

**EXAMINATION OF GOVERNANCE  
AND FUNDING OF THE  
PRESTONSBURG RECREATION, TOURIST,  
AND CONVENTION COMMISSION**



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EDWARD B. HATCHETT, JR.  
AUDITOR OF PUBLIC ACCOUNTS

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,

A handwritten signature in black ink, appearing to read "Ed Hatchett".

Edward B. Hatchett, Jr.  
Auditor of Public Accounts

EBHJr:kct





**Findings and  
Recommendations**

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

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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.

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

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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).

*First Commonwealth Bank in Prestonsburg refused to comply with our subpoena to produce the Commission's signature cards.*

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.

*State law authorizes the APA to serve subpoenas on any person touching any matter relative to any account the APA is required to state, audit, or settle.*

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.

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**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

[t]ourist 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

[t]he 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 statute 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.

*Recommendation*

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.

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**The City is not in compliance with current state law relating to timely collection of hotel taxes.**

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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.

*Recommendation*

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.

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**The Commission is not audited separately from the City's annual financial statement audit.**

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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.

*The Commission's books and account were included as part of the City's financial statement audit.*

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).

*Recommendation*

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).

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Other Issues Examined.

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.

**For a short period of time, the City improperly used a van purchased with Commission funds.**

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.

*Bid notices were published for the sale of the van.*

According to documents obtained from the Commission, bid notices were published in the *Big Sandy News* and the *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

[a]ll 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).

*Funds expended from the Commission’s account must be used exclusively to promote recreational, convention, or tourist related activity.*

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.

*The City reimbursed the Commission for the van.*

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

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**Under state law, the Commission may not unilaterally issue revenue bonds.**

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).





**EXHIBITS**



**EXHIBIT A**



complied with the requirements of these statutes before beginning work on the improvements. OAG 82-21.

The method of assessment to be applied for the county's maintenance of subdivision roads under KRS 179.470, including any services of street lights, garbage collection, water and sewer systems, is to be determined through the sound judgment of the fiscal court, which

assessment shall be geared to the legislative criterion that the cost of the improvement shall be apportioned equitably on a fair basis. In so using that standard, resort may be had to the use of one or more of the methods outlined in this section, depending upon the nature of the improvement and the general circumstances of property ownership related thereto. OAG 82-27.

#### **91A.220. Special assessments for improvements.**

**Opinions of Attorney General.** For city ad valorem tax purposes, 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.200 to 91A.209 would allow a city of the sixth class to finance street lights through a special assessment on benefits-received basis, so 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.230 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 83-132.

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 83-132.

#### **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.230 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 83-132.

#### **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.280. Payment of assessment or installment — Lien.**

**Opinions of Attorney General.** A city may, under the authority of KRS 91A.220(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 83-132.

### **TOURIST AND CONVENTION COMMISSIONS**

#### **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 promoting 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 promoting 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 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.
  - (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 97.035; 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 103.285; and to authorize the boards to build and issue bonds for facilities located on leasehold and permithold land. (Enact. Acts 1968, ch. 138, § 1; 1974, ch. 324, § 1; 1990, ch. 302, § 1, effective July 13, 1990; 1992, ch. 56, § 1, effective July 14, 1992; 2000, ch. 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, motels or hotels or similar establishments subject to the tax authorized by this section to KRS 91A.390 a collection fee for collecting, reporting and forwarding the tax imposed. OAG 83-372.

A county containing no incorporated cities may establish a tourist and convention commission pursuant to subsection (2) of this section since even if the literal language "in counties containing cities" used in subsection (2) were deemed to be in apparent conflict with the general scheme of the statute, such language must surrender to the general purpose and intent 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 dissolution of a county tourist commission once such a commission has been properly established, and the county judge/executive with or without the fiscal court has no authority to dissolve the commission. OAG 82-26.

A motel-hotel license tax imposed by the fiscal court pursuant to KRS 91A.390 must be expended for the multi-purposes explicitly set forth in KRS 91A.390(2). Those purposes in-

clude recreation as well as providing for the promotion of convention and tourist activities. OAG 83-148.

Under subsection (2) of this section, a fiscal court for the county may, by its separate action alone, establish or create a recreational, tourist and convention commission. This poses no problem, although the membership of the commission is appointed, under KRS 91A.360, by the joint action of the mayor of the largest city in the county and the county judge/executive. OAG 83-148, modifying OAG 75-523.

The room tax money to be expended directly by the city may cover a city park and any items reasonably necessary for its proper establishment, maintenance and operation, provided that the city park would be so constructed and maintained as to be useful in the attraction and promotion of tourist and convention business. OAG 83-236.

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 83-515.

Sections 27 and 28 of the Kentucky Constitution would prohibit a member of the General Assembly from serving at the same time as a member of a Tourist and Convention Commission. OAG 83-70.

**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 officers 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 participating 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 reappointed. Subsequent appointments shall be for three (3) year terms.
- (4) The commission shall elect from its membership a chairman and a treasurer, and may employ personnel and make contracts necessary to carry out the purpose 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 commerce, publishers, and printers.
- (5) The 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. 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 1968, ch. 138, § 2; 1970, ch. 59, § 1; 1974, ch. 324, § 2; 1976, ch. 139, § 1; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1980, ch. 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(2) 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 appointments to the commission required by the statute including the one contemplated to be



made specifically by the county judge/executive. OAG 81-371.

