

FILED
12-07-2021
Clerk of Circuit Court
Manitowoc County, WI
2021CV000469

STATE OF WISCONSIN
CIRCUIT COURT
MANITOWOC COUNTY

MANITOWOC AREA VISITORS AND
CONVENTION BUREAU, INC.,
4221 Calumet Avenue
Manitowoc, WI 54221,

THE HEARTY OLIVE, LLC,
921 South 8th Street
Manitowoc, WI 54220,

And

WISCONSIN ASSOCIATION OF
CONVENTION & VISITOR BUREAUS,
INC. d/b/a DESTINATIONS WISCONSIN
P.O. Box 393
Sun Prairie, WI 53590

Plaintiffs,

v.

CITY OF MANITOWOC,
900 Quay Street
Manitowoc, WI 54220,

Case No. _____
Declaratory Judgment – 30701
Other Injunction or Restraining
Order – 30704

And

CITY OF MANITOWOC ROOM
TAX COMMISSION,
900 Quay Street
Manitowoc, WI 54220,

Defendants.

SUMMONS

STATE OF WISCONSIN:

To each person named above as Defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to or electronically filed with the Court, whose address is Manitowoc County Circuit Court, 1010 South 8th Street, 1st Floor, Room 105, Manitowoc, WI 54220, and to plaintiff's attorneys, Reinhart Boerner Van Deuren s.c., whose address is 22 East Mifflin Street, Suite 700, Madison, Wisconsin 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 7th day of December, 2021.

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COMPLAINT

Plaintiff Manitowoc Area Visitors and Convention Bureau, Inc. ("MAVCB"), The Hearty Olive, LLC ("Hearty Olive"), and Wisconsin Association of Convention & Visitor Bureaus, Inc. d/b/a Destinations Wisconsin ("Destinations Wisconsin") (collectively the "Plaintiffs"), by its undersigned counsel, Reinhart Boerner Van Deuren s.c., for its Complaint against the Defendant City of Manitowoc (the "City") and the City of Manitowoc Room Tax Commission ("Commission") (collectively the "Defendants"), alleges as follows:

NATURE OF ACTION

1. This is an action for temporary injunctive and other relief under Wis. Stat. § 813.02.

PARTIES

2. MAVCB is a Wisconsin non-stock corporation created for the purposes of promoting tourism and economic development within the greater City of Manitowoc area, with its principal place of business located in the Visitor Information Center at 4221 Calumet Avenue, Manitowoc, Wisconsin 54221 (the "VIC"). MAVCB operates in accordance with generally accepted industry standards and has maintained accreditation through the industry organization Destinations Wisconsin.

3. Hearty Olive is a limited liability company organized and existing under the laws of Wisconsin, with its principal place of business located at 921 South 8th Street, Manitowoc, Wisconsin 54220. Hearty Olive is a member of MAVCB, and benefits from the services provided by MAVCB and the room tax services contract between the City and MAVCB.

4. Wisconsin Association of Convention & Visitors Bureaus d/b/a Destinations Wisconsin, is a Wisconsin non-stock corporation and Wisconsin's tourism industry leader that

provides members with educational, advocacy, marketing and networking opportunities. Destinations Wisconsin has about 40 member destinations marketing and management organizations that receive room tax from various municipalities. Destinations Wisconsin is one of the leaders on Room Tax and School Start Date legislation. Destinations Wisconsin was instrumental in drafting Wis. Stat. § 66.0615 as it currently exists.

5. The City is a body corporate and politic, duly organized as a municipal corporation under Wisconsin law, with its principal office located at 900 Quay Street, Manitowoc, Wisconsin 54220.

6. The Commission is a body corporate and politic and was organized as a commission by the City pursuant to Wis. Stat. § 66.0615(1m)(c). The Commission consists of six members and has the powers described to it under Wis. Stat. § 66.0615 with the authority to dispense all room tax receipts received by the City consistent with state law.

JURISDICTION AND VENUE

7. This Court has personal jurisdiction over the City pursuant to Wis. Stat. § 801.05(1).

8. Venue is appropriate in Manitowoc County pursuant to Wis. Stat. § 801.50(2).

ROOM TAX BACKGROUND

9. Pursuant to Wis. Stat. § 66.0615, a municipality may establish an ordinance "imposing a tax on the privilege of furnishing, at retail, except sales for resale, rooms or lodging to transients by hotelkeepers, motel operators, lodging marketplaces" Wis. Stat. § 66.0615(1m). The tax imposed is paid to the municipality. *Id.*

10. Any tax revenue that may not be retained by the municipality must be provided to a tourism entity or commission, if one is created, established to coordinate tourism promotion

and development within the municipality. Wis. Stat. § 66.0615(1m)(a); Wis. Stat. § 66.0615(1)(d).

