

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF CURRITUCK

19-CVS-171

GERALD COSTANZO, COROLLA CIVIC )  
ASSOCIATION, ET AL. )

Plaintiffs, )

v. )

CURRITUCK COUNTY, NORTH )  
CAROLINA; THE CURRITUCK COUNTY )  
TOURISM DEVELOPMENT AUTHORITY; )  
DANIEL F. SCANLON II, Former CURRITUCK )  
COUNTY MANAGER and BUDGET OFFICER, )  
in his official capacity , ET AL. )

Defendants. )

**AFFIDAVIT OF KARA G. WEISHAAR**

I, Kara G. Weishaar, being first duly sworn, depose and say as follows:

1. I am over the age of 18, have personal knowledge of all matters in this affidavit, and am legally competent to testify.

2. I am the Executive Director of the North Carolina Travel and Tourism Coalition (the "Coalition").

3. The Coalition has approved the submission of this affidavit to provide guidance to the Court regarding the state occupancy tax issues at issue in this litigation.

**The North Carolina Travel and Tourism Coalition**

4. The Coalition, founded in 1991, works to maintain a healthy environment in North Carolina for the continued growth and development of the travel and tourism industry, which is important to the economy of all of our state's 100 counties. North Carolina is the sixth most-visited state in America, with 48 million visitors in 2019.

5. The Coalition is a private, nonprofit trade association of professional sports teams, leading resorts, popular attractions, governmental organizations, convention and visitors bureaus, and other business organizations throughout North Carolina, all working together to promote public policies that encourage the growth and development of our state's vital travel, tourism, and hospitality industry.

6. The Coalition through its members and paid advocates has been actively involved since 1991 in advocating for legislation that invests occupancy tax proceeds in the beneficial use of growing the tourism economy in North Carolina. The occupancy tax is the only tax specifically targeting an industry, in which the industry is not opposed to the additional tax, provided that the proceeds of the tax are reinvested in tourism promotion or for tourism related expenditures.

7. The Coalition supports an established statement of public policy known as the "Occupancy Tax Guidelines" which set out a model for the effective use of occupancy tax proceeds. The Occupancy Tax Guidelines are a published policy statement and are widely recognized in addressing legislation authorizing local occupancy taxes. Many of the principles contained in the statement are similar to those that were established by the House Finance Committee in 1993, which are designed to make such legislation uniform across the state.

8. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S.160A-215. These provisions, which adopted many of the Guideline tenets, provide uniformity in areas of levy, administration, collection, repeal, and penalties. Subsequently, the House Finance Committee established the Occupancy Tax Subcommittee, which regularly reviews occupancy tax legislation against these tenets and looks for the inclusion of certain uniform provisions within individual occupancy tax legislation. The Coalition has worked closely with the Finance Committee and its

Occupancy Tax Subcommittee and all members of the General Assembly, representing the views of the tourism industry on legislative matters involving occupancy tax issues. The Occupancy Tax Guidelines have provided a formative foundation of review for all occupancy tax legislation coming before the General Assembly. As a result, all occupancy tax legislation is very carefully scrutinized and crafted with a deliberate intent in mind.

**The Coalition's Support of the Plaintiffs' Motion**

9. The Coalition has reviewed the Complaint in this action and the Plaintiffs' Brief in support of their Motion for Summary Judgment. The Coalition supports that Motion, and believes that evidence available to the Coalition indicates that Currituck County (the "County") and its Board of Commissioners (the "BOC") have exceeded their authority under the County's occupancy tax statute (the "Currituck Statute" or the "Statute") by using occupancy tax proceeds to fund police and emergency services (*i.e.* general governmental services). It is the view of the Coalition, based on its extensive experience in legislative matters involving occupancy tax use, that the County's use of proceeds to fund general governmental services violates the Statute's legislative intent as well as its language itself.

10. These conclusions of the Coalition are based on the following facts and opinions of the Coalition: (A) the Currituck Statute was amended in 2004 to explicitly change the purposes for which occupancy tax proceeds may be used and expressly excludes such use for police and emergency services by eliminating those purposes from the Currituck Statute; and (B) the current Statute cannot be reasonably construed to allow the use of the tax proceeds to pay for general governmental services.

