



Beth A. Wood, CPA
State Auditor

STATE OF NORTH CAROLINA
Office of the State Auditor

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March 16, 2016

The Honorable Pat McCrory, Governor
The Honorable Senator Bill Cook
Mr. Lee Nettles, Executive Director, Dare County Tourism Board

This letter presents the results of our financial related audit of the Dare County Tourism Board (Board).

Executive Director Lee Nettles reviewed a draft copy of this report. His written comments are included starting on page five.

The objective of this audit was to determine whether the Board spends its restricted funds in accordance with its enabling legislation. The audit scope was limited to fiscal years 2014 and 2015.

To accomplish our audit objective, auditors performed procedures such as interviewing personnel, observing operations, reviewing policies, analyzing accounting records, and examining documentation supporting recorded transactions and operations.

As a basis for evaluating internal control, auditors applied the internal control guidance contained in professional auditing standards. However, our audit does not provide a basis for rendering an opinion on internal control, and consequently, we have not issued such an opinion.

We conducted this audit in accordance with generally accepted government auditing standards applicable to performance audits. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We wish to express our appreciation to the staff of the Dare County Tourism Board for the courtesy, cooperation, and assistance provided us during the audit.

If you have any questions, please do not hesitate to contact my office.

A handwritten signature in cursive script that reads "Beth A. Wood".

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BACKGROUND

The Dare County Tourism Board (Board) is a public authority under the Local Government Budget and Fiscal Control Act. The Board was created for the purpose of promoting year-round travel and tourism in Dare County.

The 13 member Tourism Board is appointed to two-year terms by the Dare County Board of Commissioners. Members are selected from nominees of various tourist-related organizations¹ and Dare County municipality boards² plus one Dare County Commissioner, and two at-large members from Dare County.

The Board's most significant funding is a 1% occupancy tax and a 1% prepared food and beverage tax levied by Dare County. Occupancy and prepared food and beverage tax revenues were \$6,176,401 and \$6,407,577 for the years 2014 and 2015 respectively.

Both taxes and expenditure restrictions are defined and authorized by [Session Law 1991-177](#).

¹ Tourist-related organizations include the Outer Banks Chamber of Commerce, the Dare County Restaurant Association, the Dare County Hotel/Motel Association, and the Dare County Board of Realtors.

² This includes Duck, Southern Shores, Kitty Hawk, Kill Devil Hills, Nags Head, and Manteo.

FINDING

1. THE BOARD SPENDS RESTRICTED FUNDS IN ACCORDANCE WITH ITS INTERPRETATION OF THE LAW

The Dare County Tourism Board (Board) spends restricted funds in accordance with its interpretation of its enabling legislation.

The law states that restricted funds should be spent as needed for “services or programs needed due to the impact of tourism.” However, the law does not define or give examples of tourism impacts.

Due to the lack of specific guidance, there can be different interpretations of the restriction. For example, the impact of tourism could be defined as negative impacts such as the strain on police, lifeguards, and sanitation crews because of the increased number of people in the county during the prime tourist season.

The Board’s interpretation of the law is that restricted funds can be used to provide services and programs due to “both positive and negative” impacts of tourism. For example, the Board authorized restricted fund expenditures for firework shows and walking trails to give tourists more things to do (positive impact).

The Board has operated under this interpretation for nearly 25 years.

Lack of Clarity

There are no court cases involving the law so there is no judicial interpretation to compare against. Additionally, legislative committee meetings notes do not provide any clarification about the intent of the legislature on how the restricted funds are to be spent.

Absent other clarifying intent, the Board is left with its interpretation of the law.

What the Law States

Session Law 1991-177 created the Dare County Tourism Board and allowed for a 1% occupancy tax and 1% food/beverage tax to be used as its operational funding source.

The enabling legislation also set parameters for the use of the tax funds by directing that 75% of the tax collections be used for the cost of administration and to promote tourism and 25% to “be used for services or programs needed due to the impact of tourism on the county.”

While the law does not give examples of services or programs needed due to the impact of tourism, it does provide examples of tourism promotion expenditures. Examples include:

- Advertising to promote less-than-peak-season events and programs
- Marketing research
- A mail and telephone inquiry response program
- Welcoming and hospitality functions

FINDING

What the Board Does

Revenues from the 1% occupancy tax and 1% food/beverage tax are placed into two separate funds. In accordance with the law, 75% is placed in the Board's General Fund and 25% is placed in the Board's Restricted Special Revenue Fund. Administration costs and promotion costs are paid out of the General Fund and costs used to provide services or programs due to "both positive and negative" impacts of tourism are paid out of the Special Revenue Fund.

