1. Agenda Outline

   Documents:

   2020 01 10 BOC SPECIAL MEETING AGENDA OUTLINE.PDF

2. Agenda Full Version

   Documents:

   2020 01 10 BOC SPECIAL MEETING AGENDA FULL VERSION.PDF

In accordance with ADA regulations, persons in need of an accommodation to participate in the meeting should notify the County Manager's office at 828-764-9350 at least forty-eight (48) hours prior to the meeting.

Burke County
Board of Commissioners
Special Meeting
Comm. Meeting Room
Friday, January 10, 2020
3:00 PM

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1. Call to Order

2. Approval of the Agenda

3. Items for Discussion

1. BOC - Tourism Development Authority - Presented by Johnnie Carswell, Chairman

4. Adjourn

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Burke County, North Carolina

Agenda Abstract

Meeting Date: January 10, 2020

Items for Discussion

Subject Title: BOC - Tourism Development Authority

Presented By: Johnnie W. Carswell

Summary of Information: The TDA (Tourism Development Authority) was created in 2007 by Session Law. Due to the age of the current tourism model, new tourism related trends and ongoing LGC (Local Government Commission) findings, a comprehensive review of the Authority is necessary.

Budgetary Effect: N.A.

County Manager's Recommendation: TBD

Suggested Motion: Comprehensively review the Tourism Development Authority including authorizing legislation, purpose/function, membership, etc. Provide direction to County Staff if needed.

TDA Financial concerns

Margaret Pierce
Tue 11/19/2019 10:49 PM

To: Johnnie Carswell <johnnie.carswell@burkenc.org>; Scott Mulwee <scott.mulwee@burkenc.org>
Cc: Bryan Steen <bryan.steen@burkenc.org>

I felt after today's meeting I should let you know concerns I have regarding the TDA financial processes.

- Ed did not seem to understand all agreements and contracts regardless of length need pre-audit. He mentioned the invoices have a pre-audit statement but that is not authorizing prior to committing funds as statutorily required. I am concerned all required pre-audits are not being done and that the requirement may not be understood.
- The balance sheet and profit/loss statement provided had material errors in the numbers presented. The revenue was stated as over $204,000 yet that is not possible based on the funds sent to the TDA from the County so far this fiscal year; the receivable from Burke County had not been cleared from the balance sheet and likely was booked in error to the current year revenues of just over $95,000; Fund Balance was off from the audit presented by $50,000; the closed Morganton Savings Bank account was listed with a balance. In discussing these, Ed stated the CPA firm must not have known how to book correctly. I am concerned the CPA firm is not aware of appropriate method to book entries and that the report errors were not recognized by TDA staff who may not have the accounting expertise to determine if material errors are present in the financial reports.
- The audit firm did not acknowledge two key weaknesses in the internal controls of the TDA-lack of segregation of duties for the director and financial being written by the audit firm, not the TDA. The Director makes purchases or commitment of funds, pre-audits contracts, receives and approves invoices, signs checks, receives bank statements, and verifies bank reconciliations. These are typically considered conflicts and do happen in a small entity but are internal control weaknesses. The financials were written by the audit firm which is typical in a small entity but is considered an internal control weakness. I am unclear why these were not identified by the audit firm as weaknesses to internal controls.
- The trolley service is a business type activity that has some tourism function but it is unclear if the majority of the trips are for other business purposes. Ed is interested in purchasing another trolley and selling the current one. Prior to this happening, Board Member Scott Mulwee requested clarification from an authoritative agency such as UNC School of Government whether this is an appropriate function. I recommended Kara Millonzi as a SOG contact and to provide her with the number of trips by event type. The wedding, social events and business conferences might not meet the definition of a tourism purpose.

My concerns are focused on the processes and not a reflection on the TDA staff. Ed's area of expertise is marketing and tourism. He should not be expected to know the nuances of government finance. Also, the CPA firm may not be familiar with the particular requirements of GAAP book keeping.

Please let me know if you have questions.

Thank you,

Margaret Pierce
Burke County
Deputy County Manager/Finance Director
200 Avery Ave

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Summary of Deficiency of TDA Audits

2018 - Wentz CPA

Segregation of Duties
Significant Audit Adjustments
Auditor drafting of Financial Statements
Significant deficiency - Timely filing of Form 941
Non-compliance w/ General Statute - Failure to disperse funds as required
Non-compliance w/ General Statute - Funds held in Non-compliant Bank Account
Non-compliance w/ General Statute - Pre-Audit certificate not on checks

2017 - Martin Starnes

Segregation of Duties
Significant Audit Adjustments
Auditor drafting of Financial Statements
Significant deficiency - Timely filing of Form 941
Non-compliance w/ General Statute - Not performing escheat reporting

2016 - Martin Starnes

Segregation of Duties
Significant Audit Adjustments
Auditor drafting of Financial Statements
Non-compliance w/ General Statute - Budget ordinance

2015 - Martin Starnes

Segregation of Duties
Auditor drafting of Financial Statements
Non-compliance w/ General Statute - Issued debt without the authority to do so

2014 - Martin Starnes

Segregation of Duties
Auditor drafting of Financial Statements

2013 - Martin Starnes

Segregation of Duties
Auditor drafting of Financial Statements
Non-compliance w/ General Statute - Budget ordinance

2012 - Lowdermilk Church

Segregation of Duties
Auditor drafting of Financial Statements
Significant deficiency with accounting documentations
Non-compliance w/ Federal W2 reporting

2011 - Lowdermilk Church

Segregation of Duties
Auditor drafting of Financial Statements
Significant deficiency - Timely filing of Form 941
Significant deficiency – no capitalization policy

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Johnnie W. Carswell, Chair
Scott Mulwee, Vice Chair
Wayne F. Abele, Sr., Commissioner
Jeffrey C. Brittain, Commissioner
Maynard M. Taylor, Commissioner

BURKECOUNTY
ALL ABOUT ADVANCING

Kenneth B. Steen, County Manager
Kay H. Draughn, Clerk to the Board
J. R. Simpson, II, County Attorney
Kania Law Firm, P.A., Tax Attorney

March 26, 2019

Mr. Ed Phillips, Director
Burke County Tourism Development Authority
110 E. Meeting Street
Morganton, NC 28655

Ref: Provision of Accounting Services to Burke County Tourism Development Authority (TDA) by Burke County Finance Staff

Dear Ed:

I understand that during your Board meeting on March 19, 2019, our contract for the provision of accounting services to Burke County TDA was discussed. I further understand that you, or a member of your Board, indicated that the County was compensated for collection and distribution of occupancy tax and that compensation should suffice for the provision of desired accounting services at no additional cost to Burke County TDA. Please know that the compensation currently received by Burke County is solely for cost associated with administration which is the actual collecting and distribution of Occupancy Tax revenue to statutory recipients in Burke County. Compensation for Occupancy Tax administration does not include payment for additional accounting services related to the TDA's operations such as staff payroll / benefits, payment of vendor bills, and other operational accounting functions.

As Burke County Manager, I'm not receptive to a request for the provision of accounting services by county staff without additional compensation. Such a decision would shift payment for the cost of providing accounting services from the Occupancy Tax to unrelated tax revenue sources.

If you or the TDA Board desire to obtain accounting services from one of the municipalities receiving Occupancy Tax revenue, please go ahead. Based on the negative findings stated in your most recent audit, I believe it is very wise for you and the TDA Board to obtain such services as quickly as possible. Such a decision should enable the necessary procedural corrections to take place and reduce the likelihood of negative audit findings in the future.

Please know that a failure by the TDA Board to act on this matter in a timely fashion may cause public concern regarding the possibility of financial improprieties and undesired interest from the North Carolina Local Government Commission (LGC).

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

200 Avery Avenue - P.O. Box 219 - Morganton, NC 28680-0219
County Manager: (828) 764-9350 ~ Clerk to the Board: (828) 764-9354 ~ www.burkenc.org

Sincerely,

Kenneth B. Steen
Burke County Manager

cc: Burke County Commissioners
Burke County Attorney
Burke County TDA Board
Burke County Deputy County Manager / Finance Director
North Carolina Local Government Commission

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

TDA Services to be provided

by Burke County

- Vendor check processing including required annual 1099 reporting
- Payroll processing including employee payments, Federal and State quarterly and annual reporting, retirement reporting, and W-2s
- Financial data entry including deposits and other journal entries as needed
- Bank reconciliation on all accounts held by the TDA
- Annual state required escheat reporting and processing
- Investment recommendations for idle funds to meet NCGS requirements
- Financial reports for Board meetings and as needed by staff
- Annual financial report creation and working with auditor as needed
- Communication as needed with the NC State Treasurer's Office/LGC and other state agencies on financial matters

By utilizing the County staff, the following audit deficiencies would be alleviated:

- Segregation of duties
- Significant audit adjustments
- Timely filing of payroll reports including Federal 941s
- Auditor drafting of financial statements
- Issues with non-compliance of NC General Statutes related to financial matters

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Burke County Tourism Development Authority
110 East Meeting Street
Morganton, NC 28655

December 3, 2019

Kenneth B. Steen
County Manager
Burke County
P.O. Box 219
Morganton, NC 28655

Re: 2018-2019 Audit

Dear Mr. Steen,

Mr. Dan Mullinix, C.P.A. of the firm Gould Killian presented the 2018-2019 "Audit Wrap Up" to the Burke County Tourism Development Authority Board of Directors on November 19, 2019.

One finding was reported. The auditor made "Material Audit Adjustments in order to fairly present the financial statements in accordance with GAAP, in addition to those considered normal closing entries." Neither the TDA nor the independent accounting firm of Boggs, Crump, and Brown anticipate significant audit adjustments moving forward.

