



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II  
Attorney General

June 14, 2013

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Scot S. Farthing, Esquire  
Wythe County Attorney  
Post Office Box 1315  
Wytheville, Virginia 24382

Dear Mr. Farthing:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issues Presented

You ask whether the term tourism has been defined for purposes of § 58.1-3819 and you also seek clarification as to the meaning of a "local tourism industry organization" referenced in the same provision. You further inquire regarding the degree to which the local tourism industry must be consulted in spending transient occupancy taxes in excess of two percent.

## Response

It is my opinion that while "tourism" has not been defined for purposes of § 58.1-3819, it is generally considered to be a domestic and international travel market that is important to the economy of the Commonwealth. It is further my opinion that the requirement in § 58.1-3819 for those specified localities<sup>1</sup> is that any transient occupancy tax imposed in excess of two percent must be spent to attract travelers to the locality, increase occupancy at lodging properties, and to generate tourism. Further, a determination on spending requires input from the local tourism industry. Finally, it is my opinion that localities have reasonable discretion in determining what are "local tourism industry organizations," but the inclusion of representatives of lodging properties is required.

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<sup>1</sup> The localities referred to in § 58.1-3819 are as follows:

Accomack County, Albemarle County, Alleghany County, Amherst County, Augusta County, Bedford County, Botetourt County, Brunswick County, Campbell County, Caroline County, Carroll County, Craig County, Cumberland County, Dinwiddie County, Floyd County, Franklin County, Giles County, Gloucester County, Greene County, Halifax County, James City County, King George County, Loudoun County, Madison County, Mecklenburg County, Montgomery County, Nelson County, Northampton County, Page County, Patrick County, Prince Edward County, Prince George County, Prince William County, Pulaski County, Rockbridge County, Smyth County, Spotsylvania County, Stafford County, Tazewell County, Washington County, Wise County, Wythe County, and York County.

### Applicable Law and Discussion

Section 58.1-3819 authorizes counties to impose transient occupant taxes on certain lodging facilities not to exceed two percent.<sup>2</sup> The statute further expressly provides, for Wythe County and other specific localities<sup>3</sup> to

levy a transient occupancy tax not to exceed five percent, and any excess over two percent shall be designated and spent solely for tourism and travel, marketing of tourism or initiatives that, as determined after consultation with the local tourism industry organizations, including representatives of lodging properties located in the county, attract travelers to the locality, increase occupancy at lodging properties, and generate tourism revenues in the locality.

You seek guidance regarding compliance with § 58.1-3819. The General Assembly has not defined tourism for purposes of § 58.1-3819 or elsewhere. The General Assembly has recognized the importance of tourism to the Commonwealth's economy as evidenced by its establishment of the Virginia Tourism Authority (the "VTA").<sup>4</sup> The VTA mission statement suggests that tourism is "the Commonwealth's domestic and international travel market."<sup>5</sup> A look at the VTA website indicates that museums, historic sites, theme parks, the Commonwealth's natural resources, festivals, and a host of other activities and destinations fall within a category that is considered tourism.<sup>6</sup>

Section 58.1-3819 reflects the General Assembly's intent that the portion of the revenues derived from the transient occupancy tax in excess of two percent be spent to promote and generate tourism in the locality imposing that tax.<sup>7</sup> The statute does not, however, suggest any methods regarding how the locality should do so<sup>8</sup> except to require input from the local tourism industry. A prior opinion of this Office considered whether purchases of open spaces are consistent with the requirement that "such

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<sup>2</sup> Specifically, § 58.1-3819(A) provides that

any county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days . . . . If any locality has enacted an additional transient occupancy tax pursuant to subsection C of § 58.1-3823, then the governing body of the locality shall be deemed to have complied with the requirement that it consult with local tourism industry organizations, including lodging properties. If there are no local tourism industry organizations in the locality, the governing body shall hold a public hearing prior to making any determination relating to how to attract travelers to the locality and generate tourism revenues in the locality.

<sup>3</sup> See *supra* note 1.

<sup>4</sup> VA. CODE ANN. § 2.2-2315. The Virginia Tourism Authority does business as the Virginia Tourism Corporation. See VIRGINIA TOURISM CORPORATION, *About Virginia Tourism Corporation*, available at <http://www.vatc.org/about/> (last visited June 4, 2013).

<sup>5</sup> See VIRGINIA TOURISM CORPORATION, *Mission and Vision Statements*, available at <http://www.vatc.org/administration/mission/> (last visited June 4, 2013). The VTA includes motion picture production as part of its tourism mission as well. See *id.*

<sup>6</sup> See VIRGINIA TOURISM CORPORATION, available at <http://www.vatc.org/home/> (home page) (last visited June 4, 2012).

<sup>7</sup> See 1999 Op. Va. Att'y Gen. 200, 201.

<sup>8</sup> *Id.*

revenues be used to promote tourism in the locality,” and that Opinion concluded that such an assessment is “a factual determination to be made by the local governing body.”<sup>9</sup>

Although there is some deference to localities in determining what promotes tourism, the statute does require input from “the local tourism industry organizations, including representatives of lodging properties” where the localities have imposed transient occupancy taxes in excess of two percent and those revenues are being spent. Section 58.1-3819 also refers to “local tourism industry organizations” without defining them, but the statute is specific regarding consultation with “*representatives of lodging properties located in the county*” (emphasis added). This would indicate that localities should look to established local tourism associations<sup>10</sup> where possible and must include representatives of lodging properties in spending (beyond the two percent amount) for tourism and travel and marketing of tourism.

### Conclusion

Accordingly, it is my opinion that while “tourism” has not been defined for purposes of § 58.1-3819, it is generally considered to be a domestic and international travel market that is important to the economy of the Commonwealth. It is further my opinion that the requirement in § 58.1-3819 for those specified localities is that any transient occupancy tax imposed in excess of two percent must be spent to attract travelers to the locality, increase occupancy at lodging properties, and to generate tourism. Further, the determination on spending requires input from the local tourism industry. Finally, it is my opinion that localities have reasonable discretion in determining what are “local tourism industry organizations,” but the inclusion of representatives of lodging properties is required.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Ken C II". The signature is written in a cursive style with a horizontal line under the "C" and the Roman numeral "II".

Kenneth T. Cuccinelli, II  
Attorney General

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<sup>9</sup> *Id.* at 201-202.

<sup>10</sup> For example, the Greater Williamsburg Chamber and Tourism Alliance is a Virginia tourism partner and could be considered a representative of the tourism industry in the Williamsburg area. See GREATER WILLIAMSBURG CHAMBER AND TOURISM ALLIANCE, available at <http://www.williamsburgcc.com/> (home page) (last visited June 4, 2013).