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 81-393.

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 commission cannot enter into a contract of employment for a term of four years when no member of the commission has as many as four years remaining in his term. Where a commission has entered into a contract of employment which exceeds its authority, the subsequent commission has the authority to remove the director and appoint another person for that position or it can, if it chooses, reappoint the director for a period coinciding with the term of the subsequent commissioners. OAG 82-612.

Under KRS 91A.350(2), a fiscal court for the county may, by its separate action alone, establish or create a recreational, tourist and

convention commission. This poses no problem, although the membership of the commission 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 statutory provisions requiring that the members of a recreational, tourist and convention commission selected from lists submitted by the local hotel and motel associations actually be employed by hotels or motels or that they retain their employment with hotels or motels during their tenure with the commission, persons selected from lists submitted by hotel and motel associations who leave their positions with the hotel and motel industry while serving on such a commission, do not automatically vacate their positions and may serve out the remainder of their terms of office, presuming they do not take up residence 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 class 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 Commonwealth.
- (2) Except in a county containing a consolidated local government, the mayor of the largest city in the county shall appoint three (3) commissioners 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, appoint 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 manner:
  - (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

- (c) 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.139 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.
- (Enact. Acts 1976, ch. 139, § 2; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1980, ch. 18, § 8, effective July 15, 1980; 1988, ch. 315, § 1, effective July 15, 1988; 2002, ch. 346, § 103, effective July 15, 2002.)

**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:

91A.380                    COUNTIES, CITIES, AND OTHER LOCAL UNITS                    40

- (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 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; 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.
- (Enact. Acts 1982, ch. 77, § 1, effective July 15, 1982; 2000, ch. 344, § 3, effective July 14, 2000.)

**91A.380. Membership of joint recreational, tourist and convention commissions — Terms — Officers and employees — Audits — Removal of commissioners.**

- (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.
- (6) A commissioner may be removed from office as provided by KRS 65.007. (Enact. Acts 1974, ch. 324, § 3; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1978, ch. 388, § 1, effective June 17, 1978; 1980, ch. 18, § 9, effective July 15, 1980; 2000, ch. 344, § 4, effective July 14, 2000.)

**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 funding the purchase of development rights program provided for under KRS 67A.845.
- (6) Local governing bodies which have formed multicounty 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 of 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.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. 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.

(Enact. Acts 1968, ch. 138, § 3; 1970, ch. 59, § 2; 1974, ch. 324, § 4; 1986, ch. 11, § 1, effective July 15, 1986; 1990, ch. 302, § 2, effective July 13, 1990; 1992, ch. 56, § 3, effective July 14, 1992; 1992, ch. 165, § 4, effective July 14, 1992; 1994, ch. 505, § 1, effective July 15, 1994; 1998, ch. 372, § 8, effective July 15, 1998; 2000, ch. 154, § 2, effective July 14, 2000; 2000, ch. 344, § 5, effective July 14, 2000; 2002, ch. 167, § 1, effective July 15, 2002; 2002, ch. 346, § 104, effective July 15, 2002.)

**Legislative Research Commission Note.** (7/15/2002). This section was amended by 2002 Ky. Acts chs. 167 and 346, which do not appear to be in conflict and have been codified together.

**Compiler's Notes.** Section 5 of Acts 1992, ch. 163 provides: "The provisions of Section 2 of this Act shall apply to taxable years beginning after June 30, 1992."

**Opinions 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 a collection fee for collecting, reporting and forwarding the tax imposed. OAG 83-271.

A transient room tax established by a county and city pursuant to subsection (1) 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 83-28.

A motel-hotel 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. Those 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 83-236.

The city is required to segregate the tourist room tax as a matter of financial accountability;

thus its records must clearly show the amount of the tax spent by the city to promote tourist and convention business and the amount turned over to the tourist commission. OAG 83-236.

The room tax money to be expended directly by the city may cover a city park and any items reasonably necessary for its proper establishment, maintenance and operation, provided that the city park would be so constructed and maintained as to be useful in the attraction and promotion of tourist and convention business. OAG 83-236.

There is no statutory provision authorizing a referendum in connection with the establishment of a Tourist and Convention Commission and the levying of a tax to support the activities of such a commission. OAG 83-315.

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 83-315.

A transient room tax imposed by a city and county or by either one individually pursuant to this section to fund the operations of a Tourist and Convention Commission is a license or occupational tax. OAG 83-315.

The city legislative body does not have the authority to grant waivers in connection with payment of the tax. OAG 83-315.

The tax is to be imposed directly by the local governing body and not pursuant to a referendum proceeding. OAG 83-315.

The tax is levied upon the hotels and motels, and not on the persons or organizations occupying the rooms. OAG 83-315.

Cited: *Kentucky City for Arts Corp. v. Berns*, 401 S.W.2d 827 (Ky. 1966).

**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.390 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 multicounty tourist and convention commission under 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.
- (Enact. Acts 1994, ch. 505, § 2, effective July 15, 1994; 1998, ch. 372, § 9, effective July 15, 1998; 2000, ch. 154, § 1, effective July 14, 2000; 2000, ch. 344, § 7, effective July 14, 2000; 2002, ch. 167, § 2, effective July 15, 2002; 2002, ch. 346, § 105, effective July 15, 2002.)

