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October 8, 2003

The Honorable Jerry Fannin, Mayor
City of Prestonsburg
200 North Lake Drive
Prestonsburg, Kentucky 41653

RE: Prestonsburg Recreation, Tourist, and Convention Commission

Dear Mayor Fannin:

A citizen posed to this office a series of questions about the Prestonsburg Recreation, Tourist, and Convention Commission (Commission) and the City of Prestonsburg (City). We initiated an examination to determine whether the Commission and City are in compliance with Kentucky Revised Statutes (KRS) 91A.350 to 91A.394 governing tourist and convention commissions.

We identified several City ordinances that appear to conflict with current state statutes governing tourist and convention commissions. We found that Commission funds are not being collected within the time required by KRS 91A.390(1). The City earmarked a portion of Commission funds without the advice and consent of the Commission, which appears to violate KRS 91A.390(3). Furthermore, an ordinance adopted by the City provides the Mayor with more authority over the Commission than is authorized by KRS 91A.360(4).

In addition to the conflicts between state statutes and City ordinances noted during our examination, we also identified unauthorized changes to the Commission’s checking account made by the Mayor. Finally, we noted that the Commission is not audited separately from the City’s annual financial statement audit and that audit reports are not being distributed to the entities required by KRS 91A.360(5).

The findings noted during the performance of our examination are presented and explained in the attached detailed report. We wish to thank City personnel, as well as commissioners and Commission personnel, for the cooperation received during the course of our work.

Very truly yours,

Edward B. Hatchett, Jr.
Auditor of Public Accounts

EBHJr:kct
Findings and Recommendations

An ordinance adopted by the City of Prestonsburg provides for more authority over the Prestonsburg Tourist Commission than allowed by state statute.

Kentucky Revised Statutes (KRS) 91A.350 to 91A.394 (Exhibit A) govern tourist and convention commissions established by local governments throughout the Commonwealth. KRS 91A.350 specifically grants the authority to local governing bodies to establish tourist and convention commissions for the purpose of promoting and developing convention and tourist activities and facilities. In 1988, the City of Prestonsburg (City) established the Prestonsburg Recreation, Tourist, and Convention Commission (Commission) in accordance with KRS 91A.350(2) (Exhibit B).

City ordinance 118.04 states

[t]he …Commission shall have all of the rights, powers, duties, and obligations prescribed by law relating to the promotion of recreational, convention, and tourist activity in the [C]ity. It may employ such personnel, subject to the approval or discharge by the Mayor, and make such contracts as are necessary to effectively carry out the purposes of KRS 91A.350 through 91A.390. [Emphasis added]

State law does not give the Mayor authority to appoint and/or remove Commission employees.

KRS 91A.360(4) states that the Commission “may employ personnel and make contracts necessary to carry out the purpose of KRS 91A.350 to 91A.390.” These statutes, however, do not grant authority to a mayor to hire or fire employees of the Commission; state law only grants authority to mayors to appoint and remove commissioners of the Commission according to KRS 91A.360(1) and (6).

Recommendation

We recommend that the City revise ordinance 118.04 to reflect the statutory limits to the authority and powers granted to the City’s Mayor.

The Mayor changed the Commission’s bank signature cards without the Commission’s approval.

On August 1, 2002, the City of Prestonsburg Mayor (Mayor) changed, without the Commission’s approval, the signature authority for the Commission’s checking account to require signatures from at least two of the following persons: the Mayor, the current City Treasurer, and the former City Treasurer (Exhibit C). The former City Treasurer was included on the signature card because she is still employed by the City on a limited, part-time basis. Before this unapproved
change, signature authority was established in May 1999 and authorized the City Treasurer and either the Commission Chairperson or the Commission Treasurer (Exhibit D) to sign Commission checks.

In order to obtain documentation of the signature authority changes to the Commission’s bank account, we contacted First Commonwealth Bank of Prestonsburg (Bank). Upon initial contact with the Bank, the Bank’s Compliance Officer informed us that he did not foresee any problems with the Bank providing the signature cards upon receipt of a valid subpoena issued by the Auditor of Public Accounts (APA) under the authority of KRS 43.080. Accordingly, on July 1, 2003, the APA served a subpoena both by facsimile and by the United States Postal Service upon the Bank’s Compliance Officer to produce all signature cards of the Commission’s account from January 1, 1998, through June 30, 2003 (Exhibit E).

On July 7, 2003, the Bank’s Compliance Officer contacted the APA and informed us that the Bank was concerned about the possibility of violating the privacy rights of its customers by producing the signature cards of the Commission’s account (Exhibit F). Additionally, the Compliance Officer maintained that neither the Bank nor its employees are within the definition of entities required to produce information on oath as defined in KRS 43.080 (Exhibit G). Thus, the Bank refused to produce the documents requested in the subpoena.

KRS 91A.394 authorizes the APA to review audits and conduct its own audits and investigations of tourism and convention commissions established in accordance with KRS Chapter 91A.350. The Commission was established in accordance with KRS Chapter 91A.350 (2). KRS 43.080(3) authorizes the APA to “require information on oath from any person touching any matters relative to any account” the APA is required to state, audit, or settle. This section of the statute is not limited in either its language or its application to include only state agencies or state officials. The First Commonwealth Bank of Prestonsburg willfully failed to comply with a subpoena lawfully issued by the APA in accordance with KRS 43.080. The Bank’s failure to comply with a lawfully issued subpoena will be referred to the Public Protection and Regulation Cabinet, Department of Financial Institutions.
The APA determined that challenging the Bank’s refusal to produce the subpoenaed documents through the legal system would significantly delay finalizing our examination. Thus, to facilitate the examination, we requested that the Commission obtain the signature cards from the Bank and provide our office with copies of the cards. In this way, we were able to obtain copies of the signature cards.

Commissioners are responsible as fiduciaries for Commission funds.

KRS 91A.360 requires the chief executive officer of the local governing body to appoint seven members to serve as commissioners of the tourist and convention commission established by the local governing body. When the local governing body is a city, the city’s mayor is responsible for appointing commissioners to the commission, and the commissioners, not the mayor, are then responsible for carrying out the purposes of KRS 91A.350 to 91A.390. Furthermore, commissioners are responsible as fiduciaries for the funds collected, maintained, and distributed through the hotel and restaurant tax.

Recommendation

We recommend that check signature authority of the Commission’s checking account be limited to persons approved by the Commission, without the unlawful intervention of the Mayor. The Commission, and only the Commission, should approve all changes made to the signature cards.

The City must obtain the advice and consent of the Commission to fund tourist facilities with taxes collected from hotel/restaurant taxes.

City ordinance 118.06 specifies three recipients of the tax proceeds collected under the tourism tax and sets the percentage share of each. Thirty-three percent of the tax collected funds the City Park Commission (City Parks), not to exceed the dollar amount budgeted in 1992 through 1993, while 34 percent of the tax collected funds the Mountain Arts Center. The remaining 33 percent is distributed to the Commission.

The Commission questioned the funding provided to the City Parks.

According to the Commission’s October 10, 2002, meeting minutes, the Commission raised questions about the portion of tax revenues distributed to the City Parks. The Commission believes that the funds distributed to the City Parks should not exceed the amount set forth in KRS 91A.350(5) because of the Commission’s belief that the City Parks promote recreational activities and not tourist activities. KRS 91A.350(5) states
Tourist and convention commissions may continue to fund recreational activities or projects not related to tourism or conventions that were funded by the commission prior to July 13, 1990, at a level no greater than that provided by the commission in the 1990 fiscal year.

The City believes its city parks are a major attraction to visitors. City ordinance 118.06 states

[the city recognizes Archer Park and any other city recreational parks existing now or hereafter established, to be a major attraction for visitors to this area, and it is the intent of this chapter to provide sufficient funding to the city park system to maintain city recreational facilities at a high level for future growth and development of the city’s tourism economy.

The Mayor requested an opinion from the Attorney General’s Office. Due to the difference of opinions between the Commission and City Council, the Mayor requested an opinion from the Attorney General’s Office (Exhibit H). The Attorney General’s Office determined that the City Attorney was the appropriate authority to address the matter (Exhibit I). The City Attorney stated that in his opinion the City Park is useful in the attraction of tourists to the area and should continue to be funded at the present level. Therefore, the maximum funding allowed by KRS 91A.350(5) does not apply. Accordingly, this statue would only apply to funding provided by tourist commissions to recreational facilities not related to tourism.

KRS 91A.390(3) authorizes the tax levying body (City) to designate a portion of the money collected from the imposition of the tax to be “…used to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business.” However, the portion of money used for the above mentioned financing activities must be earmarked upon the advice and consent of the Commission. City ordinance 118.06 as last amended in September 1997 does not contain the “advice and consent” language of KRS 91A.390(3), which was amended during the 2000 General Assembly.
We recommend that the City update ordinance 118.06 to comply with KRS 91A.390(3). According to this statute, money collected from the hotel and restaurant tax should only be expended upon the advice and consent of the Commission.

City ordinance 118.18 establishes the terms for collecting the hotel and restaurant tax and the penalties for unpaid taxes. The ordinance states that tax payments are to be submitted to the City Treasurer on a quarterly basis.

According to the City Treasurer, revenues from the hotel and restaurant tax are deposited and maintained in a savings account, separate from all other City funds. At the end of each fiscal quarter, hotels and restaurants have 30 days to submit to the City the taxes due from the hotel and restaurant tax. An additional 10-day grace period is granted to hotels and restaurants before any penalties are added to the tax due. Once all the tax revenues are received from the hotels and restaurants, the City transfers the funds to the Commission’s account. The City Treasurer stated that the process averages about five months from the beginning of each quarter until funds are transferred to the Commission.

KRS 91A.390(1) states

[t]he local governing body…shall enact an ordinance for the enforcement of the tax measure enacted pursuant to this section and the collection of the proceeds of this tax measure on a monthly basis. [Emphasis added]

This statute was amended during the 2000 General Assembly.

We recommend that the City amend ordinance 118.18 to comply with KRS 91A.390(1). Tax payments from the imposition of the hotel tax should be collected monthly and forwarded, along with all proceeds from the restaurant tax, to the Commission on a timely basis.

KRS 91A.360(5) states

[t]he books of the commission and its account as established in KRS 91A.390(2) shall be audited annually by an independent auditor who shall make a report to the commission, to the associations submitting lists of names from which commission members are selected, to the appropriate chief executive officer or officers, to the State Auditor of
Public Accounts, and to the local governing body or bodies that established the commission that was audited.

City ordinance 118.05 also requires the books of the Commission to be audited annually by an independent auditor who shall make a report to the Commissioners, to the Mayor and to the City.

In years past, the Commission’s books and account have been included as part of the City’s financial statement audit performed by an independent auditor. Previous audit reports of the City indicate that the Commission’s account was presented in the City’s financial statements along with other special revenue funds of the City. According to Commission personnel, only the Commission received a copy of the City audit report, and copies were not distributed to the entities required by KRS 91A.360(5).

We recommend that the Commission’s books and account be annually audited separately from the City’s financial statement audit by an independent auditor and that the audit report be distributed to the entities required by KRS 91A.360(5).

In addition to the concerns previously addressed in this report, we examined other concerns brought to our attention that were either resolved during the performance of our examination or did not result in examination findings or recommendations for improvement. The concerns involved a Commission vehicle and the Commission’s authority to issue revenue bonds in its own name.

The Commission purchased a van, using funds collected from the hotel and restaurant tax, in July 2000 for the Executive Director to use for official travel while promoting tourism and recreation for the City. Because the van was not being used as much as the Commission anticipated, the Commission voted to sell the van in 2002.