Prior audit findings have been reduced from seven in 2018 to one in 2019, as described above.

It should be noted that the LGC has not sent notice of acceptance to the present auditor. They are experiencing a 3-week plus response time. The Final Audit Report will be forwarded to your office once it has been received.

Let me know if you have any questions.

Sincerely,

Ed Phillips

Ed Phillips
C.E.O.
Burke County Tourism Development Authority

cc. Polly Leadbetter, Chair Burke County Tourism Development Authority

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Re: Trolley Ownership and Usage Response from UNC- School of Government

Scott Mulwee
Fri 11/22/2019 5:13 PM

To: Bryan Steen <bryan.steen@burkenc.org>
Cc: Johnnie Carswell <johnnie.carswell@burkenc.org>

A loan will not be needed. They are aware that this is not allowed. I have been told the vast majority of trolley usage is from out of town.

Sent from my iPhone

On Nov 22, 2019, at 1:42 PM, Bryan Steen <bryan.steen@burkenc.org> wrote:

> Thanks, but the question not asked / answered is if the TDA doesn't have cash can they take out a loan which the LGC has already indicated they can't.
>
> Scott, has Ed indicated if they will need to finance the purchase?
>
> Any thoughts / best guess on percentage of folks from Burke County versus visitors that have used the trolley?
>
> Bryan Steen
> Burke County Manager
> Phone (828) 764-9350
> Fax (828 764-9352
>
> In accordance with North Carolina General Statutes, Chapter 132, this email address is subject to the North Carolina Public Records Law. As such, please note that all inbound and outbound messages are subject to requests for review and may be disclosed to third parties.
>
> <image001.png>
>
> **From:** Scott Mulwee <scott.mulwee@burkenc.org>
> **Sent:** Friday, November 22, 2019 12:52 PM
> **To:** Johnnie Carswell <johnnie.carswell@burkenc.org>; Bryan Steen <bryan.steen@burkenc.org>
> **Subject:** Fwd: Trolley Ownership and Usage Response from UNC- School of Government
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** Ed Phillips - Burke County Tourism Development Authority <director@discoverburkecounty.com>
> > **Date:** November 22, 2019 at 12:31:20 PM EST
> > **To:** 'Polly Leadbetter' <pollyleadbetter@gmail.com>, 'Sharon Jablonski' <sharon.jablonski245@gmail.com>, "'Angi, Morrissa'" <mangi@valdesenc.gov>, 'Teresa Sellman' <tsellman19@yahoo.com>, "dana.whisnant@yahoo.com"

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

<dana.whisnant@yahoo.com>, "Wayne F. Abele, Sr." <wayne.abele@burkenc.org>, Scott Mulwee <scott.mulwee@burkenc.org>, Margaret Pierce <margaret.pierce@burkenc.org>, 'Tonia Stephenson' <tstephenson@burkecounty.org>
Subject: Trolley Ownership and Usage Response from UNC- School of Government

CAUTION: Don't be quick to click! We're counting on you! This email is from an external sender! **Don't click** on links or open attachments from unknown sources. If you know this is spam delete the message. If you believe this message is a phish attack, Click the Phish Alert button above. If you are unsure what to do, contact the helpdesk @ support@burkenc.org.

Dear TDA Board,

During the TDA Board meeting on November 19, a question was asked pertaining to the use of the trolley and the TDA's ability to own and operate a trolley. I emailed a member of the UNC-School of Government with this question. The School of Government is generally regarded as having the highest of opinions related to governmental operations in North Carolina. Their reply is attached here.

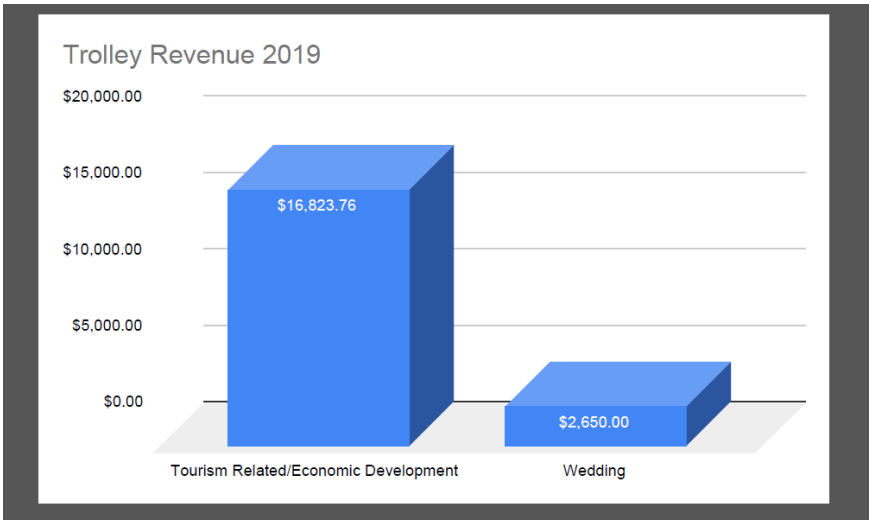
"Ed, thanks for your email. I am happy to offer my thoughts, with a large caveat. These decisions are somewhat subjective, and reasonable people can disagree on what expenditures are "tourism-related." No one knows for sure whether a particular TDA expenditure satisfies the spending requirements for that TDA unless and until a court were to rule on a challenge to that expenditure.

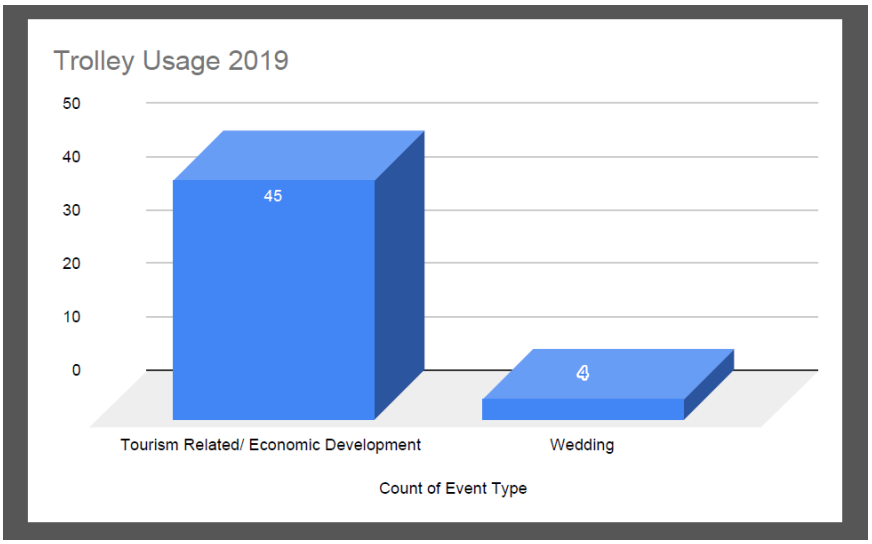
That said, I feel confident that a court would find the purchase of a tourist trolley to satisfy the spending requirements for the Burke County TDA. I don't see how someone could reasonably argue that the trolley is not related to tourism unless there were evidence that most of the trolley users were residents of Burke County. Assuming that is not the case (and it would be helpful if you were to keep stats on the residency of users), then the trolley clearly (in my view) would be a permissible expenditure.

There is some question about whether TDAs can own property, due to the lack of explicit authority in the general and local statutes that govern TDAs. But my colleagues and I here believe that the authority to own property is implicit in a TDA's mandate. That is even more likely to be true when the TDA is permitted to make capital expenditures, as is your TDA. "

Chris

Attachment: TDA File (2947 : BOC - Tourism Development Authority)





Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Jack Carroll made the motion to table this item until November 6. The motion passed 4 to 0.

3. Request to Approve a Resolution to Authorize Burke County to Levy an Additional Three Percent Occupancy Tax and to Make Other Administrative Changes. As chair of Burke County Travel and Tourism Commission, Wayne Abele was in meetings to discuss the possibility of Burke County levying an additional 3 percent occupancy tax to the current 3 percent. Other Commissioners have met in Raleigh with the County's delegation to discuss the occupancy tax. Burke County received assistance from Rep. Walter Church, Rep. Mitch Gillespie, and Senator Jim Jacumin in getting the bill passed.

In July 2007 the General Assembly enacted House Bill 78. A resolution was presented authorizing Burke County to levy an additional 3 percent increasing the occupancy tax to 6 percent.

Chairman Abele said Ed Phillips, chairman of Burke County Travel and Tourism Commission, was present. With him were Rosemary Niewold, director, and member Brain James from the Hampton Inn.

Mr. Phillips said he has worked with every county and municipality in the state who has an occupancy tax and has helped in creating tourism authorities. In Burke County the occupancy tax was created in 1989, was initially funneled through the county, but went through the Chamber of Commerce for travel and tourism promotion. In the mid 90's it was changed to an independent commission that was responsible for promoting the county. He said from 2004 until 2006 tourism in Burke County grew 8.2 percent as measured by the North Carolina Department of Commerce. That is the greatest percentage growth in the Unifour. The economic impact in Burke County is $72 million a year, and the 3 percent occupancy tax generates about $185,000 per year. They consider the growth instrumental in their marketing. The request for the additional 3 percent was initiated months ago in the General Assembly by Morganton to generate more revenue to help market them. Through their discussions it was determined rather than create another tourism authority through Morganton, the best use of tax would be to increase and set aside portions to go to Morganton and Valdese.

