in our
16 complaint, as I mentioned, was that Your Honor can
17 fashion a declaratory judgment and a remedy in this case
18 that could hold the chamber is subject to FOIA or the
19 chamber is not subject to FOIA as a public body, or that
20 the visitor and conventions bureau as a division of the
21 chamber is subject to FOIA but not the chamber.

22 Your Honor, it's for these reasons that we believe
23 summary judgment should be granted as to the plaintiff
24 and denied as to the defendant in this case. Thank you.

25 THE COURT: All right. Let me ask you --

1 MR. SMITH: Yes, sir.

2 THE COURT: -- a question. Was this action brought
3 just for the sake of transparency or is there some
4 suspicion of abuse of funds, and if so what is it?

5 MR. SMITH: Your Honor, there is some suspicion of
6 abuse of funds. That was one of the purpose --

7 THE COURT: And what is that?

8 MR. SMITH: Your Honor, because of the lack of
9 transparency here and because of the information that my
10 client has received from what he refers to as whistle
11 blowers that work within the organization and within the
12 county and state government he believes that there could
13 be certain criminal acts involving potential theft of
14 some of these public funds.

15 Now, it is through this act, the filing of the
16 lawsuit, that he was hoping to get the threshold question
17 answered on whether or not he as a citizen could get
18 information which he then could hopefully provide to law
19 enforcement to potentially seek some of these bad acts
20 and bad actors that may be residing within the chamber.

21 There is simply not enough information for me
22 ethically, Your Honor, to make any allegations at this
23 time against any individuals in the chamber as to any bad
24 acts.

25 THE COURT: It's just brought for the pure sake of

1 transparency with that concern?

2 MR. SMITH: Yes. Yes, Your Honor.

3 THE COURT: I'll be glad to hear from the chamber.

4 I just want to ask a threshold question.

5 MR. STEPP: Yes, sir.

6 THE COURT: Then I'll hear the arguments with
7 regard to arm's length and whether or not it's public
8 funds subject to disclosure. But let me ask you why, why
9 should the information not be made public? Why is it
10 that you all don't want that discoverable?

11 MR. STEPP: Well, because the chamber is a private
12 entity, Your Honor. It is not a public body. The
13 provisions of FOIA not only include accountability -- and
14 I'm going to show you that there is already complete
15 transparency as to how these funds are approved and how
16 they are spent, and I want to specifically respond to the
17 assertion of Mr. Smith about impropriety. There's
18 nothing in this record about that, absolutely not one
19 fact.

20 But FOIA does more than just require -- lets
21 somebody look at the books. You've got to have notice of
22 the meetings, you've got to have -- you know, it converts
23 anybody subject to FOIA into a public body when this is
24 plainly not, and so we just simply don't think it applies
25 and I'm going to tell you why, if I may.

1 The chamber is a nonprofit organization. Its only
2 relationship to a public body is in its status as
3 designated marketing organization, DMO for purposes of
4 this A Tax money. And that statute is very specific
5 about what that relationship is, and we've cited in our
6 briefs, Your Honor, Section 6-4-10 of the code, and it
7 says Accommodations Tax proceeds must be allocated in the
8 following manner; and part three says 30 percent of the
9 balance must be allocated to a special fund and used only
10 for advertising and promotion of tourism to develop and
11 increase tourist attendance through the generation of
12 publicity. To manage and direct the expenditures of
13 these tourism promotion funds the municipality or county
14 shall select one or more organizations such as a chamber
15 of commerce, visitor and convention bureau or regional
16 tourism commission which has an existing ongoing tourist
17 promotion program. If no organization exists the
18 municipality or county shall create an organization with
19 the same membership standard.

20 It goes on to say, To be eligible for selection the
21 organization must be organized as a nonprofit and shall
22 demonstrate to the municipality or county that it has an
23 existing ongoing tourism promotion program or that it can
24 develop an effective program.

25 Then it says, Before the beginning of each fiscal

1 year an organization receiving funds from the
2 Accommodations Tax from a municipality or county shall
3 submit for approval a budget of planned expenditures
4 before receiving the funds. At the end of each fiscal
5 year an organization receiving funds shall render an
6 accounting of the expenditures to the municipality or
7 county which distributed them.

8 So there's a budget process before the funds are
9 received, there's an accounting process after the funds
10 have been expended. And I'll go more into that but
11 that's the statutory scheme and that is to the extent
12 there's any assertion that the Hilton Head

13 Island-Bluffton Chamber of Commerce is a public body is
14 because they fulfill the statutory role, having been
15 selected by the Town of Hilton Head, Town of Bluffton,
16 and Beaufort County to serve that purpose. So that's
17 sort of the context in which all this operates.

