

January 19, 2009 Meeting

TERC voted to go into executive session to discuss confidential matters with its counsel, John Hoefler, Willoughby and Hoefler.

The Committee voted to come out of executive session, and the following motions were made:

Mr. Seigling motioned to proceed with appeal in TERC's case versus City of Myrtle Beach regarding TERC's stance on disbursement of atax funds for non-for profit organizations. Mr. Riggs seconded. The Committee unanimously approved to proceed with the appeal.

TERC voted to go into executive session to discuss confidential matters with its counsel, John Hoefler, Willoughby and Hoefler.

The Committee voted to come out of executive session, and the following motions were made:

- Mr. Seigling motioned that TERC asks counsel to send a letter to City of Myrtle Beach questioning their 07-08 report in regards to the procedure on how they approve their accommodations tax fund expenditures. Mr. Riggs seconded the motion, and TERC unanimously agreed.

November 2008 Meeting

City of Myrtle Beach:

TERC sent a letter to City of Myrtle Beach questioning their disbursement to Myrtle Beach Corporation for the Arts for the Rivoli Theatre for \$170,000. The City sent copies of the checks that had been disbursed, but there has been no work done on this project.

City of Myrtle Beach:

Questioned the following expenditures:

Public Works for Beach Cleaning, City of Myrtle Beach-
Public Works for Personnel Costs for Special Events- Sanitation, City of Myrtle Beach-
Parks & Grounds- Christmas Decorating while funds were disbursed for these projects, the Advisory Committee recommended different/no funds be disbursed.

There is a full page of expenditures in the report that have no explanations for what the funds were used for. It also appears that the advisory committee's recommendation was different on many of your projects from the Councils final allocation;

Questioned advisory committee member: Norfleet Jones, and her relation to the hospitality industry.

August 2008 Meeting

City of Myrtle Beach:

\$100,000 was approved and disbursed to Myrtle Beach Corporation for the Arts for projects that include but not limited to Rivoli Theater in 2006/2007, and \$75,000 was approved and dispersed in 2005/2006. It was reported that this money was never disbursed, and TERC wishes to question what happened to the funds. TERC determined that the city must file an amended report that explains what the money was actually spent on, and to provide expenditures for 04/05, 05/06, and 06/07.

October 2007 Meeting

City of Myrtle Beach:

The city gives most of its funding to itself in order to cover additional municipal services. Although this practice is common in some of the "high concentration areas," TERC will request the City to breakdown the funds given to each department.

August 2007 Meeting

TERC voted to go into executive session to discuss confidential matters with its counsel, John Hoefler, Willoughby and Hoefler. After returning from executive session, Mr. Curry motioned to direct Mr. Hoefler to request the Administrative Law Court to hear the case of the City of Myrtle Beach v. Tourism Expenditure Review Committee in Richland County. Myrtle Beach had requested a change of venue to Myrtle Beach. TERC approved the motion unanimously with Mr. Mustert abstaining from voting.

City of Myrtle Beach:

Mr. Mustert brought to the attention of the Committee that Myrtle Beach has plans to start using state accommodations tax funds to fund local government activities where tourists have put an additional strain on the local government for those services. After some discussion, most TERC members agreed that although it was not the intent of the law, it is a legal use of funds because Myrtle Beach is a tourism-driven area. However, TERC also agreed it is not an issue on which TERC should take a stance. Mr. Siegling motioned that Mr. Mustert, on behalf of TERC, write a letter to Myrtle Beach. The motion failed. Mr. Curry motioned that we urge the Hospitality Association of SC to get involved. The motion passed unanimously.

May 2007 Meeting

City of Myrtle Beach:

TERC had previously voted to notify the City that the \$58,000 expenditure to the Planning Dept. was not an acceptable use of funds per Section 6-4-10. However, the City voted to refund the grant monies and not actually expend the funds. TERC voted to approve this process provided the City had never actually spent the funds, it simply approved the funds. After receiving affirmation of that, TERC voted to approve.