**Legislative Research Commission** not appear to be in conflict and have been  
**Note.** (7/15/2002). This section was amended  
 by 2002 Ky. Acts chs. 167 and 346, which do  
 codified together.

**91A.394. Standards for audits required by KRS 91A.360 and 91A.380 — Review of audits by State Auditor — Civil action to compel compliance with KRS 91A.350 to 91A.390.**

- (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.380(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.  
(Enact. Acts 2000, ch. 344, § 6, effective July 14, 2000.)

#### 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.  
(Enact. Acts 1980, ch. 235, § 21, effective July 15, 1980; 1986, ch. 203, § 1, effective July 15, 1986; 1992, ch. 435, § 11, effective July 14, 1992.)

#### SPECIAL AD VALOREM TAX

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

**Compiler's Notes.** This section (Acts 85.125 by Acts 1990, ch. 92, § 1, effective July 1988, ch. 308, § 1, effective July 15, 1988) 13, 1990. 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.  
(Enact. Acts 1986, ch. 181, § 1, effective July 15, 1986.)

##### 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.  
(Enact. Acts 1986, ch. 181, § 2, effective July 15, 1986.)

##### 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.
- (Enact. Acts 1986, ch. 181, § 3, effective July 15, 1986.)

#### MANAGEMENT DISTRICTS

##### 91A.550. Definitions for KRS 91A.550 to 91A.580.

As used in KRS 91A.550 to 91A.580, unless the context otherwise requires:



**EXHIBIT B**



CHAPTER 118: RECREATIONAL, TOURISM, AND CONVENTION ACTIVITIES

Section

Recreation, Tourist, and Convention Commission

118.01	Establishment
118.02	Members
118.03	Officers
118.04	Powers and duties
118.05	Books and records to be audited
118.06	Annual request for funds
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Special Restaurant, Motor Court, Motel, Hotel or Inn Tax

118.15	Imposition of tax; purpose
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118.17	Application of provisions to certain operations
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118.19	Reimbursement for collection
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118.21	Disposition of funds
118.22	Collection fee to be retained by the city
118.98	Violations
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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 60

(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)

61            RECREATIONAL, TOURISM, AND CONVENTION ACTIVITIES    § 118.15

§ 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 34% 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.

§ 118.16 RECREATIONAL, TOURISM, AND CONVENTION ACTIVITIES

62

(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.

62A      RECREATIONAL, TOURISM, AND CONVENTION ACTIVITIES      § 118.18

(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.

63 RECREATIONAL, TOURISM, AND CONVENTION ACTIVITIES § 118.98

(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)

§ 118.99 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 RECREATIONAL, TOURISM, AND CONVENTION ACTIVITIES

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§ 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 C**



First Commonwealth Bank  
 311 North Arnold Avenue  
 Prestonsburg, KY 41653-1264  
 (606) 886-2321

**OWNERSHIP OF ACCOUNT - CONSUMER PURPOSE**

INDIVIDUAL

JOINT - WITH SURVIVORSHIP (and not as tenants in common)

JOINT - NO SURVIVORSHIP (as tenants in common)

TRUST - SEPARATE AGREEMENT:

REVOCABLE TRUST OR  PAY-ON-DEATH  
 DESIGNATION AS DEFINED IN THIS AGREEMENT  
 Name and Address of Beneficiary:

**OWNERSHIP OF ACCOUNT - BUSINESS PURPOSE**

SOLE PROPRIETORSHIP

CORPORATION  FOR PROFIT  NOT FOR PROFIT

PARTNERSHIP

Domestic Govt Unit

BUSINESS: CITY OF PBURG  
 COUNTY & STATE: \_\_\_\_\_  
 ORGANIZATION: \_\_\_\_\_

AUTHORIZATION DATED: AUGUST 3, 2002

DATE OPENED AUGUST 3, 2002 BY LADONNA ARMS

INITIAL DEPOSIT \$ 0.00

CASH  CHECK  DEPOSIT

HOME TELEPHONE # \_\_\_\_\_

BUSINESS PHONE # (606) 886-2335

DRIVER'S LICENSE # \_\_\_\_\_

E-MAIL \_\_\_\_\_

EMPLOYER \_\_\_\_\_

MOTHER'S MAIDEN NAME \_\_\_\_\_

Name and address of someone who will always know your location: \_\_\_\_\_

**BACKUP WITHHOLDING CERTIFICATIONS**


TIN: \_\_\_\_\_

TAXPAYER I.D. NUMBER - The Taxpayer Identification Number shown above (TIN) is my correct taxpayer identification number.

BACKUP WITHHOLDING - I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

EXEMPT RECIPIENTS - I am an exempt recipient under the Internal Revenue Service Regulations.

SIGNATURE: I certify under penalty of perjury the statements checked in this section and that I am not a U.S. person (including a U.S. resident alien).

X  8/12/02

ACCOUNT NUMBER

ACCOUNT OWNER(S) NAME & ADDRESS  
 CITY OF PRESTONSBURG  
 TOURISM COMMISSION FUND  
 200 N LK DR  
 PRESTONSBURG, KY 41353-0000

TYPE OF ACCOUNT  NEW  EXISTING

CHECKING  SAVINGS

MONEY MARKET  CERTIFICATE OF DEPOSIT

NOW

This is your check one: First New Checking  
 Permanent  Temporary account agreement.