Mr. Phillips said the resolution presented tonight is from the bill passed by the Senate and House authorizing the Commissioners to enact an additional 3 percent increase in the occupancy tax. The proceeds of that tax would be used to promote travel and tourism in the County and for tourism related expenditures in the County. Under the legislature to create the Tourism Authority they would add a representative of Morganton appointed by the City Council. Current use of the tax has been marketing, promoting, assisting with festivals and ads placed in media throughout the state generating inquiries, which are thousands every month. Chairman Abele said they also provide one and half staff members for the Tourism Center.

Maynard Taylor said they did not follow proper procedures. When he met with Rep. Mitch Gillespie, he told him they had met and were in agreement, but the Board had not

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

met or voted on this issue. This is an unfair formula for Drexel, Glen Alpine, Connelly Springs, Hildebran, and Rutherford College since they are left out. The County is bigger than the City of Morganton, and they allot 45 percent to them, 30 percent to Burke County, and 25 percent to Valdese leaving other towns and incorporated cities out. They have a motel in Icard and in Hildebran. Because of this unfairness he feels he should voice no on this issue.

Chairman Abele said the feeling of the present tourism commission is they feel for the small communities. They want it to be fair. Burke County Travel & Tourism plans to set up a small grant program. Small municipalities can pull down small amounts of money for festivals or whatever. The reason Morganton got more is because they looked at it as having tourism with the Greenway and the baseball park. They looked at Valdese; they looked at Burke County. The municipalities discussed it and determined this formula.

Ed Phillips said accommodations are mostly in the city limits of Morganton. That is where most of the tax revenue is generated. The constituency is not the visitor that pays the tax because they do not live here; they are the hotel operators. They invite them to talk about what is important and what generates business. One of the things is the countywide festivals and events that occur in other areas. The Whippoorwill Festival happened around Nebo at Lake James, and they funded them with promotional activities. The commission does not specifically mention representatives from Drexel or other small towns. They are aware of the impact and contributions they make to tourism. They will initiate a small grants program to help them.

Maynard Taylor said they do not get mentioned let alone part of the pie. He thinks it is an unfair formula.

Jack Carroll said they might not be on the list for funds from tourism, but they do bring in tourists who spend money. Those smaller towns reap increased tax from those events and benefit from this.

Chairman Abele said they had many meetings and tried to be fair with this. When they were finished everyone agreed on it. The municipalities will present it to their councils.

Rosemary Niewold, director of the tourism center, said they are there for all the municipalities. They provided $500 for mailing expenses to Glen Alpine for their antique show. Whoever comes to them, they try to assist them. They are there for all and do not want to leave any out.

Maynard Taylor said they take in around $300,000 a year and giving $500 to Glen Alpine is not being fair when Morganton and Valdese get $285,500. It is unfair to the other municipalities doing as much as they can on a per share basis to grow their community and enhance tourism like Morganton or Valdese.

Ms. Niewold said she feels this would be a better improvement for all. It would give them more.

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Chairman Abele said the first 3 percent does not all go to travel and tourism. It is split. He said probably the tax would go into effect December 1.

Jack Carroll made the motion to approve A Resolution to Authorize Burke County to Levy an Additional Three Percent Occupancy Tax and to Make Other Administrative Changes. The motion passed 3 to 1 with Maynard Taylor opposed.

The resolution reads:

A RESOLUTION TO AUTHORIZE BURKE COUNTY
TO LEVY AN ADDITIONAL THREE PERCENT OCCUPANCY TAX
AND TO MAKE OTHER ADMINISTRATIVE CHANGES

(a) Authorization and Scope. The Burke County Board of Commissioners may levy a room occupancy tax of 3 percent of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to the sales tax imposed by the state under G.S.105-164.4(a)(3). This tax is in addition to any state or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Authorization of Additional Occupancy Tax. In addition to the tax authorized by subsection (a) of this resolution, the Burke County Board of Commissioners may levy an additional room occupancy tax of up to 3 percent of the gross receipts derived from the rental of accommodations taxable under this subsection (a) of this resolution. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with GS 105-164.4(a)(3). Burke County may not levy a tax under this subsection unless it also levies a tax under subsection (a) of this resolution.

(c) Administration. A tax levied under this resolution must be levied, administered, collected, and repealed as provided in GS 153A-155. The penalties provided in GS 153A-155 apply to a tax levied under this resolution.

(d) Definitions. The following definitions apply in this resolution:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

(e) Distribution and Use of Tax Revenue. Burke County must, on a quarterly basis, remit the net proceeds of the occupancy tax levied under this resolution to the Burke County Tourism Development Authority. The Authority must use the proceeds as follows:

(1) First three percent (3%) – At least two-thirds must be used to promote travel and tourism in Burke County, and the remainder must be used for tourism-related expenditures in Burke County.

(2) Remainder – The Authority must segregate the remaining net proceeds into three separate accounts as set out in this subdivision. The Authority must use at least two-thirds of the funds in each account to promote travel and tourism in each of the named areas and must use the remainder for tourism-related expenditures in each of the named areas. The amounts and accounts are as follows:

a. Forty-five percent (45%) must be remitted to the Morganton Account.
b. Thirty percent (30%) must be remitted to the Burke County Account.
c. Twenty-five percent (25%) must be remitted to the Valdese Account.

Burke County Tourism Development Authority

(a) Appointment and Membership. When the Burke County Board of Commissioners adopts a resolution levying a room occupancy tax, it must also adopt a resolution creating a county Tourism Development Authority that is a public authority under the Local Government Budget and Fiscal Control Act. The resolution must provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. Of the total membership, at least one member must represent the City of Morganton, and at least one member must represent the Town of Valdese.

The Board of Commissioners must designate one member of the Authority as chair and must determine the compensation, if any, to be paid to members of the Authority.

The Authority meets at the call of the chair and must adopt rules of procedure to govern its meetings. The Finance Officer for Burke County is the ex officio finance officer of the Authority.

(b) Duties. The Authority must expend the net proceeds of the tax remitted to it under this resolution for the purposes provided in this act. The Authority must promote travel, tourism, and conventions, sponsor tourism-related events and activities, and finance tourism-related capital projects in the county and in the named towns in this resolution.

(c) Reports. The Authority must report quarterly and at the close of the fiscal year to the Burke County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board may require.

DULY adopted this 16th day of October 2007.

Wayne F. Abele, Sr., Chairman
Burke County Board of Commissioners

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Attest:
Vicki Craigo, Clerk to the Board

4. Request to Approve a Resolution to Create Burke County Tourism Development Authority. Chairman Abele said up to now they have been a commission and not a TDA. The Board approved the Occupancy Tax Resolution, and they should create the Burke County Tourism Development Authority. Membership would include the seven members currently serving on the Burke County Travel and Tourism Commission. Terms are for two years.

Burke County Travel & Tourism Commission members are

Ed Phillips, owner of Granite Communications	member
Una Reep, owner of a bed and breakfast	hotel/motel industry
Wayne Abele, Sr.	member
Barbara Hefner, Director, Travel & Tourism	Town of Valdese
Brian James, Hampton Inn	hotel/motel industry
Freddy Leger	member, eastern rep
Scott Walker, Holiday Inn	hotel/motel industry

Rosemary Niewold, Director of Burke County Travel & Tourism, is an ex officio member

The Burke County Travel and Tourism Commission meet once a month on the last Tuesday at 8:30 a.m. at the Commission's office.

New members would include a representative from the City of Morganton and Paul Ijames, Finance Director for Burke County, is the ex officio finance officer of TDA. Vicki Craigo said it was recommended a Commissioner also be designated as a member. Chairman Abele said by adding a Morganton representative and a Commissioner, membership would increase to nine. Ed Phillips agreed nine members would work but hold it at that.

Jack Carroll made the motion to approve the Resolution to Create Burke County Tourism Development Authority. The motion passed 3 to 1 with Maynard Taylor opposed.

The resolution reads:

A RESOLUTION
TO CREATE BURKE COUNTY TOURISM DEVELOPMENT AUTHORITY

(a) Appointment and Membership. By levying a room occupancy tax, the Burke County Board of Commissioners also creates a County Tourism Development Authority that is a public authority under the Local Government Budget and Fiscal Control Act. The membership of the Authority would include the seven members of the Burke County Travel and Tourism Commission appointed by the Board of Commissioners. Members' terms of office would be two years, and members may serve consecutive terms. The Board of Commissioners would appoint members to any vacancies on the Authority.

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. Of the total membership, at least one member must represent the City of Morganton, and at least one member must represent the Town of Valdese. The Board of Commissioners will designate a commissioner to serve on the Authority.

The Board of Commissioners must designate one member of the Authority as chair and must determine the compensation, if any, to be paid to members of the Authority.

The Authority meets at the call of the chair and must adopt rules of procedure to govern its meetings. The Finance Officer for Burke County is the ex officio finance officer of the Authority.

(b) Duties. The Authority must expend the net proceeds of the tax remitted to it under the Occupancy Tax Resolution for purposes specified in the resolution. The Authority must promote travel, tourism, and conventions, sponsor tourism-related events and activities, and finance tourism-related capital projects in the county and in the named towns in this resolution.

(c) Reports. The Authority must report quarterly and at the close of the fiscal year to the Burke County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board may require.

DULY ADOPTED the 16th of October 2007.

Wayne F. Abele, Sr., Chairman
Burke County Board of Commissioners

Attest:
Vicki Craigo, Clerk to the Board

5. Request to Approve Reimbursement Resolution for the Allied Health Building Project (Architectural Fees and Construction). Burke County has acquired the Doblin building for Western Piedmont Community College and the County. The County intends to renovate and equip the building.