According to documents obtained from the Commission, bid notices were published in the Big Sandy and Floyd County Times on May 22, 2002. Because only one bid was received for $1,251 and the bid amount was lower than the appraised value of the van, the Commission rejected the bid and reopened the bidding. Additionally, the Commission approved a minimum bid of $2,200 that the Commission would accept for the van.
The winning bid for the van was awarded to a presiding Commission member.

On September 12, 2002, three bids were opened by two Commission members. The winning bid of $2,600 was awarded to Larry Frazier, c/o Jim Ousley (Ousley). The amounts of the other two bids received were $1,000 and $700. Ousley was a Commission member at the time and was one of the commissioners present to open the bids received.

Because Ousley thought he may have had a conflict of interests by bidding on the van while serving as a commissioner, Ousley stated that he asked the previous Executive Director of the Commission if he could submit a bid, and that she said she would consult with the City Attorney. According to the City Attorney, the previous Executive Director only consulted with him about the legal requirements and language for advertising the bid; the City Attorney was not consulted on whether or not a conflict of interests existed for Ousley to submit a bid on the van.

The City directed the Commission member to return the van to the Commission.

On September 23, 2002, the vehicle registration and title of the van was transferred to Ousley, and Ousley submitted a cashier’s check for $2,600 to the Commission. Approximately one month later, the City Attorney advised Ousley that a conflict of interests existed for him to bid on the van. The Commission reimbursed Ousley $3,334.22 for the initial purchase price and other expenses Ousley incurred under his brief ownership. These expenses included: taxes, registration, insurance, fluid changes, belt replacements, and air conditioning repair. The reimbursement amount also included a $2,773.49 payoff amount for the loan Ousley had obtained to purchase the van (Exhibit J).

The City used the Commission’s van for the City’s senior citizen center.

The title was transferred back to the Commission on October 28, 2002, while the registration of the van was transferred back to the Commission on November 13, 2002. The van remained under the Commission’s control until the City took the van from the Commission and assigned it to the City’s senior citizens center.

KRS 91A.390(2) states that revenues collected from the hotel and restaurant tax shall be considered tax revenue for the purposes of KRS 92.330. KRS 92.330 states

[all taxes…levied or imposed by cities of the second to sixth class shall be levied or imposed by ordinance. The purpose for which each tax is levied…shall be specified in the ordinance, and the revenue there from shall be expended for no other purpose than that for which the tax was levied….}
City Ordinance 118.04 states that the Commission “shall have all of the rights, powers, duties, and obligations prescribed by law relating to the promotion of recreational, convention, and tourist activity in the city.”

The City established the hotel and restaurant tax to promote recreational, convention, and tourist activity in the City. The fund used to account for the revenues collected from the imposition of this tax is a special revenue fund since the dollars collected from the tax are designated by law to finance a specific function or activity of government (i.e., promoting recreational, convention, and tourist activity in the City).

Because the funds used to purchase and, subsequently, repurchase the van were from the Commission’s account and expenditures made from this account are to be expended solely on recreational, convention, or tourist related activity, the van must also be used exclusively to promote recreational, convention, or tourist related activity in the City. Any use of the van not in accordance with the above provisions is not allowable.

According to documentation obtained by our office, the City reimbursed the Commission in the amount of $2,600 for the van (Exhibit K).

City ordinance 118.07 forbids the Commission from issuing revenue bonds or borrowing money beyond a fiscal year without the express approval of the City. We received a concern that this ordinance did not comply with KRS 91A.390. The complainant believes this statute allows the Commission to issue revenue bonds solely in its own name. We found no conflict between City ordinance 118.07 and KRS 91A.390.

Prestonsburg, a fourth class city, established the Commission in accordance with KRS 91A.350(2). This statute grants authority to cities of the second through sixth class to establish tourist and convention commissions.

KRS 91A.390(8) states

[t]he . . . legislative body of a . . . city establishing a commission pursuant to KRS 91A.350(1) or (2) and, in its own name, a commission established pursuant to KRS 91A.350(1) is authorized and empowered to issue revenue bonds pursuant to KRS Chapter 58 for public projects.
KRS 91A.390(8) only authorizes tourist commissions established in accordance with KRS 91A.350(1) to issue revenue bonds solely in the name of a tourist commission. KRS 91A.350(1) authorizes local governing bodies of counties containing first class cities, and first class cities themselves, to establish tourist and convention commissions by joint or separate action. KRS 91A.390(8) does not grant authority to tourist commissions established by cities of the second through sixth class in accordance with KRS 91A.350(2) to issue revenue bonds solely in the name of a tourist commission. Revenue bonds may only be issued by the city or governing body establishing the tourist commission under KRS 91A.350(2).
91A.220. Special assessments for improvements.

Opinions of Attorney General. For city ad valorem taxes, all property which is not exempted by Const., § 170 or by statute must be assessed uniformly at its fair cash value and an assessment of ad valorem tax based upon benefits received would not be valid; however, KRS 91A.290 to 91A.295 would allow a city of the sixth class to finance street lights through a special assessment on benefits-received basis, as long as the city complied with the requirements of those statutes before beginning work on the improvements. OAG 82-21.

The method or procedure by which the property owner is to pay by installments under both this section and KRS 91A.290 is left to the discretion of the city in its improvement ordinance except that the payment of the first installment shall coincide with the payment of the ad valorem taxes. OAG 83-135.

A city may, under the authority of subsection (3) of this section and its home rule powers, enact an ordinance providing for an installment plan and bond financing similar to the repealed provisions of KRS Chapter 94 and use this ordinance as a basis to provide for installment payment of assessments and for the issuance of valid tax exempt bonds to finance such deferred assessments for future projects. OAG 83-135.

91A.230. Apportionment of cost of improvement for property owned by government or educational, religious or charitable organizations.

Opinions of Attorney General. The method or procedure by which the property owner is to pay by installments under both KRS 91A.290 and this section is left to the discretion of the city in its improvement ordinance except that the payment of the first installment shall coincide with the payment of the ad valorem taxes. OAG 83-135.

91A.250. Public hearing.

Opinions of Attorney General. City could not legally assess property owners affected by improvement made on street which was substituted in improvement program, where such property owners were not notified and given the opportunity to be heard at initial hearing. Thus, city would have to bear the costs incurred. OAG 85-39.

91A.260. Payment of assessment or installment — Lien.

Opinions of Attorney General. A city may, under the authority of KRS 91A.290(3) and its home rule powers, enact an ordinance providing for an installment plan and bond financing similar to the repealed provisions of KRS Chapter 94 and use this ordinance as a basis to provide for installment payment of assessments and for the issuance of valid tax exempt bonds to finance such deferred assessments for future projects. OAG 83-135.

91A.350. Local tourist and convention commissions — Continued funding.

(1) The local governing bodies of counties containing cities of the first class and the local governing bodies of the cities of the first class located therein may, by joint or separate action, establish tourist and convention commissions for the purpose of promoting convention and tourist activity. The local governing body of a consolidated local government
may establish or maintain tourist and convention commissions for the
purpose of promoting convention and tourist activity.

(2) Except in a county containing a consolidated local government, the local
governing bodies of counties containing cities of the second through
sixth classes and the local governing bodies of the cities of the second
through sixth classes located therein may, by joint or separate action,
establish tourist and convention commissions for the purpose of pro-
moting and developing convention and tourist activities and facilities.

(3) The local governing bodies of two (2) or more counties may jointly
establish tourist and convention commissions for the purpose of pro-
moting convention and tourist activities and facilities.

(4) The local governing bodies of two (2) or more counties, which may
include a consolidated local government, may jointly establish tourist
and convention commissions for the purpose of promoting convention
and tourist activities and facilities.

(5) Tourist and convention commissions may continue to fund recrea-
tional activities or projects not related to tourism or conventions that were
funded by the commission prior to July 13, 1990, at a level no greater
than that provided by the commission in the 1990 fiscal year.

(6) For the purpose of promoting recreational, convention, and tourist
activity in cities and counties served by joint playground and recreation
boards established under KRS 97.065, to provide the boards with the
same authority to issue revenue bonds granted to cities by KRS 58.010
to 58.150 and 103.200 to 103.280; and to authorize the boards to build
and issue bonds for facilities located on leasehold and permithold land.
(Enact. Acts 1989, ch. 138, § 1, 1874, ch. 324, § 1; 1990, ch. 322, § 1,
344, § 1, effective July 14, 2000; 2002, ch. 346, § 102, effective July 15,
2002.)

Opinions of Attorney General. A city may not allow the operators of motor courts,
hotels or similar establishments subject to tax as authorized by this section to
KRS 91A.390 a collection fee for collecting, reporting and forwarding the tax imposed.
OAG 83-146.

A county containing no incorporated cities may establish a tourist and convention com-
mission pursuant to subsection (2) of this section since even if the literal language "in
counties containing cities" used in subsection (3) were deemed to be in apparent conflict
with the general scheme of the statute, such language must surrender to the general pur-
pose of the statute, which is to allow all counties in the state to create tourist
and convention commissions. OAG 81-393.

Where this section mentions the word "city," it refers to incorporated cities. OAG
81-393.

There are no statutory provisions for disso-
lution of a county tourist commission once
such a commission has been properly estab-
lished, and the county judge-executive with or
without the fiscal court has no authority to
dissolve the commission. OAG 82-26.

A motor hotel license tax imposed by the
fiscal court pursuant to KRS 91A.390 must be
paid for the multi-purpose explicitly set
forth in KRS 91A.390(2). Those purposes in-
clude recreation as well as providing for the
promotion of convention and tourist activi-
ties. OAG 83-146.

Under subsection (2) of this section, a fiscal
court for the county may, by its separate
action alone, establish or create a recrea-
tional, tourist and convention commission.
This poses no problem, although the members-
ship of the commission is appointed, under
KRS 91A.380, by the joint action of the mayor
of the largest city in the county and the
county judge-executive. OAG 83-148, modify-
ing OAG 75-302.

The room tax money to be expended directly
by the city may cover a city park and any
items reasonably necessary for its proper es-
tablissement, maintenance and operation, pro-
vided that the city park would be so con-
structed and maintained as to be useful in the
attraction and promotion of tourist and con-
vention business. OAG 83-298.

Both a Tourist and Convention Commission
and the tax to support the activities of such a
commission should be established pursuant to
an ordinance enacted by the local governing
body OAG 83-313.

Section 27 and 28 of the Kentucky Con-
stitution would prohibit a member of the Gen-
eral Assembly from serving at the same time
as a member of a Tourist and Convention
Commission. OAG 92-78.
91A.360, Membership of tourist and convention commissions — Terms — Officers and employees — Audit.

(1) The commission established pursuant to KRS 91A.350(2) shall be composed of seven (7) members to be appointed, in accordance with the method used to establish the commission. Members of a commission established by joint action of the local governing bodies of a county and a city or cities located therein shall be appointed, jointly, by the chief executive officers of the local governing bodies that established the commission. Members of a commission established by separate action of the local governing body of a county or a city located therein shall be appointed separately by the chief executive officer of the local governing body that established the commission. The chief executive officer of a city shall mean the mayor and the chief executive officer of a county shall mean the county judge/executive. Appointments to a commission shall be made by the appropriate chief executive officer or officers in the following manner:

(a) Two (2) commissioners shall be appointed from a list of three (3) or more names submitted by the local city hotel and motel association and one (1) commissioner shall be appointed from a list of three (3) or more names submitted by the local county hotel and motel association, provided that if only one (1) local hotel and motel association exists which covers both the city and county, then three (3) commissioners shall be appointed from a list of six (6) or more names submitted by it. If no formal local city or county hotel and motel association is in existence upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to this subsection, then up to three (3) commissioners shall be appointed by the appropriate chief executive officer or officers from persons residing within the jurisdiction of the commission and representing local hotels or motels. A local city or county hotel and motel association shall not be required to be affiliated with the Kentucky Hotel and Motel Association to be recognized as the official local city or county hotel and motel association.