**(A) The Currituck Statute was amended in 2004 to explicitly change the purposes for which occupancy tax proceeds may be used and to expressly prohibit such use for police and emergency services.**

11. Prior to the Statute's 2004 amendment, its predecessor version required that at least 75% of the net proceeds of the occupancy tax be used "only for *tourist* related purposes, including construction and maintenance of public facilities and buildings, garbage, refuse, and solid waste collection and disposal, *police protection and emergency services.*" N.C. Sess. Law 1987-209, § 1(e) (emphasis added). The remainder was to be deposited in the County's General Fund and could be used "for any lawful purpose." *Ibid.*

12. The County's prior statutory language was typical of the early occupancy tax statutes, which allowed most local governments to use the proceeds to supplement general fund revenues. In the 1990's the North Carolina General Assembly changed its policy on occupancy taxes. The Coalition presented credible data to the General Assembly indicating that the imposition of the occupancy tax in addition to the existing sales tax that was already imposed on lodging services increased lodging costs to the extent that the taxes actually hurt the local tourism industry, unless the proceeds were invested to make the area more attractive to tourists and business travelers. This resulted in the adoption of principles requiring the use of occupancy proceeds in the promotion of tourism or tourism related expenditures ("TRE"). It should be noted that the County collects and keeps their share of the sales tax imposed on lodging and other tourism related sales and the General Assembly allows the County to deposit those funds in its general fund and to use them to provide the services that the County is obligated to provide. The Coalition has no objection to this use of sales tax.

13. In 2004, Currituck elected to increase its tax to 6% and the amended Statute was titled "TO . . . CHANGE THE PURPOSES FOR WHICH THE TAX MAY BE USED." The

permitted purposes of the former statute were (in the language of the amendment) “rewritten” to include only tourism related expenses (TRE) and promotional expenses.

14. The General Assembly defines TRE (in Currituck’s Statute) as:

“Expenditures that, in the judgment of the Currituck County Board of Commissioners, are **designed to increase the use** of lodging facilities, meeting facilities, recreational facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures and beach nourishment.” *(emphasis added)*

The amendment also deleted from the prior Statute the authority to deposit the tax proceeds into the County’s General Fund.

15. As a result, it is the view of the Coalition that the General Assembly’s intent was that the new standards for use of proceeds effectively prohibited their use for the general governmental purposes, including “police protection and emergency services” that had been permitted uses under the prior law.

16. Notwithstanding the 2004 Amendment of the Statute, it appears from the allegations in the Complaint (and the County’s audited financial data that it cites) that Currituck has continued to use occupancy tax proceeds to pay for the services and equipment for police, emergency medical and fire protection, regardless if the use was for tourists or for local residents. The Coalition is not aware of any other local government that has used occupancy tax proceeds in this manner under the language of the legislation that was enacted after Coalition guidelines have been used as guidance for uniform occupancy tax legislation.

17. One feature of the Currituck’s Statute that is distinctive is that it is the only law in the State that authorizes its Tourism Development Authority (the “TDA”) to consist solely of the County’s Commissioners. The guidelines require that TDA’s include tourism industry representatives who have a vote in determining legitimate “TRE,” but Currituck’s Statute does

not. For whatever reason the General Assembly put in this structural distinction in the Currituck TDA, it does not change the fact that the General Assembly clearly and with all information and policy choices before it chose to limit the use of the County's use of TRE and to require that the uses "**be designed to increase the use**" of lodging and other tourist facilities.

**(B) The current Currituck Statute cannot be reasonably construed to allow the use of the tax proceeds to pay for general municipal services.**

18. Based upon depositions of Currituck BOC members that are summarized in Plaintiffs' Brief, the County has apparently justified the use of occupancy tax proceeds for police, EMS and fire protection as an exercise of the "BOC's "judgment" under the "TRE" definition. The Commissioners testified that the "safety and security" provided by that protection were deemed to have "attracted tourists" to increase the use of County lodging and recreational facilities.

19. The Coalition disagrees with this interpretation of the TRE definition, because it ignores what we view as the clear intent of the General Assembly when it adopted the 2004 amendment of Currituck's Statute. The 2004 amendment shifted the focus of the uses of proceeds away from general governmental services that would address both tourists and residents themselves and directed the use of proceeds that fostered the tourism industry by requiring the use of occupancy tax proceeds **for** purposes "**designed to increase the use**" of County lodging and recreational facilities.

Further affiant sayeth not.

Dated: 8 31, 2021

By: Kara G. Weishaar  
Kara G. Weishaar

Executive Director  
North Carolina Travel &  
Tourism Coalition

County of Wake  
State of North Carolina

Sworn to and subscribed before me this day Kara G. Weishaar I have personal knowledge of the identity of the principal or I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a \_\_\_\_\_.

This the ~~31<sup>st</sup>~~ August, 2021 day of ~~June~~, 2016

August, 2021

Debra Cox  
Notary Public

Notary's Printed or Typed Name

My Commission Expires: 12/4/2024

(SEAL)

DEBORAH COX  
NOTARY PUBLIC  
WAKE COUNTY, N.C.