March 2007 Meeting

City of Myrtle Beach

TERC previously voted to direct the State Treasurer's Office to withhold funds for Freewoods Foundation Pig Pen exhibit in the amount of \$10,000. However, after review of additional information, TERC found that although it might be not the best use of funds, the exhibit was in conjunction with a museum which does adhere with Section 6-4-10 of the S.C. Code of Laws. TERC voted to overturn its original decision and allow the expenditure. Susan Cruse and John Curry cast dissenting votes. Susie Surkamer, Frans Mustert and Ed Riggs abstained from voting.

January 2007 Meeting

Executive Session: TERC voted to enter into executive session to discuss confidential matters with its counsel, John Hoefler, Willoughby and Hoefler.

After returning from executive session, the following decisions were made.

City of Myrtle Beach's Request to Return Funds:

TERC had previously voted to withhold funds in the amount of \$58,000.00 from the City based on an atax grant that was used to fund studies and the acquisition of land. TERC determined this was an inappropriate expenditure. Myrtle Beach stated it had rescinded the grant of atax funds, and are requesting that TERC not withhold funds. TERC will request the City verify that the funds were never actually expended.

TERC Appeal Regarding ALJD's Decision with City of Myrtle Beach:

Mr. Hoefler reported that this case was still in the appeal process and nothing has changed.

November 2006 Meeting

TERC Appeal Regarding ALJD's Decision with City of Myrtle Beach:

Mr. Hoefler reported by phone that this case was still in the appeal process and nothing has changed.

City of Myrtle Beach:

Withhold funds for Freewoods Foundation Pig Pen exhibit in the amount of \$10,000. Frans Mustert abstained from voting.

September 2006 Meeting

TERC Appeal Regarding ALJD's Decision with City of Myrtle Beach:

Mr. Hoefler reported that this case was still in the appeal process and nothing has changed.

July 2006 Meeting

TERC voted to go into executive session to discuss confidential matters with its attorney.

When TERC adjourned from executive session, the following actions were taken:

- TERC passed a motion to continue with its appeal with Myrtle Beach in the case dealing with the granting of funds to a for profit entity.
- TERC re-examined questions it had of Myrtle Beach's disbursement of funds in the amount of \$58,000.00 to the Planning Department for a feasibility study and purchase of land. It also examined \$2.7 million that Myrtle Beach had used to put in its general fund, which the City says is used in part for police protection. After discussion, TERC voted to direct the STO to withhold \$58,000.00 from future disbursements to the City. Feasibility studies and purchase of land is not tourism related expenditure according to Section 6-4-10.

May 2006 Meeting

The Committee then reviewed correspondence received from the following entities' regarding their **FY 04-05 Accommodations Tax Reporting Forms**.

The following had been sent letters questioning various items such as their 65% expenditures, their 30% recipients, accurate coding, balancing issues, their local committee compliance, and various questions TERC had regarding certain expenditures.

City of Myrtle Beach

(According to the information it received, TERC approved questions it had previously of the City, including the expenditure to the Planning Department and the City of Myrtle Beach General Fund). Per Mark and John (TERC Committee Members)

January 2006 Meeting

Myrtle Beach Appeal:

The next step in the appeal process is circuit court. Mr. Hoefler advised TERC that the process could take up to two years.

The Committee then reviewed the following entities' **FY 04-05 Accommodations Tax Reporting Forms**. The following have been sent letters questioning various items such as their 65% expenditures, their 30% recipients, accurate coding, balancing issues, their local committee compliance, and various questions TERC had regarding certain expenditures. Those entities who were sent letters questioning lighting and landscaping will receive an opinion from TERC after it confers with its attorney. Those from which TERC voted to withhold funds will

receive the chance to provide additional information in person at a TERC meeting or via written correspondence:

City of Myrtle Beach, Pawley's Island, Town of Ridgeland:

TERC voted to withhold \$1,000.00 for an expenditure used to fund increased seating at youth baseball tournaments.

December 2005 Meeting

The Committee then went into executive session to discuss confidential attorney/client information.

City of Myrtle Beach update:

The Committee voted in executive session to file an appeal the Administrative Law Court's decision regarding Myrtle Beach and TERC's decision to withhold funds for fireworks usage based on the entity being for profit.