(b) One (1) commissioner shall be appointed from a list of three (3) or more names submitted by the local restaurant association or associations. If no formal local restaurant association or associations exist upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to this subsection, then one (1) commissioner shall be appointed by the appropriate chief executive officer or offices from persons residing within the jurisdiction of the commission and representing a local restaurant. A local restaurant association or associations shall not be required to be affiliated with the Kentucky Restaurant Association to be recognized as the official local restaurant association or associations.

(c) One (1) commissioner shall be appointed from a list of three (3) or more names submitted by the chamber or chambers of commerce existing within those governmental units, which by joint or separate action have established the commission. If the commission is established by joint action of a county and a city or cities, then each chamber of commerce shall submit a list of three (3) names, and the chief executive officers of the participating governmental units shall jointly appoint one (1) commission member from the aggregate list. If no local chamber of commerce is in existence upon the establishment of a commission or upon the expiration of the term of a commissioner appointed pursuant to this subsection, then one (1)
commissioner shall be appointed by the appropriate chief executive
officer or officers from persons residing within the jurisdiction of
the commission and representing local businesses.

(d) Two (2) commissioners shall be appointed in the following manner:
1. By the chief executive officer of the county or city, if the
commission has been established by separate action of a county
or city; or
2. One (1) each by the chief executive officer of the county and by
the chief executive officer of the most populous city participat-
ing in the establishment of the commission, if the commission
has been established by joint action of a county and a city or
cities.

(2) A candidate submitted for appointment to the commission, pursuant to
subsection (1)(a) to (1)(c), shall be appointed by the appropriate chief
executive officer or officers within thirty (30) days of the receipt of the
required list or lists. Vacancies shall be filled in the same manner that
original appointments are made.

(3) The commissioners shall be appointed for terms of three (3) years,
provided, that in making the initial appointments, the appropriate chief
executive officer or officers shall appoint two (2) commissioners for a
term of three (3) years, two (2) commissioners for a term of two (2) years
and three (3) commissioners for a term of one (1) year. There shall be no
limitation on the number of terms to which a commissioner is reappoint-
ated. Subsequent appointments shall be for three (3) year terms.

(4) The commission shall elect from its membership a chairperson
and a treasurer, and may employ personnel and make contracts necessary to
carry out the purposes of KRS 91A.350 to 91A.390. The contracts may
include, but shall not be limited to, the procurement of promotional
services, advertising services, and other services and materials relating
to the promotion of tourist and convention business. Contracts of the
type enumerated shall be made only with persons, organizations, and
firms with experience and qualifications for providing promotional
services and materials, such as advertising firms, chambers of com-
merce, publishers, and printers.

(5) The books of the commission and its account shall be audited annually by an independent auditor who
shall make a report to the commission, to the associations submitting
lists of names from which commission members are selected, to the
appropriate chief executive officer or officers, to the State Auditor
of Public Accounts, and to the local governing body or bodies that estab-
lished the commission that was audited. A copy of the audit report shall
be made available by the commission to members of the public upon
request and at no charge.

(6) A commissioner may be removed from office, by joint or separate action,
of the appropriate chief executive officer or officers of the local governing
body or bodies that established the commission, as provided by KRS
65.007.

(Enact. Acts 1965, ch. 138, § 2; 1976, ch. 59, § 1; 1974, ch. 324, § 2; 1976,
18, § 7, effective July 15, 1980; 1980, ch. 153, § 1, effective July 15, 1980;
1992, ch. 56, § 2, effective July 14, 1992; 2000, ch. 344, § 2, effective July
14, 2000.)

Opinions of Attorney General. Since
KRS 91A.350-91A.390 clearly authorizes a city by
separate action, to establish a tourist and
convention commission, and since this section
only deals with the appointments to a joint
city-county commission by the mayor and the
county judge-executive, suggested that the
mayor of the city alone make the seven ap-
pointments to the commission required by the
statute including the one contemplated to be
made specifically by the county judge/executive. OAG 81-397.

Where a tourist and convention commission is created in a county which has no incorporated cities, the county judge/executive would have to appoint all the members. OAG 81-
397.

Since the appointment of a director involves a governmental function, his contract cannot extend beyond the term of the members of the commission who appointed him, thus a com-
misson cannot enter into a contract of em-
ployment for a term of four years when no mem-
ber of the commission has as many as four years remaining in his term. Where a com-
misson has entered into a contract of em-
ployment which exceeds its authority, the sub-
sequent commission has the authority to re-
move the director and appoint another per-
son for that position or it can, if it chooses, re-
appoint the director for a period coinciding
with the term of the subsequent commis-
ioners. OAG 82-432.

Under KRS 91A.350(3), a fiscal court for the
county may, by its separate action alone, estab-
lish or create a recreational, tourist and
convention commission. This poses no prob-
lem, although the membership of the commis-
sion is appointed, under this section, by the
joint action of the mayor of the largest city in
the county and the county judge/executive.
OAG 83-148, modifying OAG 75-321.

Since there are no constitutional or statu-
tory provisions requiring that the members of
a recreational, tourist and convention com-
misson selected from lists submitted by the
local hotel and motel associations actually be
employed by hotels or motels or that they re-
tain their employment with hotels or motels
during their tenure with the commission, per-
sons selected from lists submitted by hotel
and motel associations who leave their posi-
tions with the hotel and motel industry while
serving on such a commission, do not auto-
matically vacate their positions and may
serve out the remainder of their terms of
office, presuming they do not take up resi-
dence in another state. OAG 84-193.

A member of the fiscal court may also serve
as an appointed member of a county tourist
commission as there is no inherent conflict of
interest. OAG 99-4.

91A.370. Tourist and convention commission in county containing
city of first or consolidated local government.

(1) Except in a county containing a consolidated local government, the
commission established pursuant to KRS 91A.350(1) shall be composed
of nine (9) members to be appointed by the mayor of the largest city in
the county, the county judge/executive and the Governor of the Com-
monwealth.

(2) Except in a county containing a consolidated local government, the
mayor of the largest city in the county shall appoint three (3) com-
misssioners in the following manner:
(a) One (1) commissioner from a list submitted by the local city hotel
and motel association;
(b) One (1) commissioner from a list submitted by the chamber of
commerce of the largest city in the county; and
(c) One (1) commissioner from a list submitted by the local restaurant
association or associations.

(3) Except in a county containing a consolidated local government, the
county judge/executive shall, with the approval of the fiscal court, ap-
point three (3) commissioners in the following manner:
(a) One (1) commissioner from a list submitted by the local county hotel
and motel association, provided that if only one (1) local hotel and
motel association exists which covers both the city and county, then
the local hotel and motel association shall submit a list to the
county judge/executive;
(b) One (1) commissioner from a list submitted by the board of directors
of the largest incorporated thoroughbred horse racing concern in
the county, which list shall contain only directors, officers, or
employees of that corporation; and
(c) One (1) commissioner who is a resident of the county and who has
an active interest in the convention and tourist industry.

(4) Except in a county containing a consolidated local government, the
Governor shall appoint three (3) commissioners in the following man-
ner:
(a) One (1) commissioner from a list submitted by the State Fair Board;
(b) One (1) commissioner from a list submitted by the local countywide
air board; and
(e) One (1) commissioner shall be appointed, in those counties not containing a consolidated local government, who is a resident of the county. In those counties containing a consolidated local government, one (1) commissioner shall be appointed who is a resident of the area comprising the consolidated local government.

(5) Vacancies shall be filled in the manner that original appointments are made.

(6) When a list as provided in subsections (2) and (3) of this section contains less than three (3) names or when a selection from such list is not made, the appointing authority shall request in writing the submission of a new list of names.

(7) Except in a county containing a consolidated local government, the commissioners shall be appointed for a term of three (3) years, provided that in making the initial appointments, the mayor, county judge/executive, and Governor of the Commonwealth shall each appoint one (1) commissioner for a term of one (1) year, one (1) commissioner for a term of two (2) years, and one (1) commissioner for a term of three (3) years.

(8) Upon the establishment of a consolidated local government in a county where a city of the first class and a county containing such city have had in effect a cooperative compact pursuant to KRS 79.310 to 79.330, the commission shall have nine (9) members. Six (6) members of the commission shall be appointed by the mayor of the consolidated local government pursuant to the provisions of KRS 67C.199 for a term of three (3) years. The Governor of the Commonwealth shall appoint three (3) members of the commission for a term of three (3) years. Incumbent members upon the establishment of the consolidated local government shall continue to serve as members of the board for the time remaining of their current term of appointment.

(9) The commission shall elect from its membership a chairman and a treasurer, and may employ such personnel and make such contracts as are necessary to effectively carry out the purposes of KRS 91A.350 to 91A.390. Such contracts may include but shall not be limited to the procurement of promotional services, advertising services, and other services and materials relating to the promotion of tourist and convention business; provided, contracts of the type enumerated shall be made only with persons, organizations, and firms with experience and qualifications for providing promotional services and materials such as advertising firms, chambers of commerce, publishers, and printers.

(10) The books of the commission shall be audited by an independent auditor who shall make a report to the commission, to the organizations submitting names from which commission members are selected, and to the mayor of a city or a consolidated local government, the county judge/executive in counties not containing a consolidated local government, and the Governor of the Commonwealth.

(11) Commission members appointed by the Governor shall serve at the pleasure of the Governor. Commission members appointed by the mayor of a city or a consolidated local government, or the county judge/executive may be removed as provided by KRS 65.007.


91A.372. Membership of tourist and convention commission in urban-county government — Terms — Officers and employees — Audit.

(1) The commission established pursuant to KRS 91A.350(2) by an urban-county government shall be composed of nine (9) members appointed by the mayor of the urban-county government in the following manner:
(a) Three (3) commissioners from a list submitted by the local hotel and motel association.

(b) One (1) commissioner from a list submitted by the local restaurant association or associations.

(c) One (1) commissioner from a list submitted by the local chamber of commerce.

(d) Four (4) commissioners who shall be residents of the urban-county.

(2) Vacancies shall be filled in the same manner that original appointments are made.

(3) The commissioners shall be appointed for terms of three (3) years, provided, that in making the initial appointments, the chief elective official of the urban-county shall appoint three (3) commissioners for a term of three (3) years, three (3) commissioners for a term of two (2) years and three (3) commissioners for a term of one (1) year.

(4) The commission shall elect from its membership a chairman and a treasurer, and may employ such personnel and make such contracts as are necessary to effectively carry out the purposes of KRS 91A.350 to 91A.390. Such contracts may include but shall not be limited to the procurement of promotional services, advertising services and other services and materials relating to the promotion of tourist and convention business; provided, contracts of the type enumerated shall be made only with persons, organizations, and firms with experience and qualifications for providing promotional services and materials, such as event coordinators, advertising firms, chambers of commerce, publishers and printers.

(5) The books of the commission shall be audited by an independent auditor who shall make a report to the commission, to the organizations submitting names from which commission members are selected, and to the mayor of the urban-county government.


