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City's expert witness takes the stand

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HUNTSVILLE — The City of Huntsville's expert witness likened the former Huntsville-Walker County Chamber of Commerce president Dee Everett to failed Enron CEO Ken Lay in Everett's insistence that she was unaware of how her staff spent some hotel occupancy tax or HOT funds and discrepancies in how those expenditures were documented.

Teri Wylie, a senior director at Alvarez & Marsal Dispute Analysis & Forensic Services in Houston, whom the city hired to analyze the HOT fund financial records the chamber submitted, testified for six hours Friday in the fourth day of the city versus chamber trial.

The City of Huntsville filed suit against the chamber in September 2009, alleging the chamber and Everett had misallocated \$561,000 in hotel-motel occupancy funds, allocated to the chamber for use in attracting overnight tourists to the city. The city also seeks interest on those damages in the amount of \$152,000 for a total of \$713,000.

Wylie, in response to questions from City Attorney Leonard Schneider, gave a detailed description of the methodologies she used to determine the exact amount of money she believes the chamber has misspent over the past 10 years as well as the results of her financial analysis.

The chamber can legally spend HOT funds on activities that attract tourists to Huntsville and Walker County who are likely to stay overnight. These include marketing and advertising Huntsville and Walker County as a tourist attraction, administrative costs for the employee who oversees the funds and operation costs for the building used by that employee. However, the chamber must also follow prescribed methods to account for all HOT funds spent, and all funds must be used to directly promote tourism and put "heads in beds."

Wylie described to the jury her interviews with Everett, in which Everett claimed she didn't know about how some of the funds were spent by Kimm Thomas, who handled use of HOT funds. Everett said, for example, that HOT funds were not used to purchase advertising for Huntsville's annual Fair on the Square, which is the chamber's largest yearly fundraiser.

"She said no (the funds were not used for FOS ads)," Wylie testified. "She said sometimes Kimm Thomas would do advertisements she wasn't aware of ... I asked Dee, what is the process? If Kimm is in charge of all advertising for the Convention and Visitors Bureau, who approves (those ads)? I was told the CVB (chamber board) approves those ads."

Schneider then asked Wylie if she knew who served on the CVB board.

"Dee Everett and Steve Everett were both members of the board," she testified. But Dee told Wylie she might have missed seeing some of the ads submitted to the board for approval. "(Dee) said she didn't go to all the meetings."

Schneider characterized this as "the doofus defense" — which Ken Lay also claimed — wherein the president claims to have no knowledge of, and therefore no accountability for, what their employees are doing.

Wylie said she used specific information gleaned from her interviews with Everett and memos Everett sent to the city in her analysis. With the use of detailed charts transcribed on a large white board for the jury to view, Wylie walked the jury through the course of her audit and described the results.

Among the charts was one that showed how Wylie came up with the \$561,000 figure she said the chamber should be expected to reimburse the city. She testified that this amount is about 20 percent of what the city entrusted the chamber with over the past 10 years. With a 5 percent interest fee added on the amount, she said, the chamber owes the city a total of \$713,000.

To further explain, Wylie broke down the \$561,000 into several categories for jurors.

Since 2000, Wylie concluded, the chamber owes the city \$41,000 in budget-to-actual expenditures that were never reimbursed to the city by the chamber; \$179,000 in an over-allocation of payroll; \$21,000 in an over-allocation of overhead (such as Kimm Thomas's workspace); \$206,000 in marketing that lacked adequate support documentation; \$43,000 in marketing that was not allowed under HOT regulations; and \$71,000 in expenses with invoices that lacked adequate support documentation.

Levi McCathern of Dallas, who represents the chamber, was allowed to begin cross-examination of Wylie, which lasted about an hour Friday afternoon. She will take the stand again Monday morning.

McCathern asked Wylie if she was paid to "find something" in chamber records that would lead to a hefty reimbursement. Wylie responded that the city paid her a flat rate consistent with typical industry fees. In response to questions from Schneider, Wylie said that she was told by Schneider to give the chamber "the benefit of the doubt" when performing her audit.

McCathern began his cross-examination by questioning Wylie's experience as a forensic accountant, attempting to elicit more than once an admission that her previous work did not include analysis of hotel occupancy tax funds.

Wylie responded that while the first time she had worked specifically with HOT funds was under direction from the City of Huntsville, she had substantial experience as a tax accountant and 16 years experience in forensic accounting.

McCathern also questioned Wylie's methodologies, contrasting her conclusions with those of the defense's expert witness, Huntsville accountant Karon Murff, a certified public accountant and digital forensics director at Sam Houston State University.

Wylie testified Murff found no commingling of HOT funds — deposits of money from various sources in one chamber bank account — a claim with which Wylie said she disagrees. Murff also said she found

nothing amiss in chamber records and used different figures to assess, for example, the cost of office space used by then chamber employee Thomas.

For example, Wylie allocated Thomas 1,000 square feet of office space at chamber offices, which was paid for with HOT funds, whereas Murff, who was not present in court Friday and did not testify, allocated 1,700 square feet. Using Murff's figure, the \$21,000 Wylie said the chamber owes the city for use of office space in violation of HOT funds regulations "goes away," McCathern said.

Wylie described how she arrived at the 1,000 square foot figure, by visiting the chamber office and interviewing Thomas about her use of the space. Murff looked at square footage of the office building to reach her conclusion, according to testimony.

McCathern also took issue with Wylie's figure of \$206,000 in marketing expenditures she testified should be returned to the city.

"This one item accounts for \$206,000 of your \$560,000," he said. "The issue is not that they (advertisements) were run. The issue is you don't have (support documentation to show what was on them.) Why else would the chamber be running ads in Texas Journey or Texas Monthly than to bring overnight travelers to Huntsville?"

Wylie testified she could not answer the question because without seeing the ad, she didn't know what the ads were supposed to accomplish.

"The chamber was telling the city it wasn't using funds for Fair on the Square advertising," she said. "Why would (Dee) tell me there were no funds spent on that?"

Wylie also testified that she looked at more than 260 documents the chamber provided to her. During her review, if Everett or Thomas could show a documented link between an invoice and an appropriate use of HOT funds, she moved on with no questions asked. The invoices she pulled out as having inadequate documentation were ones Everett or Thomas acknowledged were an inappropriate use of HOT funds or were ones they could not remember. Because Everett admitted many of these invoices were an improper use of HOT funds, Wylie testified, she believes Murff is arguing with Everett when she says she finds "nothing amiss."

The day's final bit of testimony revolved around auditor Ken Davis and his findings each year when conducting city and chamber audits.

McCathern told Wylie it was Davis' job to ensure all the books balanced out right and to make sure one entity didn't owe the other money. Wylie disagreed and pointed again to the chamber's fiduciary duty to keep accurate and detailed records to present to the city.

Testimony in the case of the city versus the chamber will continue Monday morning at 9 a.m. at the Leon County Courthouse in Centerville with Judge Kenneth H. Keeling presiding.