

## TESTIMONY of CHRIS HICKS on SB 252 (4/18/2018)

I am Chris Hicks of 444 Woodwick Court, Cincinnati, Ohio 45255.

I am here today to speak in opposition to Senate Bill 252 by which certain Republican lawmakers seek to nullify four opinions of Republican Attorney General Mike DeWine 2017-034, 2017-035, 2017-036 and 2017-037 which all called out that county-elected officials serving on Convention and Visitor's Bureau Boards (CVB) is improper. I had a legislator describe this bill, and its house counterpart, HB 530, as the "fox guarding the hen house bill." It would again allow a slush fund for elected officials comprised of tax dollars that can be spent without public records, open meetings or public procurement rules.

Some quick background points:

- CVBs are organized as 501(c)6 entities that are supposed to be "business leagues, chambers of commerce, real estate boards, boards of trade and professional football leagues" per the IRS.
- CVBs are typically 95%+ funded by tax revenue via the bed tax.
- Data on how much tax is involved is illusive. For 2015, \$185m in bed tax was collected. Typically, at least ½ of that goes to CVBs. That is \$92.5m in tax dollars that are used and spent not subject to open meetings or public records. In Franklin County, as an example, we are talking \$48m in bed tax in 2015.
- CVBs often claim to be "independent non-profit entities" and are almost completely non-transparent. They are not currently subject to open records, public meetings or public procurement rules and most fight hard to never reveal how tax dollars were used.
- Commissioners typically have CVB Board appointment powers and they decide who is the recognized CVB in a market (thus getting the hotel tax). Commissioners also vote on other matters relevant to CVBs in their Commissioner Capacity (ex: extra funding).

A key opinion within the four opinions is 2017-036 which held out that a County Commissioner cannot serve on a CVB Board for very simple reasons, not least of which is that the Commissioners determine which CVB in a market gets tax revenue and Commissioners vote on a myriad of measures relating to the recognized CVB, including appointments and revenue measures.

By allowing a Commissioner to serve on a CVB board, SB 252 effectively gives a "slush fund" to a County Commissioner when they serve on a CVB Board. Remember, the Commissioners approve the monies going to the CVB and then, if this bill stands, can sit as a director who is allowed to spend the funds in secret.

In 2012, in Clermont County, an elected Commissioner, David Uible, took over the CVB in what he described, in writing, as a coup d'état. He and another Commissioner, Ed Humphrey, voted to replace the majority of the CVB Board and fill it with government officials (including himself). He then used the CVB monies to award several contracts to his business associates. He also had an additional, more secretive entity set up, which was the Clermont Sports Development Corporation, and was also controlled by elected officials while masquerading as an independent non-profit.

Local legal action is playing out regarding the Clermont County CVB, of which Mr. Uible was a Board and Executive Committee member, and \$3,500,000 (over 5 years) was spent without transparency, using a secret set of bylaws that allowed a small group to make spending decisions in secret from the overall CVB Board. It is ethically and morally repugnant. SB 252 attempts to legalize such behavior.

I long ago discussed these issues with Sen. Peterson related to your version of this bill. I am sure there are powerful forces with deep pockets who want this bill and will fight full transparency for tax dollar funded CVBs and who want back the non-transparent slush fund these entities can provide. I think the public, however, is tired of those in our capitol putting special interest over common sense.

The AG opinion, 2017-036 in particular, raised key issues that Senator Peterson ignored. These included:

- Improper interest in a contract – The participation of a Commissioner on a CVB is an improper interest in a contract. The Commissioners authorize the funding (via the hotel tax) and can determine who is recognized as the CVB. Doing so while being a director of a CVB is a brazen conflict. - And -
- Conflicting fiduciary responsibilities – The fiduciary responsibility of Commissioner is to the people but a CVB Board member has a fiduciary responsibility to the travel and tourism industry. That conflict, where taxes are involved, is not reconcilable. The role on the CVB (and its fiduciary responsibility) would “mess with” the ability of a Commissioner to exercise their responsibility to the entire county.

Additionally, the authors of this bill seemed to fail to note that a 501(c)6 is subject to federal law and federal action. This is playing out, in many ways, via a gentleman in South Carolina named Skip Hoagland who is pursuing lawsuits, IRS and FBI intervention. Mr. Hoagland is fond of pointing out that, on a national level, forensic audits on these entities performed by non-local entities such as the FBI or IRS result in criminal charges for misuse of funds in nearly 100% of all cases.

I have noted that on the house side, I think an amendment was proposed. The amendment reads:

(Q) A convention and visitors' bureau that receives funds under this section shall adopt an ethics policy to govern its members in the performance of their official duties and shall adopt a public records policy.

What folly, on two fronts. Why would there not be a simple statewide standard? Namely open meetings and public records? Who can defend this?

The real ultimate issue here is whether we all believe citizens have the right to a full accounting of how their tax dollars are spent. CVBs, which are 95% tax dollar-funded, have become a dodge to open meetings and public records laws for elected officials and their staffs. Rather than working on bills like SB 252, I call on you all to focus on the real issue. CVBs, frankly any entity, that is significantly tax dollar-funded need to be subject to open records and public meeting rules. Simple. It is more than fair that the citizens are able to see how their tax monies are being used.

A closing point, I wonder how many county elected officials on CVB Boards have enjoyed trips? How many of their friends have gotten contracts? I cannot know since CVBs, funded by tax dollars, are immune from transparency. I was pleased that Mike DeWine acted to stop a blatant compatibility of office issue. But, instead of fixing the core problem, transparency, you are considering legalizing brazen conflict of interest that involves tax dollars. It is disappointing to day the least but I am hopeful that this will shed light on you and whether you side with the citizens who deserve tax dollar transparency or not. It is simple. The time has come for transparency.

Thank you.