



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

November 14, 2008

Todd Davidson, Chief Executive Officer
Oregon Tourism Commission
670 Hawthorne Avenue SE, Suite 240
Salem, OR 97301

Re: Opinion Request OP-2008-3

Dear Mr. Davidson:

In 2003, the legislature enacted ORS 320.300 to 320.990, which govern the collection and use of state and local transient lodging taxes. Or Laws 2003, ch 818. Transient lodging taxes are taxes “imposed on any consideration rendered for the sale, service or furnishing of transient lodging.” ORS 320.305(1). ORS 320.350 restricts how local governments may spend revenue from lodging taxes imposed or increased on or after July 2, 2003. Specifically, ORS 320.350(5) and (6) require local governments to use at least 70 percent of the net revenue generated from any new or increased lodging taxes for specified tourism-related purposes (for simplicity this opinion will refer to the net revenue generated from new and increased taxes as “new lodging tax revenue.”) One of those tourism-related purposes is funding “tourism-related facilities.” ORS 320.350(5)(a). You ask whether certain local expenditures qualify as funding “tourism-related facilities.” Your question, a short answer, and a supporting discussion follow.

QUESTION PRESENTED

Can local infrastructure, such as county roads or city sewers, qualify as “tourism-related facilities” under ORS 320.350(5)(a) such that local governments may fund them, without restriction, with new lodging tax revenue? If so, under what circumstances?

SHORT ANSWER

Based on the text, context, and legislative history of ORS 320.300(9) and ORS 320.350(5) and (6), the legislature most likely intended local roads, sewers, sewer plants, and transportation facilities to qualify as “tourism-related facilities” only if they draw tourists themselves, directly serve a specific tourist attraction (such as an access road), or are part of the infrastructure of a specific tourist attraction (such as a restroom and the on-site sewer line.) The legislature most likely did not intend “tourism-related facilities” to encompass roads and other infrastructure simply because they are used, even heavily, by tourists as well as locals.

DISCUSSION

1. Method for Interpreting Statutes

To answer your question, we must interpret the relevant statutes with the goal of determining the legislature's intent. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993); ORS 174.020. We begin by examining the statute's text and considering statutory and judicially created rules of construction that bear directly on how to read the text, such as to give words of common usage their "plain, natural and ordinary meaning." *Id.* at 611; ORS 174.010. We do not examine the text in isolation but in context, including other provisions of the same statute. *Id.* at 610; *SAIF Corporation v. Walker*, 330 Or 102, 108, 996 P2d 979 (2000). If the text and context suggest only one possible meaning, our inquiry ends there. *PGE*, 317 Or at 610-11. If more than one meaning is possible, we examine legislative history to determine which meaning the legislature intended. *Id.* at 611-12.

2. ORS 320.350

a. Text of the Provision

ORS 320.350 provides, in relevant part, that:

(1) A unit of local government that did not impose a local transient lodging tax on July 1, 2003, may not impose a local transient lodging tax on or after July 2, 2003, unless the imposition of the local transient lodging tax was approved on or before July 1, 2003.

(2) A unit of local government that imposed a local transient lodging tax on July 1, 2003, may not increase the rate of the local transient lodging tax on or after July 2, 2003, to a rate that is greater than the rate in effect on July 1, 2003, unless the increase was approved on or before July 1, 2003.

* * *

(5) Subsections (1) and (2) of this section do not apply to a new or increased local transient lodging tax if all of the net revenue from the new or increased tax, following reductions attributed to collection reimbursement charges, is used consistently with subsection (6) of this section to:

(a) Fund tourism promotion or tourism-related facilities;

(b) Fund city or county services; or

(c) Finance or refinance the debt of tourism-related facilities and pay reasonable administrative costs incurred in financing or refinancing that debt * * *.

* * *

(6) At least 70 percent of net revenue from a new or increased local transient lodging tax shall be used for the purposes described in subsection (5)(a) or (c) of this section. No more than 30 percent of net revenue from a new or increased local transient lodging tax may be used for the purpose described in subsection (5)(b) of this section.

Accordingly, local governments must spend at least 70 percent of new lodging tax revenue on the identified tourism-related purposes, including funding tourism-related facilities, and no more than 30 percent to fund “city or county services.” You ask whether local infrastructure, such as county roads or city sewers, can qualify as “tourism-related facilities” under ORS 350.320(5)(a) and be funded without limitation by new lodging tax revenue or whether those facilities are more properly categorized as county and city services subject to the 30 percent funding limitation.

b. City or County Services

We first discuss the meaning of “city or county services.” “Services” is the plural of “service,” which, used as a noun, has a variety of meanings. Potentially relevant meanings include “the duties, work, or business performed or discharged by a government official,” “action or use that furthers some end or purpose: conduct or performance that assists or benefits someone or something: deeds useful or instrumental toward some object,” “useful labor that does not produce a tangible commodity – usually used in plural <railroads, telephone companies, and physicians perform *services* although they produce no goods>” and “the provision, organization, or apparatus for conducting a public utility or meeting a general demand.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (WEBSTER’S) at 2075 (unabridged 2002).