18 The statutory process, contrary to what Mr. Smith
19 says, is definitely an arm's length. There's absolutely
20 no requirement that any of these public bodies select
21 this chamber to fulfill that role. Every year they can
22 select somebody different if they so chose.

23 There is no conflict of interest, there is no undue
24 influence, there is no untoward relationship at work here
25 that somehow subverts the public purpose of this statute.

1 Everything is operating exactly as the General Assembly
2 intended it to, and of course in the provision and the A
3 Tax statute that provides that FOIA shall be applied to
4 the designated marketing organization or that any member
5 of the public would have access to the books and records
6 of the DMO to determine how the money was spent, and
7 there's good reason for that, because it's not necessary,
8 as I will tell you.

9 So I agree with the plaintiff that the Weston case
10 is dispositive. Mr. Smith says it's controlling, it's
11 binding. I agree with him a hundred percent. Where we
12 part company is what does it mean for purposes of this
13 case. So I'd like to spend a little bit of time on that.

14 But before I do I just want to say Your Honor asked
15 a pertinent question about is this just for transparency
16 or is there some suspicion of wrongdoing. The record
17 before this Court does not contain any evidence of any
18 wrongdoing of any misappropriation of any misconduct.
19 These are scurrilous allegations that are not part of
20 this record. There is no evidence of them and that
21 should not be injected into this case, notwithstanding
22 whatever suspicions the plaintiff might have about that.
23 Now is the time to present the evidence to the Court, not
24 to simply rely on allegations and suspicions, and
25 there is nothing in the record to suggest that

1 anything --

2 THE COURT: I think his problem is the way they are
3 maintaining there's no way to have evidence or facts
4 unless they get the information. I think that's what
5 they are saying.

6 MR. STEPP: Well, Your Honor, that's simply not the
7 case because this budget, this process, this budget is
8 submitted before each year, every year, year after year,
9 after year. The budget is presented. It contains a very
10 detailed proposal for how the chamber would suggest that
11 this tourism and marketing dollars be expended, line
12 items, specific line items for specific things, very
13 detailed. That is submitted to the public body.

14 Let's just say the town for convenience, the Town
15 of Hilton Head, then the Town of Hilton Head considers
16 that and they can approve all of it, they can approve
17 some of it, they can approve none of it or they can
18 select a different DMO every year, but that budget
19 itself, and it's attached to the depositions that Your
20 Honor has before you, I'll be happy to hand up a copy
21 from one year as an example, but it contains a very
22 detailed formula for what the chamber would propose to do
23 with the A Tax funds that it presents. Then it is
24 approved or if it is approved then that's the way the
25 chamber has to spend the money.

1 And so the chamber is not making decisions about
2 how to spend the money. The Town of Hilton Head is
3 making those decisions. The chamber is simply executing
4 the decisions made by the public body in their role as
5 the keepers of the public purse. They are not just
6 throwing money to the chamber and saying, Well, you all
7 decide how you are going to do it and then let us know
8 later.

9 THE COURT: Very good point. Let me hear the
10 plaintiff's response to that particular...

11 MR. SMITH: Your Honor, I think it's important for
12 us to look to how someone could get redress for a
13 violation of FOIA in the event that we do decide they are
14 subject to FOIA, and this goes to this point about --

15 THE COURT: Well, they are saying that all of the
16 information is already available and the budget has been
17 approved and there's nothing by which you can determine
18 whether or not the funds are being misappropriated or
19 not.

20 MR. SMITH: You are right, Your Honor. He's right
21 in saying that there are two principal ways in which a
22 member of the public could receive information about the
23 way in which the chamber said it was going to expend the
24 public funds to budget.

25 THE COURT: He says they have to spend it that way.

1 MR. SMITH: Well, Your Honor, the factual record in
2 this case just simply disagrees because as pointed out by
3 Susan Thomas in her deposition that they do not always
4 spend it exactly how they want it.

5 In fact, unless there's a variance -- you know,
6 \$10,000 is where they are at internally on these
7 variances. So, like, if it's less than \$10,000 then they
8 don't get notice to the town that they are going to
9 change it. They don't seek their approval. Beyond that
10 I'm told they do, beyond \$10,000, but they are given
11 leeway on that.

12 Now, Your Honor, as to whether or not they can get
13 information it's important to look at the remedy section
14 because if there were a violation, okay, you would be
15 able to seek a declaratory judgment if there was a
16 violation, and here there are two principal times when
17 you can get this information, the budget as approved by
18 the town in its minutes for DMO, that's one.