Number of signatures required for withdrawal 2

FACSIMILE SIGNATURE(S) ALLOWED?  YES  NO


[X] \_\_\_\_\_

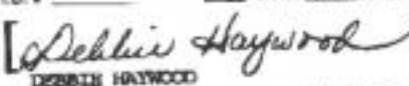
SIGNATURE(S) - The undersigned agree to the terms stated on every page of this form and acknowledge receipt of a completed copy. The undersigned further authorize the financial institution to verify credit and employment history and/or have a credit reporting agency prepare a credit report on the undersigned, as individuals. The undersigned also acknowledge the receipt of a copy and agree to the terms of the following disclosures:

Deposit Account  Funds Availability  Privacy

Electronic Funds Transfer  Truth in Savings

(1):  \_\_\_\_\_  
 JUDY MARTIN  
 I.D.# \_\_\_\_\_ D.O.B. Feb. 9, 1957

(2):  \_\_\_\_\_  
 BRENDA HAYES  
 I.D.# \_\_\_\_\_ D.O.B. JUN. 25, 1947

(3):  \_\_\_\_\_  
 DEBBIE HAYWOOD  
 I.D.# \_\_\_\_\_ D.O.B. April 3, 1964

(4): [X] \_\_\_\_\_  
 I.D.# \_\_\_\_\_ D.O.B. \_\_\_\_\_

Authorized Signer (Individual Accounts Only)

[X] \_\_\_\_\_  
 I.D.# \_\_\_\_\_ D.O.B. \_\_\_\_\_



**EXHIBIT D**





First Commonwealth Bank  
 311 North Arnold Avenue  
 Prestonsburg, KY 41653-1264  
 (606) 886-2321

**OWNERSHIP OF ACCOUNT - CONSUMER PURPOSE**

INDIVIDUAL  \_\_\_\_\_  
 JOINT - WITH SURVIVORSHIP (and not as tenants in common)  
 JOINT - NO SURVIVORSHIP (as tenants in common)  
 TRUST - SEPARATE AGREEMENT:

REVOCABLE TRUST OR  PAY-ON-DEATH  
 DESIGNATION AS DEFINED IN THE AGREEMENT  
 Name and Address of Beneficiary:

**OWNERSHIP OF ACCOUNT - BUSINESS PURPOSE**

SOLE PROPRIETORSHIP  
 CORPORATION:  FOR PROFIT  NOT FOR PROFIT  
 PARTNERSHIP  
 Domestic Govt. Unit

BUSINESS:  
 COUNTY & STATE OF ORGANIZATION:  
 AUTHORIZATION DATED:

DATE OPENED MAY 19, 1999 BY JF  
 INITIAL DEPOSIT \$ 0.00  
 CASH  CHECK  **ADD SIGNERS**  
 HOME TELEPHONE # \_\_\_\_\_  
 BUSINESS PHONE # (606) 886-  
 DRIVER'S LICENSE # \_\_\_\_\_  
 EMPLOYER \_\_\_\_\_  
 MOTHER'S MAIDEN NAME \_\_\_\_\_  
 Name and address of someone who will always know your location:

**BACKUP WITHHOLDING CERTIFICATIONS**

TIN: \_\_\_\_\_

**TAXPAYER I.D. NUMBER** - The Taxpayer Identification Number shown above (TIN) is my correct taxpayer identification number.

**BACKUP WITHHOLDING** - I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

**EXEMPT RECIPIENTS** - I am an exempt recipient under the Internal Revenue Service Regulations.

**NONRESIDENT ALIENS** - I am not a United States person, or if I am an individual, I am neither a citizen nor a resident of the United States.

SIGNATURE: I certify under penalties of perjury the statements checked in this section.

x Brenda Hayes 5/24/99  
 (Date)

See Addendum for Contract Terms.  
 © 1993 Service Systems, Inc., St. Cloud, MN (1-800-367-2341) Form WFOC LAZKY 4/1998

ACCOUNT NUMBER

ACCOUNT OWNER(S) NAME & ADDRESS  
 CITY OF PRESTONSBURG  
 TOURISM COMMISSION FUND  
 90 N LAKE DR  
 PRESTONSBURG, KY 41653-0000

TYPE OF ACCOUNT  NEW  EXISTING  
 CHECKING  SAVINGS  
 MONEY MARKET  CERTIFICATE OF DEPOSIT  
 NOW  \_\_\_\_\_  
 This is your (check one): Business Checking  
 Permanent  Temporary account agreement.

Number of signatures required for withdrawal 1  
 FACSIMILE SIGNATURE(S) ALLOWED?  YES  NO

[  
 X  
 ]

SIGNATURE(S) - THE UNDERSIGNED AGREE(S) TO THE TERMS STATED ON PAGES 1 AND 2 OF THIS FORM, AND ACKNOWLEDGE(S) RECEIPT OF A COMPLETED COPY ON TODAY'S DATE. THE UNDERSIGNED ALSO ACKNOWLEDGE(S) RECEIPT OF A COPY OF AND AGREE(S) TO THE TERMS OF THE FOLLOWING DISCLOSURE(S):

Deposit Account Disclosure  Funds Availability Disclosure  
 Electronic Fund Transfers Disclosure  TIS Disclosure  
 \_\_\_\_\_