As part of the $3 million project, General Services requires money for CBSA Architects to produce plans and specs for the Doblin building. They also require money for asbestos removal. The building needs a roof, which is estimated between $200,000 and $300,000.

The County wishes to reimburse itself from the financing proceeds for expenditures made by the County on the project.

Jeff Boss, Director/Engineer of General Services, said they would like to speed this project. One way would be to separate the bid instead of waiting for a final bid for full construction. They look at demolition on a separate bid and adding the architect's full fee for the design of the entire building instead of waiting and doing the portion for WPCC. There would be savings doing this. The schedule is tight getting WPCC in; they want to get an advance on funds on demolition and starting the second story structure in the WPCC portion.

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Chairman Abele said it has been suggested the building would open in 2009. This is unacceptable; it should open in 2008. They hope to get it open by Christmas.

Chairman Abele asked for the figure. Mr. Boss said for the architect it would increase around $92,000 to accommodate the entire building. The demolition was initially $229,000, but with the assistance from County staff, it is down to $95,000 to $150,000. There is a contract left for $13,000 for removal of asbestos. He said they got about $70,000 for metal they took out of the Doblin building. They auctioned it, and people came to remove it at their own costs and gave the County a check. Maynard Taylor asked about the $70,000? Mr. Boss said it went to the Doblin account.

Maynard Taylor asked if the project would cost $3 million as referenced in the resolution. Ron Lewis said they have received a grant for $1 million from EDA, a $1 million grant from North Carolina Community Colleges, $300,000 commitment from Blue Ridge HealthCare, and he believes there will be a $200,000 commitment from the Appalachian Regional Commission. The committee appointed by Burke Partnership for Economic Development is seeking grant funds. He and Mr. Boss are always looking at possibilities for additional grant money. So far they have a commitment for about $2.5 million. He thinks the portion for WPCC is $3.5 million. There would be a $1 million hole. They do not know what the rest of the building would be until it is bid. Mr. Boss said the architect estimates total build-out at $5 million. He said an additional $1.5 million for the additional 60,000 square feet. Mr. Lewis said there is a possibility of contractual arrangements that would further plug those holes.

Jeff Boss said they look to put a $3 million loan in it. They intend to acquire $2.5 million in grants. He added the contract documents and bid would be done in one phase, but the entire building not occupied by WPCC, would be done as an addendum and it does not have to be accepted with the bids. If the money is not available, they are still able to construct the portion for WPCC.

Wes Abele made the motion to approve the Reimbursement Resolution Related to Installment Purchase Financing of the Allied Health Building Project (architectural fees and construction for Doblin building). The motion passed 4 to 0.

The reimbursement resolution related to installment purchase financing of the Allied Health Building project is on file in the office of the Clerk to the Board.

6. Request to Bid on Hwy. 18 South Waterline Project. Jeff Boss was present. General Services would like to request bids for the Hwy. 18 South waterline project. This project should use the remainder of the water bond funds. If necessary, additional funding will come from the new waterline construction budget line, which currently has $74,850 available.

This project is necessary because it makes possible the connection of the Music Mountain water system to the Enola water system, thus reducing the number of systems Burke County has to maintain and operate.

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-265
HOUSE BILL 78

AN ACT TO AUTHORIZE BURKE COUNTY TO LEVY AN ADDITIONAL THREE PERCENT OCCUPANCY TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 422 of the 1989 Session Laws, as amended by Chapter 143 of the 1995 Session Laws, reads as rewritten:

"Section 1. Occupancy tax. – (a) Authorization and ~~scope.~~ Scope. – The Burke County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious ~~organizations.~~organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Occupancy Tax. – In addition to the tax authorized by subsection (a) of this section, the Burke County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with this act. Burke County may not levy a tax under this subsection unless it also levies a tax under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

(c) Administration. – A tax levied under this act must be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

(c1) Definitions. – The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

(e) Distribution and Use of ~~tax revenue.~~ Tax Revenue. – Burke County ~~shall use~~ must, on a quarterly basis, remit the net proceeds of the occupancy tax ~~only to promote economic development and travel and tourism in Burke County. The county may~~

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

~~allocate the net proceeds one-half for economic development and one-half for travel and tourism or in any other ratio the board of commissioners considers appropriate. As used in this subsection, 'net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.~~levied under this act to the Burke County Tourism Development Authority. The Authority must use the proceeds as follows:

(1) First three percent (3%). – At least two-thirds must be used to promote travel and tourism in Burke County, and the remainder must be used for tourism-related expenditures in Burke County.

(2) Remainder. – The Authority must segregate the remaining net proceeds into three separate accounts as set out in this subdivision. The Authority must use at least two-thirds of the funds in each account to promote travel and tourism in each of the named areas and must use the remainder for tourism-related expenditures in each of the named areas. The amounts and accounts are as follows:

a. Forty-five percent (45%) must be remitted to the Morganton Account.

b. Thirty percent (30%) must be remitted to the Burke County Account.

c. Twenty-five percent (25%) must be remitted to the Valdese Account.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Burke County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 1.1. Burke County Tourism Development Authority. – (a) Appointment and Membership. – When the Burke County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it must also adopt a resolution creating a county Tourism Development Authority that is a public authority under the Local Government Budget and Fiscal Control Act. The resolution must provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. Of the total membership, at least one member must represent the Town of Morganton, and at least one member must represent the Town of Valdese.

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

The board of commissioners must designate one member of the Authority as chair and must determine the compensation, if any, to be paid to members of the Authority.

The Authority meets at the call of the chair and must adopt rules of procedure to govern its meetings. The Finance Officer for Burke County is the ex officio finance officer of the Authority.

(b) Duties. – The Authority must expend the net proceeds of the tax remitted to it under this act for the purposes provided in this act. The Authority must promote travel, tourism, and conventions, sponsor tourism-related events and activities, and finance tourism-related capital projects in the county and in the named towns in this act.

(c) Reports. – The Authority must report quarterly and at the close of the fiscal year to the Burke County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

"Sec. 2. This act is effective upon ratification."

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Chowan, Clay, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Martin, Montgomery, Nash, New Hanover, New Hanover County District U, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averasboro in Harnett County."

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

SECTION 3. This act is effective when it becomes law. The Burke County Board of Commissioners has 30 days from the date the act becomes effective to ensure that the membership of the Authority is in compliance with this act.

In the General Assembly read three times and ratified this the 26th day of July, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Board of Directors: The TDA shall be governed by a Board of Directors consisting of seven (7) members including ex-officio. ***These members shall be appointed by the Burke County Board of County Commissioners*** for two (2) year terms. The initial appointments shall be for a staggered term. Three (3) members shall be initially appointed for two (2) year term, and two (2) members appointed for one (1) year term.
A minimum of three (3) members shall represent local travel and tourism related occupations or business, of which two (2) shall represent the Hotel and Motel Industry. Efforts will also be made for representation from all parts of the County.

Responsibilities and Duties: The business and affairs of the TDA are governed by the TDA Board. The Board shall have the general charge, supervision, and control of its affairs, staff, funds, and property; provided, however, the TDA may contract with any person, firm, corporation, or agency to advise and assist it in the development of programs for the promotion of travel, tourism, and conventions, and may delegate to such contracted agency powers and responsibilities as the Board, upon majority vote, shall determine to be necessary and appropriate.

Vacancies: Vacancies in the membership of the board of the TDA shall be filled in the same manner as the initial appointments by the Burke County Board of Commissioners. Board members appointed to fill vacancies shall serve for the remainder of the unexpired term of the member for whose term they are appointed to fill.

Chairperson: ***The Chairperson will be elected from among the members by the County Commissioners.*** The Chairperson shall preside at meetings of the TDA and have the authority to appoint such committees necessary to conduct the work of the TDA.

Vice-Chairperson: The Vice-Chairperson will be elected from among the members by the members.

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Treasurer: The Treasurer will be elected from among the members by the members.

Election of Officers: Officers will be elected annually at the first meeting in July. The term of office shall be one year.

Attendance: TDA Board members who ***miss 2 consecutive board meetings shall be removed from the board.*** At their sole discretion, the Chair of the TDA board may grant an excused absence. However, even a large number of excused absences may prevent the board from conducting business. It is imperative that board members attempt to attend as many meetings as possible. (Adopted Sept. 16, 2014)

General Policies and Procedures: The TDA shall adhere to Burke County's fiscal and budgeting policies and procedures as established by the County and North Carolina General Statues.

TDA Board Qualifications

1. The Candidate should have strong background or experience in marketing and/or business promotion.
2. Resume of the Candidate should be presented to the County Manager prior to Commissioners' vote.
3. The Candidate should have knowledge and/or experience to act as an Ambassador of the TDA.
4. The Candidate must be prepared to make themselves available to adequately perform the duties as TDA Board Member with their time and commitment to attendance of meetings.
5. The Candidate must live in the County or have a significant real estate investment in the Tourism Industry within the County.
6. Candidates must complete a workshop or scheduled meeting of education and orientation of the purpose and duties of the TDA and its enabling legislation.

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

7. Candidate should be an owner/manager/administrator and /or person of decision making and responsibility within and representing their Brunswick County business.

*Criteria applies to nominations by the Chambers. Commissioners' appointments, per the enabling legislation, must be currently involved in the promotion of travel and tourism.

