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City takes stand in first day of testimony

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CENTERVILLE — Huntsville mayor pro tem and attorney Lanny Ray laid open the City of Huntsville's case against the Huntsville-Walker County Chamber of Commerce on Wednesday during the first full day of testimony in the HOT funds trial.

On the stand, Ray described the city's concerns about how the chamber was spending and documenting the use of hotel-motel occupancy (HOT) tax funds, the basis of the city's year-old suit against the chamber. Levi McCathern, the Dallas attorney representing the chamber, asked Ray on cross-examination if he was "telling this jury the chamber was laundering money?"

"You could call it that," Ray replied.

Chamber of commerce supporters in the courtroom reacted with laughter and snorts of derision.

But Ray offered as evidence chamber activity associated with its purchase of magazine advertising using hotel occupancy tax or HOT money. Ray testified the chamber bought these ads in magazines such as *Texas Monthly* in which several local festivals were mentioned, such as the Sam Houston Folk Festival and the Airing of the Quilts.

"That's a good use of HOT money," he testified. "The problem we found was the chamber was charging these (event organizers) for their share of the ad, and then they would keep that money.

"(Calling it money laundering) may be a little harsh, but I'm using it in the vernacular," Ray added. "If you're putting (the money) back into your own account (instead of back into the HOT account), that is money laundering."

Much of Ray's testimony centered around small amounts of cash the chamber officials used for meals, travel or items bought at the Sam Houston Statue gift shop — all things he agreed were insignificant by themselves.

"These are all small amounts relatively speaking," Ray said, "but nickels and dimes add up."

Some chamber receipts had notations next to them, such as "Gretchen's birthday" or "Mary Ellen's birthday" and "cake given to media." Ray's testimony was that if HOT money was used to fund any of these things, the money was misused under the statutes of how HOT money should be spent.

HOT money should be spent directly on activities that promote tourism or put "heads in beds." Since the money is coming to the city through taxes on local hotel and motel room rentals, the money should be used

to bring in more overnight visitors. Local events that only local people are likely to attend don't fall into this category.

City attorney Leonard Schneider asked Ray if it would be fair to say the chamber had been partying on HOT money.

"I'd say they were taking extreme liberties with the money," Ray said.

Ray said an initial compliance review showed the chamber had deposited HOT funds in commingled bank accounts with proceeds from the statue visitor's center and gift shop and submitted inadequate records about how and why the money was spent. "The issue is about the misspent money," he said. "Once we got the documents, it was time to ratchet up the scrutiny."

Ray testified that chamber receipts and documents were readily available to auditors hired by the city but had never been presented to the Huntsville City Council or HOT board when asked. "These documents should be available to anyone at any time," he said.

The chamber, in addition to purchasing items from the statue gift shop for its own fundraisers, bought a \$20 gift card from Palais Royal and a membership to the Downtown Business Alliance and funded a Chamber of Commerce Business After Hours meeting — all with HOT money, according to testimony.

McCathern challenged Ray on the abruptness in which the city cancelled its contract with the chamber — despite the six-month notice he said was stipulated in the contract. "The city just ended the contract early because it was city government and it could," he said.

He also established that Ray had not been a member of the City Council when the HOT funds contract was signed and had no first-hand knowledge of the chamber's history of compliance with the city contract. "You have no idea at all if any reporting was done to the city (by chamber) prior to 2008 because you weren't there," McCathern said. "The city comes back 10 years later (after contract was signed) and says I don't like the way things have been run... So, I'm going to add up all the expenditures from the last 10 years and I want that money back."

McCathern then took issue with the city's commingling claim, stating the chamber used numbered codes to track where the money was being spent. The chamber also was under no obligation to meet deadlines set by the city or to pay employees in any certain way, he said and questioned some of the claims that the chamber used the money extravagantly.

"You have no evidence people were buying personal clothing for partying it up," McCathern said.

Ray agreed, saying he didn't believe chamber officials were replenishing their wardrobes with HOT funds, but that he did believe there were questions about exactly how the money was spent.

McCathern pointed out the chamber is a nonprofit organization and asked Ray if he thought former chamber president Dee Everett was "down there running a kingdom?"

"Mrs. Everett had kind of a fiefdom over there," Ray replied.

Accounting

City accountant Marcella (Marcy) Metz, who also testified Wednesday, said she wanted to correct several answers in her original deposition that seemed to support the chamber. Following that deposition, she said, she realized she had misspoken, a situation she chalked up to “nerves.”

The original question was whether she believed Dee Everett or any member of the chamber board appropriated any of the HOT funds for personal use. Metz said after having reviewed the documents again, she would now answer “yes.”

Metz then testified she found several instances in which the chamber had inadequate documentation to back up what officials claimed was spent and for what. She referred to credit card receipts as examples.

“This (American Express statement) has El Chico on it and this one says Margarita’s,” she testified. “That’s all it says. We don’t know who went for the meal because we don’t have a receipt.”

Metz will be back on the stand today to finish testifying.

Court will be in recess until 1 p.m. today because a juror had a prior commitment in the morning. The case is being tried at the Leon County Courthouse in Centerville with Judge Kenneth H. Keeling presiding.