APPROPRIATE ALLOCATION OF COUNTY TRANSIENT ROOM TAX REVENUE TO

JULIAN CARROLL CONVENTION CENTER DEBT

March 26, 2023

Section 1. Must the County Use Its Tax Revenue to Pay City Debt?

A question has arisen as to how the McCracken Fiscal Court's transient room tax, pursuant to KRS 91A.392 is to be disbursed on the Carroll Convention Center roof repair project. Specifically, must the proceeds be a "first in" payment of debt payment jointly owed by the City and County for convention center costs, or may the County apply the tax revenue to only It's portion of the debt owed and not to the City's portion? In other words, can the County apply the revenue from the tax It implemented and collects for servicing Its own debt, or must it share the tax revenue with the City?

KRS 91A.392 created a means by which counties can, if they choose to do so, enact a TRT of 2% in addition to the 4% TRT already authorized. Only qualifying counties and consolidated governments can impose this TRT. No city that is not a part of a consolidated government is permitted to impose this TRT. McCracken County chose to implement the TRT 2% for convention center debt.

All money collected "…shall be applied toward the retirement of bonds issued pursuant to KRS 91A.390(8) to finance in part the expansion or construction or operation…" of a convention center or fine arts center…"

Generally speaking, cities and counties are authorized through legislation to enact taxes to support government operations. Paducah enacts taxes to support itself and McCracken County enacts taxes to supports itself. Whatever the intended purpose of a tax, it is both designed and limited to directly supporting the operation of the taxing entity. Paducah and McCracken County, like all other government entities, do not implement a tax for the direct benefit of the other. While a Paducah tax may indirectly benefit McCracken County, and vice versa, that benefit is indirect, or collateral to, the goal of benefitting the taxing entity.

The Kentucky legislature enacted this 2% TRT solely for implementation by counties (consolidated or unconsolidated). No city may implement the tax. Why did the legislature exclude cities in this effort to fund a convention center? Perhaps because Kentucky counties predominately do not have the revenue stream of their respective cities. Perhaps it is to offset the fact that counties alone, and not cities, statutorily bear the burden and cost of providing jails and associated expenses of food and medical care, of which a large portion is city residents. Regardless, there is neither any express language, nor implication, that the county's TRT must be shared with a city and cannot be, consistent with generally accepted theory, used for direct county benefit. The requirement is that it be paid by a COUNTY toward convention center debt; not that it be expanded to pay for a city's debt. Were it intended otherwise, the legislature would have made that clear.

Perhaps there is an additional reason. This TRT allocated only to counties and only for financing convention centers and fine arts centers has one other requirement. The Center must be "…located in the central business district of the consolidated local government or the authorized city located in the county. KRS 91A.392(3)(a).

So a County can enact a tax on room occupants to finance a convention center but only if the center is located in the central business district of the city. But the city cannot enact such tax. Why? We can speculate, but an apparent reason is that the State desires to see counties support tourism within the cities. Counties create the tax, collect it, then pay it as a contribution toward the convention center debt. Had the legislature intended that counties share the revenue with cities, it could easily have said so. Were that the intent It would have not restricted the TRT for only the benefit of counties.

The financing of the Julian Carroll Convention Center was first established through an "Interlocal Cooperation Compact" that set forth the initial rights and duties of all parties in June of 2001. The City of Paducah, McCracken County, the Paducah-McCracken County Convention and Visitors Commission, and the McCracken County Convention Corporation all agreed upon the terms. This was over twenty years prior to state legislative action creating the "county only" TRT to be allocated to convention center financing.

Beginning with this ICC over two decades ago, and to today, the City and County have contractually agreed to share equally in meeting JCCC needs. For example, if the City/County obligation (apart from CVB and CCC obligations) under the ICC totaled $2 million, then per the ICC the County owes $1 million and the City owes $1 million.

The Carroll Convention Center roof will require some $2M in repair. McCracken County stands ready to pay Its one-half of the obligation. Most, if not all, of the County's half will be covered by the "county only" 2% TRT. Paducah City's position is that It will not pay Its one-half. Instead, City demands that the County's 2%TRT be applied as "first-in" payment, so that the City's obligation to pay one half of the total debt is reduced to paying only one half of the <u>remaining</u> debt, as reduced by the County's 2% TRT payment.

The City intends to violate the ICC requirement that it pay half of the City/County debt. City insists that the County first apply the County's TRT revenue to the joint City/County obligation. Only then will the City pay toward the repair, and only pay on whatever balance is left.

It is estimated that the "county only TRT will be sufficient, or nearly sufficient, to pay the entire $2M roof repair debt over time. If so, then, contrary to the ICC agreement, the County will pay the entire $2M debt, both the City and County obligations as dictated per the ICC, and the City will pay $0. This for a convention center located in the central business district of the City of Paducah.

This practice is obviously contrary to the ICC terms requiring equal payments from the City and County. The City argues that this is appropriate, despite being a blatant violation of the ICC, because the 2% "county only" tax revenue should be shared for the benefit of the City. There is no basis to believe nor assume that this revenue is either intended, nor should be, contributed to the City to reduce its own contractual obligation. It is the City saying in effect: "We will pay only if the County's payment does not cover the debt, and then only half of the balance."