It is not apparent from the text and context which of those meanings the legislature intended. For instance, it may be that the legislature intended city or county services to mean the provision of labor (police, fire, etc.), but not facilities funding or it may have meant the term to encompass all services provided. In such a circumstance, we consult legislative history to discern the legislature’s intended meaning.

ORS 320.350(5)(b) was enacted in 2003 as part of HB 2267. Or Laws 2003, ch 818, § 10. Originally, HB 2267 required all new local lodging tax revenue to be spent on tourism. HB 2267, § 11 (Introduced) (2003). Before 2003, local governments had not been restricted in their use of local lodging tax revenue and they opposed the new restriction. *See former* ORS 305.824 (governing local lodging taxes before 2003). Lodging and tourism groups and local government associations eventually compromised and the bill was amended to allow local governments to use up to 30 percent of new local lodging tax revenue for city and county services. The legislative history demonstrates that the legislature intended to allow local governments to use that 30 percent for *any* expenditure they chose:

LARRY CAMPBELL: Recognize that, in this Bill, 30 percent of increased local taxes can be used any way the community wants to. They are not limited to public service or anything else.

Testimony of Larry Campbell, Oregon Lodging Association (HB 2267), July 23, 2003, tape 223, side B at 117.

REPRESENTATIVE VERGER: This bill perhaps strikes [a] balance of being able to protect 70 percent of that money at the same time [allowing] cities * * * to do whatever they want to do with the 30 percent.

Testimony of Representative Verger, House Revenue Committee (HB 2267), August 12, 2003, tape 241, side A at 73.

REPRESENTATIVE SCOTT: [HB 2267] require[s] 70 percent of the new local tax revenue to be used for tourism purposes [and] up to 30 percent to be used for the needs of the local jurisdiction at their choice.

Testimony of Representative Scott, House Floor Debate (HB 2267), August 19, 2003, tape 176, side A at 065.

SENATOR METZGER: [HB 2267] creates a formula requiring 70 percent of new local room tax revenue to be used for tourism purposes and up to 30 percent to be used for the needs of the local jurisdiction as they see fit.

Testimony of Senator Metzger, Senate Floor Debate (HB 2267), August 22, 2003, Tape 281, side B at 311.

That history demonstrates that the legislature intended ORS 320.350(6) to allow local governments to use up to 30 percent of new lodging tax revenue in any way they saw fit, but to require that they spend at least 70 percent on tourism. Therefore, local governments may use up to 30 percent of new lodging tax revenue to fund local infrastructure, including roads and sewers. If the road or sewer does not qualify as a “tourism-related facility” the local government can spend no more. But, if a road or sewer qualifies as a “tourism-related facility”, the 30 percent limitation is inapplicable and the local government may expend up to 100 percent of new lodging tax revenue to fund the facility. We next consider whether city or county infrastructure such as roads and sewers can qualify as “tourism-related facilities.”

c. Definition of Tourism-Related Facility

ORS 320.300(9) provides that “tourism-related facility”:

(a) Means a conference center, convention center or visitor information center;
and

(b) Means other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.

“Conference center,” “convention center” and “visitor information center” are defined by ORS 320.300(2), (3) and (13), respectively. Facilities that fit within those categorical statutory definitions are “tourist-related facilit[ies]” for purposes of ORS 320.350(5)(a). But those definitions are very restrictive and apply to very few facilities in Oregon. For example, among other requirements, a convention center must have a room-block relationship with the local lodging industry and generate a majority of its business income from tourists. ORS 320.300(3). A conference center must meet the current membership criteria of the International Association of Conference Centers. ORS 320.300(2).

Other tourism-related facilities also can qualify as “tourism-related facilities” if they meet certain criteria set out in ORS 320.300(9)(b). Specifically, the facility must be: “other improved real property”, “ha[ving] a useful life of 10 or more years”; and “a substantial purpose of supporting tourism or accommodating tourist activities.” We examine each of those criteria in turn.

(1) Other Improved Real Property

The first criterion is that the facility be “other improved real property.” “Other” obviously means “other than” conference centers, convention centers and visitor information centers that fit within the categorical statutory definitions.