(1) [ Brenda Hayes ]  
 BRENDA HAYES  
 I.D.# \_\_\_\_\_ D.O.B. 1-25-47

(2) [ Sam Blankenship ]  
 SAM BLANKENSHIP  
 I.D.# \_\_\_\_\_ D.O.B. \_\_\_\_\_

(3) [ Mark McInnes ]  
 MARK MCINNES  
 I.D.# \_\_\_\_\_ D.O.B. 6/11/58

(4) [ X ]  
 I.D.# \_\_\_\_\_ D.O.B. \_\_\_\_\_

Authorized Signer (Individual Accounts Only)  
 [ X ]  
 I.D.# \_\_\_\_\_ D.O.B. \_\_\_\_\_



**EXHIBIT E**



COMMONWEALTH OF KENTUCKY  
AUDITOR OF PUBLIC ACCOUNTS  
144 CAPITOL ANNEX  
FRANKFORT, KENTUCKY 40601

Subpoena # 03-2  
KRS 43.080

## SUBPOENA

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. 502.573.0050  
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: Robert E. McBeath  
Robert E. McBeath  
APA General Counsel

Date: July 1, 2003

PROOF OF SERVICE:

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

on: BARRY DAVIS, GENERAL COUNSEL  
Name / First Commonwealth Bank  
311 N. ARNOLD AVE.  
Address  
PRESTONBURG, KY 40363

by: JASON HENDERSON  
Name  
PUBLIC ACCOUNTS AUDITOR IV  
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.

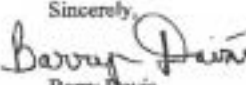
The administrative subpoena makes specific reference to KRS 43.080. My reading of that statute reveals that the Auditor of Public Accounts has the right to examine all books, records, accounts, etc. of any state agency, presumably by the use of an administrative subpoena and by other means. KRS 43.010(3) 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 91(A).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

**History:** Amended 1978 Ky. Acts ch. 92, sec. 2, effective June 17, 1978. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 150, 4618-136, 4625, 4636-1.



**EXHIBIT H**





**MAYOR**  
JOSEF S. FANNIN

**CITY COUNCIL**  
HARRY ADAMS  
ROBERT ALLEN  
BIL R. COLLINS  
BOY CONPTON  
OTIS HANSEL COOLEY  
JIMMY JOE DEROSSETT  
DANNY H. HAMILTON  
THOMAS HEREFORD, II



200 North Lake Drive  
Prestonsburg, Kentucky 41653  
  
(606) 886-0335  
Fax (606) 886-0563

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



Home of  
The Kentucky Oreg - Mountain Arts Center • Chandler Edge Racetrack • Jerry Wiley Summer Music  
Theatre and State Park • Jerry Wiley Flower Festival



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**





COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

ALBERT B. CHARDLER III  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITOL AVENUE  
FRANKFORT, KY 40601-3449  
(502) 566-5300  
FAX: (502) 564-2894

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,

A handwritten signature in black ink, appearing to read "Scott White", with a long horizontal flourish extending to the right.

Scott White  
Assistant Deputy Attorney General

#478

cc: Jerry S. Fannin, Mayor  
Enclosure





**EXHIBIT J**





OCTOBER 01, 2002

INVOICE TO PURCHASE THE 1995 CARAVAN FROM: JIM OUSLEY

PAYOFF	\$2773.49 AS OF 10-02-02.
TAXES	\$171.00
REGISTRATION AND TAG	\$6.00
INSURANCE	\$107.44
OIL CHANGE	\$21.00
TRANS. OIL CHANGE/LABOR	\$49.00
BELTS	\$33.99
WINDOWS SEALER	\$3.49
LABOR FOR BELTS/SEALER	\$90.00
A/C CHARGE AND REPAIR	\$50.00
PURCHASE PRICE	\$3305.41
.94 A DAY INTEREST AFTER 10-02-02	

EXP: 11/04  
525 UNIVERSITY ST  
PRESTONBURG KY 40377947  
TRUCK/SELF 28,742 \$ 1,389 20.81  
TRUCK 174788864 \$ SALES TAX \$ 8.89  
REF# 480013402 8995318711 \$ 20.81

+ 28.81  
-----  
\$3334.22



**EXHIBIT K**



CITY OF PRESTONSBURG

Vendor	Invoice Number	Invoice Date	Invoice Amount	Amount Paid	Discount Taken	Net Amount
811 PRESTONSBURG TOURISM	090303	09/05/2003	\$2,600.00	\$2,600.00	\$0.00	\$2,600.00
009438	001-08401-0004		\$2,600.00	\$2,600.00	\$0.00	\$2,600.00
Check Total						\$2,600.00

Check Date 09/05/2003

Check Number

6906

006906

FOR SECURITY REASONS THE SERIAL NUMBER CONTAINED HEREON MAY VARY FROM THAT WHICH APPEARS ON THE FRONT OF THE CHECK

<p><i>City of Prestonsburg</i>                  GENERAL FUND                  200 NORTH LAKE DRIVE PH. 505-886-2335                  PRESTONSBURG, KY 41653</p>	<p>FIRST COMMONWEALTH BANK                  MARTIN - BETSY LAYNE                  TWO LOCATIONS IN PRESTONSBURG                  PRESTONSBURG, KY 41653</p>	<p>09/05/2003</p>	<p>006906</p>
---	---	-------------------	---------------

AMOUNT \$\*\*\*\*\*2,600.00

CHECK # 6906

PAY

Two Thousand Six Hundred And No/100\*\*\*\*\* DOLLARS

TO THE ORDER OF PRESTONSBURG TOURISM

PRESTONSBURG, KY 41653



AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

THE RESERVE BANK OF THE UNITED STATES IS A FEDERAL RESERVE BANK. CHECKS ARE SUBJECT TO SEVERAL FEDERAL RESERVE REGULATIONS.