19 The second is the final year end accounting of how
20 it was actually spent. Now, I know that's provided on
21 the chamber's website, maybe that's something you can
22 also get from the town.

23 Now, 34-100 is the remedy section for FOIA which
24 says that upon a violation you have one year Statute of
25 Limitations to decide whether or not you can and should

1 and then institute a cause of action.

2 Let's say it is on the side that you disagree as a
3 taxpayer with how the money is projected to be spent.

4 That means you would have a year, and that is in keeping
5 with other decisions of other public bodies, probably
6 enough time to evaluate whether or not you can bring an
7 action. But let's assume it's you instead as a taxpayer
8 want to challenge how it actually was spent, like it was
9 spent for a purpose that the town said, No, you can't
10 spend it on that, but they did it any way, something like
11 that. That would only be gleaned from the final year end
12 accounting but the violation of the chapter would be

13 where they actually spent something that they weren't
14 supposed to spend in accordance with the budget. You are
15 not going to know when that happened until the final
16 accounting is provided. That may be days before the
17 Statute of Limitations is to accrue under FOIA, and I
18 don't think we are willing to say from a public policy
19 perception what FOIA has construed for, that we would
20 allow someone only a day or two to hire an accountant to
21 look at the accounting, hire a lawyer to analyze and then
22 file the complaint and then bring the action. That seems
23 incongruent to what the legislature intended for FOIA.

24 THE COURT: I didn't mean the interrupt.

25 MR. STEPP: That's perfectly all right, Your Honor,

1 but I think that's an important point and I'm delighted
2 that the plaintiff concedes.

3 And if you review the final accounting you can
4 determine whether there's been any misconduct with
5 respect to the funds. That's what they just told you,
6 and that final accounting is on file with the town. It's
7 in the records of town and it fully discloses information
8 that plaintiff concedes would be all you'd need to know
9 to know whether there's been a violation.

10 Now, the Statute of Limitations issue is not
11 relevant because that's the one year FOIA Statute of
12 Limitations. I don't know what the Statute of
13 Limitations is for a claim that the money was improperly
14 spent, but even so you'd have at least a year.

15 But the important point for today is, on Your
16 Honor's question about transparency, that's where the
17 information is. And to the extent there has been any
18 discretion exercised, which I would suggest if you read
19 those depositions it is very de minimis, very de minimis.

20 But to the extent that the chamber has to make a
21 decision that they can't get town input and they make a
22 decision that varies to certain degree of the budget it's
23 reported and accounted for finally so that there's not
24 any concealment about that. It is actually reported and
25 available for public inspection.

1 And, Your Honor, this is critical under Weston.
2 Weston is the controlling case as both sides agree. And
3 Weston does not hold, as I think the plaintiff is
4 suggesting in this case, that Weston does not hold that
5 if you just get public money you're automatically subject
6 to FOIA. Weston involved a very detailed factual
7 analysis about whether the USC education foundation or
8 research foundation was a public body for purposes of
9 FOIA, and the facts in that case are compelling.

10 As Mr. Smith said the Court found that any one of
11 the four transactions would have been enough to make them
12 a public body but the four taken together were, I think
13 the Court said, overwhelming evidence that they were, in
14 fact, a public body.

15 But what was going on there versus what's going on
16 here, and what was going on in Weston is very different.
17 Number one, the foundation received about two million
18 dollars in proceeds from the sale of public property.
19 Not through the University but the public property was
20 sold and the two million dollars of proceeds went
21 directly to the foundation.

22 Then the Court found that the foundation received
23 about 16 million dollars in grants originally directed to
24 the University but which were then redirected by the
25 University to the foundation and to act as agent for the

1 University and on behalf of the University.

2 The Court found that the foundation used USC
3 university employees to do the work of the foundation.
4 The Court found that the foundation received title to
5 public property and got six million dollars in grants for
6 the development of the Koger Center in Columbia, six
7 million dollars that was a public donation that went to
8 the foundation. It didn't go to the University, it went
9 to the foundation. And then the Court found that the
10 University had signed contracts with the foundation and
11 the proceeds from those contracts were retained by the
12 foundation.

13 Now, Your Honor, all of those transactions between
14 the foundation and the University, they weren't done
15 pursuant to statute. They weren't done with any public
16 scrutiny whatsoever. They were simply done in a
17 conference room somewhere at the University with nobody
18 looking over anybody's shoulder, and that's a very
19 different situation from what we have today.