(1) The commission established pursuant to KRS 91A.350(3) shall be composed of six (6) members from each county to be appointed by the county judge/executive, with the approval of the fiscal court, one (1) of whom shall be a member of the General Assembly in whose district the county or part of the county is located in the following manner:

(a) One (1) commissioner from a list of at least three (3) persons submitted by the local restaurant association or associations;

(b) One (1) commissioner from a list of at least three (3) persons submitted by the local chamber of commerce;

(c) One (1) commissioner by the county judge/executive; and

(d) Two (2) commissioners from a list of at least six (6) persons submitted by the local hotel and motel association or associations.

(2) Vacancies shall be filled in the same manner that original appointments are made.

(3) The commissioners shall be appointed for terms of three (3) years, provided that in making the initial appointments, the county judge/executive shall appoint two (2) commissioners for a term of three (3) years, two (2) commissioners for a term of two (2) years, and two (2) commissioners for a term of one (1) year.

(4) The commission shall elect from its membership a chairman and a treasurer, and may employ such personnel and make such contracts as are necessary to effectively carry out the purpose of KRS 91A.350 to
91A.390. Such contracts may include but shall not be limited to the procurement of promotional services, advertising services and other services and materials relating to the promotion of tourist and convention business.

(5) The books of the commission and its account as established in KRS 91A.390(2) shall be audited by an independent auditor who shall make a report to the commission, to the organizations submitting names from which commission members are selected, to the State Auditor of Public Accounts, and to the county judge/executive of each county. A copy of the audit report shall be made available by the commission to members of the public upon request and at no charge.


91A.390. Room tax — Special transient room tax — Authorization for additional tax by a county with a city of the first class, urban-county governments, and multicounty tourist and convention commissions — Revenue bonds.

(1) The commission shall annually submit to the local governing body or bodies which established it a request for funds for the operation of the commission. The local governing body or bodies shall include the commission in the annual budget and shall provide funds for the operation of the commission by imposing a transient room tax, not to exceed three percent (3%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. In addition to the three percent (3%), the local governing body may impose a special transient room tax not to exceed one percent (1%) for the sole purpose of meeting the operating expenses of a convention center. A transient room tax imposed by an urban-county government shall not exceed four percent (4%) of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or like or similar accommodations businesses. Transient room taxes shall not apply to the rental or leasing of an apartment supplied by an individual or business that regularly holds itself out as exclusively providing apartments. Apartment means a room or set of rooms, in an apartment building, fitted especially with a kitchen and usually leased as a dwelling for a minimum period of thirty (30) days or more. The local governing body or bodies that have established a commission by joint or separate action shall enact an ordinance for the enforcement of the tax measure enacted pursuant to this section and the collection of the proceeds of this tax measure on a monthly basis.

(2) All moneys collected pursuant to this section and KRS 91A.400 shall be maintained in an account separate and unique from all other funds and revenues collected, and shall be considered tax revenue for the purposes of KRS 68.100 and KRS 92.330.

(3) A portion of the money collected from the imposition of this tax, as determined by the tax levying body, upon the advice and consent of the tourist and convention commission, may be used to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business.
The balance of the money collected from the imposition of this tax shall be used for the purposes set forth in KRS 91A.350. Proceeds of the tax shall not be used as a subsidy in any form to any hotel, motel, or restaurant. Money not expended by the commission during any fiscal year shall be used to make up a part of the commission’s budget for its next fiscal year.

4. A county with a city of the first class may impose an additional tax, not to exceed one and one-half percent (1.5%) of the room rent. This additional tax, if approved by the local governing body, shall be collected and administered in the same manner as the regular tax and shall be used for the purpose of funding additional promotion of tourist and convention business.

5. An urban-county government may impose an additional tax, not to exceed one percent (1%) of the room rents included in this subsection. This additional tax shall be collected and administered in the same manner as the regular tax with the exception that this additional tax shall be used for the purpose of developing the purchase of development rights program provided for under KRS 67A.848.

6. Local governing bodies which have formed multi-county tourist and convention commissions as provided by KRS 91A.350(3) may impose an additional tax, not to exceed one percent (1%) of the room rents. This additional tax, if approved by each governing body, shall be collected and administered in the same manner as the regular tax, with the exception that this additional tax shall be used for the purpose of funding regional efforts relating to the promotion of tourist and convention business and convention centers. In no event shall any revenues collected as provided for under KRS 91A.350(3) be utilized for the construction, renovation, maintenance, or additions to any convention center that is located outside the boundaries of the Commonwealth of Kentucky.

7. The commission, with the approval of the tax levying body, may borrow money to pay its obligations that cannot be paid at maturity out of current revenue from the transient room tax, but shall not borrow a sum greater than can be repaid out of the revenue anticipated from the transient room tax during the year the money is borrowed. The commission may pledge its securities for the repayment of any sum borrowed.

8. The fiscal court or legislative body of a consolidated local government or city establishing a commission pursuant to KRS 91A.350(1) or (2) and, in its own name, a commission established pursuant to KRS 91A.350(1) is authorized and empowered to issue revenue bonds pursuant to KRS Chapter 58 for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.390, may be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county, consolidated local government, or city. All bonds sold under the authority of this section shall be subject to competitive bidding as provided by law, and shall bear interest at a rate not to exceed that established for bonds issued for public projects under KRS Chapter 58.

9. A commission established pursuant to KRS 91A.350(3) is authorized and empowered to issue revenue bonds in its own name, payable solely
from its income and revenue, pursuant to KRS Chapter 58 for revenue bonds for public projects. Bonds issued for the purposes of KRS 91A.350 to 91A.361, shall be used to pay any cost for the acquisition of real estate, the construction of buildings and appurtenances, the preparation of plans and specifications, and legal and other services incidental to the project or to the issuance of the bonds. The payment of the bonds, with interest, may be secured by a pledge of and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Bond and interest obligations issued pursuant to this section shall not constitute an indebtedness of the county. All bonds sold pursuant to this section shall be subject to competitive bidding as provided by law, and shall not bear interest at rates exceeding those for bonds issued for public projects under KRS Chapter 58.


Legislative Research Commission Note. (12/15/2002). This section was amended by 2002 Ky. Acts chs. 187 and 346, which do not appear to be in conflict and have been codified together.


Opinion of Attorney General. A city may not allow the operators of motor courts, motels or hotels or similar establishments subject to the tax authorized by KRS 91A.350 to this section to collect taxes for collecting, reporting and forwarding the tax imposed. OAG 83-371.

A transient room tax established by a county and city pursuant to subsection (4) of this section to fund the tourist commission's activities, may, under appropriate ordinances, be collected and accounted for by the tourist commission's treasurer. OAG 82-28.

A motels-hotels license tax imposed by the fiscal court pursuant to this section must be expended for the multi-purposes explicitly set forth in subsection (2) of this section. These purposes include recreation as well as providing for the promotion of convention and tourist activities. OAG 83-148.

Subsection (2) of this section permits the city legislative body to exercise its sound discretion in distributing the tax money; this section establishes no precise or arithmetical figures as to the distribution of the tourist room tax proceeds. OAG 83-236.

A city park would be a legitimate expenditure by the city under subsection (2) of this section. OAG 83-256.

The city is required to segregate the tourist room tax as a matter of financial accountabil-
91A.392. Levy of additional transient room tax by consolidated local government or county containing city of the first or second class — Exceptions — Required repeal of tax upon retirement of bonds.

(1) In addition to the three percent (3%) transient room tax authorized by KRS 91A.380 and the one percent (1%) transient room tax authorized by KRS 153.440, a consolidated local government, or the fiscal court in a county containing a city of the first or second class, except those counties that are included in a multicity tourist and conventionuridad KRS 91A.350, may levy an additional transient room tax not to exceed two percent (2%) of the rent for every occupancy of a suite, room, or rooms charged by all persons, companies, corporations, or other similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or similar accommodations businesses.

(2) All money collected from the tax authorized by this section shall be applied toward the retirement of bonds issued pursuant to KRS 91A.390(8) to finance in part the expansion or construction or operation of a governmental or nonprofit convention center or fine arts center useful to the promotion of tourism located in the central business district of the consolidated local government or the city of the first or second class located in the county.

(3) After the retirement of the bonds provided for in this section, the additional transient room tax levied pursuant to this section shall be void, and the consolidated local government or fiscal court shall take action to repeal the ordinance which levied the tax.


Note. (7/16/2002). This section was amended by 2002 Ky. Acts chs. 107 and 346, which do not appear to be in conflict and have been codified together.


(1) On an annual basis, the Auditor of Public Accounts shall issue audit standards to be followed in the audits authorized by KRS 91A.360(5) and 91A.389(5). These audit standards shall supplement generally accepted audit standards. Upon request, the Auditor of Public Accounts may review the final report and all related work papers and documents of the independent certified public accountant relating to the audit required under KRS 91A.360. Any costs associated with the review or subsequent audit by the Auditor of Public Accounts shall be borne by the commission. If the Auditor of Public Accounts determines that there are substantive discrepancies in the commission’s books or account, the Auditor of Public Accounts shall notify the director of the commission, the county attorney, and the appropriate legislative body of its findings.

(2) Any resident of the county may bring an action in the Circuit Court to enforce the provisions of KRS 91A.350 to 91A.390. The Circuit Court shall hear the action and, on a finding that the commission has violated the provisions of KRS 91A.350 to 91A.390, shall order the commission to comply with the provisions. The Circuit Court, in its discretion, may
allow the prevailing party, other than the commission, court costs, to be paid from the commission’s account.

**Restaurant Tax**

91A.400. Restaurant tax in cities of fourth and fifth classes.
In addition to the three percent (3%) transient room tax authorized by KRS 91A.390, the city legislative body in cities of the fourth and fifth classes may levy an additional restaurant tax not to exceed three percent (3%) of the retail sales by all restaurants doing business in the city. All moneys collected from the tax authorized by this section shall be turned over to the tourist and convention commission established in that city as provided by KRS 91A.350 to 91A.390.

**Special Ad Valorem Tax**

91A.430. Enactment and administration of special ad valorem tax. [Repealed, reenacted, and amended.]

Compiler’s Notes. This section (Acts 1988, ch. 39, § 1, effective July 15, 1988) was repealed, reenacted and amended as KRS.

**User Fees**

91A.510. Definition of user fee.
As used in KRS 91A.520 and 91A.530, unless the context otherwise requires:
"User fee" means the fee or charge imposed by a local government on the user of a public service for the use of any particular service not also available from a non-governmental provider.

91A.520. Limit on user fees.
User fees shall not generate revenues or profits in excess of the reasonable costs associated with providing a public service.

91A.530. Special revenue accounts — Administration.
(1) Local governments imposing user fees shall establish a special revenue account for each user fee.
(2) All user fees collected and all disbursement of such fees shall be administered according to generally accepted principles of governmental accounting.

**Management Districts**

As used in KRS 91A.550 to 91A.580, unless the context otherwise requires:
CHAPTER 118: RECREATIONAL, TOURISM, AND CONVENTION ACTIVITIES

Section

Recreation, Tourist, and Convention Commission

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118.02 Members
118.03 Officers
118.04 Powers and duties
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Special Restaurant, Motor Court, Motel, Hotel or Inn Tax

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RECREATION, TOURIST, AND CONVENTION COMMISSION

§ 118.01 ESTABLISHMENT.

There is hereby established a recreation, convention, and tourist commission to be known as the Prestonsburg Recreation, Tourist, and Convention Commission. (Ord. 4-88, passed 2-8-88)

§ 118.02 MEMBERS.

(A) The Recreation, Tourist, and Convention Commission shall consist of seven members to be appointed by the Mayor as follows:

(1) Three commissioners from a list of six or more names submitted by the local hotel and motel industry association in the city; and if no local association exists, then up to three commissioners shall be appointed from a list of six or more names of persons residing within the jurisdiction of the Commission submitted by the Kentucky Hotel and Motel Association.

