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City Council of Richland Center
Ashley Oliphant, City Administrator
Marty Richards, Tourism Director

RE: Legal Opinion on the City Tourism Operations

To the Above:

I have been asked to perform a legal examination of tourism operations within the city. My conclusions upon conducting that review are that tourism operations as they are currently structured are inconsistent with statute, but that changes are possible to bring those operations into alignment with the law – however, decisions will need to be made as to what the city wants to accomplish in its support of tourism activities. A summary of that analysis follows.

Terminology

Before going into the legal analysis, it should be explained that the terminology for this subject can become confusing, because each of the three main entities discussed herein incorporate the term “tourism.” To minimize confusion, I will be using the following:

- Department: The City Tourism Department, the primary (if not only) employee of which is Coordinator Marty Richards.
- Commission: A body created by a municipality or municipalities “...to coordinate tourism promotion and tourism development...” Wis. Stat. § 66.0615(1)(a).
- Entity: A nonprofit organization meeting one of several criteria which “...provides destination marketing staff and services for the tourism industry in a municipality...” Wis. Stat. § 66.0615(1)(f).
- Destination Marketing Organization: A nonprofit entity primarily focused on promoting tourism to a specific area, dedicating at least 51% of its revenue to tourism promotion and development. A city can create a structure that allows its tourism department to act as the de facto DMO.

Background

A full review of the history of tourism in the city was beyond the scope of research necessary to complete this analysis, but it is important to be aware of a few major events. First, at some point prior to 2013 the city adopted an ordinance imposing a room tax. While municipalities collect room taxes, the majority of those funds must be transferred to an Entity or Commission before they can be spent – and even then, only for certain purposes.

Then in 2016, the Council passed a resolution creating the “Richland County Tourism Commission” (emphasis added). This body was given the authority to spend room tax revenue subject to a pre-approved budget. Notably, this authority was explicitly written to last only until 2018 unless the Council voted to extend it. No evidence has been found thus far indicating such an extension has been granted, meaning this body may be defunct.

Finally, the decisions were made first to hire Coordinator Richards, and then to make his position full-time. Records from those times talk about the benefits of such a position, including the ability to contract with other municipalities to maximize the impact of their respective contributions. Additionally, like many things, this structure was never updated when the Council made the decision to begin using a city administrator, leaving the Department and its coordinator in somewhat of an administrative Limbo.

How Room Taxes and Tourism Work

The structure contemplated by Wis. Stat. § 66.0615 is that a given municipality, upon adopting a room tax, then shifts the majority (70%) of the income generated from that room tax to an independent or quasi-independent organization. That organization then expends those funds in ways which support tourism in the municipality. However, almost every aspect of that basic structure is adjustable, leading to a confusing array of options available to a municipality’s (or municipalities’) governing body.

As may be deduced by the use of plural above, one of the first decisions to be made in this process is whether the municipality is going to go it alone, or whether they will create a Zone. A Zone “...means an area made up of 2 or more municipalities that, those municipalities agree, is a single destination as perceived by the traveling public.” In other words, a Zone is when two or more municipalities work together to implement the basic structure above (or a variation thereof). For the purposes of this section, I will continue to refer to an individual municipality for the sake of readability.

Next is decided the recipient of the tax revenues. Per Wis. Stat. § 66.0615(1m)(a), “...any tax revenue that may not be retained by the municipality, shall be forwarded...to a tourism entity or a commission...” Entities and Commissions are defined earlier in this document, and the decision between the two will dictate how much control a municipality can exert over the revenue it needs to transfer. Entities provide services directly and so are more like a traditional contractual relationship. Commissions, on the other hand, should be considered more along the lines of the Park or Library Boards, where the members are appointed and confirmed by the Mayor and Council, but the actual body operates with a degree of independence. However, Commissions are obligated under statute (Wis. Stat. § 66.0615[1m][b]1) to contract for the services that Entities provide.