20 So that's the facts that the Weston court was
21 confronted with. We don't have anything like that. But
22 regardless of the facts, the holding of Weston, if Your
23 Honor will look at it, and I'm happy to hand up a copy,
24 completely requires a conclusion that the chamber in our
25 case is not subject to FOIA. Let me tell you why.

1 The Weston court looked at five factors to
2 determine whether a private entity was a public body for
3 purposes of FOIA, and as Mr. Smith has already said the
4 first thing they said was, Well, if you are a private
5 entity and you are receiving money in an arm's length
6 transaction to provide goods or services then you are not
7 subject to FOIA.

8 Well, in part that's exactly what's going on here.
9 The chamber is providing marketing and tourism promotion
10 services to the town or the county and to a certain
11 extent being compensated. That's what the exchange of
12 money is about. Expressly under Weston FOIA doesn't
13 apply. So the plaintiff necessarily has to challenge
14 that by trying to argue that, well, the relationship is
15 not arm's length, and they cite the family court case and
16 this other case about people in business.

17 But, you know, this is a statutory relationship
18 that is created each year. There's no compulsion for any
19 of the public bodies to name the chamber. There's
20 absolutely no requirement that any of the public bodies
21 approve the budget of the chamber. There's no undue
22 influence going on here. There's no conflict of interest
23 here. There is absolutely nothing that keeps this from
24 being what happens in the business world every day.

25 There is a contractual or quasi contractual

1 relationship between two parties who started out dealing
2 in arm's length. The fact that they have a relationship
3 as a result of their dealings doesn't mean they are --
4 they are still not at arm's length. I mean, if so every
5 time somebody with an existing contractual relationship
6 under the plaintiff's argument, every time it got renewed
7 it would no longer be an arm's length deal because it was
8 preceded by a contractual relationship, which the
9 plaintiff argues would be enough to destroy the arm's
10 length nature of the relationship.

11 There's simply nothing like that going on here.
12 There's not one fact in the record before the Court to
13 suggest that the relationship between the chamber and the
14 town, and the county, and the Town of Bluffton is
15 anything other than arm's length. They deal according to
16 the provisions of the statute. There's no allegation
17 that any of those statutory procedures have been violated
18 or deviated from. So there's no basis for the Court to
19 concluded this as not an arm's length basis.

20 So the very first factor that Weston throws on the
21 table is is this a provision of goods and services from
22 parties dealing at arm's length? We suggest it is and
23 we think the record supports that.

24 But there are four more factors that the Weston
25 court says you got to look at to determine whether a

1 private entity is subject to FOIA or not, and I want to
2 take a minute just to read the rest of the holding in
3 Weston, if I may.

4 The Court says, When a block of funds is diverted
5 en masse from a public body to a related organization or
6 when the related organization undertakes the management
7 and expenditure of the funds the only way that the public
8 can determine with specificity how those funds were spent
9 is through access to the records and affairs of the
10 organization receiving and spending the funds.

11 So that's a long sentence that the Court put on us
12 but there are four takeaways from it, as I see it. The
13 first thing is has there been a diversion of public
14 funds? Now, in the Weston case on the facts that I
15 described to you I think that's a pretty fair adjective
16 for what went on. Those funds, I think, were indeed
17 diverted from the University, which is clearly a public
18 entity, to this putatively private foundation that
19 operated exclusively for the benefit of the University.
20 We don't have anything like that here.

21 We've got transfers of money pursuant to a statute,
22 pursuant to a budget done with the blessing of the
23 General Assembly, done in public. The approval is
24 subject to public comment. It happens at town meetings
25 with an A Tax committee. I mean, there's all kinds of

1 scrutiny on that.

2 So number one, you can't say, I don't believe, you
3 can't conclude that this is a diversion in the sense that
4 the Court found in the Weston case. Secondly, is the
5 chamber a related organization? Now, obviously the
6 foundation was very closely related to the University
7 because all they did was exist to serve the University's
8 purposes. Well, the chamber is much more than that. The
9 chamber serves its members. It also serves as DMO. But
10 if it's no longer the DMO the chamber is not going away.
11 The chamber is going to continue with its existing
12 mission. So the only relationship that the plaintiff
13 finds so nefarious is the relationship that arises under
14 this statute, and that's simply not enough to make it a
15 related organization in the sense that the Weston court
16 was considering that term. So that's number three.

17 Number four is, is there an en masse transfer?
18 Well, Mr. Smith says yes, there's monies that are
19 transferred quarterly. Well, that's true. They are
20 transferred in bulk, but they are also only transferred
21 after the budget has been approved.