(2) One commissioner from a list of three or more names submitted by the local restaurant industry association in the city; and if no local association exists, then one commissioner shall be appointed from a list of three or more names of persons residing within the jurisdiction of the Commission, submitted by the Kentucky Restaurant Association.
§ 118.03 RECREATIONAL, TOURISM, AND CONVENTION ACTIVITIES

(3) One commissioner from a list of three or more names submitted by the Floyd County Chamber of Commerce.

(4) Two commissioners appointed by the Mayor.

(B) Terms of the Commission members shall be for three years, except that in making the original appointments, three commissioners will have a one-year term, two commissioners will have a three-year term; and two commissioners will have four-year terms.

(C) Commission members shall serve without compensation.

(D) All vacancies on the Commission shall be filled in the same manner as the original appointments are made.
(Ord. 4-88, passed 2-8-88; Am. Ord. 8-97, passed 9-11-97)

§ 118.03 OFFICERS.

(A) The Recreation, Tourist, and Convention Commission shall elect a Chairman and a Treasurer, who shall serve without compensation.
(Ord. 4-88, passed 2-8-88)

(B) The Treasurer and any other officer of the Commission writing checks or handling funds shall be bonded by the city in an amount commensurate to the largest amount of money on hand in any given month.
(Ord. 5-88, passed 2-8-88)

§ 118.04 POWERS AND DUTIES.

The Recreation, Tourist, and Convention Commission shall have all of the rights, powers, duties, and obligations prescribed by law relating to the promotion of recreational, convention, and tourist activity in the city. It may employ such personnel, subject to the approval or discharge by the Mayor, and make such contracts as are necessary to effectively carry out the purposes of KRS 91A.350 through 91A.390. Such contracts may include but shall not be limited to the procurement of promotional services, advertising services, and other services and materials relating to the tourist and convention business; provided however, that such contracts be made only with persons, organizations, and firms with experience and qualifications for providing promotional services and materials, such as advertising firms, chambers of commerce, publishers, and printers.
(Ord. 4-88, passed 2-8-88; Am. Ord. 8-97, passed 9-11-97)

§ 118.05 BOOKS AND RECORDS TO BE AUDITED.

The books and records of the Recreation, Tourist, and Convention Commission shall be audited by an independent auditor who shall make a report to the commissioners, to the Mayor, and to the City Council annually.
(Ord. 4-88, passed 2-8-88)

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§ 118.06 ANNUAL REQUEST FOR FUNDS.

(A) The Recreation, Tourist, and Convention Commission shall annually submit to the City Council a request for funds for the operation of the Commission for the ensuing year. The Council shall include the Commission in its annual budget and shall provide funds, to the extent it deems necessary, for the operation of the Commission in its annual budget.

(B) The Recreation, Tourist, and Convention Commission shall include in its annual budget funds for the costs of maintenance, acquisition, construction, and operation of city park facilities useful in the attraction and promotion of tourist and convention business, including athletic facilities. The Recreation, Tourist, and Convention Commission shall budget a maximum of $33% of its funds of the Hotel, Motel and Restaurant Tax, not to exceed the dollar amount budgeted in 1992 through 1993, to the City Park Commission for such purposes. The Recreation, Tourist, and Convention Commission shall meet annually with the Park Commission prior to the preparation of the Recreation, Tourist, and Convention Commission's budget to determine the amount of funds to be allocated to the park system. The city recognizes Archer Park and any other city recreational parks existing now or hereafter established, to be a major attraction for visitors to this area, and it is the intent of this chapter to provide sufficient funding to the city park system to maintain city recreational facilities at a high level for future growth and development of the city's tourism economy. The Recreation, Tourist and Convention Commission shall budget 33% of its funds of the Hotel, Motel and Restaurant Tax, to the acquisition, construction and operation of the Mountain Arts Center, home of Kentucky Opry, and the total of this amount may be pledged to bonded indebtedness for the life of the bonds.

(Ord. 5-88, passed 2-8-88; Am. Ord. 17-92, passed 9-14-92; Am. Ord. 8-97, passed 9-11-97)

§ 118.07 FISCAL LIMITATIONS.

The City Council forbids the Recreation, Tourist, and Convention Commission to issue revenue bonds or to borrow money beyond the fiscal year without the express approval of the City Council. The fiscal year shall begin July 1 of each year and terminate on June 30 following.

(Ord. 5-88, passed 2-8-88)

SPECIAL RESTAURANT, MOTOR COURT, MOTEL, HOTEL, OR INN TAX

§ 118.15 IMPOSITION OF TAX; PURPOSE.

(A) For the purpose of operation of the Recreation, Tourist, and Convention Commission, and to finance the cost of acquisition, construction, operation, and maintenance of facilities useful in the attraction and promotion of tourist and convention business, including the city park system, there is hereby imposed and levied a special tax of 3% of the gross retail sales of restaurants doing business within the city.

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§ 118.16 RECREATIONAL, TOURISM, AND CONVENTION ACTIVITIES

(B) There is hereby further imposed and levied a special transient room tax of 3% of the rent for every occupancy of a suite, room, or rooms, charged by all persons, companies, corporations, or other like or similar persons, groups, or organizations doing business as motor courts, motels, hotels, inns, or other like similar accommodations businesses.

(C) The tax imposed herein shall be in addition to other general taxes and the occupational or business license taxes payable to the city.

(Ord. 5-88, passed 2-8-88; Am. Ord., passed -- ; Am. Ord. 8-88, passed 6-3-88; Am. Ord. 17-92, passed 9-14-92)

§ 118.16 DEFINITION.

For purpose of this subchapter the following definition shall apply unless the context clearly indicates or requires a different meaning.

"RESTAURANT." Any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; street vendors; catering kitchens; commissaries; or similar places in which food is prepared for sale for consumption on the premises or elsewhere. The term does not include schools, food vending machines, establishments serving beverages only in single service or original containers, or retail food markets which only cut, slice, and prepare cold-cut sandwiches for individual consumption.

(Ord., passed -- )

§ 118.17 APPLICATION OF PROVISIONS TO CERTAIN OPERATIONS.

Temporary food stands, booths, street concessions, and similar type operations, whether operated by non-profit corporations or not, when food is prepared and sold for immediate consumption, are not exempt from this tax.

(Ord., passed -- )

§ 118.18 PAYMENT OF TAX; DUE DATE AND DELINQUENCY.

(A) On and after October 1, 1992, every person, company, corporation, or other like or similar persons, groups, or organizations doing business as restaurants located in the city shall pay quarterly to the City Treasurer a tax of 3% of the gross retail sales collected by them during the preceding quarter. Such tax shall be due and payable to the City Treasurer 30 days after the last day of each quarter, together with a return on a form furnished by or obtained from the Treasurer, setting forth an aggregate amount of gross retail sales charged and collected during the period to which the tax applies, together with such other pertinent information as the Treasurer may require. Restaurants would begin collecting October 1, 1992 and make the first payment before February 1, 1993.

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(B) On or after October 1, 1992, every person, company, corporation, or other like or similar persons, groups, or organizations doing business as a motor court, motel, hotel, inn, or other similar or like accommodation businesses located in the city shall pay quarterly to the City Treasurer a tax of 3% of the gross sales and receipts from all rentals received and described under § 118.15(B). Motor courts, motels, hotels, inns, or other like or similar accommodations businesses shall begin collecting the tax effective October 1, 1992, and make the first payment on or before February 1, 1993.
(C) Any tax imposed by this chapter which shall remain unpaid after it becomes due, as set forth herein, shall have added to it a penalty of 10%, together with interest at the rate of 6% against the total amount of tax overdue at any time. After 60 days, the amount of penalty shall be compounded each month. These penalties are the same as those for late payment of city occupational taxes.

(Ord. 5-88, passed 2-8-88; Am. Ord., passed - ; Am. Ord. 8-88, passed 6-3-88; Am. 17-92, passed 9-14-92)

§ 118.19 REIMBURSEMENT FOR COLLECTION.

As reimbursement for the cost of collecting and remitting the tax, the restaurant owner, corporation, person, or entity responsible for collecting the tax shall deduct on each return, 2% of the first $1,000 tax due and 1-1/4% of the tax in excess of $1,000 provided the amount due is not delinquent at the time of payment.

(Ord., passed - )

§ 118.20 TAXPAYER TO MAINTAIN RECORDS.

It will be the responsibility of the taxpayer to maintain books, records, and papers in support of all amounts reported on the quarterly return. The city will be permitted to examine the books, records, and papers of the taxpayer upon notification in writing to the taxpayer.

(Ord. 5-88, passed 2-8-88)

§ 118.21 DISPOSITION OF FUNDS.

The funds collected from this tax shall be maintained by the City Treasurer in a special fund and disbursed to the Recreation, Tourist, and Convention Commission in accordance with its annual budget. All such money shall be used solely for the purpose of promoting recreational, convention, and tourist activity in the city as set out in KRS 91A.390, and shall not be used to provide a subsidy in any form to any hotel, motel, or restaurant. Any money not expended by the Commission during any fiscal year will be used to make up a part of the Commission's budget for the next fiscal year.

(Ord. 5-88, passed 2-8-88)

§ 118.22 COLLECTION FEE TO BE RETAINED BY THE CITY.

A collection fee in the amount of 3% of the first $1,000 and 2-1/4% of the tax in excess of $1,000 shall be retained by the city.

(Ord. 5-88, passed 2-8-88)

§ 118.23 VIOLATIONS.

No person shall purposefully refuse to file a return, pay the tax due, or knowingly file a false or fraudulent return required herein.

(Ord. 5-88, passed 2-8-88) Penalty, see § 118.99
§ 118.99 PENALTY.

Whoever violates the provisions of this chapter shall be guilty of a misdemeanor, subject to a fine of not more than $100 for each violation, imprisonment for not more than 30 days, or both.
(Ord. 5-88, passed 2-8-88)
EXHIBIT E
TO:  First Commonwealth Bank  
Attention: Barry Davis, General Counsel  
311 N. Arnold Avenue  
Prestonsburg, Kentucky 41653

Re: Bank Signature Cards, Account

1. Under the authority of KRS 43.080 and other applicable law, you are commanded by the Commonwealth of Kentucky, Auditor of Public Accounts, to produce the following:

   True and correct copies of all bank signature cards for account maintained in the name of the City of Prestonsburg Tourism Commission Fund from January 1, 1998 through June 30, 2003.

2. You are commanded to deliver or make available the documents in paragraph 1., above, within five (5) work days from the date of proof of service to:

   Auditor of Public Accounts  
   Attention: Jason Henderson  
   105 Sea Hero Road, Suite 2  
   Frankfort, Kentucky 40601  
   Tel. 502.873.0050  
   Fax 502.573.0067
This subpoena issued by Edward B. Hatchett, Jr., Auditor of Public Accounts, Commonwealth of Kentucky, on the 1st day of July, 2003.

EDWARD B. HATCHETT, JR.
AUDITOR OF PUBLIC ACCOUNTS

By: [Signature]
Robert E. McBeath
APA General Counsel

Date: July 1, 2003

PROOF OF SERVICE:

This subpoena was served, by delivery by fax / mail (check one or more), this the 1st day of July, 2003, at 11:45 a.m. / p.m.

on: [Name] [Title]
[Address]

by: [Name] [Title]
EXHIBIT F
VIA FACSIMILE

Robert E. McBeath, Esq.
General Counsel
Commonwealth of Kentucky
Auditor of Public Accounts
144 Capitol Annex
Frankfort, Kentucky 40601

RE: Subpoena No. 03-2
First Commonwealth Bank Account No.