11. If a single municipality imposes a room tax, the municipality may create a commission. A "commission" is defined as an "entity created by one municipality or by 2 or more municipalities in a zone, to coordinate tourism promotion and tourism development for the zone." Wis. Stat. § 66.0615(1)(a).

12. Wis. Stat. § 66.0615(1m)(b)1 states that any commission established under Wis. Stat. § 66.0615(1)(a) must contract with another organization to perform the functions of a tourism entity *if no tourism entity exists in that municipality*.

13. Wis. Stat. § 66.0615(1)(f) defines "tourism entity" as a "nonprofit organization" that:

1. came into existence before January 1, 2015,
2. spends at least 51 percent of its revenues on tourism promotion, and
3. provides destination marketing staff and services for the tourism industry in a municipality.

14. MAVCB is a "nonprofit organization" that came into existence before January 1, 2015; spends at least 51 percent of its revenues on tourism promotion, and provides destination marketing staff and services for the tourism industry in a municipality and, therefore, qualifies as a tourism entity as defined by Wis. Stat. § 66.0615(1)(f).

BACKGROUND FACTS

15. The City collects Room Tax pursuant to Wis. Stat. § 66.0615. Pursuant to the City's Room Tax Ordinance 23.050, the City currently imposes an 8% room tax, and has since

January 1, 2013. Since 1993, the City has remitted a portion of that room tax to its local tourism entity, MAVCB.

16. The City has a Room Tax Commission consisting of six members. The Room Tax Commission has the powers ascribed to it under Wis. Stat. § 66.0615 and has the authority to dispense all room tax dollars received by the City as permissible under state law.

17. MAVCB and the City entered into a Services Agreement on May 24, 1993 and have further executed five subsequent amendments to collect room taxes pursuant to the City's Municipal Code and Wis. Stat. § 66.0615.

18. MAVCB is the sole tourism entity, as defined by Wis. Stat. § 66.0615(1)(f), in the City.

19. MAVCB's board is made up of tourism industry professionals.

20. MAVCB is accredited by Destinations Wisconsin as a destinations marketing organization ("DMO"). This accreditation requires an application and that the applicant follow industry best practices.

21. MAVCB's designation as a DMO allows it to receive grants from the Wisconsin Department of Tourism.

22. MAVCB's members include restaurants, attractions, museums and retailers.

23. The MAVCB currently operates out of the Visitors Information Center ("VIC") as required in the Services Agreement. The City is the owner of the VIC and leases the VIC to the MAVCB for \$1.00 per year pursuant to a Lease Agreement dated October 26, 1993. MAVCB has operated the VIC since that time.

24. On October 25, 2016, the Services Agreement ("Services Agreement") was extended for the period of January 1, 2017 through December 31, 2021.

25. Pursuant to Article I, Section 9 of the Services Agreement, MAVCB delivers tourism and marketing services to the City and the City of Two Rivers to enhance the tourism industry in the City and the City of Two Rivers. Examples of these services include tourism related activities such as operation of the VIC, website development and management, database management, travel planners, print media, fulfillment services, public relations, niche marketing, conventions, group tours and other services typically performed by similar organizations.

26. Pursuant to Article 1, Section 6, if the City intended not to renew its contract with MAVCB, the City was required to provide MAVCB with a notice of intent to not renew the Services Agreement by June 1, 2021.

27. A Room Tax Commission meeting was held on March 23, 2021, to discuss possible approval of a letter of intent to continue or to end the City's agreement with MAVCB and a possible Request for Proposal ("RFP") for Tourism Entity Services.

28. On March 25, 2021, the City's Mayor notified MAVCB of changes he wanted in the next agreement, including his desire to hand-pick all MAVCB Board Members, to remove the requirement that board members represent tourism businesses and to require that board members live within the City of Manitowoc.

29. On March 25, 2021, the City sent an RFP for Tourism Entity Services for the City to MAVCB.

30. On April 30, 2021, MAVCB submitted its renewal proposal to the City.

31. Upon information and belief, MAVCB's proposal was the only response the City received to its RFP request.

32. On May 17, 2021, the Room Tax Commission had a meeting discussing the termination of the MAVCB Services Agreement.

33. On May 21, 2021, the City sent a notice of intent not to renew the Services Agreement to MAVCB. The notice stated that the City was open to negotiations.

34. On July 7, 2021, the City's Mayor notified MAVCB that the City received an offer to purchase the VIC, and made a counteroffer which was accepted.