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

TDA Board Qualifications *

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Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Tourism Development Authority
9-Members
2-Year Terms

Seat No.	Position	Name-Address		Term
1	COT Chair 8/19/2014	Polly Leadbetter Lake James Real Estate 3053 NC Hwy 126 Morganton NC 28655	A-UT R R R TE	10/15/2013 12/17/2013 12/15/2015 1/16/2018 12/31/2019
2	Morganton	Sharon Jablonski P.O. Box 3448 Morganton NC 28680	A R R R R TE	10/20/2009 12/17/2013 12/15/2015 1/16/2018 12/31/2019
3	Valdese	Morrissa Angi Valdese Dept. of Tourism P.O. Box 339 Valdese NC 28690	A R TE	12/15/2015 1/16/2018 12/31/2019
4	COT	Teresa Sellman Inn at Glen Alpine P.O. Box 686 Glen Alpine NC 28628	A R TE	12/16/2014 1/24/2017 12/31/2018
5	Travel/Tourism At-Large	Dana Whisnant 107 York Street Morganton NC 28655	A-UT R TE	8/15/2017 1/16/2018 12/31/2019
6	Travel/Tourism At-Large	Jarrod Bailey 214 Riverside Drive Morganton NC 28655	A-UT TE	4/18/2017 12/31/2018
7	Travel/Tourism At-Large	Wayne Abele Abele's Family Restaurant 2156 S. Sterling Street Morganton NC 28655	A R R R	10/20/2009 12/17/2013 12/15/2015

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

BURKECOUNTY
ALL ABOUT ADVANCING

October 22, 2019
Mr. Ed Phillips, Chief Executive Officer
Burke County Tourism Development Authority
110 East Meeting Street
Morganton, NC 28655

Re: SL 2007-265 Financial Reporting Requirements

Dear Mr. Phillips,

We recently received a copy of the letter issued by the North Carolina Department of State Treasurer, State and Local Government Financial Division and the Local Government Commission (LGC) dated September 5, 2019 that was sent to Chairperson Polly Leadbetter, Burke County Tourism Development Authority (TDA). As you may be aware, the LGC letter states the LGC completed an annual analysis of the audited financial statements of the TDA for the fiscal year ending June 30, 2018. The purpose of the LGC's letter is to convey concerns of the LGC for which corrective action is required. In fact, the LGC letter stated, ***"We are extremely concerned about the serious statutory violations committed by the Authority during the fiscal year ended June 30, 2018."*** This letter indicates that your board should come up with a corrective action plan, and carefully monitor this plan; it cites statutes that provide that failure to adequately address these violations of law could result in personal liability for you, the TDA officers, and perhaps for each member of your governing board.

Please know that the LGC's letter to the Burke County TDA is very concerning to me as well as the Burke County Board of Commissioners. As such, we have completed a review of **SL 2007-265** and now give you notice that you, as the TDA CEO, will provide the following information to the Burke County Board of Commissioners at the intervals stated in **SL 2007-265:** all revenues stated by source and in the total amount received during quarterly increments as well as a final total for the fiscal year and all expenditures by separate line item and amount expended for the line item for the quarter and end of the fiscal year. We also expect that you will present this information in person at a monthly meeting of the Board of Commissioners and take questions and comments from the Commissioners.

Please contact Kay Draughn, Clerk to the Board of County Commissioners, by November 5th, for report dates and other pertinent instructions for your agenda item. Additionally, I encourage you and the TDA Board to reconsider the offer made by Margaret Pierce, Burke County Deputy County Manager / Finance Director, to handle all financial activities for the TDA and thereby resolve staffing deficiencies that your current accounting firm may not be able to resolve for the TDA.

Sincerely,

Kenneth B. Steen
County Manager

Enclosures: LGC Letter of Sept. 5, 2019 & SL 2007-265

cc: Board of Commissioners, County Finance Director & TDA Chair

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

STATE OF NORTH CAROLINA
DEPARTMENT OF STATE TREASURER
State and Local Government Finance Division
and the Local Government Commission

JANET COWELL
TREASURER

T. VANCE HOLLOMAN
DEPUTY TREASURER

May 19, 2009

The Honorable Ed Phillips Jr., Chair
Burke County Tourism Development Authority
Post Office Box 219
Morganton, North Carolina 28680-0219

Dear Chair Phillips Jr.:

The staff of the Local Government Commission has analyzed the audited financial statements of the Burke County Tourism Development Authority for the fiscal year ended June 30, 2008. As a result of our review we feel we should bring the following items to your attention.

The Authority audited financial statements were not received by our office until April 30, 2009, well after the due date of October 31, 2008. A report received by the governing body ten months after year-end identifies financial and operational problems after it is too late for the Board to take any effective action. As stewards of the public's resources, the governing body is responsible for ensuring that the audited financial statements are available to the public in a timely manner. Information in the report is needed by various external groups such as the North Carolina General Assembly, federal and State agencies that provide funding, and other public associations. We understand that this is the Authority's first year reporting, however we urge the Board to analyze these problems and take the appropriate action to ensure that the audited financial statements for the current fiscal year are completed and submitted by October 31, 2009.

Please write to us about your plans to resolve this matter. If you have any questions, please contact me at (919) 807-2380.

Sincerely,

Sharon G. Edmundson, CPA
Director, Fiscal Management Section

cc: Paul Ijames, Finance Officer
Boggs, Crump & Brown PA

325 NORTH SALISBURY STREET, RALEIGH, NORTH CAROLINA 27603-1385
Courier #56-20-45 Telephone: (919) 807-2351 Fax: (919) 807-2352
Physical Address: 4505 Fair Meadow Lane, Blue Ridge Plaza, Suite 102, Raleigh, NC 27607
Website: www.nctreasurer.com
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Attachment: TDA File (2947 : BOC - Tourism Development Authority)

NORTH CAROLINA
DEPARTMENT OF STATE TREASURER
STATE AND LOCAL GOVERNMENT FINANCE DIVISION
AND THE LOCAL GOVERNMENT COMMISSION

JANET COWELL
TREASURER

T. VANCE HOLLOMAN
DEPUTY TREASURER

May 9, 2012

The Honorable Mitch Kerce Jr., Chairman
Burke County Tourism Development Authority
Post Office Box 219
Morganton, North Carolina 28680-0219

Dear Chairman Kerce Jr.:

The State and Local Government Finance Division in its role as staff to the Local Government Commission has analyzed the audited financial statements of Burke County Tourism Development Authority for the fiscal year ended June 30, 2011. Corrective action regarding the issues discussed below may improve both your Town's financial condition and operations.

We noted various weaknesses concerning the Authority's internal control system that were communicated to management in writing by the auditor. We are particularly concerned that the auditor noted that payroll reports were not filed in a timely manner. Each of the items noted by your auditor was identified to assist the Board in improving the Authority's overall accounting system. We urge the Board to develop a corrective action plan and begin eliminating these internal control weaknesses.

Please respond in writing within the next 30 days to each concern that we have raised in this letter and address the payroll issue in detail. If you are planning to issue debt that requires the approval of the Local Government Commission, we must have a complete response to this letter on file prior to the Commission's consideration of your debt application. If we can be of any assistance to you please contact me at 919-807-2380.

Sincerely,

Sharon Edmundson

Sharon G. Edmundson, CPA
Director, Fiscal Management Section

cc: Ed Phillips, Finance Officer
Lowdermilk, Church & Co., LLP

325 NORTH SALISBURY STREET, RALEIGH, NORTH CAROLINA 27603-1385
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Physical Address: 4505 Fair Meadow Lane, Blue Ridge Plaza, Suite 102, Raleigh, NC 27607
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Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Burke County Tourism Development Authority
PO Box 219
Morganton, North Carolina 28680-0219

Ed Phillips, Finance Officer
Burke County Tourism Development Authority
PO Box 219
Morganton, North Carolina 28680-0219

Lowdermilk, Church & Co., LLP
121 N. Sterling Street
Morganton NC 28655

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

NORTH CAROLINA
DEPARTMENT OF STATE TREASURER
STATE AND LOCAL GOVERNMENT FINANCE DIVISION
AND THE LOCAL GOVERNMENT COMMISSION

JANET COWELL
TREASURER

T. VANCE HOLLOMAN
DEPUTY TREASURER

April 11, 2013

Mitch Kerce, Jr., Board Chairman
Burke County Tourism Development Authority
P O Box 219
Morganton, North Carolina 28680-0219

Dear Chairman Kerce:

The State and Local Government Finance Division in its role as staff to the Local Government Commission has analyzed the audited financial statements of Burke County Tourism Development Authority for the fiscal year ended June 30, 2012. Corrective action regarding the issues discussed below may improve both your financial condition and operations.

The Authority's audited financial statements were not received in our office until February 28, 2013, well after the due date of October 31, 2012. A report received by the Board nearly eight months after year-end identifies financial and operational problems after it is too late for the Board to take any effective action. As stewards of the public's resources, the governing body is responsible for ensuring that audited financial statements are available to the public in a timely manner. Information in the report is needed by various external groups, such as the North Carolina General Assembly, federal and State agencies that provide funding, and other public associations. We urge the Board to determine the cause of the delay, and take the appropriate action to ensure that the audited financial statements for the current year are completed and submitted by October 31, 2013.

We noted various weaknesses concerning your Tourism Development Authority's internal control system that were communicated in writing to you by the auditor. We are concerned that the auditor reported as a material weakness segregation of duties. This weakness in segregation of duties may have led to many of the significant deficiencies noted by your auditor. Significant deficiencies noted by your Auditor are the following: lack of documentation being attached to deposit tickets, lack of receipt books as documentation for sale of promotional items, bank statements being received by the same person who has responsibility for all Authority transactions, lack of mileage documentation sheets, Stipends paid for cell phone use not reported on employee's W-2s properly, numerous checks being made for reimbursements to the executive director for cash purchases, and inadequate inventory tracking for promotional items. Each of the items noted by the auditor was identified to assist the Board in improving the Tourism Development Authority's overall accounting system. We note that a corrective action has

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Attachment: TDA File (2947 : BOC - Tourism Development Authority)

already been implemented to eliminate some of these Significant Deficiencies. We encourage the Board to monitor the Authority's progress and to develop a corrective action plan to eliminate the other items identified by the auditor.