Dear Mr. McBeath:

This is to acknowledge the receipt, by facsimile, of the above-referred to administrative subpoena on July 1, 2003. As you know, from our telephone conversations of that same date, I was under the initial impression that the subpoena was one issued by a court where a civil action was pending.

The administrative subpoena makes specific reference to KRS 43.080. My reading of that statute reveals that the Auditor of Public Accounts has the right to examine all books, records, accounts, etc. of any state agency, presumably by the use of an administrative subpoena and by other means. KRS 43.010(3) defines state agency. Our bank does not come within that definition, nor is any bank employee an officer or employee of any such agency.

During our second conversation you referred me to KRS 91A.394 and indicated that this statute was applicable to the above-referred to administrative subpoena. My review of this statute and of the two statutes referred to in subsection (1) thereof tells me that they are also not applicable to our bank. KRS 91A.360 and 91A.380 refer to an audit by an independent auditor; KRS 91A.394 gives the Auditor of Public Accounts the right to review various papers and documents relating to the audit of the independent auditor (certified public accountant).

The above having been said, I would like to assure you on behalf of the bank that we wish to fully cooperate in good faith with your office. As I indicated to you during our discussions the bank feels it must proceed cautiously so as not to violate any privacy rights which our customers may have, and to protect itself from any liability for releasing customer information. We are concerned that if we comply with your administrative subpoena based upon the statutory authority you have provided, we may have privacy and other issues with the customer involved.

With respect to the above, I am therefore requesting that we continue a meaningful dialogue to see if we can accomplish our respective goals: the production of the records which your office seeks on the one hand and the protection of our customer's privacy without the bank’s being exposed to any liability for producing these documents.

I look forward to resolving this matter in an amicable way as soon as possible and will make myself available for further discussion at your earliest convenience.

Sincerely,

Barry Davis
Compliance Officer
EXHIBIT G
43.080 Access to books and records -- Power to obtain testimony.

(1) The Auditor and his authorized agents shall have access to and may examine all books, accounts, reports, vouchers, correspondence files, records, money and property of any state agency. Every officer or employee of any such agency having such records or property in his possession or under his control shall permit access to and examination of them upon the request of the Auditor or any agent authorized by him to make such request.

(2) The Auditor and his assistants shall have access at all times to the papers, books and records of the asylums, prisons, institutions for the mentally retarded and eleemosynary institutions, and public works that he is authorized to examine, and of any county officer who receives or disburses county funds.

(3) The Auditor may require information on oath from any person touching any matters relative to any account that the Auditor is required to state, audit or settle. The Auditor may administer the oath himself, or have it done by any officer authorized to administer an oath.

(4) The Auditor and his assistants may issue process and compel the attendance of witnesses before them, and administer oaths and compel witnesses to testify in any of the investigations the Auditor is authorized to make.

Effective: June 17, 1978

October 9, 2002

Hon. Albert B. Chandler, III
Attorney General
Commonwealth of Kentucky
118 State Capitol
700 Capitol Bldg.
Frankfort, KY 40601

RE: Request for Attorney General’s opinion on the application of KRS 91A.350

Dear Mr. Chandler:

This letter is to formally request an Attorney General’s Opinion on the application of KRS 91A.350 as it relates to a limitation on funding of recreational activities or projects with monies raised through restaurant and motel taxes.

Pursuant to KRS 91A.350 the City of Prestonsburg, a city of the fourth class, passed an ordinance on February 8, 1988 which created a Recreation, Convention, and Tourist Commission. The same ordinance which created the Commission also imposed a tax on the gross sales of restaurants doing business within the City limits and likewise imposed a transient room tax on motor courts, motels, hotels, inns, or other similar accommodations conducting business within the Prestonsburg City limits. A portion of the tax revenue generated by the restaurant and motel tax funds the business of the Recreation, Tourist, and Convention Commission and a portion of the tax, pursuant to city ordinance, is earmarked to fund the construction, operation, and maintenance of the Prestonsburg City Park under KRS 91A.390(3).

The Park contains facilities for playground equipment and a city owned and operated swimming pool. However, the City Park also contains facilities which attract visitors from other parts of Kentucky as well as visitors from other states. At the City Park a rink and grandstand is maintained for several horse shows...
held at the Park each year and at the athletic fields county, regional and state baseball and softball tournaments are conducted. The Park also hosts annual motorcycle rallies and shows; tennis tournaments; family reunions, and an annual Christmas light display. The City Park’s facilities are, therefore, promoted and used to attract visitors to the City of Prestonsburg.

As Mayor of the City of Prestonsburg I was advised that KRS 91A.350 (4) was amended effective July 14, 2000 so as to limit funding for recreational activities or projects at a level no greater than the funding level provided in the 1990 fiscal year. However, since operation and maintenance of the Prestonsburg City Park is related to tourism and the attraction of visitors to the city the question for which I seek your formal opinion is whether the funding limitation contained in subsection 4 of KRS 91A.350 is actually applicable to the city’s park where the recreational activities and Park’s facilities are related to the attraction of tourists to the City. I would, therefore, greatly appreciate your opinion concerning the application of the funding limitation contained in KRS 91A.350(4) for the Prestonsburg City Park.

Thank you for your opinion in this matter.

Very truly yours,

JERRY S. FANNIN, MAYOR
CITY OF PRESTONSBURG
EXHIBIT I
October 16, 2002

David H. Neeley
City Attorney
Neeley & Reynolds Law Offices, P.S.C.
Suite 100, 112 W. Court Street
Prestonsburg, KY 41653

Dear Mr. Neeley:

The Office of the Attorney General recently received the enclosed letter from Jerry S. Fannin, Mayor of the City of Prestonsburg, Kentucky, requesting an opinion regarding the application of KRS 91A.350 as it relates to a limitation on funding of recreational activities or projects with monies raised through restaurant and motel taxes.

After a review of this correspondence, a determination was made that you are the appropriate entity to address the questions raised in this request.

If we can be of further service, please let us know.

Very truly yours,

Scott White
Assistant Deputy Attorney General

#478
cc: Jerry S. Fannin, Mayor
Enclosure
EXHIBIT J
OCTOBER 01, 2002

VOICE TO PURCHASE THE 1995 CARAVAN  FROM: JIM OUSLEY

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</table>
EXHIBIT K
City Of Prestonsburg

First Commonwealth Bank
Two Locations In Prestonsburg
Prestonsburg, KY 41653

100 North Lake Drive
Ph: 606-486-2335

09/05/2003

City Of Prestonsburg

General Fund

200 North Lake Drive
Ph: 606-486-2335
Prestonsburg, KY 41653

Pay

Two Thousand Six Hundred And 00/100

Dollars

To The Order Of
Prestonsburg Tourism

Prestonsburg, KY 41653

Authorized Signature

[Signature]

[Check Number] 006906

[Amount] $2,600.00

[Check Date] 09/05/2003

[Vendor] 811 Prestonsburg Tourism

[Voucher Number] 006906

[Invoice Number] 001-08401-0004

[Invoice Date] 09/05/2003

[Invoice Amount] $2,600.00

[Amount Paid] $2,600.00

[Discount Taken] $0.00

[Net Amount] $2,600.00

[Check Total] $2,600.00
October 2, 2003

Via Fax: 502/573-0067 & Regular Mail

Edward B. Hatchett, Jr.
Auditor of Public Accounts
105 Seahero Road, Ste. 2
Frankfort, KY 40601-5404

RE: Prestonburg Recreation, Tourist, and Convention Commission

Dear Mr. Hatchett:

This is to acknowledge receipt of the draft report containing the findings noted during the performance of your examination of the City of Prestonburg ordinances relating to the Prestonburg Recreation, Tourist, and Convention Commission and your examination of the Commission's records and documentation. I have carefully reviewed with interest the findings and recommendations contained in the draft report and submit the following in response to the report's recommendations:

REVISION OF CITY ORDINANCE 118.04. The recommendation that city ordinance 118.04 be amended will be presented to the Prestonburg City Council. A recommendation will be made to Council that the ordinance be amended as suggested.

AUTHORITY TO SIGN COMMISSION CHECKS. The recommendation made in regard to the signature authority over the Commission's checking account has already been addressed. In fact, the Prestonburg Commission amended its bylaws effective July 3, 2003 to reflect that three officers of the Commission have check signing authority along with the City Treasurer. On July 10, 2003 the bank where the Commission's deposits are held was specifically notified as to the persons who have check writing authority and now that appropriate bonding has been secured for the Commission.
members who have authority to sign checks, the issue regarding signatories for the
Commission's checking account is moot. (A copy of the Commission's revised bylaws,
correspondence from the Commission's Chairman to the First Commonwealth Bank,
and a copy of the bank signature card are appended. Please note that on the signature
card the account number and social security number of those persons with authority
to sign the checks have been redacted for security purposes).

AMENDMENT OF ORDINANCE 118.18 TO PROVIDE FOR MONTHLY TAX
COLLECTIONS. Although City ordinance 118.18 cannot be easily amended so as to
provide for monthly collection of the transient room tax and restaurant tax as has been
recommended, a question exists as to whether Section 1 of KRS 91A.390 is applicable
to cities of the fourth class and would only be applicable to the transient room tax and
not the restaurant tax. Subsection 1 of KRS 91A.390 speaks directly to the transient
room tax and follows the heading:

Room tax-Special transient room tax-Authorization for additional tax
by a county with the city of the first class, Urban-county
governments, and multi-county tourist and convention commissions-
Revenue bonds.

The first six sentences of subsection 1 of KRS 91A.390 address specifically the
transient room tax and contains no reference to the restaurant tax. The first six
sentences are then followed by the last sentence which provides, "The local governing
body or bodies that have established a commission by joint or separate action shall
enact an ordinance for the enforcement of the tax measure enacted pursuant to this
section and the collection of the proceeds of this tax measure on a monthly basis."
(Emphasis added).

The last sentence of section 1 of KRS 91A.390 refers to "...this section..." and makes no
reference to the section of chapter 91A dealing with the imposition of a restaurant tax.
Therefore, we have a question as to whether section 1 of KRS 91A.390 actually
mandates collection of both the restaurant tax and the transient room tax on a monthly
basis. Therefore, I believe that it would be helpful to secure an opinion from the Office
of the Attorney General as to the application of KRS 91A.390(1).

SEPARATE AUDIT OF THE COMMISSION'S BOOKS AND ACCOUNTS. Although the
audit of the Prestonsburg Recreation, Tourist, and Convention Commission has been
performed in years past as a part of the City's audit conducted by independent auditors,
whose services were paid by the City, there certainly is no reason why the Commission
cannot obtain its own independent audit separate and apart from the City's. Previously,
the audit of the Commission's books and accounts was obtained and paid for by the City
Mr. Edward Hatchett, Jr.
October 2, 2003
Page Three

as an accommodation to the Commission. However, the Commission will be advised that it will be responsible for the expense and procurement of its own independent audit.

THE CITY'S USE OF THE COMMISSION'S VAN FOR THE SENIOR CITIZENS CENTER. Although there are no recommendations contained in your report with regard to the City's use of the Commission's van by the Senior Citizens Center, I wanted to address that issue since it was also a subject referred to in the draft report. After the van had been returned to the Commission by the Commission's member who had an obvious conflict of interest, the van sat unused for a prolonged period of time. Rather than see the van deteriorate and not be utilized for any good purpose, the van was taken to the Senior Citizens Center which also serves as a tourist information center at the entrance to Jenny Wiley State Park. I am advised that the van is currently being used by the Senior Citizens Center for home meal delivery and is available for local tourist transportation if needed. (See exhibit 5 hereto).