22 So while the transfer may be en masse, I don't want
23 to get into a semantic argument about it, but clearly the
24 Weston court was looking at en masse transfers in which
25 all of the discretion, all of the decisions, all of the

1 authority with respect to dealing with those funds was
2 put in the foundation and not in the University, and we
3 don't have anything like that.

4 Although the transfers may be in bulk, maybe that's
5 a better word, if it's not domestic court, but still the
6 budget is in place. There's preapproval for what is
7 going to happen to those monies, so we don't, in my view,
8 have an en masse transfer as that phrase is used in
9 Weston.

10 And then finally, and this is something that we've
11 already touched on, the Weston court wants to know
12 whether the public can figure out what happened to the
13 money only by looking at the private entity's records,
14 and that's not the case here.

15 The public can go to the town, go to the county and
16 see the budget, see the final accounting. The plaintiff
17 concedes if you go look at the final accounting and you
18 think something is wrong you can file a lawsuit. Well,
19 that's the very purpose of FOIA, is to provide that
20 accountability at the public level, and that exists in
21 this case. So there's no contention in this case that
22 any information has been withheld from the public and
23 there's no evidence in this case that all of the
24 information about the expenditures can't be had from the
25 public records, and when that's the case Weston on its

1 face doesn't apply.

2 The five conditions in Weston simply don't apply to
3 the facts of this case. And if they don't then we would
4 suggest based upon the holding of Weston there's no basis
5 to conclude that the chamber is subject to FOIA. You
6 take Weston, which both parties agree is controlling, and
7 there you have it. None of those five factors are
8 present.

9 I want to address a couple of other arguments that
10 the plaintiffs have made.

11 THE COURT: Before you do that.

12 MR. STEPP: Yeah.

13 THE COURT: Let me ask the plaintiff, they maintain
14 that the budget is provided and you can see what they
15 propose and then at the end of the year you can find out
16 how they actually spent it. What other information do
17 you want or need?

18 MR. SMITH: I think, Your Honor, it would be
19 pertinent to understand by looking at the final year end
20 accounting exactly where the discretion was coming from
21 in the budget. Meaning, if Your Honor, you can draw by
22 looking at the face of the documents a line from a budget
23 item that may have said for -- by example, for the
24 promotion of Beach Side Surfboard Rental Properties on
25 Hilton Head Beach. If you can then by looking at those

1 documents, the budget that's public record and then the
2 accounting that becomes public record, if you can draw a
3 line from that and understand which vendor it was that
4 fit that then I think, Your Honor, in that select
5 scenario that may be enough to understand exactly how the
6 money was spent.

7 But, Your Honor, it's just -- they are not that
8 neatly lined up. I mean, it's not that easy to make that
9 determination. So what you've got to do is you've got to
10 understand what were the imaginations of the organization
11 who is managing the expenditure of those funds to figure
12 out how they were operating in accordance with that.

13 You can guess that the final year end accounting
14 was for that mandate in the budget but it's just you're
15 looking at a general perspective goal by the town for
16 something versus the actual expenditure. And unless you
17 have the ability to seek to ask of the organization, the
18 DMO, how is it that you are fulfilling this purpose, we
19 are 11 months into this and I haven't seen anything on it
20 yet, or there are three months after we first did this
21 and I see that you've already spent all of this money
22 allocated for this purpose but yet you didn't do anything
23 to fulfill the purpose yet.

24 I mean, Your Honor, kind of what I'm saying is that
25 if we don't allow anyone to be able to get behind the

1 numbers as provided at the end of the year by the audit
2 and the accounting done by the chamber we are not going
3 to know ever, really, how exactly it came to meet the --
4 how the stated goal was met in the expenditure.

5 THE COURT: Yes, sir?

6 MR. STEPP: If I may respond to that, Your Honor.
7 Nor is there any provision in FOIA or anybody else that
8 says that level of information is something that even a
9 public body would have to supply.

10 I have actually tried to examine once upon a time
11 the budget of the City of Columbia for a different reason
12 and I can make no -- I couldn't make any sense out of it
13 at all. It doesn't always line up, and FOIA doesn't
14 require that even a public body provide some sort of
15 glittering road map with an audited financial statement.
16 None of that is required.

17 What's required is that the public know how public
18 funds are expended and in this case that final accounting
19 does that, entirely, as the plaintiffs themselves have
20 conceded. So all this business about, you know, it
21 doesn't line up, well, okay. If that's their contention
22 so be it, although, I don't think that's really in the
23 record before Your Honor. In fact, I'm sure it's not in
24 the record before Your Honor. But there's also no legal
25 basis at the bottom that says it's got to be in some

1 particular form.