November 2005 Meeting

City of Myrtle Beach update:

Myrtle Beach withholding- John Hoefer reported to TERC the latest on the contested case hearing between TERC and Myrtle Beach. Mr. Hoefer stated that no decision had been reached, but he anticipated a decision soon...

Discussion of Fireworks:

Based on TERC's fireworks policy that state accommodations tax funds can be used for fireworks only if the fireworks display has ties to a civic or cultural event (July 4, New Years Eve, etc.), **TERC voted to direct the State Treasurer's Office to withhold \$25,000.00 from the City of Myrtle Beach regarding its usage of fireworks.** It has not been proven that this fireworks display has a definite tie to a civic or cultural event.

TERC voted to allow the Town of Hilton Head to use accommodations tax funds for its fireworks display. According to the information presented, the fireworks in Hilton Head have a definite tie to a civic event.

September 2005 Meeting

City of Myrtle Beach Update:

Myrtle Beach withholding-

John Hoefer reported to TERC the latest on the contested case hearing between TERC and Myrtle Beach. Mr. Hoefer stated that it was ultimately in the hands of the judge at this point and a decision should be rendered soon.

June 2005 Meeting

City of Myrtle Beach Case Update:

Myrtle Beach Withholding:

Mr. Hoefer updated the Committee on what stage we are in with the Myrtle Beach case. The court has denied Myrtle Beach's request to treat the case as an appeal. He said the hearing is set for mid-August and might require committee/staff testimony. He will continue to keep the Committee updated.

March 2005 Meeting

City of Myrtle Beach Case Update:

Myrtle Beach Withholding:

Mr. Hoefer updated the Committee on what stage we are in with the Myrtle Beach case. He said that Myrtle Beach has filed a motion to dismiss the contested case hearing and wishes to conduct an appeal. Myrtle Beach maintains that TERC should be the entity responsible for conducting a contested case hearing. TERC's position in the matter is that it does not have the legal authority to do so according to the law. Mr. Hoefer will continue to update the Committee on developments as they arise.

February 2005 Meeting

City of Myrtle Beach Case Update:

Myrtle Beach Withholding:

The Committee went into executive session to discuss information that was attorney/client privileged.

Myrtle Beach Opinion:

Mr. Mustert requested that TERC consider asking Mr. Hoefer for an opinion concerning a couple of items in Myrtle Beach. The Committee approved a motion to request Mr. Hoefer to render an opinion concerning this matter.

City of Myrtle Beach –

The committee approved the expenditures of Freewood Farms and the Carolina Spartans.

However, the **Committee voted to deny funding of \$25,000.00 for Myrtle Beach fireworks.** The fireworks organization has since received its for profit status, but TERC determined it did not fit the criteria of Section 6-4-10 in that those who benefit primarily are merchants. The Committee voted to have its attorney review the letter.

December 2004 Meeting

City of Myrtle Beach Case Update:

Myrtle Beach Withholding:

Mr. Hoefler updated the Committee via email to Mrs. Jeter on the Myrtle Beach notice of appeal filed with the ALJC. At the time, there had really been no new updates. Judge Marvin Kittrell has been assigned to the case. He is the same judge that heard the Florence County case. Mr. Hoefler will continue to update the Committee as this case develops.

November 2004 Meeting

City of Myrtle Beach Case Update:

Myrtle Beach Withholding:

Mr. Hoefler updated the Committee on Myrtle Beach filing a contested case hearing with the ALJD. He said that they were filing a protest based on the Committee's decision to withhold funds based on the recipient being a for profit entity. Mr. Hoefler said that he would continue to update the Committee as the case went before the court, and he expected it to be resolved within the same amount of time frame as Florence County – about four months.

September 2004 Meeting

Chairman Mustert asked Vice Chairman Lanneau Siegling to serve as Committee Chairman for the discussion of Myrtle Beach.

City of Myrtle Beach:

The Committee reviewed the additional information the City had sent on the Myrtle Beach Fall Rally in the amount of \$10,000.00 and the Myrtle Beach Fireworks/Beach Bang in the amount of \$20,000.00. After much discussion, it was decided that since both of these are for profit organizations, the Committee would ask that funds be withheld. It voted to withhold funds in the above-determined amounts. Frans Mustert abstained from voting.