As noted in your report, the City has reimbursed the Commission in the amount of $2,600 for the van. As the Commission had already declared the van surplus, did not use the van for any purpose, and ultimately was paid for the van, the City's use of the van was not and would not have been detrimental to the Prestonsburg Recreation, Tourism and Convention Commission.

As a final note, I wanted to thank you for your staff's courtesy and the professionalism extended to the City's personnel and employees of the Prestonsburg Recreation, Tourism and Convention Commission. Should either you or anyone on your staff need any additional information concerning this matter or if you feel that any further discussions are warranted, please feel free to contact any of us in the City administration.

Very truly yours,

Jerry S. Fannin
Mayor of the City of Prestonsburg

Enclosures
| Exhibit 1 | Amended Bylaws of the Prestonsburg Recreation, Tourism & Convention Center |
| Exhibit 2 | July 10, 2003 Correspondence from Chairman of the Prestonsburg Tourism Commission to the First Commonwealth Bank |
| Exhibit 3 | A copy of the bank's signature card |
| Exhibit 4 | The Western Surety Company bond for the City of Prestonsburg Tourism Commission |
| Exhibit 5 | Correspondence from Chairman of the Prestonsburg Senior Citizens Center to Mayor Fannin |
By-Laws
of the
Prestonsburg Recreation, Tourism & Convention Commission
113 South Central Avenue
Prestonsburg, Kentucky 41653
606-886-1341/Fax 886-6997

Article I
Office
Section 1. The Commission shall use as its address 113 South Central Avenue, Prestonsburg, Kentucky 41653 or any other address as may be determined by the Commission as the business of the Commission may require.

Article II
General Powers
Section 1. The business and affairs of the Prestonsburg Recreation, Tourism & Convention Commission shall be managed by the duly appointed members of the Commission.

Section 2. The Prestonsburg Recreation, Tourism & Convention Commission is the policy making body and shall be authorized to conduct and transact business in the name of "Prestonsburg Convention and Visitors Bureau."

Section 3. The number, tenure in office, qualifications and method of appointment of the members of the Commission shall be as set forth in the KRS 91A.360 and City Ordinance 4-88, Section 2.

Section 4. The rights, powers, duties and obligations of the Commission are set forth in City Ordinance 4-88.

Article III
Mission
Section 1. It is the purpose of the Commission to develop and promote activities, events, organizations and special programs which will bring overnight guests and other visitors to Prestonsburg, thereby providing jobs locally and thereby further enhancing revenues for the city and growth in the business community.

Article IV
Membership and Appointment
Section 1. The membership of the Commission and any vacancies thereon, shall be appointed and shall serve as provided in KRS 91A.360 and City Ordinance 8-97.

Section 2. On or before 60 days prior to the termination of the term of any member, the Chairman of the Commission shall give written notice to the office holder, association(s) and/or organization(s) authorized to submit nominations(s) for the appointment of the membership(s) whose term is expiring and said written notice shall request that all nominations be submitted in accordance with the Ordinance to the Mayor of the City of Prestonsburg no less than 30 days prior to the expiration of the term of the respective membership(s). The Chairman shall further request the Mayor to make and finalize all appointments or reappointments prior to the expiration date of any respective term.

Section 3. If any member is absent three or more consecutive meetings, regular or special, during any one fiscal year, the Executive Director shall first report that fact to the Commission and the Commission may thereafter direct the Executive Director to so notify the Mayor.

Article V
Meetings
Section 1. The meetings of the Commission shall be held monthly on the second Wednesday of each month or at any other time and day agreed upon by the majority of the Commission. Notice of meetings shall be by mail, telephone or electronic mail to the Commissioners and the news media.

Section 2. Special meetings may be called by or at the request of the Chairman or any two (2) Commissioners. They may select the time and place for the meeting and shall be responsible for notifying each of the Commissioners at least two (2) days before a special meeting.
Section 3. A simple majority (four (4) of seven (7)) of the Commissioners shall be a quorum. Without a quorum present, the majority present may adjourn a meeting.

Section 4. If the Commission so desires, it can adjourn to go into executive session pursuant to the open meetings act as contained in KRS 61.805.

Section 5. Action shall not be required to be taken on in any matter that is presented before the Commissioners on the first presentation.

Section 6. Compensation shall not be paid Commissioners for their services. If any reimbursement is in order, such reimbursement shall be approved by a majority of the Commission as an act of the Commission for expenses incurred on behalf of the Commission prior to the expense being incurred.

Section 7. Request for expenditures shall be presented by written application. Itemized bills shall be presented for payment to the Commission.

Section 8. All business of the Commission shall be held in confidence except where prohibited by the open meeting act as contained in KRS 61.805.

Section 9. No Commissioner shall act on behalf or represent him/herself as acting on behalf of the Commission without the express approval of a majority of the Commission.

Article VI
Officers
Section 1. A Chairman, Vice Chairman and Treasurer shall be elected by a regular nominating process of the Commission on a yearly basis serving on a fiscal year July 1 to June 30.

Section 2. The Chairman or his designate presides over Commission meetings.

Section 3. The Chairman, Vice Chairman and/or Treasurer shall be responsible for disbursement of funds in cooperation with the City Treasurer.

Section 4. Committees under the Commission shall be appointed by the Chairman at a regular meeting. Members of the Commission shall aid in the development of committees of volunteers for special services and/or special events. At least one member of the Commission shall be a member of any committee appointed by the Commission.

Section 5. The Commission may provide for the creation of a supportive organization or association of persons (referred to as “ex-officio members”) involved in the hospitality or tourism industry to work with the Commission in carrying out its purposes and objectives.

Section 6. At the May meeting each year, the Chairman shall appoint a committee of three (3) Commissioners as a Nominating Committee. The Nominating Committee will prepare a slate of officers to be voted on at the regular June meeting. Officers shall assume the responsibility of office at the regular July meeting.

Section 7. The term of office shall be for the fiscal year, July first to June thirtieth. The Officers shall be elected and serve for a term of one (1) year.

Article VII
Duties of Officers
Section 1. The Chairman shall:

a. Preside over meetings when present.
b. May sign, with other designated officers as authorized by the Commission, such contracts, deeds, bonds, mortgages, leases and other instruments or documents which the Commission has authorized to be executed, except in cases where signing and execution thereof shall be expressly delegated by the Commission members or by these by-laws to some other officer or agent of the Commission, or shall be required by law to be otherwise signed or executed.
c. Appoint a three (3) member Nominating Committee for election of officers or officer as approved by the Commission.
d. Appoint committees for special events and other volunteer services, as approved by the Commission.

Revised 7/3/2003
e. Able to co-sign all Commission checks along with the Vice Chairman, Treasurer and/or City Treasurer.

Section 2. The Vice Chairman shall:
- a. Able to co-sign all Commission checks along with the Chairman, Treasurer and/or City Treasurer.
- b. Perform all duties incident to the office of Vice Chairman and other duties as assigned.

Section 3. The Treasurer shall:
- a. Able to co-sign all Commission checks along with the Chairman, Vice-Chairman and/or City Treasurer.
- b. Perform all duties incident to the office of Treasurer and other duties as assigned.

Article VIII

Staff

Section 1. The Commission may, from time to time, employ such personnel, accountants, attorneys and other independent contractors as may be necessary to effectively carry out the Commission’s purpose upon such terms and conditions as the Commission may then determine within its discretion.

Section 2. The Commission shall employ an executive director to carry out the purpose of KRS 91A.350.390.

Section 3. The Executive Director shall conduct the fiscal affairs of the Commission and be responsible for budgets, reports and other financial matters of the Commission.

Section 4. All items of a tangible nature including, without limitation, all brochures, maps, pamphlets, advertisements, slogans, logos, computer programs, lists of potential tourists or conventions, or other work product which are produced, compiled, edited, arranged, designed, or authored by any employee or independent contractor of the Commission shall always be considered and remain the sole property of the Commission.

Article IX

Financial Procedures

Section 1. Fiscal Year. The fiscal year of the Commission shall be from July 1 through the following June 30.

Section 2. Commission Funds. Funds are derived from Transient Room and Restaurant Taxes authorized by KRS 91A.390, which shall not exceed three percent (3%) as provided by City Ordinance 17-92. Supplemental funds may be derived from such additional sources as the Commission may approve.

Section 3. Budget. An annual operating budget will be drafted and submitted by the Treasurer, Chairman or Executive Director prior to the beginning of the fiscal year for approval by the Commission. The Commission will then submit its final proposed annual budget to the City no later than the fifteenth (15) day of May.

Section 4. Audit. KRS 91A.360(5) provides that the books of the Commission shall be audited by an independent auditor who shall make a report to the Commission, to the organizations submitting names from which Commission members are selected and to the Mayor.

Section 5. Expenditures/Statutory Limits/Bidding: There shall be no dollar limit on budget-approved expenditures, except that competitive bids will be obtained at or below statutory limit of $20,000. In addition, competitive bids shall be obtained at the discretion of the executive director on all major purchase not covered under statutory provisions. A financial report, reflecting income and expenditures, including payroll, and bank balances shall be presented at each regular Commission meeting.

Article X

Parliamentary Procedures

Section 1. The current edition of Roberta Rules of Order shall be the final source of authority in all questions of parliamentary procedures.

Article XI

Amendments to By-Laws

The Commission shall have the power and authority to alter, amend, or repeal the by-laws of the Commission at any regular or special meeting at which a quorum is present by the vote of the majority, providing all members were duly notified of the meeting, including the notice of such a proposed amendment would be voted upon.

Article XII

Revised 7/3/2003
Indemnification of Officers

The Commission shall indemnify each duly appointed member who was or is a party, or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceedings whether civil, administrative, or investigative by reason of the fact that he or she is or was a member of the Commission or serving at the request of the Commission against expense (including lawyer fees), judgments, fines and amounts actually incurred by him or her in connection with such action, suit or proceedings if he or she acted in good faith and in a manner he or she reasonably believed to be in and not opposed to the best interest of the Commission.

Article XIII
Repeal

All previous By-Laws adopted by the Commission are herewith repealed.

Article XIV
Effective Date

These By-Laws shall take immediate effect upon final adoption.

Revised 7/3/03
July 10, 2003

First Commonwealth Bank
311 N. Arnold Avenue
Prestonsburg, KY 41653

Dear Sir or Madam,

The following Commission Board members, as well as the Prestonsburg City Treasurer, need to be placed on the Signature card for the Prestonsburg Tourism Commission. The members have been selected by the Tourism Commission as designated check signers. The Commission has approved that two of the four signatures be required for processing of checks. A copy of the bylaws (revised July 3, 2003) are attached for your files.

The Account number is . The mailing address needs to be Prestonsburg Tourism Commission, 113 South Central Avenue, Prestonsburg, Kentucky 41653. The contact telephone number is (606) 886-1341.