2 FOIA doesn't require that records be maintained in
3 any particular form. It simply requires that the records
4 that exist be provided to the public, and that's exactly
5 what happens here, which is exactly what the General
6 Assembly intended under the A Tax Act.

7 The final thing I wanted to say, Your Honor, was
8 just this business about the distinction between the
9 convention visitors bureau and the chamber, the CVB is a
10 division of the chamber. It's not a separate legal
11 entity. I don't know Your Honor slices that pie but the
12 defendant in this case is the Hilton Head Island-Bluffton
13 Chamber of Commerce, and there's no facts in the record
14 that would distinguish it from the convention and
15 visitors bureau.

16 So in conclusion, Your Honor, this is an arm's
17 length transaction exempt under Weston. There's been no
18 diversion. We are not a related organization. There's
19 not an en masse transfer and the public can see how the
20 money was spent. Under those circumstances we would urge
21 Your Honor to grant summary judgment in favor of the
22 defendant.

23 THE COURT: Let me ask you this. You maintain on
24 behalf of the chamber that all the information is
25 available in the budget and the final accounting. If

1 that's the case, what do you have to hide? Why don't you
2 give them whatever they want?

3 MR. STEPP: Your Honor, it's not a question of what
4 we have to hide. It's a question of whether the law --

5 THE COURT: Wait. What else is there to give? I'm
6 just asking --

7 MR. STEPP: Your Honor, I don't know. I don't know
8 that there's anything else to get but the chamber, I
9 think, is well within its right to take the position it's
10 not subject to the provisions of FOIA when there's a case
11 right on point that identifies the factors and says we're
12 not. It's not a question of hiding anything. The
13 chamber is a private entity.

14 It's the same thing as saying, Well, why don't you
15 make your tax returns available, Your Honor, put them
16 online. What do you have to hide.

17 THE COURT: I think I have to.

18 MR. STEPP: Well, I haven't seen them. I can
19 assure you of that. But, you know, that's just not the
20 right question with all due respect. The chamber has a
21 right to operate as a private entity subject to whatever
22 the statutes --

23 THE COURT: Well, it may be an inappropriate way to
24 say it, what do you have to hide, but my question to you
25 is what other information is there out there?

1 MR. STEPP: I don't, and the answer is I don't know
2 what else there would be. I mean, obviously the --

3 THE COURT: Let me ask the plaintiff. Do you want,
4 like, minutes of the meetings? What do you want?

5 MR. SMITH: Your Honor, I believe that if --

6 THE COURT: Or do you know what you want?

7 MR. SMITH: Right now based upon what we can get
8 from the two items that we agree are provided by the
9 chamber annually, the budget and the accounting, I know
10 what we have now. What I don't know is necessarily, as
11 he pointed out, how we got there. And I think that if
12 he's -- he's right in describing that FOIA is primarily
13 concerned with getting documents that can explain how
14 public monies were spent by the organization who is
15 subject to FOIA. Your Honor, in this case one thing that
16 you might get that you don't see right now are actual
17 copies of receipts.

18 THE COURT: I see. Yes.

19 MR. SMITH: I mean, it's true that there is an
20 audit, and presumably the audit was looking at receipts.

21 THE COURT: You can see checks and receipts and
22 that sort of thing.

23 MR. SMITH: Right. Right. And, Your Honor, I
24 mean, I don't know why they wouldn't be willing to
25 provide that because in another context if I am going to

1 FOIA a traditional public body for how money was expended
2 that's exactly what I'd get back, is that level of
3 specificity. You know, who did you pay for, what company
4 did you pay to do this section of the road, for instance,
5 you know, up to the county, and I would get that contract
6 with them and I would get that.

7 Now, they may do a certain level of redaction for
8 the exemptions within FOIA but at least I would have the
9 ability to know on a basic level who it went to, for how
10 much money, and how long did the work last, based upon
11 when the check was presented to them upon the completion
12 of the work.

13 THE COURT: How about the private endeavors of the
14 chamber? How do you delineate between all of that stuff
15 and the private matters of the chamber of commerce?

16 MR. SMITH: And, Your Honor, that's a great
17 question because that is where we are wandering into a
18 novel area here in the law because we don't have any
19 direction yet as for the Court when you have a hybrid
20 organization like this on how you would make that
21 determination.