August 2004 Meeting

City of Myrtle Beach:

Chairman Mustert shared with the Committee some talk about the City of Myrtle Beach using its 65% funds to conduct audits on the 65% recipients. After some discussion, the Committee concluded that the City could avoid audits by having the applicants complete the proper paperwork with detailed information and implement the form that is used by Richland County to track data after the project is completed. Therefore, the Committee passed a motion that it would advise the City that the 65% funds should not be used for this purpose.

REVIEWED BY JOHN CURRY/MARK WILLIAMS:

Because neither Mr. Curry nor Mr. Williams were in attendance, the Committee decided to carry forward discussion of entities reviewed by them. However, they did review the Town of Springdale's expenditure report and decided the ONLY expenditure worthy to receive funding was for billboard advertising. Mr. Curry and Mr. Williams will be alerted of this and the Committee will vote on action that needs to be taken against the town at its next meeting.

The Committee also determined that the City of Myrtle Beach would need another letter asking for the supplemental information that the Committee had requested in May. In July, the Committee had given the City an additional 30 days to supply the information because one of their staff had left. The Committee decided that the City should receive another letter letting them know that if they did not get the information within 15 days, it would be noncompliant.

June 2004 Meeting

City of Myrtle Beach:

The Committee has not yet received correspondence from the City regarding its questionable expenditures. However, TERC learned that the person normally responsible for those functions is no longer with the City, therefore, it will give the City 30 more days to correspond.

April 2004 Meeting

CALL TO ORDER /ADMINISTRATIVE TASKS/UPDATES:

Myrtle Beach Issue:

Before the Myrtle Beach letter was sent questioning why the City approved expenditures not approved by the local committee and questioning the non-profit status of several expenditures, Mr. Mark Williams asked that TERC re-examine the letter and its overall tone. After some discussion, the Committee agreed to revise the letter. The revised letter would then be sent to various committee members for input before it is distributed.

March 2004 Meeting

REVIEW OF CORRESPONDENCE/QUESTIONS

REVIEWED BY MARK WILLIAMS/JOHN CURRY:

City of Myrtle Beach:

The Committee voted to question the following expenditures, **specifically why they were not approved by the local committee:**

International Heritage Festival - \$2,000.00
Myrtle Beach Fall Rally - \$10,000.00
Myrtle Beach Fireworks/Beach Bang - \$20,000.00

TERC also questioned the non-profit status of the three questionable expenditures and whether or not they primarily benefit locals. Mr. Frans Mustert abstained from voting.

November 2003 Meeting

Letters to City of Myrtle Beach and the S.C. Municipal Association:

Mr. Siegling inquired about input from the City of Myrtle Beach and the S.C. Municipal Association regarding the May 5 meeting, where they told the Committee they thought some of their requests for additional information from local governments were too aggressive. At that time, both the City of Myrtle Beach and the Municipal Association told the Committee they would be glad to submit in writing any suggestions they might have for the Committee. The Committee has yet to receive them, so the Committee will draft letters to the two requesting their comments as soon as possible.

June 2003 Meeting

Legislative Update:

Mr. Sponseller updated the Committee on accommodations tax related issues at the statehouse. He said the SCDOR was still working on language in the "BAT" bill that addressed Sunday alcohol sales. Mr. Sponseller also said he was invited by the Municipal Association of SC to speak at a meeting regarding accommodations taxes. Chairman Mustert also told the Committee that **Mr. Tom Ellenburg, city attorney for Myrtle Beach**, asked a member of the TERC to speak at its attorneys meeting in December. The committee agreed it would wait to retain legal counsel and have its attorney conduct education such as that.

May 2003 Meeting

Non Committee Members/Guests in Attendance:

Tom Sponseller, SC Hospitality Association; Damita Jeter, TERC Committee Staff; Jean Askew, City of Georgetown; **Thomas Ellenburg, City of Myrtle Beach (Attorney)** and **Howard Duvall, Municipal Association of S.C.**

QUESTIONS/PRESENTATION BY HOWARD DUVALL AND TOM ELLENBURG:

Mr. Howard Duvall of the Municipal Association of S.C. then discussed some concerns with the Committee regarding a form they sent out requesting more information from municipalities. The form also included a definition of a tourist as being one that travels 50 miles. Mr. Duvall said he thought the Committee has gotten too far tilted "towards hospitality" and it is requesting items that are not within the realm of its authority. Committee members said that originally the law defined tourists as those traveling overnight.