Turning to “improved real property,” there is no common definition of that phrase. Parsing the words, the relevant definition of “improve” is “to increase the value of (land or property) by bringing under cultivation, reclaiming for agriculture or stock raising, erecting buildings or other structures, laying out streets, or installing utilities (as sewers).” WEBSTER’S at 1138. “Real” in this context means “[1] **c**: of or relating to things (as lands, tenements) that are fixed, permanent, or immovable; *specifically*: of or relating to real estate <real property>.” *Id.* at 1890. The fitting definition of “property” is: “2 **a**: something that is or may be owned or possessed: WEALTH, GOODS *specifically*: a piece of real estate[.]” *Id.* at 1818. Putting those definitions together, “improved real property” means real estate or land enhanced in value by a building or other structure, cultivation, reclamation for agriculture or ranching, or by streets and utilities, such as sewers. Therefore, land enhanced by streets or sewers or other utilities is “improved real property.”

We note “improved real property” connotes a thing – improved land – rather than a project. If the improved real property qualifies as a “tourism-related facility” the local government may “fund” it without limitation pursuant to ORS 320.350(5)(a) and (6). “Fund,” which is used as a verb in the statute, means “to furnish money for.” THE AMERICAN HERITAGE DICTIONARY at 342 (3d ed 1994) (we consulted a commonly-used dictionary other than WEBSTER’S, because it provides no definition that is applicable in this context). Applying that definition, to “fund” a tourism-related facility is to furnish money for a tourism-related facility.

Thus if the improved real property qualifies as a tourism-related facility, the local government may use funds in any way it sees fit on the facility, including to expand or maintain it.

(2) Useful Life of 10 or More Years

Roads and sewers and other city or county infrastructure, in the normal instance, have a useful life of 10 or more years, but that would be a factual matter to be determined on a facility by facility basis.

(3) Substantial Purpose of Supporting Tourism or Accommodating Tourist Activities

The last criterion – that the property has “a substantial purpose of supporting tourism or accommodating tourist activities” – is the linchpin of the definition, being the one that makes the property “tourism-related.” Each of the terms in this criterion requires careful consideration, beginning with “substantial purpose.”

The pertinent definition of “purpose” is “something that one sets before himself as an object to be attained: an end or aim to be kept in view in any plan, measure, exertion, or operation: DESIGN.” WEBSTER’S at 1847. Therefore a “substantial purpose” means a substantial objective to be attained by the facility.

“Substantial” is used in the statute as an adjective to describe “purpose.” The adjective “substantial” has a range of meanings, three of which are pertinent. The first is “consisting of, relating to, sharing the nature of, or constituting *substance*: * * * MATERIAL.” *Id.* at 2280. “Substance” means “essential nature: ESSENCE * * * a fundamental part, quality or aspect: essential quality or import: the characteristic and essential part.” *Id.* at 2279. The second relevant definition of “substantial” is “being of moment: IMPORTANT, ESSENTIAL.” *Id.* at 2280. “Important,” in turn, means “marked by or possessing weight or consequence.” *Id.* at 1135. The third relevant definition of substantial is “being that specified to a large degree or in the main” as in “a *substantial* victory or a *substantial* lie.” *Id.* at 2280. The relevant definition of “large” is “of considerable magnitude: BIG.” *Id.* at 1272. And “main” means “outstanding, conspicuous or first in any respect: GREAT, PREEMINENT: principal.” *Id.* at 1362.

In short, “substantial purpose” may mean: (1) a fundamental, characteristic or essential part of the purpose; (2) a weighty, consequential purpose; (3) a purpose of considerable magnitude; or even, (4) the first purpose. A slight, unimportant or inconsequential purpose would not be “substantial” under any of those definitions; the purpose must be important and consequential. Under the last definition, the purpose must even be the “main” – meaning first or preeminent – purpose.

Context suggests that the legislature may not have meant “substantial” in the sense of the main or first purpose. ORS 320.300(13), a related statute defining “visitor information center,” states that it is “a building, or a portion of a building, *the main purpose of which* is to distribute or disseminate information to tourists.” (Emphasis added). We generally presume that when the legislature uses different language in related provisions it intends different meanings. *PGE*, 317

Or at 611 (use of term in one section and not in another section of the same statute indicates a purposeful omission); *State v. Guzek*, 322 Or 245, 265, 906 P2d 272 (1995) (when the legislature uses different terms in related statutes, we presume that the legislature intended different meanings.) Applying the presumption, the legislature's use of "the main purpose" in ORS 320.300(13) and "a substantial purpose" in ORS 320.300(9)(b) presumptively demonstrates that the legislature did not intend "a substantial purpose" to mean "the main purpose" as in the first or principal purpose.