The advantage to the creation of a Commission over contracting directly with an Entity is that, despite an obligation to contract for services, Commissions are able to contract not just with Entities, but “...with another organization...if no tourism entity exists in that municipality.” *Id.* The League of Municipalities has issued an opinion that the inclusion of this provision allows for a Commission to contract with any organization so long as it is capable of providing the services

an Entity would. That is where the Department comes in – since there are no Entities in Richland Center, the Commission can contract with the City to provide those services. In this way, the City maximizes its control over tourism expenditures – not only does it control the percentage of room tax revenues it is allowed to keep, but it also has the same authority over the Department as it does over any other department of the City. If the Commission becomes dissatisfied with the Department's services it is free to seek them elsewhere, but the City has an obvious interest in avoiding the Commission doing so.

As for what services an Entity (or other organization, as will be explored later) provides, it can be anything that can reasonably be explained to be in support of tourism. This can include staffing, provision of materials, skilled or specialized labor, and all of the logistical underpinnings required by such endeavors. For example, the Department creates videos, maintains the website, and purchases or negotiates agreements with advertising companies and coordinates the content of those advertisements.

Richland Tourism

For the purposes of this section, we will assume that the authorization given to the Commission either was or has been renewed, or an identical authorization has been granted. However, with the current ordinance language the Commission exists, but has no authority to do anything, and correcting this should be an urgent priority regardless of how the Council chooses to do so. Additionally, we are going to assume that the resolution's reference to a county tourism commission was an error, because the City would have no authority to create a county-wide organization.

Richland Tourism consists of two parts: the Commission and the Department. Currently, the Department provides the services enumerated above (and others) for not only Richland Center, but numerous municipalities. Those municipalities presumably have formed tourism commissions of their own, which have then contracted with the Department. That contractual arrangement is appropriate, however it is unclear what, if any, approval was given to these contracts by the Council. I was not charged with drafting them, nor had I been directed to review them prior to the commissioning of this opinion. There is no record of these contracts having come before Council for discussion and/or approval available at this time. Since these contracts could potentially obligate the city, and because there is not currently the same oversight of the Department that there would be for other city departments, the city could find itself liable for failure to fulfill a contract that its elected representatives never approved.

The Commission currently operates similarly to the Utility Commission: it monitors the performance of the Department, ostensibly provides oversight of its department head, and sets the budget for the Department using the room tax revenues from Richland Center and the various contracted municipalities described above. However, this arrangement represents an overreach of the Commission's authority. Per statute and the aforementioned contracts, the Commission should have no more say over the operations of the Department than any of the other municipalities with which the Department is contracted, and certainly should not be dictating to those municipalities how the money they contribute should be spent. Certainly, all of the commissions could work collectively to set expectations for the Department (or create a Zone),

which would determine whether or not they elect to continue contracting with it, but even then they would not be able to direct the Department in the way that say, the Utility Commission directs the City Utilities.

Summary

That is the issue for the Council's consideration: what should be the focus of the Department? Assuming the contractual issues are resolved, the Department will remain the "other organization" contracted with by municipalities to perform the duties of an Entity. This allows for a pooling of resources for what has been identified as the "Greater Richland Area," which presumably increases purchasing power, but it does mean we have a city department which spends significant time on efforts that do not directly affect the city (the indirect benefits of increased tourism are both debatable and the purpose of the current arrangement). If the Council wishes to maintain the priorities of the current arrangement, discussions should be had with the other participating municipalities whether the creation of a Zone would be a better way of pooling resources. If the Council wishes to redirect the Department's efforts towards projects that create exclusive, or at least greater, benefits for the city, revision of the existing contracts may become necessary. Regardless, clarity is necessary on how the Department should comport itself vis-à-vis oversight from the Administrator, and/or whether the Department should be folded into, for example, Economic Development.

An alternative would be a more substantive discussion on whether or not a dedicated department is the best way the city can utilize its resources in the service of supporting tourism services. I am not aware of, but will also say it has not been explored, as to whether one or more of the other organizations in the area may qualify as an entity qualified to receive the room tax revenue. For example, a local chamber of commerce or other community organization may be better situated to perform these services without the burdens borne by a government agency. Regardless of the direction the Council chooses to move in, the city will benefit from all options having been explored.