The legislature changed the law to say "outside of their communities for reasons other than working." The Committee wanted a more precise definition and was told by legal staff that they could use what the national parks, recreation and tourism industry, the Travel Institute of America as well as the S.C. PRT uses – the "50 mile" definition.

The Committee clarified that they asked for the overall attendance, percentage of tourism, and overall budget as a way to obtain more information from entities.

Mr. Mustert said that many times, the information given to the Committee was insufficient to make a proper determination regarding the expenditures. He said the Committee realized it was not law and encouraged entities to provide as much information as possible. Mr. Duvall said he was concerned many entities did not have the information to give them. Committee members said they felt as though municipalities could provide the information if needed. Mr. Duvall was also told that in the future, the reporting form would be expanded and the language would be changed to say, "explain expenditures" instead of "list expenditures." He agreed that would probably help to give more sufficient information for the Committee.

Mr. Duvall also said the statute was originally created to give municipalities an additional source of income. Mr. Curry objected, and said he was involved with the original legislation, and the statute was created to "provide a reasonable tourism bill since it was a hospitality tax." Mr. Curry said the industry worked with the legislature to create a bill that would promote tourism since it was a tax upon the industry.

Mr. Duvall stated that the Mayor of Pawley's Island, Mayor William Otis, was asked to resign from the Committee. Various Committee members said that statement was untrue. Mayor Otis had dual office holdings according to the Governor's Office and resigned because of that reason. Committee members also reminded Mr.

Duvall that the Municipal Association is delinquent in proposing an appointment to fill the vacant seat. In addition, the appointee of the S.C. Association of Counties has only attended one of seven meetings, which also may appear as a lack of representation of non tourism-related Committee members.

Mr. Duvall told the Committee he thought they scrutinized expenditures too closely. The Committee said they had a responsibility to question certain expenditures they did not understand. Committee members said that many of the smaller municipalities collected more than \$50,000 in accommodations taxes, but were not "tourism driven" towns and cities. **The Committee was put in place by state law to oversee and determine if all applicable entities in the state were using these funds to promote tourists.**

Mr. Ellenburg then joined the conversation and **said the Committee, according to the law, did not have the right to ask for such things as percentages.** They could ask for minutes and guidelines of local accommodations tax committees and county councils. **He said that the Committee was trying to "micromanage" and he invited Mr. Duvall and his association to join in a lawsuit against the Committee.**

Mr. Ellenburg also stated that the Tourism Expenditure Review Committee should trust the local accommodations tax committees who have already approved certain expenditures. Committee members said that the law states what their responsibility is and encouraged both Mr. Ellenburg and Mr. Duvall to continue dialogue with the Committee and offer suggestions in order to reach a solution in the matter of disagreement. The Committee agreed to draft a letter to both Mr. Duvall and Mr. Ellenburg to encourage them to state their specific concerns with the Committee and offer specific suggestions.

Chairman Mustert asked Mr. Ellenburg if he would like to discuss a matter in private concerning the City of Myrtle Beach. Mr. Ellenburg said he preferred to discuss it openly. **Mr. Mustert said the City of Myrtle Beach uses part of its 65% funds for city services. It is not running it through the advisory committee, and, in addition, the Committee has never approved minutes from its meetings.**

The Committee then voted to approve Mr. Ellenburg and the City of Myrtle Beach's request regarding an FOI to review all documents housed at its office in the SC Department of Revenue, provided Mr. Ellenburg worked within Mrs. Jeter's scheduled office hours and pay for staff time, copies and other expenses.