Commission Members to be added:

David Tackett, Chairman
Jim Ousley, Vice Chairman
Boyd Thompson, Treasurer

Debbie Haywood, City Treasurer

Thank You

David Tackett, Chairman
Prestonsburg Tourism Commission

Board Members: David Derossett, Mark Miller, Jim Ousley, Tiffany Parsons, David Tackett, Boyd Thompson, Donna Wells

113 South Central Avenue, Prestonsburg, Kentucky 41653
606-886-1341/Fax 606-886-6997/800-844-4704
www.prestonsburgky.org
First Commonwealth Bank

Account Holder Name(s): CITY OF PRESTONSBURG DBA PRESTONSBURG TOURISM COMMISSION

Account Purpose: Non Consumer

ACCOUNT TYPE: Business NOW

ACCOUNT NUMBER

Date Opened
07-19-03

Date Revised
Opening
Verified By
CIS System

SSN/TIN
101 S CENRAL AVENUE PRESTONSBURG, KY 41653

Telephone Number (606) 886-1341

Number of Signatures Required: 2

OWNERSHIP TYPE: Government/Municipal/Public Funds

Signatures of Authorized Individuals. This Agreement is subject to all terms below:

DAVID TACKETT, CHAIRMAN CITY OF PRESTONSBURG DBA PRESTONSBURG TOURISM COMMISSION

BOYD THOMPSON, TREASURER CITY OF PRESTONSBURG DBA PRESTONSBURG TOURISM COMMISSION

JIM DUSLEY, VICE CHAIRMAN CITY OF PRESTONSBURG DBA PRESTONSBURG TOURISM COMMISSION

DEBBIE HAYWOOD, CITY TREASURER CITY OF PRESTONSBURG DBA PRESTONSBURG TOURISM COMMISSION

(The signatures and printed names of each account signer)

The Authorized Individual(s) signing above agree(s), that the Account Holder’s Account(s) will be governed by the terms set forth in the Deposit Agreement and Disclosures, the Time Certificate of Deposit or Confirmation of Time Deposit Agreement(s) applicable, the Rate and Fee Schedule, the Funds Availability Policy Disclosure, the Electronic Funds Transfer Agreement and Disclosure, if applicable, acknowledges receipt of our privacy policy (if applicable), as amended by the Financial Institution from time to time, and such other authorization documents provided to the Financial Institution from time to time. The Authorized Individual(s) also acknowledge that they have received at least one copy of these deposit account documents. The Authorized Individual(s) represent(s) that they hold the position(s) indicated above and they are authorized to enter into this Agreement on behalf of the Account Holder.

The following information may be used to further identify individual(s) for telephone instructions, large transactions, or if a signature varies.

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<tr>
<th>Name</th>
<th>SSN</th>
<th>MMN</th>
</tr>
</thead>
<tbody>
<tr>
<td>DAVID TACKETT</td>
<td>41628</td>
<td></td>
</tr>
<tr>
<td>Phone: (606) 886-2382</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Job: Banker</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DOB: 5/15/65</td>
<td></td>
<td></td>
</tr>
<tr>
<td>JIM DUSLEY</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Phone: (606) 886-2555</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Job: m/c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DOB: 3/10/70</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BOYD THOMPSON</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Phone: (606) 886-6496</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Job: m/c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DOB: 2/13/44</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The following information may be used to further identify individuals for telephone instructions, large transactions, or if a signature varies.

**Name:** DEBBIE HAYWOOD  
**Street:** 321 Spurlock Creek  
**City:** Prestonsburg  
**State:** KY  
**Zip:** 41653  
**Phone:** 931-0392 with 886-3335  
**City:**  
**State:**  
**Zip:**  
**ID:** 4-3-64  

**MMN:**
Western Surety Company

PUBLIC EMPLOYEES BLANKET BOND
Including Public School System
Bond No. 6956946

DECLARATIONS

Item 1. Name of Oblige: City of Princetonburg Tourism Commission

Item 2. Name of Insured: City of Princetonburg Tourism Commission

Item 3. Bond Period: From the beginning of the 13th day of August, 2003,
to 12 o'clock midnight on the effective date of the cancellation or termination of this bond as an entity.

Item 4. Table of Limits of Liability

<table>
<thead>
<tr>
<th>Insuring Agreement</th>
<th>Limit of Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Honesty Blanket Bond Coverage</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>2. Honesty Blanket Pension Bond Coverage</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>3. Faithful Performance Blanket Bond Coverage</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>4. Faithful Performance Blanket Pension Bond Coverage</td>
<td>$100,000.00</td>
</tr>
</tbody>
</table>

Item 5. The liability of the Surety is subject to the terms of the following riders attached hereto:

Item 6. The Oblige and the Insured by acceptance of this Bond give notice to Surety terminating or canceling prior Bond(s) No. (1)

INSURING AGREEMENTS

1. Honesty Blanket Bond Coverage

2. Honesty Blanket Pension Bond Coverage

3. Faithful Performance Blanket Bond Coverage

4. Faithful Performance Blanket Pension Bond Coverage

GENERAL AGREEMENT

Loss Under Prior Bond

If the coverage of an Insuring Agreement of this Bond is interrupted by any prior bond carried by the Insured or any predecessor in interest of the Insured which ever bore a name similar to the name of the Insured, up to the time of such substitution, the Surety agrees that such loss, if any, shall be paid by the Surety, provided such loss has been discovered during the Bond Period, provided such loss is not covered under this Bond Period, but prior to the expiration of three years from the cancellation of the Bond, and that such loss would have been recoverable from the Insured or such predecessor under such prior Bond, and would be the result of the fact that the time within which to bring suit, action or proceeding of any kind theretofore had expired, and provided further:

1. If the indemnity offered by the General Agreement shall be a part of and not in addition to the amount of coverage afforded by the applicable Insuring Agreement of this Bond, then such loss would have been recoverable under such Insuring Agreement had such Insuring Agreement carried the same coverage, conditions and limitations as of the time of such substitution been in force when the acts or defaults causing such loss were committed; and
2. If the recovery under such Insuring Agreement on account of such loss shall not exceed the amount which would have been recoverable under such Insuring Agreement in the amount for which it is written as of the time of such substitution, but such Insuring Agreement had been in force when such acts or defaults were committed, or the amount which would have been recoverable under such Insuring Agreement had such prior Bond continued in force until the discovery of such loss if the letter amount be smaller.
THE FOREGOING INSURING AGREEMENTS AND GENERAL AGREEMENT ARE SUBJECT TO THE FOLLOWING CONDITIONS AND LIMITATIONS.

DEFINITIONS

Section 1. The following terms, as used in this Bond, shall have the respective meanings stated in this Section:

"Employee" as used in Insuring Agreements 1, 2, 3 and 4 means a person while in the employ of the Insured during the Bond Period who is not required by law to give bond conditioned for the faithful performance of his duties and who is a member of the staff or personnel of the Insured but does not mean any Treasurer or Tax Collector by whatever title known, of the Insured.

"Employee" as used in Insuring Agreements 3 and 4 means a person while in the employ of the Insured during the Bond Period who is not required by law to give bond conditioned for the faithful performance of his duties and who is a member of the staff or personnel of the Insured but does not mean any Treasurer or Tax Collector by whatever title known.

STUDENT ACTIVITIES

When this bond is written for a Public School System, "Employee" as above defined shall also be deemed to include any student enrolled in a school under the jurisdiction of the Insured while attending in a course of instruction and while engaged in any activities organized and conducted by the Insured in connection with such student activities.

Any loss of such property, funds, Bonds or Shares through any act or default covered by this Bond and committed by any Employee shall be deemed to be a loss sustained by the Insured under this Bond, whether or not the Insured is legally liable therefor.

UNIDENTIFIABLE EMPLOYEE

Section 2. In case it is alleged to have been caused by the Insured through acts or defaults by an Employee covered under an applicable Insuring Agreement of this Bond, while such Insuring Agreement is in full force and effect and the Insured shall be unable to designate the specific Employee causing such loss, the Insured shall notify the Insurer in writing of the occurrence of such act or default and provide such other information as the Insurer may require to resolve such claim.

The aggregate liability of the Surety for any such loss shall not exceed the amount stated in Item 4 of the Declarations applicable to such Insuring Agreement.

EXCLUSION

Section 3. This Bond does not cover any loss sustained by, or incurred by the Insured under circumstances wherein the Insured is not legally liable therefor and in the case of losses which the Insurer or the Insured otherwise undertake to indemnify or to assist the insured in the performance of their duties.

LIMITS OF LIABILITY

Section 4. Indemnification by the Surety for any loss under Insuring Agreement 1, 2, 3 and 4 shall not exceed the Surety’s liability for such loss under the applicable Insuring Agreement, whichever terminated, provided, however, that the Surety’s total liability under each such Insuring Agreement for any loss covered by any Employee in which such Employee is concerned or implicated is limited to the applicable amount of indemnity specified in the Table of Limits of Liability.

Indemnification by the Surety for any loss under Insuring Agreement 2 or 3 shall not exceed the Surety’s liability for such loss under the applicable Insuring Agreement, whichever terminated, provided, however, that the Surety’s total liability under such Insuring Agreement for any loss covered by any Employee in which such Employee is concerned or implicated is limited to the applicable amount of indemnity specified in the Table of Limits of Liability.

Repudiation of any number hereunder this Bond shall continue in force until the amount of any such loss shall be payable or paid, the limit of the Surety’s liability as specified in the Table of Limits of Liability shall be reduced by the amount of such loss to a point to be determined by the Surety from time to time during the period of such insurance.

Dated this 13th day of

By

Resident Agent

W ESTERN S URETY C OMPANY

By

Stephen T. Pate, President
ADDITIONAL INDEMNITY RIDER

It is agreed that:

1. Additional indemnity, in accordance with the terms of such of the Insuring Agreements in force under the attached bond as are specifically designated opposite the following positions, respectively, is granted by this rider to Employees performing the duties of such positions, at the amount set opposite the names of such positions, respectively.

2. The liability of the Surety under this rider on account of any one Employee in any one or more of such positions (in the original or an increased or decreased amount) shall not exceed the largest single amount of indemnity on any one position occupied by such Employee.

3. No losses shall be recoverable under this rider unless caused by an Employee who has been identified as having caused such loss, anything to the contrary in said bond or this rider notwithstanding.

<table>
<thead>
<tr>
<th>Position</th>
<th>Location</th>
<th>Insuring Agreement</th>
<th>Total Number of Employees in such Position</th>
<th>Amount of Additional Indemnity on such Employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO ADDITIONAL INDEMNITIES APPLIED FOR</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Dated this ___ 13th ___ day of August ___ 2003 ___

Counterinsured ____________________________
By _______________ Resident Agent

________________________________________
By _______________ Stephen T. Pate, President
October 2, 2003

Mayor, Jerry Fannin
City Of Prestonsburg
Municipal Building
200 N. Lake Drive
Prestonsburg, KY 41653

Dear Mayor,

I hope this letter finds you well.

This letter is to report the current direction & mission of the Prestonsburg Senior Citizens and Tourist Information Center.

As you are aware our local center provides many services to the local aging population. These services are, but not limited to Home Meal Delivery, Congregate Meals onsite and numerous other activities.

Also, due to the location of our new Center at the entrance of Jenny Wiley State Park we also serve as a Tourist Information Center providing brochures, helpful directions, restroom facilities and local tourist transportation if needed. As you know our facility was designed with a tourist center located in the main entrance of the facility giving easy access to all our visitors.

Again, I want to personally thank you and the Prestonsburg City Council for all your support. I'm sure together we will continue to provide a very positive "first impression" to our welcomed tourist.

Sincerely,

Darrell Patton
Chairman
AUDITOR’S REPLY
We reaffirm our position that KRS 91A.390(1) clearly requires that proceeds from the room tax be collected on a monthly basis. These proceeds should be forwarded to the Commission in a timely manner. In addition, all proceeds from the restaurant tax authorized by KRS 91A.400 should be collected and forwarded to the Commission in accordance with the statute, which states in part, “[a]ll moneys collected from the tax authorized by this section shall be turned over to the tourist and conventions commission established in that city as provided by KRS 91A.350 to 91A.390.”