**CITY OF PRESTONSBURG'S EXAMINATION RESPONSE**





**MAYOR**  
 JERRY S. FANNIN

**CITY COUNCIL**  
 HARRY ADAMS  
 ROBERT ALLEN  
 C. E. "Little Shag" BRANHAM  
 BILL R. COLLINS  
 OTIS HANSEL COOLEY  
 JIMMY J. DEROSSETT  
 DANNY H. HAWKSON  
 KELLY MOORE



800 North Lake Drive  
 Prestonsburg, Kentucky 41653

(506) 886-2335  
 Fax (506) 886-0563

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: Prestonsburg 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 Prestonsburg ordinances relating to the Prestonsburg 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 Prestonsburg 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 Prestonsburg 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



Home of  
 The Kentucky Opry - Mountain Arts Center • Thunder Ridge Race track • Jerry Wiley Summer Music  
 Theatre and State Park • Jerry Wiley Flower Festival



Mr. Edward Hatchett, Jr.  
October 2, 2003  
Page Two

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 can 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  
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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

TABLE OF CONTENTS FOR THE ADDENDUM

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 KRS61.805.

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 designee 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 tourist 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.

- 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 Roberts 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**

**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

A handwritten signature in black ink, appearing to read "D. Tackett".

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](http://www.prestonsburgky.org)

**First Commonwealth Bank**

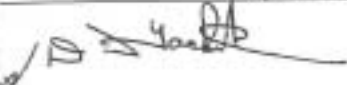
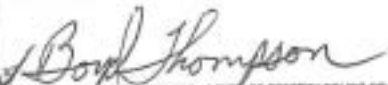

Account Purpose: Non Consumer

Account Holder Name(s): CITY OF PRESTONSBURG DBA  
PRESTONSBURG TOURISM COMMISSION  
Reporting SSN(TIN):  
Mailing Address: 113 SOUTH CENTRAL AVENUE, PRESTONSBURG,  
KY 41653  
Telephone Number: (806) 886-1341 Work #:  
Number of Signatures Required: 2 CIF Number:

ACCOUNT TYPE Business NOW		ACCOUNT NUMBER	
Date Opened 07-10-03	Date Revised	Opened By 88 [Signature]	Verified By Chex Systems

OWNERSHIP TYPE Government/Municipal/Public Funds

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

 DAVID TACKETT, CHAIRMAN of CITY OF PRESTONSBURG DBA PRESTONSBURG TOURISM COMMISSION	 JIM DUSLEY, VICE CHAIRMAN of CITY OF PRESTONSBURG DBA PRESTONSBURG TOURISM COMMISSION
 BOYD THOMPSON, TREASURER of CITY OF PRESTONSBURG DBA PRESTONSBURG TOURISM COMMISSION	 DEBBIE HAYWOOD, CITY TREASURER of CITY OF PRESTONSBURG DBA PRESTONSBURG TOURISM COMMISSION

(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 Account Agreement and Disclosure, the Time Certificate of Deposit or Confirmation of Time Deposit Agreement (if applicable), the Rate and Fee Schedule, the Funds Availability Policy Disclosure, the Electronic Funds Transfer Agreement and Disclosure, (if applicable), acknowledge 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. MMN - Mother's Maiden Name

Name: DAVID TACKETT @SSN# Street: 322 Ruice Rd Danee Ky 41609 Mailing: 41609 Phone: (H): 874-2360 (W): 886-2382 Job: Banker DOB: 5/25/65 ID: MMN:
Name: JIM DUSLEY @SSN# Street: 376 E Lake Dr Vicks, KY 40319 Mailing: Phone: (H): 297-2190 (W): 886-2555 Job: Mgr DOB: 8/8/70 ID: MMN:
Name: BOYD THOMPSON @SSN# Street: 45.73 S. Prestonburg, Ky. 41653 Mailing: BOX 1848 Prestonburg, Ky. 41653 Phone: (H): 606-886-6696 (W): 606-886-6701 Job: Mgr DOB: 2-13-44 ID: MMN:

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

Name:	DEBBIE HAYWOOD	SSN:	
Street:	Le 321 Spurlock Creek		
Mailing:	Prestonsburg, Ky 40553		
Phone:	839-0392	Cell:	886-2335
Job:	City Treasurer		
DOB:	4-3-64	MMN:	
ID:			