Accordingly, "a substantial purpose" likely means an important, weighty, consequential purpose, but not necessarily the first or chief purpose. "Important, weighty and consequential" have both qualitative and quantitative aspects. Even in the latter sense, those terms do not lend themselves to precise quantification. Thus, it is not obvious how to determine whether a "purpose" is "important, weighty, or consequential." For that reason, it is appropriate to consult legislative history for clarification. But first we consider the meanings of "supporting tourism" and "accommodating tourist activities."

Beginning with "supporting tourism," "supporting" means "to uphold by aid[ing] * * * [or] actively promot[ing] the interests or cause of [.]" WEBSTER'S at 2297. "Tourism" means "economic activity resulting from tourists." ORS 320.300(6). Therefore, "supporting tourism" means aiding or actively promoting economic activity resulting from tourists.

Facilities might aid or actively promote tourist spending in the community in a number of ways. First, facilities like convention centers, conference centers, and performing arts centers could hold conventions, conferences and other events that draw tourists – and their tourist dollars – into the community. Second, tourists could be drawn into the community by the nature of the facility itself, such as an improved recreational area or a museum. Third, a facility like a visitor's center could disseminate information to tourists that would induce them to spend their money at various places in the community. All of those facilities likely aid or actively promote tourist spending in the community.

Roads and sewers are not like those facilities; they do not "draw" in tourists or induce them to spend their money in the community. On the other hand, most roads and sewers may *indirectly* aid or promote tourist spending by providing adequate infrastructure to tourists who are drawn to the community for other reasons. The text and context do not clarify how attenuated the legislature intended the "aid" or "support" of tourist spending to be and, later in this opinion, we will look to legislative history for clarification, but first we examine the meaning of "accommodating tourist activity."

The relevant definition of "accommodate" is to "furnish with something desired, needed, or suited." WEBSTER'S at 12. "Tourist" is defined by ORS 320.300(10) to mean:

a person who, for business, pleasure, recreation or participation in events related to the arts, heritage or culture, travels from the community in which that person is a resident to a different community that is separate, distinct from and unrelated to the person's community of residence, and that trip:

(a) Requires the person to travel more than 50 miles from the community of residence; or

(b) Includes an overnight stay.

“Activity” means “an occupation, pursuit, or recreation in which a person is active – often used in plural <business *activities*> <social *activities*>.” WEBSTER’S at 22. Putting the definitions of “tourist” and “activities” together, “tourist activities” are business activities, pleasure and recreation activities, and attending arts, heritage and cultural events when done by people who travel more than 50 miles from their community of residence or stay overnight in a community that is distinct from their community of residence to do so. We doubt that the legislature meant “tourist activities” to include activities of daily living, such as using local infrastructure like the roads, water, and wastewater systems, because the definition of “tourist” is limited to visitors who come to a community “for” certain activities. That limitation strongly suggests that “accommodating tourist activities” means accommodating the listed activities.

Putting it all together, an improved real property has a substantial purpose of “accommodating tourist activities” if it furnishes something desired, needed or suited for tourists to engage in business, pleasure or recreational activities or to attend arts, heritage or cultural events. Obvious examples, because they furnish places that are desired, needed or suited to those tourists activities, would be convention and conference centers, improved recreational areas, museums, and performing arts centers.

Once again, local infrastructure is unlike those facilities because it does not directly accommodate tourist activities. But, again, infrastructure may indirectly accommodate tourist activities by furnishing something necessary, desired or suited for tourists to use the places that *do* accommodate tourist activities. For example, an access road to a recreational facility makes it possible for tourists to use the facility. It is not clear, however, whether the legislature intended facilities that provide indirect accommodation to be included.

Based on our examination of text and context, we conclude that roads and sewers fit within the definition of improved real property, but questions remain about whether they have a substantial purpose of supporting tourism or accommodating tourist activities. We next examine the legislative history for clarification.

d. Legislative History Concerning “Substantial Purpose of Supporting Tourism or Accommodating Tourist Activities

ORS 320.300(9) (defining “tourism-related facility”), ORS 320.350(5) (specifying the purposes on which new local lodging tax revenue could be spent) and ORS 320.350(6) (specifying the percentages that must be used for tourism and may be used for non-tourism purposes) were enacted in 2003 as part of HB 2267. Or Laws 2003, ch 818, §§ 1, 2 and 8. The primary purpose of HB 2267 was to establish a state lodging tax dedicated to increasing Oregon tourism marketing efforts. Again, the legislature originally intended all new local lodging tax revenue to be used to promote tourism. Although the state tax had wide and enthusiastic legislative support, the new restriction on how local governments could spend their local tax

dollars was highly contentious and the subject of numerous proposed amendments, which were discussed and debated at length. Those discussions resulted in two significant compromises. The first – allowing local governments to spend 30 percent on any purpose they saw fit – we discussed earlier. The second compromise was changing the definition of “tourism-related facility” to make it more inclusive. We now address that change.