22 The law is instructive, I would believe, for Your
23 Honor to follow the public funds. If the chamber is
24 going to operate exclusive of public funds I do not
25 believe -- the chamber, just the chamber's side of this,

1 not the VCB, I do not believe the chamber then would be
2 subject to FOIA if they are not receiving or expending
3 public funds. If, though, there are public funds through
4 grants, tax monies, wherever, I think that those
5 activities of the chamber would be subject to FOIA.

6 THE COURT: Say that again.

7 MR. SMITH: I believe that those activities of the
8 chamber, those that did receive and then expend public
9 funds would be subject to FOIA because I believe that's
10 what the statute provides and I believe that's what the
11 Court was explaining in Carolina V. Weston Research
12 because if we were to take the chamber out hypothetically
13 in this scenario away from the VCB and they were
14 expending public funds but weren't subject to FOIA then
15 pursuant to the Court's rule there would not be a way
16 that the public can determine with specificity.

17 THE COURT: Yes, sir? Would you like to say
18 anything?

19 MR. STEPP: Thank you, Your Honor. Well, you know,
20 again, we've only got one defendant and there's no basis
21 in FOIA to say it only applies to a little bit. If the
22 Court applies FOIA to the chamber then all the board
23 meetings are public, we've got to have notice to the
24 press about everything that you do. It converts. That
25 would, in fact, convert a private entity with its own

1 purposes into a public body in which everything would be
2 subject to public scrutiny and there's no basis to say,
3 Well, it's only about this or it's only about that. It's
4 all or nothing. And it just -- you know, clearly, if the
5 fact that we got public money and expended public money
6 was enough the Weston court wouldn't of had to go through
7 all of this.

8 But the other case, I would just mention, is the
9 Disabato case. We both cited it. And it talks -- it
10 really spends most of -- another subsequent Supreme Court
11 decision, mostly deals with the interaction of FOIA and
12 the right of free speech.

13 But on the question of whether the school board's
14 association was a public body they sent it back to the
15 trial court for a factual determination. Well, it was
16 stipulated that they got public money. I mean, it's just
17 not that easy. You've got to find evidence of the
18 factors that are set out in Weston before you can apply
19 that. And whether, you know -- whether somebody has
20 resisted or not is not the issue. I mean, private
21 citizens have a right and private entities have a right
22 to keep their business private.

23 The mere fact that you exist doesn't open you up to
24 every Tom, Dick and Harry that comes down the road, and
25 the General Assembly has been very specific about that

1 and so has the Supreme Court.

2 And just so Your Honor will see I'd like to hand
3 up, this is exhibit 4 to Mr. Deal's deposition. He's the
4 CFO of the chamber. This is an example of one of the
5 accountings that is rendered at the conclusion of a year,
6 just so Your Honor can see the level of information that
7 is provided. It's quite detailed. And that's available
8 for public inspection at the town or county level.

9 THE COURT: The plaintiff has taken the position
10 that this case is ripe for summary judgment, is purely a
11 question of law. What's the chamber's position?

12 MR. SMITH: We agree, Your Honor.

13 THE COURT: All right. It's on me now.

14 MR. STEPP: I'm sorry not to take you off the hook.

15 MR. SMITH: And, Your Honor, if I can just briefly
16 respond to what was said earlier, generally.

17 THE COURT: Yeah.

18 MR. SMITH: With regards to whether or not they are
19 operating as a related organization, I think it's
20 important to note that it's true that the legislature has
21 instructed the town that they need to select a DMO or one
22 or more to serve the municipality. Here, Your Honor,
23 from the deposition of Susan Thomas we understand just
24 how close this relationship has been.

25 The Town of Hilton Head, according to her

1 deposition, has had the Hilton Head Island-Bluffton
2 Chamber of Commerce as their DMO for 32 years. The Town
3 of Bluffton has had them for 15 years, and Beaufort
4 County for seven. There is not provided in this case a
5 contract for them serving as the designated marketing
6 organization, meaning something that at a threshold level
7 the public taxpayer could understand that would set up
8 the goals for what they are going to do.

9 THE COURT: This is probably neither here nor there
10 but throughout the State is it typically the chamber of
11 commerce who serves as the DMO? Are there places where
12 it's not?

13 MR. SMITH: It's my understanding, Your Honor,
14 there are many places where it's not but that's because
15 of the visitor and conventions bureau often is the DMO.

16 THE COURT: Say that again now.

17 MR. SMITH: The visitor and conventions bureau of
18 that local area usually does serve as the DMO, but in
19 instances where you have this same format where the
20 chamber and DMO were one entity then, yes, usually the
21 chamber is the DMO.