 <h1 style="margin: 0;">Western Surety Company</h1>													
(A Stock Company, herein called Surety)													
<b>PUBLIC EMPLOYEES BLANKET BOND</b> Including Public School System													
Bond No. <u>69559046</u>													
<b>DECLARATIONS</b>													
<b>Item 1.</b>	Name of Obligor: <u>City of Prestonsburg Tourism Commission</u>												
<b>Item 2.</b>	Name of Insured: <u>City of Prestonsburg Tourism Commission</u>												
<b>Item 3.</b>	Bond Period: From the beginning of the <u>13th</u> day of <u>August</u> , 2003, to 12 o'clock night on the effective date of the cancellation or termination of this bond as an entirety.												
<b>Item 4.</b>	Table of Limits of Liability												
	<table border="0" style="width: 100%;"> <tr> <td style="width: 80%;">Insuring Agreement 1</td> <td>Honesty Blanket Bond Coverage</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>Insuring Agreement 2</td> <td>Honesty Blanket Position Bond Coverage</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>Insuring Agreement 3</td> <td>Faithful Performance Blanket Bond Coverage</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>Insuring Agreement 4</td> <td>Faithful Performance Blanket Position Bond Coverage</td> <td style="text-align: right;">\$ 100,000.00</td> </tr> </table>	Insuring Agreement 1	Honesty Blanket Bond Coverage	\$ _____	Insuring Agreement 2	Honesty Blanket Position Bond Coverage	\$ _____	Insuring Agreement 3	Faithful Performance Blanket Bond Coverage	\$ _____	Insuring Agreement 4	Faithful Performance Blanket Position Bond Coverage	\$ 100,000.00
Insuring Agreement 1	Honesty Blanket Bond Coverage	\$ _____											
Insuring Agreement 2	Honesty Blanket Position Bond Coverage	\$ _____											
Insuring Agreement 3	Faithful Performance Blanket Bond Coverage	\$ _____											
Insuring Agreement 4	Faithful Performance Blanket Position Bond Coverage	\$ 100,000.00											
<b>Item 5.</b>	The liability of the Surety is subject to the terms of the following riders attached hereto:												
<b>Item 6.</b>	The Obligor and the Insured by the acceptance of this Bond give notice to Surety terminating or conceding prior Bonds? <u>No (s)</u>												
<p style="text-align: center; font-size: small;">such termination or cancellation to be effective as of the time this bond becomes effective.</p> <p style="font-size: small;">The Surety, in consideration of the payment of the premium, and subject to the Declarations made a part hereof, the General Agreement, Conditions and Limitations and other terms of this Bond, agrees, in accordance with such of the Insuring Agreements hereof as are specifically designated by the insertion of an amount of indemnity in the Table of Limits of Liability, to indemnify the Obligee for the use and benefit of the Insured for:</p>													
<b>INSURING AGREEMENTS</b> <b>Honesty Blanket Bond Coverage</b>													
1. Loss sustained by the Insured through any fraudulent or dishonest act or acts committed by any of the Employees, acting alone or in collusion with others, during the Bond Period, to an amount not exceeding in the aggregate the amount stated in the Table of Limits of Liability applicable to this Insuring Agreement 1.													
<b>Honesty Blanket Position Bond Coverage</b>													
2. Loss caused by the Insured through any fraudulent or dishonest act or acts committed by any of the Employees, acting alone or in collusion with others, during the Bond Period, to an amount of indemnity on each of such Employees being the amount stated in the Table of Limits of Liability applicable to this Insuring Agreement 2.													
<b>Faithful Performance Blanket Bond Coverage</b>													
3. Loss caused to the Insured through the failure of any of the Employees, acting alone or in collusion with others, to perform faithfully his duties or to account properly for all moneys and property received by virtue of his position or employment during the Bond Period to an amount not exceeding in the aggregate the amount stated in the Table of Limits of Liability applicable to this Insuring Agreement 3.													
<b>Faithful Performance Blanket Position Bond Coverage</b>													
4. Loss caused to the Insured through the failure of any of the Employees, acting alone or in collusion with others, to perform faithfully his duties or to account properly for all moneys and property received by virtue of his position or employment during the Bond Period, the amount of indemnity on each of such Employees being the amount stated in the Table of Limits of Liability applicable to this Insuring Agreement 4.													
<b>GENERAL AGREEMENT</b> <b>Loss Under Prior Bond</b>													
If the coverage of an Insuring Agreement of this Bond is substituted for any prior bond issued by the Insured or by any predecessor in interest of the Insured which prior bond is terminated, completed or allowed to expire as of the time of such substitution, the Surety agrees that such Insuring Agreement applies to loss sustained by, or caused to, the Insured, at the time may be, prior to or during the Bond Period, provided that such loss is discovered after the beginning of the Bond Period and prior to the expiration of three years from the cancellation of this Bond as an entirety and that such loss would have been recoverable by the Insured or such predecessor under such prior bond except for the fact that the time within which to bring suit, action or proceeding of any kind thereunder had expired, and provided further:													
(1) the indemnity afforded by this General Agreement shall be in part or in addition to the amount of coverage afforded by the applicable Insuring Agreement of this Bond, and													
(2) such loss would have been covered under such Insuring Agreement had such Insuring Agreement with its agreements, conditions and limitations as of the time of such substitution been in force when the acts or defaults causing such loss were committed; and													
(3) recovery under such Insuring Agreement on account of such loss shall in no event exceed the amount which would have been recoverable under such Insuring Agreement in the amount for which it is recoverable as of the time of such substitution, had such Insuring Agreement been in force when such acts or defaults were committed, or the amount which would have been recoverable under such prior bond had such prior bond continued in force until the discovery of such loss if the latter amount be smaller.													
Form 611 - 12/98													

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 and 2 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 the 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 furnish an Individual Bond to operate for office 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 handling or having possession of property or funds in connection with student activities or while handling or having possession of U. S. Savings Bonds or Stocks or funds in connection with the purchase or sale of such Bonds or Stocks.