The legislature, over the course of seven months, considered 19 different proposed amendments to HB 2267. Many of them proposed alternative definitions of “tourism-related facility.” The first definition relevant to our analysis was the one proposed in the -9 amendments, which was:

[A] conference center, convention center, visitor information center or other improved real property that has a useful life of 10 or more years and *the primary purpose* of supporting tourism or accommodating tourist activities.

HB 2267, § 1(9) (-9) (2003) (emphasis added). The House Revenue Committee discussed that new definition in a work session on June 25, 2003. Much of that discussion focused on the fact that the definition appeared to require conference centers, convention centers and visitor information centers that met statutory definitions to also meet the 10-year useful life and primary purpose criteria. In the course of discussing that problem, Representative Barnhart raised concerns about the “primary purpose” language:

I have to say I have a big concern about the use of that word “primary” and let me just give you an illustration of that. The Convention Center in Portland is not “primarily” used for tourism. It’s – most of the people who use it come from the neighborhood – certainly within 50 miles – on any given event, it doesn’t matter what event it is, most of the people come from the neighborhood within 50 miles.

In Eugene, the Hult Center is another good example, obviously a tourist-related facility, but most of the people coming to events there come from within 50 miles even though the Bach Festival, for example, has people from 35 states that are going to be attending starting the end of this week. * * * I really need to understand how the use of that word “primary” would not limit the use of these funds for facilities like those that certainly have a tourist-related function – a very important one – but are not “primarily” tourism-related facilities.

Testimony of Representative Barnhart, House Revenue Committee (HB 2267), June 25, 2003, tape 190, side A 411- 446. Representative Barnhart interpreted the “primary purpose” criteria to eliminate facilities that drew most of their patrons from the local community, even if they also had a very important tourism-related function. That interpretation of “primary purpose” is consistent with its plain meaning as the relevant plain meaning of “primary” is “first in rank or importance: CHIEF, PRINCIPAL.” WEBSTER’S at 1800.

No further discussion of the meaning or implications of the “primary purpose” requirement took place in that work session. But when the committee held its next work session on July 23, 2003, it considered amendments that changed the definition of tourism-related

facility to: (1) clarify that conference centers, convention centers and visitor information centers that met statutory definitions did not have to meet additional criteria; (2) for other facilities, substitute a “substantial purpose” requirement for the “primary purpose” requirement; and, (3) expressly exclude “roads, other transportation facilities, [and] sewers or sewer plants” from the definition. HB 2267, section (1) (9) (a) - (c) (-14 and -15 amendments) (2003).¹⁷

The committee discussed the latter two changes at length. Because that discussion was so lengthy, we summarize the most pertinent points, beginning with the exclusion of “roads, other transportation facilities, [and] sewers or sewer plants” from the definition. At the beginning of the work session, Chair Shetterly told the committee that he intended to remove “other transportation facilities” from the exclusion. Testimony of Chair Shetterly, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A at 380-400. But four committee members, Representatives Haas, Barnhart, Hobson and Verger, refused to vote for the amendment even with that change, because it continued to exclude roads, sewers and sewer plants. Testimony of various legislators, House Revenue Committee (HB 2267), July 23, 2003, tape 224, side B at 010-070.

None of the legislators explained what roads, sewers, or sewer plants should be included; their objection to the exclusions was more general. Both Representatives Hobson and Verger expressed opposition to the exclusion because it “was moving in the wrong direction,” the “wrong direction” in this context being imposing greater restrictions on local governments. *Id.* Representative Barnhart opposed the exclusion because he was concerned about how a city would be able to raise a local tax and spend 70 percent of it on tourism if the restrictions on the definition of tourism-related facilities were so substantial. *Id.* Representative Hass merely stated that the exclusion was a source of consternation among his colleagues, who otherwise supported the bill. *Id.*

Two non-legislator witnesses discussed roads and sewers more specifically. The first, Ken Strobeck, representing the League of Oregon Cities, testified that he was concerned about the exclusion because coastal communities’ sewer systems and roads were heavily impacted by tourists. He testified that those communities had to build their sewer facilities to accommodate tourists, not local residents. He gave the example of Cannon Beach, stating that it had a population of 1500 to 2000, but over 1000 motel rooms. He also testified that he thought the exclusion would prevent funding public restrooms. Testimony of Ken Strobeck, League of Oregon Cities, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A at 059-314.