22 And, Your Honor, I think, finally, I just want to
23 point out that it's not that FOIA has provided us
24 guidance through the case law yet that the specific line
25 drawing I was talking about before from the budget to how

1 it was spent is not something that FOIA requires. We
2 don't have that authority yet from FOIA from a court or
3 anyone else, that level of specificity. We just have not
4 yet had a case that has sought that level of specificity
5 because, Your Honor, there have not been many public body
6 cases interpreted under the law.

7 There have been many cases concerning what a public
8 body must do as to show an exemption for giving away
9 information must apply, and if the Court goes into that
10 analysis as to whether or not, for instance, an autopsy
11 report is the a medical record, one of the things that
12 would not be provided under the exemptions report, but we
13 have not yet gotten any authority as to whether or not it
14 would be impermissible for FOIA to require that level of
15 specificity.

16 THE COURT: Well, you say the Supreme Court has not
17 given us guidance. I anticipate that this case will give
18 us some guidance one way or the other.

19 MR. SMITH: Your Honor, it's my understanding from
20 my client and from their client that, yes, that upon a
21 decision today this will likely rise.

22 THE COURT: All right. Well, that's probably
23 exactly what we need, is some clarity.

24 I'm going to ask both of y'all to draft a proposed
25 order and I'm going to spend the balance of the week

1 reading these riveting briefs and deposition transcripts
2 because I think it is important and I think I do need to
3 read all of it and get my own feeling from the facts.
4 You all made a very good presentation. I think I
5 understand the issues but I do need to read all of that
6 and give it some contemplation.

7 And from the plaintiff's standpoint with regard to
8 your brief I would specifically direct their -- from your
9 perspective that under no circumstances would the
10 business of the chamber of commerce be subject to FOIA,
11 and that would have to be delineated out.

12 MR. SMITH: Your Honor, just to make a point here.
13 I did not bring this up earlier but in the complaint our
14 prayer for relief did include not just a determination of
15 public body but also a determination as to whether or not
16 the documents that were supposed to be provided should be
17 given over.

18 Now, procedurally, Your Honor, this is a little bit
19 weird for you because typically in a FOIA context you get
20 the request for information and then the public body says
21 Okay, we are not giving it over to you because South
22 Carolina FOIA provides that we may exempt from disclosure
23 of these certain things. Here what did not happen on
24 that determination of a public body was anything that
25 went towards the documents but just that you can't send

1 them to us because we are a public body.

2 So I just, Your Honor, want to point out that that
3 is out there in this case but we don't have a
4 determination from the chamber yet in the event they are
5 a public body as to whether or not those items that were
6 sought in the FOIA request would or would not be subject
7 to disclosure.

8 THE COURT: Well, I'll ask that you address that in
9 the order and you can address that particular issue and
10 I'll give it some thought myself.

11 MR. SMITH: Thank you, Your Honor.

12 THE COURT: All right. And how much time do each
13 of you need to prepare a proposed order?

14 MR. SMITH: Your Honor, I mean, I think I can
15 probably get this done in about two weeks time.

16 MR. STEPP: That's fine.

17 THE COURT: Two weeks it shall be and I'll ask that
18 you send it -- I'm going to be here in Beaufort for the
19 next six months so I'll ask it be sent to the clerk's
20 office to my attention and I'll receive it.

21 Very good. I'll ask that you send the original
22 with a self-addressed stamped envelope, and once you get
23 it done you can e-mail it to me and I can start reading
24 and studying it but I do want the original from both.
25 Does that sound all right?

1 MR. SMITH: Yes, sir.

2 THE COURT: Anything else anybody else would like
3 to say?

4 MR. STEPP: Your Honor, do you want a copy of
5 Weston --

6 THE COURT: I do.

7 MR. STEPP: -- just for your reading?

8 THE COURT: Yes.

9 (A document was handed to the Court.)

10 MR. SMITH: Your Honor, as he pointed out we also
11 cited Disabato that was not a big portion today. I can
12 hand up a copy of that as well.

13 THE COURT: Okay. All right. Thank y'all.

14 (WHEREUPON, the hearing was concluded.)

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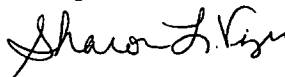
C E R T I F I C A T E

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I, Sharon L. Vizer, Official Court Reporter for the
14th 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 the evidence introduced in the hearing of the
captioned case in Circuit Court on the 27th day of
January 2016.

I do further certify that I am neither of kin, counsel
nor have an interest to any party hereto.

May 21, 2016



SHARON L. VIZER

CIRCUIT COURT REPORTER