Chairman Mustert excused himself from voting. **Vice Chairman Lanneau Siegling was previously asked by Mr. Ellenburg to recuse himself from any dealings with the City of Myrtle Beach based on a newspaper article that ran in the Sun News. Mr. Siegling said the statements he made to the reporter were taken out of context, and he would not recuse himself from voting on matters that dealt with Myrtle Beach.**

City of Myrtle Beach and City of Rock Hill:

The Committee reviewed their explanation of questionable expenditures and approved their original request. Letters will be drafted telling them such. Mr. Mustert excused himself from voting on the Myrtle Beach expenditures.

March 2003 Meeting

Chairman Mustert informed the Committee about an article written by Zane Wilson of the Sun News regarding accommodations taxes. Mrs. Jeter said she would pull the article and place in the Committee news and media archives.

REVIEW OF QUESTIONABLE EXPENDITURES:

City of Myrtle Beach:

Did not answer specific questions posed in our letter. A letter will be drafted saying please provide the number of total attendance to the event, the total number of tourists and the total budget. Should information not be forthcoming the committee may rule to withhold in the future.

January 2003 Meeting

Requested Explanation to Questionable Expenditures Letters:

The Committee agreed that Counties and municipalities with questionable expenditures from prior meetings should respond in two weeks from the date on the letter. The majority of the letters were sent on 1-27-03:

Anderson County	City of Aiken	City of Beaufort	City of Greenville
City of Greer	Greenville County	Horry County	Town of Springdale

Expenditure Reports Reviewed:

Lanneau Siegling/John Curry – Requested further information on the following:

- Beaufort County
- Oconee County
- City of Myrtle Beach**
- Horry County**
- Laurens County
- Town of Mount Pleasant
- City of Newberry
- County of Orangeburg
- Town of Port Royal
- Town of Ridgeland
- City of Rock Hill

Town of Springdale (used wrong form)
Town of Summerville

Letter to Ashby Ward – Myrtle Beach Chamber of Commerce

The Committee agreed to submit a letter to Ashby Ward regarding the use of the 65% tourism-related funds to establish a facility. The Committee feels that it would not be the best use of A-Tax funds – may be some duplication or overlapping with other county/city funds.

Link to minutes - <http://www.atax.sc.gov/Minutes.htm>

Link to Tourism Expenditure Review Committee

<http://www.atax.sc.gov/index.html>

The Tourism Expenditure Review Committee was created in July 2001 when the Governor signed S.B. 349. The Committee was founded as an oversight authority whose mission is to review reporting forms from applicable entities for compliance with the law.

The Tourism Expenditure Review Committee is a the State Committee that monitors accommodations tax reporting. (A-tax).

LOOK at FAQ's – Might hold some important info to get them on their own game

A Brief History of the South Carolina Accommodations Tax Bill

A bill creating a tax on transient lodgings facilities in South Carolina was originally introduced by state Representative Jean Meyers in the mid-seventies. The monies were basically to go to the state's general fund and some towards reduction of property taxes. The state's hotel industry successfully fought the bill as a discriminatory tax for several years. When Ms. Meyers left the legislature, Representative Harriet Keyserling picked up the effort and added a section which used the monies for arts related activities.

The bill was gaining support each year and in 1981, after studying what other states had done, representatives of the hospitality industry including Angus Cotton, John Curry, John David Rose and Ashby Ward held several meetings with Representative Keyserling to craft a bill that would provide a guaranteed amount for tourism promotion as well as funds for appropriate arts activities.

At that time only 16 of South Carolina's 46 counties had significant tourism activity. The remaining 30 counties fought the legislation claiming that their citizens would suffer by having to pay the tax when visiting the popular coastal areas. To get their support, the "Robin Hood" amendment was added which required that the rich tourism areas give some funds to those not otherwise benefiting from the tax.

The bill that passed in 1983 gave the first \$25,000 to the general fund of the county or municipality where it was collected. 25% of the balance was to go to a non-profit organization with a track record of tourism promotion for marketing. An advisory committee was required for every county and municipality that collected in excess of \$50,000 annually and the special rules established for "high tourism impact" areas which let the remaining funds be spent, in part, for general services above what would normally be required if there was not significant tourism impact.

The bill was later modified giving counties/municipalities 5% in addition to the \$25,000 and the designated marketing agency an additional 5% for a total of 30%. There have been minor modifications over time and there is still a need for some clarification on many issues but the tax has served us well.