There is no language in the ICC, nor in the statute creating the "county only" 2% TRT requiring a county to apply its "county only" TRT for the equal benefit of a city. Neither is there anything to imply that it should be so applied.

One point is glaringly apparent. The legislature, in creating the additional 2% "county only" TRT intended to maximize a county's ability to support a convention center within a county. Glaringly apparent because ONLY a county can enact the tax and the revenue can ONLY be used to retire the debt of a convention center. This maximizing the support of a convention center is clearly diminished when the TRT is applied to reduce the amount of revenue available to a convention center. The current issue is a perfect example. If the 2% TRT is "first-in" and reduces the City's contribution (a contribution it contractually agreed to) the potential revenue to the convention center is lessened by that action.

Not only does this "first-in" payment lessen revenue to the convention center; it detracts from and diminishes the legislative effect of strengthening counties contributions to convention centers. The county uses its tax revenue to lessen the City's financial obligation, resulting in weakening both the convention center and the county. By sharing the 2% TRT with the City, the County is required to spend additional monies to cover the balance owed.

Finally, exhausting the "county only" TRT by paying what should be the City's debt, prohibits the County from contributing to other worthy needs. The County can use this TRT money for additional needs at the JCCC or Carson Center. It can also be used for a facility that the County may designate as a "fine arts center". The Columbia Theatre and Market House Theatre are possibles.

The county's 2% TRT, permitted only for county enactment, to strengthen and maximize a county's ability to benefit a convention center in the county, consistent with general tax theory, should be used for direct county benefit. Accordingly, the "county only" 2% TRT should be applied to ONLY the County share of JCCC debt. By doing so, the county meets Its contractual obligations, the TRT is maximized, and the County TRT can be spread to other grand projects. All within the City of Paducah.

The below is a summary of relevant ordinances that further support this conclusion.

Section 2. Relevant Ordinance History

The TRT was first enacted by McCracken Ordinance #2000-16. A TRT was established as follows:

1. Not to exceed 3% for use by the Paducah-McCracken Convention and Visitors Bureau "…for the purpose of promoting and developing convention and tourist activities and facilities in Paducah and McCracken County [Section 2(A)]
2. An addition not to exceed 2% tax which is divided equally (1% each) for "…the reduction of debt and the financing of the expansion of the Julian Carrol Convention Center and 1% "to finance part of the Four Rivers fine arts performing center, not to exceed $3M.

3. An additional not to exceed 1% tax "…for use by the Paducah-McCracken Convention Center Corporation for the sole purpose of operating expenses of the Julian Carrol convention center."

Ordinance #2000-16 was repealed in total on August 19, 2019 by Ordinance 2019-09 in order to be consistent with amendments made to KRS 91A pertaining to TRT.

The relevant changes brought in the repeal of Ord 2000-16 by enacting Ordinance 2019-09 were that it (1) omitted the equal division of the 2% tax to be split by the Convention Center and the Four Rivers Center; (2) omitted the "not to exceed $3M"; and (3) specified it was to "…finance in part the expansion or construction or operation of a governmental or nonprofit convention center or fine arts center…"

Ordinance 2022-09 amended Ord. 2019-09 on January 1, 2023. The amendment expanded the target businesses from which the 6% TRT could be collected, consistent with the State legislature's expansion.

The ordinance also specifies:

A **3% TRT** is levied:

[1] "…for use by the McCracken Sports Tourism Commission for the purpose of **promoting and developing** convention and tourist activities and facilities in McCracken County

[2] "Pursuant to KRS 91A.390(3), a portion of the money collected from the imposition of this tax as determined by the McCracken County Fiscal Court, upon advice and consent of the Sports Tourism Commission, may be used to finance the cost of **acquisition, construction, operation, and maintenance** of facilities useful in the attraction and promotion of tourists and convention business."

[3] "Pursuant to KRS 91A.390(3) and KRS 91A.350, the balance of the money collected from the imposition of this tax shall be used for the purposes of **developing** convention and tourist activities and facilities." [Section 2A] [Emphases added]

A **2% TRT** is levied "…and shall be applied to the retirement of bonds issued pursuant to KRS 91A.390(a) to finance in part the **expansion or construction or operation** of a governmental or non-profit convention center or fine arts center…" [Emphasis added]

A **1% TRT** is levied "…for the purposes of meeting and paying the **operating expenses** of a convention center designated by the McCracken Fiscal Court." [Emphasis added]

Section 5 requires the McCracken County Treasurer to make monthly disbursement consistent with the above:

3% McCracken STC

2% Convention Center and Fine Arts Center Escrow Account

1% Convention Center designated by the Fiscal Court.

Section 3. Conclusion

In conclusion this is a statutory scheme to permit counties only to implement a tax for the benefit of a convention center within the central business district of a city. The County elected to enact the tax, collect it, and disburse it as permitted. There is no requirement nor implication that the tax be applied to lessen the City's obligation. It should apply to the County's obligation as the taxing authority, consistent with general tax theory. If the City will only adhere to Its ICC contractual obligations to pay half the JCCC debt, the County will have $1 million to put toward another City facility, such as the Market House or Columbia theaters.

Craig Clymer

McCracken Judge Executive