It is typical for small units of governments' audited financial statements to include a finding for inadequate separation of duties. With the economic challenges facing most governments today, it is not always feasible to expect small governments to hire additional staff to provide for proper separation of duties and eliminate the finding. However, local governments can mitigate this weakness by strategic use of other personnel and by utilizing board members to perform some of the necessary tasks to achieve a higher level of internal control. Utilizing board members to help segregate duties was recommended to you by the Auditor in the previous year. Local Government Commission Staff Memorandums number 568 and 569 discuss internal controls in small governments and how to assign tasks to segregate responsibilities as much as possible. These memorandums can be accessed on our website at http://www.nctreasurer.com. Choose Divisions, then Local Fiscal Management, then "Memos". We also encourage you to review the "Internal Controls" section of the North Carolina Department of State Treasurer Policies Manual. A copy of this section also can be downloaded from our website. Choose Divisions, then Local Fiscal Management, then "Policy and Audit Manuals". Finally, we suggest you review any changes in assignments with your independent auditors to allow them to update their documentation of your internal control system.

According to our records, your Tourism Development Authority neglected to respond to our letter regarding the audited financial statements for the fiscal year ended June 30, 2011. Please respond in writing within the next 30 days to each concern that we have raised in this letter. If we can be of any assistance to you please contact me at 919-807-2380.

Sincerely,

Sharon Edmundson

Sharon G. Edmundson, CPA
Director, Fiscal Management Section

cc: Ed Phillips, Executive Director
Paul Ijames, Ex-Officio Finance Officer
Cindy Randolph, Lowdermilk, Church & Co., LLP

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Mitch Kerce, Jr., Chairman
Burke County Tourism Development Authority
P O Box 219
Morganton, North Carolina 28680-0219

Ed Phillips, Executive Director
Burke County Tourism Development Authority
P O Box 219
Morganton, North Carolina 28680-0219

Paul Ijames, Ex-Officio Finance Officer
Burke County Tourism Development Authority
P O Box 219
Morganton, North Carolina 28680-0219

Cindy Randolph
Lowdermilk, Church & Co., LLP
121 N. Sterling Street
Morganton, North Carolina 28655

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

NORTH CAROLINA
DEPARTMENT OF STATE TREASURER
STATE AND LOCAL GOVERNMENT FINANCE DIVISION
AND THE LOCAL GOVERNMENT COMMISSION

JANET COWELL
TREASURER

T. VANCE HOLLOMAN
DEPUTY TREASURER

April 22, 2014

Mitch Kerce Jr., Chairman
Burke County Tourism Development Authority
P O Box 219
Morganton, North Carolina 28680-0219

Dear Chairman Kerce, Jr.:

The State and Local Government Finance Division in its role as staff to the Local Government Commission has analyzed the audited financial statements of the Burke County Tourism Development Authority for the fiscal year ended June 30, 2013. The purpose of this letter is to convey our concerns about your Tourism Development Authority's financial operations. We request that you respond to this letter, addressing each concern we have raised.

At June 30, 2013, the Special Revenue Fund had a deficit of $90,428. A project ordinance has been adopted for this Fund, which indicates that revenues should equal expenditures over the life of the project. The project ordinance should be reviewed. If it is determined that all revenue and appropriation estimates are reasonable, no further action is needed. If it is determined that all revenues will not be realized or that expenditures will exceed the amount budgeted, the ordinance should be amended to reflect additional revenues sources or reduce expenditures.

Contributing to the negative fund balance in the Special Revenue Fund, certain expenditures were made in excess of appropriations authorized by the budget ordinance. Budget over-expenditures indicate that the unit's pre-audit process is not functioning as it should. The North Carolina Local Government Budget and Fiscal Control Act requires that an expenditure be budgeted prior to the Authority entering into the obligation. Over-expenditures occur when commitments are made or funds are expended when there are not sufficient funds left in the budget to cover the obligation. The finance officer and his/her sureties are legally liable for any sums that are disbursed when the disbursement is not budgeted. Accordingly, the budget must be amended to allow for the otherwise unauthorized expenditure before making any disbursement of funds. [G.S. 159-13, 159-15, 159-25, 159-28(b) and (e)]. The *North Carolina Department of State Treasurer Policies Manual* contains a section on budgeting that provides guidance in establishing and maintaining budgetary controls. A copy of this section can be downloaded from our website at https://www.nctreasurer.com/slg/Pages/Policies-Manual.aspx.

Please respond in writing within the next 30 days to each concern that we have raised in this letter. Responses should be in letter form, signed, and may be submitted in hard copy by mail or

325 NORTH SALISBURY STREET, RALEIGH, NORTH CAROLINA 27603-1385
Courier #56-20-45 Telephone: (919) 807-2350 Fax: (919) 807-2352
Physical Address: 4505 Fair Meadow Lane, Blue Ridge Plaza, Suite 102, Raleigh, NC 27607
Website: www.nctreasurer.com

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

via email. If you email your response, please send it to unitletter@nctreasurer.com. If you are planning to issue debt that requires the approval of the Local Government Commission, we must have a complete response to this letter on file prior to the Commission's consideration of your debt application. If we can be of any assistance to you please contact me at 919-807-2380.

Sincerely,

Sara S. Shippee, CPA
Assistant Director, Fiscal Management Section

cc: Ed Phillips, Director
Lowdermilk, Church & Co., LLP

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Burke County Tourism Development Authority
P O Box 219
Morganton, North Carolina 28680-0219

Ed Phillips, Director
Burke County Tourism Development Authority
P O Box 219
Morganton, North Carolina 28680-0219

Lowdermilk, Church & Co., LLP
121 North Sterling Street
Morganton, NC 28655

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NORTH CAROLINA
DEPARTMENT OF STATE TREASURER
STATE AND LOCAL GOVERNMENT FINANCE DIVISION
AND THE LOCAL GOVERNMENT COMMISSION

JANET COWELL
TREASURER

GREGORY C. GASKINS
DEPUTY TREASURER

May 4, 2015

Mitch Kerce Jr., Chairman
Burke County Tourism Development Authority
P O Box 219
Morganton, North Carolina 28680-0219

Dear Chairman Kerce:

The State and Local Government Finance Division in its role as staff to the Local Government Commission has analyzed the audited financial statements of the Burke County Tourism Development Authority for the fiscal year ended June 30, 2014. The results of the analysis revealed an area of concern regarding the Authority's operations. The purpose of this letter is to convey this concern to you and the Board. We request that you respond to this letter, addressing the concern we have raised.

As is typical for small units of governments, the Authority's audited financial statements include a finding for inadequate separation of duties. With the economic challenges facing most governments today, it is not always feasible to expect small governments to hire additional staff to provide for proper separation of duties and eliminate the finding. However, local governments can mitigate this weakness by strategic use of other personnel and by utilizing board members to perform some of the necessary tasks to achieve a higher level of internal control. Local Government Commission staff Memorandums 568 and 569 discuss internal controls in small governments and how to assign tasks to segregate responsibilities as much as possible. These memorandums can be accessed on our website at http://www.nctreasurer.com. Select "Divisions" then "Local Fiscal Management" followed by "Memos". We also encourage you to review the "Internal Controls" section of the North Carolina Department of State Treasurer Policies Manual. This section also can be downloaded from our website at www.nctreasurer.com/slg/Pages/Policies-Manual.aspx

Please respond in writing within the next 45 days to the concern that we have raised in this letter. Responses should be in letter form, signed, and may be submitted in hard copy by mail or via email. Emailed responses should be sent to unitletter@nctreasurer.com we must have a complete and thorough response to this letter on file prior to the

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Commission's consideration of your debt application. If we can be of any assistance to you please contact me at 919-807-2380.

Sincerely,

Sharon Edmundson

Sharon G. Edmundson, CPA
Director, Fiscal Management Section

cc: Ed Phillips, Director
Lowdermilk, Church & Co., LLP

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Burke County Tourism Development Authority
P O Box 219
Morganton, North Carolina 28680-0219

Ed Phillips, Director
Burke County Tourism Development Authority
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NORTH CAROLINA
DEPARTMENT OF STATE TREASURER
STATE AND LOCAL GOVERNMENT FINANCE DIVISION
AND THE LOCAL GOVERNMENT COMMISSION

JANET COWELL
TREASURER

GREGORY C. GASKINS
DEPUTY TREASURER

May 4, 2015

Mitch Kerce Jr., Chairman
Burke County Tourism Development Authority
P O Box 219
Morganton, North Carolina 28680-0219

Dear Chairman Kerce:

The State and Local Government Finance Division in its role as staff to the Local Government Commission has analyzed the audited financial statements of the Burke County Tourism Development Authority for the fiscal year ended June 30, 2014. The results of the analysis revealed an area of concern regarding the Authority's operations. The purpose of this letter is to convey this concern to you and the Board. We request that you respond to this letter, addressing the concern we have raised.