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

UNIDENTIFIABLE EMPLOYEE

Section 2. In case a loss is alleged to have been caused to 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 nevertheless have the benefit of such Insuring Agreement provided that the evidence submitted reasonably establishes that the loss was in fact caused by such Employee through such acts or defaults and provided, further, that regardless of the number of such Employees concerned or implicated in such loss, 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 suffered by, or caused to, the Insured under circumstances whenever and in the amount which the Obligor or the Insured voluntarily undertakes or is obligated by law to reimburse or indemnify any of the Employees against liability incurred by them in the performance of their duties.

LIMITS OF LIABILITY

Section 4. Indemnification by the Surety for any loss under Insuring Agreement 1 or 3 shall not reduce the Surety's liability for other losses under the applicable Insuring Agreement, whenever sustained, provided, however, that the Surety's total liability under each such Insuring Agreement for any loss caused by any Employee or 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 4 shall not reduce the Surety's liability for other losses under the applicable Insuring Agreement, whenever sustained, provided, however, the Surety's total liability under each such Insuring Agreement as to each Employee is limited to the applicable amount of indemnity specified in the Table of Limits of Liability.

Regardless of the number of years this Bond shall continue in force and the number of premiums which shall be payable or paid, the limit of the Surety's liability as specified in the Table of Limits of Liability shall not be cumulative from year to year or period to period.

LIMIT OF LIABILITY UNDER THIS BOND AND ANY PRICE BOND

Section 5. With respect to loss under Insuring Agreement 1 or 3 caused by any Employee or in which such Employee is concerned or implicated or which is chargeable to such Employee as provided in Section 2 of this Bond and with respect to loss under Insuring Agreement 2 or 4 caused by any Employee or which is chargeable to such Employee as provided in Section 2 of this Bond and with respect to loss under any Insuring Agreement which occurs partly during the Bond Period and partly during the period of other bonds issued by the Surety to the Insured or to any predecessor in interest of the Insured and terminated or renewed or allowed to expire and in which the period specified therein for bringing suit, action or proceeding of any kind, or if no such period is specified therein, then within the period provided by the applicable statute of limitations, has not expired or the time such loss thereunder is discovered, the total liability of the Surety under this Bond and under such other bonds shall not exceed, in the aggregate, the amount carried under the applicable Insuring Agreement of this Bond or such loss or the amount available to the Insured under such other bonds, as limited by the terms and conditions thereof, for any such loss if the latter amount be larger.

CANCELLATION

Section 6. This Bond shall be deemed cancelled as to any Employee:

- (a) Immediately upon discovery by the Obligor or the Insured of any act on the part of such Employee which would constitute a liability of the Surety under the applicable Insuring Agreement covering such Employee;
- (b) Upon the death, resignation or removal of such Employee; or
- (c) At 12 o'clock night upon the effective date specified in a written notice mailed to the Obligor and the Insured. Such date shall be not less than thirty days after the date of mailing. The mailing by the Surety of notice as aforesaid to the Obligor and the Insured shall be sufficient proof of notice. Delivery of such written notice by the Surety shall be equivalent to mailing.

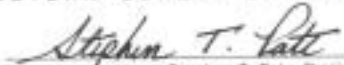
This Bond may be canceled by the Obligor or the Insured by mailing to the Surety written notice stating when thereafter the cancellation shall be effective. This Bond may be canceled by the Surety by mailing to the Obligor and the Insured written notice stating when, not less than thirty days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. Delivery of such written notice either by the Obligor or the Insured or by the Surety shall be equivalent to mailing. If the Obligor or the Insured corrects, amended premium shall be computed in accordance with the customary short rate tables and procedures. If the Surety corrects, amended premium shall be computed pro rata. Premium adjustments may be made at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment in tender of amended premium is not a condition of completion.

If any of the cancellation provisions set forth in either or both of the foregoing paragraphs of this Section are prohibited or made void by any law controlling the construction of this Bond, such provisions to the extent they are prohibited or made void shall be deemed to be nullified and of no effect.

LEGAL PROCEEDINGS

Section 7. No suit, action or proceeding of any kind to recover an account of loss under this Bond shall be brought after the expiration of three years from the conclusion of this Bond as an entirety provided, however, that if such limitation for bringing suit, action or proceeding is prohibited or made void by any law controlling the construction of this Bond, such limitation shall be deemed to be amended so as to be equal to the minimum period of its limitation permitted by such law.


  
 Dated this 13th day of August, 2003
   
 Counter-signed:
   
 By 
  
 Resident Agent

WESTERN SURETY COMPANY
   
 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 on Employees performing the duties of such positions, to 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.

Position	Location	Insuring Agreement	Total Number of Employees in such Position	Amount of Additional Indemnity on such Employee
NO ADDITIONAL INDEMNITIES APPLIED FOR				

Dated this 13th day of August, 2003

Countersigned

WESTERN SURETY COMPANY

By [Signature]  
Resident Agent

By [Signature]  
Stephen T. Pate, President

***PRESTONSBURG SENIOR CITIZENS  
CENTER***

*76 PATSY EVANS DRIVE  
PRESTONSBURG, KY 41653*

*(606)896-6855*

*DIRECTOR, AL GUNTER, JR  
CHAIRMAN, DARRELL PATTON*

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.”