On the other hand, Mr. Strobeck appeared to recognize a distinction between “tourism-related facilities” and funding local infrastructure such as sewers. He testified that new restrictions on how local governments could spend the revenue were not necessary, because local governments already were “spen[ding] [50 percent of the revenue from existing taxes] on tourism promotion, tourism facilities, with the other half * * * on sewers, police, etc..., which are affected by tourist traffic.” Testimony of Ken Strobeck, League of Oregon Cities, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A at 278. In other words, while he appeared to want local communities to have the flexibility to spend more money on local

infrastructure, such as sewers and roads, his testimony also appears to acknowledge that such spending is not funding a tourist-related facility.

The second non-legislator witness, Doug Riggs, representing the Central Oregon Cities Organization, testified that the exclusion was problematic because a city like Redmond might want at some future point to expand roads or sewers around the Deschutes County Fairgrounds, a facility that drew a lot of tourists, specifically to address the needs of the tourist industry. Testimony of Doug Riggs, Central Oregon Cities Organization, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A at 318-371.

At the end of the work session, the committee decided not to vote on any proposed amendments that day, but to attempt to work out a compromise. Testimony of various legislators, House Revenue Committee (HB 2267), July 23, 2003, tape 224, side A at 371-497. The resulting compromise was the removal of the express exclusion of “roads, other transportation facilities, [and] sewers or sewer plants” from the definition of “tourism-related facility.” The definition otherwise remained the same. HB 2267, § (1) (9) (a) – (c), (-19) (2003).

After that change, when discussing the specific types of facilities that they intended “tourism-related facilities” to include, legislators mentioned the types of roads and sewers as follows. In the work session on August 12, 2003, Representative Barnhart stated that: “I am especially pleased that we left out the piece on sewers and such. I can imagine putting in a restroom in a park might very well be a substantial promotion of tourism and, of course, that involves sewer lines among other things.” Testimony of Representative Barnhart, House Revenue Committee (HB 2267), August 12, 2003, tape 241, side A at 031-113. Second, in the House Floor Debate, Chair Shetterly stated that “improvements and access to natural resources and recreational facilities” could very well fall under the definition of “tourism-related facility.” Statement of Chair Shetterly, House Floor Debate (HB 2267), August 19, 2003, tape 177, side A at 211. Representative Farr agreed. Statements of Chair Shetterly and Representative Farr, House Floor Debate (HB 2267), August 19, 2003, tape 177, side A at 237.

In sum, the history shows that the legislature did not intend to categorically exclude roads, sewers, sewer plants, and other transportation facilities from the definition of “tourism-related facilities.” If a specific road or sewer, etc., meets the criteria in ORS 320.300(9)(b), including having a substantial purpose of supporting tourism or accommodating tourist activities, it would qualify as a “tourism-related facility.” But legislators cited only three very limited types of roads and sewers that might qualify: roads that provide access to natural and recreational facilities, other improvements to recreational facilities, which could include sewers, and a restroom in a park. Those types of roads and sewers either are part of tourist attractions or directly serve them. In that sense, those facilities might “draw” tourists to the extent that the attraction itself draws tourists. No legislator stated any intent to include roads and sewers merely because they are used heavily by tourists. Consequently, the history suggests that the legislature may have intended local infrastructure such as roads and sewers to be “tourism-related facilities” only to the extent that they either are part of or directly serve tourist attractions.

For further clarification, we turn to the legislature’s discussion about the meaning of “substantial purpose.” First, Chair Shetterly explained that the change from a “primary purpose”

test to a “substantial purpose” test was a compromise that benefited local governments by giving them more flexibility. Testimony of Chair Shetterly, House Revenue Committee (HB 2267), July 23, 2003, tape 224, side A at 010-497. In other words, “substantial purpose” was a lesser standard than “primary purpose.” Accordingly, the legislative history on that point is consistent with the context, which also suggests that “substantial” was not intended to mean the primary or chief purpose of the facility.

But no legislator provided a definition of “substantial purpose” and there appeared to be considerable confusion amongst the legislators about what facilities would meet that test. Rather than clarifying the meaning of “substantial purpose,” Chair Shetterly attempted to demonstrate the legislature’s intent by describing on the record the kinds of facilities that were meant to be included. Other legislators appeared to agree with his assessment, although Representative Barnhart appeared to intend the definition to be interpreted as broadly as possible. The following are excerpts of legislators’ statements from the time that the “substantial purpose” language was introduced to statements made during the House floor debates. We begin with committee discussions following the introduction of the “substantial purpose” language on July 23, 2003:

CHAIR SHETTERLY: I will say on the record that I think the Hult center, *because it accommodates the Bach Festival, and when it is not accommodating the Bach Festival, there is the Eugene Opera and there are concerts that are advertised and I know I have traveled several times to events at the Hult Center.* I think that there is no doubt in my mind that the Hult Center and other *regional facilities that bring people in are going to qualify under the substantial purpose test.* Keller Auditorium. I don’t know how many times a year I am up at the Keller Auditorium in Portland and I live more than 50 miles from Portland, and *I’ll bet that you’ve got a substantial number of people who are in there every time there is a show that live more than 50 miles away. I think those are the facilities that in fact do come under the substantial purpose test * * ** which is, again, exactly why it has been such a difficult test for the lodging association and the proponents of the Bill to move towards. * * * And I think Brownsville, the Brownsville Museum, or some of those kinds of things, if those are even owned or funded by municipalities I think those would qualify. *Again, I have traveled to the Brownsville Museum on several occasions to see them [sic]. They have a sign by the freeway that draws people in off the freeway and I am sure that that would qualify under any reasonable standard of “substantial purpose.”* So I think there is more flexibility than what you are granting in your testimony with that move toward the “substantial purpose” test.

* * *

* * * [A] convention center that we do have in Salem now, that *we have gatherings of statewide organizations on a regular basis * * * would qualify as a substantial purpose[.]*

REPRESENTATIVE SCOTT: * * *. We talk about, Doug you have spoken to the Redmond facility and everyone is talking about how *folks come to these* and

where they get the money to operate these. And now we are talking about the tourism industry that collects a tax and should that bear the burden of the facility. ***I think we need to look at really how many people affect those facilities, wherever they may be.***

* * *

REPRESENTATIVE FARR: You know, we have had Mr. Chair, you placed on the record during this discussion that you feel that “substantial” includes the Hult Center and “substantial” includes the Deschutes facility and the Astoria facility and I think that placing that on record goes a long way to the interpretation of the intent of the amendments and the intent of the language of this bill.

* * *

REPRESENTATIVE WILLIAMS: * * *. My own concern that the “substantial” language modifying the word tourism in that sentence still creates in my mind some question as to whether some of the facilities that have been discussed today would, in fact, be protected.

Testimony of various witnesses, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A, 380-400, tape 223, side B 300-436; tape 224, side A, 010-497, and tape 224, side B, 010-070 (emphasis added).

The following are excerpts from the committee work session on August 12, 2003 following the removal of language expressly excluding “roads, other transportation facilities, [and] sewers or sewer plants”:

CHAIR SHETTERLY: There was concern still about the language of “substantial purpose” and what kind of facilities [would meet that test.]

* * *

I just want to confirm my inclination for the record that these are the kinds of things that we would be looking around [at] statewide: performing arts centers, we talked about the Hult Center, I think your convention center in Salem that might not qualify as a convention center within the specific language of the statute, ***but that nevertheless was designed to facilitate statewide conferences and conventions***, I think would be one that would fall under that substantial purpose test. I can see recreational facilities, improved recreational facilities, performing arts centers, cultural facilities, ***those kinds of things would be my intent as long as you have folks coming in from out of the area and can establish that there is a substantial number of those, whatever that is. That is going to be a locally-driven test, but I think there is flexibility on all sides.***

* * *

REPRESENTATIVE BARNHART: * * * I was in Pennsylvania a few weeks ago for a family reunion and one of the things that we did while we were there was to visit some sights in the little town that the Barnhart family came from. Among the things that we saw were historical houses; there is a genealogy library set up as part of the county library there and, of course, parks, historical railroad stations, and a variety of other things. It seems to me that within the right context all of those might be considered to be tourist, might be facilities that support tourism or accommodate tourist activities. After all, while we were there, we spent money in the local restaurants and in lodging and so forth in Pennsylvania. ***So, I think and I hope that this is considered to be a very broad definition. I am especially pleased that we left out the piece on sewers and such; I can imagine putting in a restroom in a park, might very well be a substantial promotion of tourism and, of course, that involves sewer lines among other things.*** I think, otherwise, the Chair has mentioned most of the areas, most of the issues that I am interested in. ***It is hard for us to know all of the things that bring tourists to town and I hope that anyone interpreting this language will interpret it very, very broadly.***

REPRESENTATIVE FARR: * * * I just want to make sure that the understanding [is] that, for instance, fairgrounds are included in tourism facilities.

CHAIR SHETTERLY: Well, I guess my thinking would be that they are not excluded. Again, I think it is going to be a facility-by-facility test and, ***depending on the nature of the crowd that comes, I think they very well could be.***

Testimony of various legislators, House Revenue Committee, August 12, 2003, tape 241, side A, 031-113 (emphasis added).

Following that discussion, the committee unanimously voted to send the bill to the floor with a do pass recommendation. These statements followed in the House floor debate:

CHAIR SHETTERLY: As you know, if you followed this Bill, one of the most contentious issues was the element of the rumination on the use of new tourism tax dollars by local communities.