As is typical for small units of governments, the Authority's audited financial statements include a finding for inadequate separation of duties. With the economic challenges facing most governments today, it is not always feasible to expect small governments to hire additional staff to provide for proper separation of duties and eliminate the finding. However, local governments can mitigate this weakness by strategic use of other personnel and by utilizing board members to perform some of the necessary tasks to achieve a higher level of internal control. Local Government Commission staff Memorandums 568 and 569 discuss internal controls in small governments and how to assign tasks to segregate responsibilities as much as possible. These memorandums can be accessed on our website at http://www.nctreasurer.com. Select "Divisions" then "Local Fiscal Management" followed by "Memos". We also encourage you to review the "Internal Controls" section of the North Carolina Department of State Treasurer Policies Manual. This section also can be downloaded from our website at www.nctreasurer.com/slg/Pages/Policies-Manual.aspx

Please respond in writing within the next 45 days to the concern that we have raised in this letter. Responses should be in letter form, signed, and may be submitted in hard copy by mail or via email. Emailed responses should be sent to unitletter@nctreasurer.com we must have a complete and thorough response to this letter on file prior to the

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Commission's consideration of your debt application. If we can be of any assistance to you please contact me at 919-807-2380.

Sincerely,

Sharon Edmundson

Sharon G. Edmundson, CPA
Director, Fiscal Management Section

cc: Ed Phillips, Director
Lowdermilk, Church & Co., LLP

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Burke County Tourism Development Authority
P O Box 219
Morganton, North Carolina 28680-0219

Ed Phillips, Director
Burke County Tourism Development Authority
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Morganton, North Carolina 28655

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NORTH CAROLINA
DEPARTMENT OF STATE TREASURER
STATE AND LOCAL GOVERNMENT FINANCE DIVISION
AND THE LOCAL GOVERNMENT COMMISSION

JANET COWELL
TREASURER

GREGORY C. GASKINS
DEPUTY TREASURER

October 22, 2015

Polly Leadbetter, Chairperson
Burke County Tourism Development Authority
P O Box 219,
Morganton, North Carolina 28680-0219

Dear Chairperson Leadbetter:

The State and Local Government Finance Division in its role as staff to the Local Government Commission has analyzed the audited financial statements of the Burke County Tourism Development Authority for the fiscal year ended June 30, 2015. The results of the analysis revealed an area of concern regarding the Authority's financial operations. The purpose of this letter is to convey this concern to you and the Board. We request that you respond to this letter, addressing the concern we have raised.

We note that a violation of a finance-related legal provision was discussed in Note 2 of the Notes to the Financial Statements. The Session Law that created the Authority does not allow you to issue debt of any kind. We understand that you have developed a corrective action plan that will repay the debt within six months. We encourage the Board to monitor the Authority's progress in implementing this corrective action plan.

Please respond in writing within the next 45 days to the concern that we have discussed in this letter. Responses should be on the Authority's letterhead, signed and submitted by mail or by email to unitletter@nctreasurer.com. If we can be of any assistance to you, please contact me at (919) 814-4289.

Sincerely,

Sharon Edmundson

Sharon G. Edmundson, MPA, CPA
Director, Fiscal Management Section

cc: Ed Phillips, Executive Director
Paul Ijames, Finance Officer
Martin Starnes & Associates, CPAs, P.A.

3200 ATLANTIC AVENUE, RALEIGH, NORTH CAROLINA 27604
Courier #56-20-45 Telephone: (919) 814-4300 Fax: (919) 855-5812
Website: www.NCTreasurer.com

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Paul Ijames, Finance Officer
Burke County Tourism Development Authority
P O Box 219,
Morganton, North Carolina 28680-0219

Ed Phillips, Executive Director
Burke County Tourism Development Authority
P O Box 219,
Morganton, North Carolina 28680-0219

Martin Starnes & Associates, CPAs, P.A.
730 13th Avenue Drive SE
Hickory, North Carolina 28602

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

NORTH CAROLINA
DEPARTMENT OF STATE TREASURER
STATE AND LOCAL GOVERNMENT FINANCE DIVISION
AND THE LOCAL GOVERNMENT COMMISSION

JANET COWELL
TREASURER

GREGORY C. GASKINS
DEPUTY TREASURER

November 15, 2016

Board Chairperson
Burke County Tourism Development Authority
P O Box 219
Morganton, North Carolina 28680-0219

Dear Board Chairperson:

The State and Local Government Finance Division in its role as staff to the Local Government Commission has analyzed the audited financial statements of the Burke County Tourism Development Authority for the fiscal year ended June 30, 2016. The results of the analysis revealed some areas of concern regarding the unit's internal controls regarding the preaudit function. Because these weaknesses represent operational challenges for your unit, we will be contacting you to further evaluate these findings and assist you in developing strategies to eliminate or mitigate the weaknesses. Please review the concern that is included with this letter.

Sincerely,

Becky Dzingeleski
Senior Accounting & Financial Management Advisor

cc: Director
Auditor(s)

3200 ATLANTIC AVENUE, RALEIGH, NORTH CAROLINA 27604
Courier #56-20-45 Telephone: (919) 814-4300 Fax: (919) 855-5812
Website: www.nctreasurer.com

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Director
Burke County Tourism Development Authority
P O Box 219
Morganton, North Carolina 28680-0219

Burke County Tourism Development Authority
P O Box 219
Morganton, North Carolina 28680-0219

Martin Starnes & Associates, CPAs, P. A.
730 13th Avenue Drive SE
Hickory, NC 28602

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Unit Fiscal Summary: Burke County Tourism Development Authority

Issue #	Issue Type	Concerns that need to be addressed
1	GovernmentalFund	The budgetary report shows expenditures that exceeded the amounts authorized by the budget, indicating that the statutorily required preaudit process is not functioning properly. We will be contacting your Finance Officer to set a time to visit and review your preaudit process and your procedures.

If you have any questions or need assistance in preparing your response, please contact:

Becky Dzingeleski

Becky.Dzingeleski@nctreasurer.com

919-814-4287

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

NORTH CAROLINA
DEPARTMENT OF STATE TREASURER

STATE TREASURER OF NORTH CAROLINA
DALE R. FOLWELL, CPA

STATE AND LOCAL GOVERNMENT FINANCE DIVISION
AND THE LOCAL GOVERNMENT COMMISSION

GREGORY C. GASKINS
DEPUTY TREASURER

September 5, 2019

Polly Leadbetter, Chairperson
Burke County Tourism Development Authority
110 East Meeting Street
Morganton, North Carolina 28655

Dear Chairperson Leadbetter:

The State and Local Government Finance Division in its role as staff to the Local Government Commission has analyzed the audited financial statements of the Burke County Tourism Development Authority for the fiscal year ended June 30, 2018. The results of the analysis revealed some areas of concern regarding both the Authority's financial operations and internal controls. The purpose of this letter is to convey those concerns to you and the Board. Corrective action in the following areas is required. We request that you respond to this letter, addressing each concern we have raised.

We are extremely concerned about the serious statutory violations committed by the Authority during the fiscal year ended June 30, 2018. These violations were communicated to you both in Note 2 to the financial statements and in the letter to management as follows:

1. Violations of the North Carolina General Statute 159-31(b): The Authority's bank deposits were not properly collateralized in excess of the FDIC limit and the amounts exceeded the FDIC limit during the year.
2. Violations of the North Carolina General Statute 159-28(d)(1): The Authority's checks did not have the required signed certificate on them stating that "This disbursement has been approved as required by the Local Government Budget and Fiscal Control Act."
3. The Authority's procedure to spend the occupancy tax collected is not in accordance with Session Law 2007-265 House Bill 78.

The members of the governing board, as well as the Authority's staff, should be familiar with the NC Session Laws and General Statutes that apply to local governments and should have systems in place to ensure that these violations do not continue to occur.

Also noted in the letter to management and of great concern is that the Authority continued not submitting its required IRS forms 941 by the due dates. This also was an issue mentioned in the prior year's letter to management and it was suggested then that the Executive Director should also provide an overriding review on the payroll processing. Not submitting these IRS forms by the required due dates can result in monetary fines which is not a prudent way to spend public funds.

Each of the above items noted by the auditor was identified to assist the Board in improving the Authority's overall internal controls and accounting system. We noted in your responses to the findings that for many of these items the Authority has developed corrective action plans. We urge the Board to continually monitor these corrective action plans in order to eliminate the statutory violations and serious internal control weaknesses.

3200 Atlantic Avenue • Raleigh, North Carolina 27604
Courier #56-20-45 • Telephone: (919) 814-4300 • Fax: (919) 855-5812 • www.NCTreasurer.com

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

The problem areas addressed in this letter require **corrective action**. The Board must ensure that its corrective action plan fully addresses the deficiencies in internal control that were identified by the auditor. Please respond in writing within the next 45 days to each concern that we have mentioned in this letter. Responses should be on the Authority's letterhead, signed and submitted by mail or by email to unitletter@nctreasurer.com. We are available to assist you in addressing each matter. If we can be of any assistance to you, please contact me at (919) 814 4289.

Sincerely,

Sharon Edmundson

Sharon G. Edmundson, MPA, CPA
Director, Fiscal Management Section

cc: Wayne Abele, Board Member
Morrissa Angi, Board Member
Angel Crawley, Board Member
Sharon Jablonski, Board Member
Scott Mulwee, Board Member
Teresa Sellman, Board Member
Jarrod Bailey, Board Member
Ed Phillips, Executive Director
Margaret Pierce, Finance Officer
Debora B. Wentz, CPA

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

Employment Agreement

This Employment Agreement (this "Agreement") is made effective as of July 18, 2017, (The "effective date", by and between Burke County Tourism Development Authority ("Burke TDA"), of 110 East Meeting Street, Morganton, North Carolina, 28655 and William Edwin Phillips, Jr. ("Ed Phillips"), of 111 Terrace Place, Morganton, North Carolina, 28655.