Examples of restricted (25%) funding used to provide services and programs due to tourism's impact include annual fireworks shows, payments to lifeguards, a dredging project, and the design of a multi-use center. Expenditures have also been used for the Duck soundside boardwalk and amphitheater, several multi-use paths and wellness trails, restorations of key historic attractions, and other projects throughout the community.

Additionally, all Special Revenue monies expended by the Board receive approval from the Dare County Board of Commissioners and are paid to other entities on a reimbursement basis.

Recommendation

The Board should seek clarification from the legislature as to the intent of the restriction.

AUDITOR RESPONSE

Government Auditing Standards require that we add explanatory comments to the report whenever an audit finding response is inconsistent or conflicts with the finding or recommendation. In accordance with this requirement and to ensure that the nature and seriousness of the findings are not minimized or misrepresented, we have provided comments to the Board's responses when appropriate.

The Board's response indicates that it does not agree with the report's assertion that the enabling law lacks clarity.

As noted in the report, there is no clear legislative intent and no case law regarding the Board's spending of restricted funds.

To address local concerns about the intent of the restriction, the Board should seek clarification from the legislature as recommended.

The Governor, Legislators, and the citizens of North Carolina should consider the clarification provided above when evaluating the Board's response to the audit finding.

RESPONSE FROM DARE COUNTY TOURISM BOARD



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March 7, 2016

Beth Wood, CPA
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Dear Auditor Wood,

Thank you for the opportunity to respond to the financial related audit report (Report) regarding the Dare County Tourism Board (Board).

The Finding

In general, we agree with the Report Finding: the Board does spend Restricted Funds in accordance with its interpretation of the law.

The Report, though, goes on to speak extensively on the matter of interpretation, at one point stating, "Absent other clarifying intent, the Board is left with its interpretation of the law."

We do not agree with the Report's assertion that the legislation lacks clarity.

Prevailing Intent

As cited within the Background section of the Report (p. 1), "The Board was created for the purpose of promoting year-round travel and tourism." This purpose is also articulated within Section 6.(b) of the enabling legislation: "*The Tourism Board shall promote year-round travel and tourism in Dare County as provided in Section 7 of this act and perform other duties as required by law.*"

The promotion of year-round travel and tourism is, therefore, the Board's legislated purpose and establishes the over-arching legislative intent; Section 7 and the distribution of proceeds is a subservient point to Section 6.

Positive Impact

The promotion of year-round travel and tourism is an inherently positive intent.

The Report acknowledges the distinction between "positive and negative impacts" of tourism, but points out that the legislation does not specify whether Restricted Funds are to be used for one or the other, or for both.

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Rather than viewing this as an inadvertent omission, as implied by the Report, we see it as a conscious decision on the part of the Legislature, particularly since the legislation specifies negative impact expenditures in an earlier section.

Section 1.(e) informs the distribution of the 3% occupancy tax designated for Dare County and its six towns, stating, "Revenue distributed to a town or retained by the county under this subsection may be used only for tourist-related purposes, including construction and maintenance of public facilities and buildings, garbage, refuse, and solid waste collection and disposal, police protection, and emergency services."

In other words, when the Legislature wished to limit the occupancy expenditures to positive or negative impacts only, it did so.

The versatility of the direction to the Board is intentional and reflects the wisdom of the Legislature, recognizing that it could not fully anticipate the myriad appropriate uses of Restricted Fund dollars.

Local Legislation

The recommendation that the Board seek clarification from the Legislature presumes that the local legislation needs to be improved upon or better understood. This particular piece of legislation resulted from a request made by local officials and with the involvement of several individuals who are still involved with the Board's activities to this day.

As the Report observes, the Board has administered the Restricted Funds consistently since its inception nearly 25 years ago. During that time, approximately \$9 million dollars have been reinvested in the community. Walkways and beach accesses have been constructed, historic and cultural assets have been built and preserved, and visitors and residents have been provided with amenities to encourage enjoyable and memorable experiences on the Outer Banks - in essence, promoting year-round travel and tourism to Dare County's Outer Banks.

The projects have tangibly benefitted visitors and residents, improving our tourism infrastructure and ensuring the long-term viability of our area's fundamental economic engine, tourism.

None of the local governmental entities directly affected by the Restricted Fund portion of the legislation are requesting that changes be made to it.

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Next Steps

The Tourism Board's next regular meeting is scheduled for Thursday, March 17th. The Report will be added to the meeting agenda for discussion. I will seek further direction from the Board at that time, and will share the results of the discussion with Mr. Styres immediately following the meeting.

We have appreciated the professional and forthright approach of the State Auditor's office during this process. Please let me know if you, or your staff, have any questions, or if I can help in any way.

Sincerely,



Lee Nettles
Executive Director
Outer Banks Visitors Bureau

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This audit required 428.5 hours at an approximate cost of \$42,422.