

# The Huntsville Item, Huntsville, TX

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## Opening statements given in City-Chamber trial

By *Tori Brock*  
Staff Reporter

HUNTSVILLE — More than a year's worth of back-and-forth between the City of Huntsville and the Huntsville-Walker County Chamber of Commerce amounts to little more than a "small town mess," according to Levi McCathern of Dallas, who represents the chamber.

Jurors in the case of the city versus the chamber and its former president Dee Everett — under felony indictment in the case — were present to hear those words during the defense's opening statement at the Leon County Courthouse on Tuesday. The long-anticipated trial was moved to Leon County on a change of venue last week.

Lawyers for the city, however, said they can prove the chamber misallocated or misused \$569,000 in hotel-motel occupancy tax funds over the past several years — a claim city attorney Leonard Schneider said shows the chamber abused its duty to the city.

The city receives hotel occupancy tax or HOT funds from local hotels and motels to put back into programs that promote tourism. McCathern, however, claimed the case isn't about the money at all.

"I think it has a lot more to do with things that don't have anything to do with HOT funds," he told jurors. "A large portion (of those funds) go to the city and they spend it. They screw up all the time spending it."

There aren't a whole lot of ways for a small town to spend money that would directly put 'heads in beds,' which is supposed to be the main function for HOT funds, McCathern said.

In the city's opening remarks, Schneider told jurors the chamber had a fiduciary duty to spend HOT funds in a prescribed way. Instead, he claimed, money from this fund was used to purchase items donated to local fundraisers, to pay an employee's full salary, and to provide car allowances — none of which contributed to promoting tourism, or putting "a head in a bed."

Chamber records show that the money was not accounted for appropriately. The city attorney said.

"You have to keep complete and accurate financial records," he said. "It has to be used specifically to promote tourism."

In 1994, the city and chamber entered into a contract that outlined the chamber's fiduciary responsibilities. The city expected to provide minimal oversight of the use of the funds since the contract was clear.

"From 2000 to 2009, the chamber received close to \$180,000 to \$240,000 a year to use and manage. They were an independent contractor. You don't oversee them and look over their shoulder. You trust them,"

Schneider said.

In 2008, the Huntsville City Council formed a HOT Board charged with oversight of how this money was being spent.

"The board was charged with this duty and was asked if the city was using these funds correctly," Schneider told jurors. "They said should we be spending this money on the Wynne Home? (They decided it was wrong.) So they stopped doing it.

"They looked at the Chamber of Commerce and asked for records and the HOT board had trouble getting complete records."

In 2008 when the city wasn't getting records it requested from the chamber, it hired Teri Wylie with the forensic accounting firm of Alvarez and Marsal Dispute Analysis and Forensic Services. Wylie's initial report found \$174,000 in misapplied funds. The city claims that figure could now be as high as \$569,000.

McCathern countered that in 2008 several new council members were elected and it was then that the situation turned political.

"Is this about HOT funds or about something else?" he asked jurors. "When Teri comes in, you'll notice she's she highest paid person in this room ... She needed to find something," he said. "She was hired to find something. What does that do to her credibility?"

From the time the report was released, McCathern said, the city "just kind of did whatever it wanted." By doing so, the city breached the part of its contract with the chamber that stated there was a six-month time frame in which the contract could be ended. This was so there would be time for any mistakes to be fixed, McCathern said.

"In one day's time, it was cancelled," he said. "One employee was told she was now working for the city. One day she was working for the chamber and the next day she was working for the city ... (The city) just came into the chamber without permission or consent and just started removing boxes."

Evidence will show where misapplied funds went, Schneider said. Items as small as throw blankets and as substantial as an employee's salary were funded using HOT funds, he said.

"Throws were purchased and donated to the Lions Club fundraiser," he said. "Some of the Convention and Visitor's Bureau Board were not notified of these expenditures ... The evidence will show a Longhorn table marked half off was purchased at the Sam Houston Statue gift shop and donated to the chamber for a gala auction," he added. "This goes back to trust and duty."

Schneider acknowledged that the jury has its work cut out for them.

"The right thing is hard to do, especially in a tight-knit community," he said. "The directors and president (Everett) knew what was going on.

"You're going to hear excuses," he added. "It's not easy to have a lawsuit in a small community."

## Jury Selection

Court convened at 9 a.m. Tuesday with a packed house of jurors.

Bennie Rush, an attorney for the city, told jurors who the main players in the case would be. Mayor J. Turner and Mayor Pro Tem Lanny Ray will represent the City of Huntsville. Carol Smith, chamber president, and Dee Everett, former chamber president, will represent the chamber in court.

“This is an important case in our community,” said Rush, explaining the change of venue for “publicity reasons.”

“This is a civil case. In a criminal case, you have to prove beyond a reasonable doubt. Civil cases are proved by a preponderance of evidence,” he explained to the newly selected jury. “We have to make the scales of justice tip in our favor.”

Several potential jurors had served either a chamber or city council function. Rush asked if everyone understood what it meant to enter into a contract and to have a fiduciary duty.

“(The chamber) had a duty to spend HOT funds in a certain way,” he said. “They also had a duty not to commingle the funds (they were collecting).”

“If they didn’t – if they commingled, we allege it’s a breach of their fiduciary duty and a breach of their contract,” he added. “Guess what? It made the City Council upset.”

He then asked potential jurors if any of them thought it was OK to take someone else’s money and mispend it. No one raised his hand.

Rush said evidence would show money was spent without proper documentation and that the chamber didn’t return leftover funds at the end of the year. Rush asked if evidence shows that \$569,000 was misallocated would jurors feel comfortable “writing that number down” and awarding the city that amount.

The city is also seeking punitive damages in this case, which would be damages awarded as punishment.

“(That would be) an example to other folks who ask the city for money,” Rush said. “Don’t do this. Don’t misallocate money.”

By way of introduction, chamber lawyer McCathern spoke to potential jurors of living in Dallas and growing up in Snyder.

“Does anybody here think this case is over? Do you think Dee Everett is some kind of rogue?” he asked. “I represent a good group of people. The group I represent is the Chamber of Commerce. They want to promote business and tourism and growth. Does anybody think because so much city government is here that there must be something to this?”

McCathern asked jurors to consider that the adage, “where there’s smoke, there’s fire,” may be wrong in this

case.

“Wait to hear all the evidence before you make your decision,” he asked.

Seven men and five women were seated in the jury box. The trial will reconvene Wednesday at 9 a.m. at the Leon County Courthouse in Centerville with Judge Ken H. Keeling, 278th Judicial District, presiding.