* * *

Examples of a tourism-related facility that local communities can fund out of their 70 percent share that is restricted under this bill would include such things as the Hult Center in Eugene. ***That draws and has the substantial purpose of attracting tourists to the Eugene community.*** Keller Auditorium in Portland. I know my wife and I travel up there as often as we can. We are tourists under the definition of this Bill. And even here in Salem, the planned convention and conference center that's ***going to be drawing conferences from around the state; statewide conferences and meetings. Those are the kinds of facilities at the***

local level that would fall under this tourism facility. County fairgrounds could very well fall under this definition as well as *cultural and historical facilities that draw people from elsewhere in the state. And also, improvements and access to natural resources and recreational facilities.* There is flexibility in this for local communities and, at the same time, there is a guarantee that to the extent that flexibility is used, *it is going to be used for facilities that draw tourists and that have as their substantial purpose that tourism promotion[.]*

REPRESENTATIVE BARNHART: One of the key issues in this was the repeated working and reworking of what it was that cities and counties could spend any new transient room taxes that they might raise on and whether, not going into the specific details of what we ended up with in the bill, except to say that, as we worked through this, we came to realize that the *cities and counties needed to have a very broad definition of what is was that they were going to be allowed to spend the 70 percent of their new or expanded tax that had to be spent on tourism promotion or tourism-related facilities.* The “substantial purpose” which is referred to in the bill having to do with tourism-related facilities turned out to be a very important phrase for us as we worked on this bill, because it *deals, of course, with not only facilities that are designed to primarily draw tourists, but facilities which are useful to the local community to do local things, but also, as a part of their operation and nature, will have a substantial purpose of supporting tourism and accommodating tourist activities.*

* * *

[While in Pennsylvania] we visited * * * a couple of local museums and the library. And, as the committee dealt with this issue of “substantial purpose” I would submit, and I believe the other committee members would agree that those facilities, small facilities that they were, *because they do in fact draw tourists from far away*, that they have, along with other reasonable purposes, they have a “substantial purpose” of supporting tourism or accommodating tourist activities.

Testimony of Chair Shetterly, House Floor Debate, August 19, 2003, tape 177, side A at 211 (emphasis added); Testimony of Representative Barnhart, House Floor Debate (HB 2267), August 19, 2003, tape 176, side B at 09 (emphasis added).

That history demonstrates that the types of facilities that legislators intended to include were things like performing arts centers, convention centers and other facilities that, by their nature and operation draw “substantial numbers” (a locally-driven and flexible test) of tourists to the community.^{2/} Roads and sewers, while they do serve tourists, do not, by their nature and operation, draw tourists.

But the legislative history also is clear that legislators did not want to exclude roads and sewers from the definition; the only possible conclusion to be drawn from that fact is that they believed that at least some types of roads and sewers would qualify. Legislators mentioned three that might: “improvements and access to natural and recreational facilities” and “a restroom in a park.” Those facilities might be said to draw tourists as they are part of the infrastructure of a

tourist attraction or directly serve a specific tourist attraction. No legislator expressed an intent to include local infrastructure that does not have that direct nexus to a tourist attraction simply because it is used heavily by tourists. The legislature likely intended local governments to use their 30 percent unrestricted funds to pay for those facilities.

CONCLUSION

We conclude, based on the text, context and history of ORS 320.300(9) and ORS 320.350(5) and (6) that the legislature most likely intended local roads, sewers, sewer plants, and transportation facilities to qualify as “tourism-related facilities” only if they drew tourists in themselves, directly serve a specific tourist attraction (such as an access road), or are part of the infrastructure of a specific tourist attraction (such as a restroom and the on-site sewer line). The legislature most likely did not intend “tourism-related facilities” to encompass roads and other infrastructure simply because they are used, even heavily, by tourists as well as locals.

Sincerely,

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^{1/} At the beginning of the work session, Chair Shetterly mentioned a July 1, 2003 memo that he had circulated to the committee that “addressed changing ‘primary’ to ‘substantial.’” Testimony of Chair Shetterly, House Revenue Committee (HB 2267), July 23, 2003, tape 223, side A 006-022. That memo is not included in the legislative history materials and the Office of Legislative Counsel does not have a copy of that memo in its file, so we do not know what discussion, if any, it contained about the reason for the change from “primary purpose” to “substantial purpose.” The only memo from Chair Shetterly to the committee members concerning that change is dated July 23, 2003 and it merely tells committee members about the change without explaining the reason for it. Minutes, House Revenue Committee (HB 2267), July 23, 2003, Exhibit 4.

^{2/} There was no discussion of visitor information centers which aid tourism spending by disseminating information, likely because those facilities are unique and fit within the categorical statutory definition.