A. Burke TDA is engaged in the business of Promoting Tourism and providing Visitor Services. Ed Phillips will primarily perform the job duties at the following location: 110 East Meeting Street, Morganton, North Carolina.

B. Burke TDA desires to have the services of Ed Phillips.

C. Ed Phillips is willing to be employed by Burke TDA.

Therefore, the parties agree as follows:

EMPLOYMENT. As of the Effective Date, Burke TDA shall employ Ed Phillips as Executive Director, a.k.a- "Director of Tourism." Ed Phillips shall provide to Burke TDA the following services: Develop and Execute Annual Marketing Plan; Manage Visitor Center; Create Job Growth and Retention within local Tourism Businesses. Ed Phillips accepts and agrees to such employment, and agrees to be subject to the general supervision, advice and direction of Burke TDA and Burke TDA's Board of Directors. Ed Phillips shall also perform such other duties as are customarily required to direct and manage all of the day-to-day operations of Burke TDA, and such other and unrelated services and duties as may be assigned from time to time by Burke TDA.

BEST EFFORTS OF EMPLOYEE. Ed Phillips agrees to perform faithfully, industriously, and to the best of Ed Phillips's ability, experience, and talents, all of the duties that may be required by the express and implicit terms of this Agreement, to the reasonable satisfaction of Burke TDA.

COMPENSATION OF EMPLOYEE. As compensation for the services provided by Ed Phillips under this Agreement, Burke TDA will pay Ed Phillips an annual salary of $64,260.00 payable monthly on the last day of each month subject to all applicable state and federal withholdings. Upon termination of this Agreement, payments under this paragraph shall cease; provided, however, that Ed Phillips shall be entitled to payments for periods or partial periods that occurred prior to the date of termination and for which Ed Phillips has not yet been paid, and for any commission earned in accordance with Burke TDA's customary procedures, if applicable. Accrued vacation will be paid in accordance with state law and Burke TDA's customary procedures. This section of the Agreement is included only for accounting and payroll purposes and should not be construed as establishing a minimum or definite term of employment or customary procedures, if applicable. The TDA board has the right to increase Mr. Phillips' Annual Salary as deemed appropriate and can be made annually by TDA Board.

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

PERFORMANCE COMPENSATION. In addition to the payments under the preceding paragraph, Burke TDA will make Performance Compensation payments to Ed Phillips in an amount equal to 5% of gross Occupancy Tax Revenue collected in Burke County. This tax revenue is one of several solid metrics used to determine the growth and development of the Tourism Industry in Burke County. This performance compensation will be paid monthly by Burke TDA on the last day of the month in accordance with base payroll check.

A. Accounting. Burke TDA shall maintain records in sufficient detail for purposes of determining the amount of the performance compensation. Burke TDA shall provide to Ed Phillips written accounting that sets forth the manner in which the performance compensation payment was calculated.
B. Right to Inspect. Ed Phillips, or Ed Phillips' agent, shall have the right to inspect Burke TDA's records for the limited purpose of verifying the calculation of the compensation payments, subject to such restrictions as Burke TDA may reasonably impose to protect the confidentiality of the records. Such inspections shall be made during reasonable business hours as may be set by Burke TDA.
C. Death of the Employee. If Ed Phillips dies during the term of this Agreement, the estate of Ed Phillips shall be entitled to payments and compensation payments for the period ending with the date of Ed Phillips's death.
EXPENSE REIMBURSEMENT. Burke TDA will reimburse Ed Phillips for "out-of-pocket" expenses incurred by Ed Phillips in accordance with Burke TDA's policies in effect from time to time.

RECOMMENDATIONS FOR IMPROVING OPERATIONS. Ed Phillips shall provide Burke TDA with all information, suggestions, and recommendations regarding Burke TDA's business, of which Ed Phillips has knowledge that will be of benefit to Burke TDA.

VACATION. Ed Phillips shall be entitled to three weeks (15-days) of paid vacation during each calendar year. Such vacation must be taken at a time mutually convenient to Burke TDA and Ed Phillips. Although Burke TDA encourages Ed Phillips to use the allotted vacation in the year it is earned, Ed Phillips shall be entitled to carry over unused vacation days from year to year.

SICK LEAVE. Ed Phillips shall be entitled to 10 day(s) paid time, due to illness or for personal business, for each year of employment, with the year to be measured using January 1 date as the point of beginning. Sick leave benefits may not be converted into cash compensation.
Sick leave may be accumulated from year to year up to a total of unlimited days.
If Ed Phillips is unable to work for more than 60 days because of sickness or total disability, and if Ed Phillips's unused sick leave is insufficient for such period, a maximum of all of Ed Phillips's unused vacation time shall be applied to such absence.

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

HOLIDAYS. Ed Phillips shall be entitled to 12 holidays with pay during each calendar year.

INSURANCE BENEFITS. Ed Phillips shall be entitled to insurance benefits, in accordance with Burke TDA's applicable insurance contract(s) and policies, and applicable state law. These benefits shall include:

A. Health Insurance

ADDITIONAL BENEFITS. Ed Phillips shall be entitled to the following benefits:

A. Cell Phone Allowance of $140 per month

B. Compensation Time for Weekends and Holidays worked as such benefits are provided in accordance with Burke TDA policies in effect at the time of this agreement. Due to the nature of this work, it is expected that Ed Phillips will work numerous weekend days and holidays during the year.

Ed Phillips shall be able to participate in Burke TDA's pension plan within the North Carolina State Employee Retirement Plan in accordance with the plan's terms and the requirements of law.

TERM/TERMINATION. Ed Phillips's employment under this Agreement shall be for an unspecified term on an "at will" basis. This Agreement may be terminated, for any reason whatsoever, by Burke TDA upon 90 Days written notice, and by Ed Phillips upon 90 Days written notice.

If Ed Phillips is in violation of this Agreement, Burke TDA may terminate employment with cause without notice and with compensation to Ed Phillips only to the date of such termination. As used in this Agreement, the term "Cause" shall include, without limitation: insubordination; dishonest; fraud; serious dereliction of duty; criminal activity; acts of moral turpitude; conviction of a felony, plea of guilty to a felony charge. The compensation paid under this Agreement shall be Ed Phillips's exclusive remedy.

If Ed Phillips's employment is terminated by Burke TDA without cause, Ed Phillips shall continue to receive Ed Phillips's base salary, bonus and benefits (phone allowance, health care and life insurance as applicable) for a period of 12 Months from the effective date of termination (the "Severance Period").

If Ed Phillips terminates this Agreement by providing appropriate notice, the Company, at its election, may require Ed Phillips to continue to perform Ed Phillips duties hereunder for the full notice period, or terminate Ed Phillips employment at any time during such notice period, provided that any such termination shall not be deemed to be a termination without cause of Ed Phillips employment by Burke County Tourism Development Authority. Unless otherwise provided by this Section, all compensation and benefits paid by Burke County Tourism Development Authority to Ed Phillips shall cease upon the last day of the 90-day termination period.

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

TERMINATION DUE TO DEATH. William Edwin Phillips, Jr.'s employment under this Agreement will terminate immediately upon William Edwin Phillips, Jr's death and Burke County Tourism Development Authority shall not have any further liability or obligations to William Edwin Phillips, Jr.'s estate, executors, heirs, assigns or any other person claiming under or through William Edwin Phillips, Jr's estate, except that William Edwin Phillips, Jr.'s estate shall receive any accrued but unpaid salary or bonuses and any life insurance benefits to be paid pursuant to William Edwin Phillips, Jr.'s beneficiary designation.

COMPLIANCE WITH EMPLOYER'S RULES. Ed Phillips agrees to comply with all of the rules and regulations of Burke TDA.

RETURN OF PROPERTY. Upon termination of this Agreement, Ed Phillips shall deliver to Burke TDA all property which is Burke TDA's property or related to Burke TDA's business (including keys, records, notes, data, memoranda, models, and equipment) that is in Ed Phillips's possession or under Ed Phillips's control. Such obligation shall be governed by any separate confidentiality or proprietary rights agreement signed by Ed Phillips.

NOTICES. All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or on the third day after being deposited in the United States mail, postage paid, addressed as follows:

Employer:

Burke County Tourism Development Authority
Acting Chairperson
Chairman of the Board
110 East Meeting Street
Morganton, North Carolina 28655

Executive:

William Edwin Phillips, Jr.
111 Terrace Place
Morganton, North Carolina 28655

Such addresses may be changed from time to time by either party by providing written notice in the manner set forth above.

Attachment: TDA File (2947 : BOC - Tourism Development Authority)

BINDING AGREEMENT. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns. In the event Burke County Tourism Development Authority is acquired, is a non-surviving party in a merger, or transfers substantially all of its assets, this Agreement shall not be terminated and the transferee or surviving company shall be bound by the provisions of this Agreement. The parties understand that the obligations of Ed Phillips are personal and may not be assigned by William Edwin Phillips, Jr.

ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

AMENDMENT. This Agreement may be modified or amended, if the amendment is made in writing and is signed by both parties.

SEVERABILITY. If any provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

APPLICABLE LAW. This Agreement shall be governed by the laws of the State of North Carolina.

EMPLOYER:

Burke County Tourism Development Authority

By: _____ Date: 8/2/17
Chairman of the Board

AGREED TO AND ACCEPTED.

EXECUTIVE: _____ Date: 8-02-2017

William Edwin Phillips, Jr.

Attachment: TDA File (2947 : BOC - Tourism Development Authority)