

# The Huntsville Item, Huntsville, TX

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## Testimony continues in chamber trial

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CENTERVILLE — Witnesses for the City of Huntsville wrapped up testimony Thursday describing the city's investigation of the Huntsville-Walker County Chamber of Commerce's use of HOT funds, making way for the city's expert witness, who is expected to testify today in the City of Huntsville versus the Huntsville-Walker County Chamber of Commerce and former chamber president Dee Everett.

Testimony began at 1 p.m. Thursday because a juror had a prior morning commitment, which left time for only two and a half hours of testimony. Early on in a day that started late and ended early, Judge Kenneth H. Keeling shut down objections by Levi McCathern, the Dallas attorney representing the chamber of commerce, over whether Huntsville City Council member and attorney Lanny Ray should be sitting at the plaintiff's table because he has been called as a witness in the case. Ray was called to testify earlier in the week.

McCathern argued that Ray leaning over and talking to City Attorney Leonard Schneider from time to time was improper.

Keeling overruled the objections, citing the fact that Ray is mayor pro tem and is, in that capacity, a plaintiff — along with the mayor and the other seven members of the council. As a plaintiff, he is allowed to speak with his attorney during trial.

"I don't want to argue with you," Keeling told McCathern. "They have the right to sit there ... If you want Carol Smith (chamber president) to sit with you, she can. Is that what you're griping about?"

Marcy Metz, an accountant for the city, resumed her testimony Thursday, describing what she found when going through three boxes of financial records the chamber supplied to the city. Metz testified Wednesday that she had done a subsequent review of chamber documents after first testifying during her deposition that she saw nothing suspicious. During this subsequent review, Metz said, she looked closer at the documents and began requesting back-up documents from a Sam Houston Statue Visitor's Center gift shop employee.

When those documents looked different, Metz said, it made her take a closer look at the chamber's record-keeping. Upon cross-examination by McCathern, she acknowledged that though the documents she received from the chamber looked different from the ones she received later, the information on them was the same. Metz testified she questioned information missing on the documentation of money spent with HOT funds. For example, former chamber president Dee Everett and associate Kimm Thomas purchased jewelry but noted on the receipt they intended to reimburse the HOT fund account for the purchases. But, Metz said, the chamber was not charged sales tax for the items when they were purchased.

“Those purchases were made for the gift shop and were tax exempt,” she testified. “They were not paying state sales tax on these personal items.”

Next on the stand was Laurie O’Brien, finance administrator for the city. O’Brien testified she found a lack of supporting documentation several times in her search of chamber records. The city’s finance director, Winston Duke, asked O’Brien to go through the three boxes of documents provided to the city to search for discrepancies in chamber-purchased advertising and marketing.

“I was asked to look for KSAM ads and Huntsville Item ads,” she said. “One invoice was from Texas Journey magazine for \$2,510. There was no copy of the ad or anything showing what was advertised.”

McCathern showed jurors the invoice, which stated “Sam Houston” under the description line. He asked O’Brien if she knew that many people travel to Huntsville to stay overnight to learn more about Sam Houston.

Schneider objected, saying O’Brien has no convention center or visitor’s bureau experience. He said she was only on the stand to say she saw a lack of back-up documentation from the chamber.

O’Brien was the last witness who took the stand in person Thursday. Jurors were read the deposition testimonies of former chamber officials Todd Armstrong, William Durham, Steve Everett, Shannon Higbie and Carol Smith. Some of the testimony focused on whether Dee Everett, as then-chamber president, had the authority to assign staff to assist with gathering the HOT funds documentation the city had requested and whether the city’s request was handled in a timely manner.

“She would tell us she was taking care of those details,” testified Armstrong, immediate past president of the chamber’s executive board. “We trusted her that everything was being done to meet (the city’s) requests.”

Durham, chairman of the board of directors prior to Armstrong, was asked if Dee Everett was authorized by the board to assign staff without going through the board first. He testified she was authorized to have chamber staff gather any documents the city requested.

“That was her business,” he testified. “Our (board) powers are as a whole — as a vote.”

Steve Everett, Dee’s husband and a former executive director of the chamber, was asked about purchases made by the chamber that were later donated to the Lion’s Club. He was questioned as to why these purchases were made.

The last testimony of the day came from Shannon Higbie, office manager for the chamber. Higbie’s testimony showed that Dee Everett asked Higbie to copy documents for her use, but not for the city. She also testified Everett kept her own filing system locked in her office. Higbie’s deposition testimony included answers to questions about the relationship between Dee (McFarland) Everett and Steve Everett, who were married in 2007.

Higbie was asked if she thought there was a possible conflict of interest in the two dating when the chamber was spending money on advertising with Steve Everett’s employer, KSAM, while he also served on the chamber board.

"I was not aware of them dating while he was serving on the board," she testified.

She later testified she didn't know how Dee Everett determined what administrative assistant duties were to be paid from the chamber's general fund and which were to be paid using HOT money.

Questions asked during Carol Smith's deposition centered around whether she knew she had a fiduciary duty to hold chamber member interests above her own personal interests, and she testified she did.

Keeling recessed court at 3:30 p.m. because testimony of the plaintiff's next witness, Teri Wylie of Alvarez and Marsal Dispute Analysis and Forensic Services, is expected to be lengthy.

Court will resume at 9 a.m. today at the Leon County Courthouse in Centerville.