35. On September 8, 2021, the City held a closed session of the Room Tax Commission to discuss the contract negotiations with the City, the City of Two Rivers and MAVCB. At the end of the meeting, the Commission adopted a motion to terminate negotiations for a new tourism service agreement with MAVCB based on the RFP response and ongoing negotiations and directed the Mayor to meet with the City of Two Rivers Room Tax Commission to discuss alternate options. During the meeting, the Mayor also stated that the exploration of alternative options should include discussions with tourist destination entities throughout the area.

36. On September 9, 2021, the Mayor sent an e-mail to MAVCB stating that no further contract discussions will be had with MAVCB and that they have until December 31 to vacate the VIC.

37. On September 16, 2021, MAVCB sent a letter to the Mayor requesting that the City resume negotiations.

38. On September 15, 2021, the City of Two Rivers sent an e-mail to the City declining to meet with the Mayor to explore alternative options and continued to express their support for MAVCB.

39. On September 19, 2021, Destinations Wisconsin submitted a letter in support of MAVCB, and expressed their concern that the City may violate Wis. Stat. § 66.0615 should the City not renew its contract with MAVCB.

40. On September 20, 2021, John L. Brunner, an Alderman for District 5 of the City, sent an e-mail to the Room Tax Commission supporting MAVCB and requesting the Room Tax Commission reconsider their decision to terminate negotiations with MAVCB.

41. On September 21, 2021, the Room Tax Commission held a meeting. At this meeting, the Room Tax Commission moved to direct 100% of the room tax collected to be spent supporting a proposed budget by the Mayor.

42. Since then, the City has proposed to create a new department within the City that will report to the Mayor and the Room Tax Commission ("Tourism Department"). As proposed, this new department would employ three staff. The City is in the process of approving the Tourism Department and the three proposed job descriptions. Upon information and belief, the City and/or Room Tax Commission will remit all room tax collections to the Tourism Department.

43. The City's proposed Tourism Department does not meet the definition of a Tourism Entity as defined in Wis. Stat. § 66.0615.

44. Upon information and belief, at the meeting on September 21, 2021, the attorney for the City admitted that MAVCB is a tourism entity within the meaning of Wis. Stat. § 66.0615.

45. Other than the RFP, the City never provided a written proposal, terms sheet or other written communication during the course of negotiations.

46. The City made no attempt to work with MAVCB.

47. MAVCB made at least two attempts to obtain a legal opinion from the City explaining how they were not required to contract with a Tourism Entity. The City never supplied a response.

48. MAVCB and the City of Two Rivers continue negotiating in good faith to agree to a new tourism services agreement.

49. On October 28, 2021, the City sent a notice to MAVCB terminating their lease and requiring them to vacate the premises by December 31, 2021.

50. On November 1, 2021, the Personnel Committee for the City approved the proposed job descriptions for the Tourism Department of the City.

51. On November 11, 2021, the City posted a notice of public meetings including a Common Council meeting on November 15, 2021 and a Room Tax Commission meeting on November 17, 2021. Both posted agendas included items related to the approval of the creation of a Tourism Department under the purview of the Room Tax Commission of the City.

52. As a result of the City's actions, there will not be a Tourism Entity, as defined by Wis. Stat. § 66.0615(1)(f), providing tourism promotion and tourism development as of January 1, 2022.

53. As a result of the City's actions, the partnership with the City of Two Rivers is severed. The two communities will waste resources competing with each other to attract visitors. This will confuse visitors and offer a lower level of service.

54. The City's proposed Tourism Department is not a Tourism Entity as defined by Wis. Stat. § 66.0615(1)(f).

55. The City's proposed Tourism Department is not accredited by Destinations Wisconsin.

56. Unlike the MAVCB, the City's proposed Tourism Department is not made up of industry professionals.

57. The City's proposed Tourism Department does not provide a mechanism for membership, thus alienating hotels, restaurants, attractions, museums and retailers who are currently members of MAVCB. As a result, MAVCB members can no longer communicate their interests to a board and are forced to work with the City exclusively.

58. As a result of the City's actions, retailers and resort owners, such as Hearty Olive, will suffer.

59. Hearty Olive has been unable to engage the Mayor or City in recent months to discuss tourism concerns.

60. Hearty Olive benefits from the MAVCB and the services it provides to its business.

61. Hearty Olive will be harmed by the removal of MAVCB. Hearty Olive is only one of many retailers, hotels, restaurants, attractions and museums that will be harmed by the removal of MAVCB.

COUNT I – VIOLATION OF ROOM TAX STATUTE

62. The allegations of paragraphs 1- 61 are incorporated as if fully re-alleged herein.

63. The City has violated Wis. Stat. § 66.0615 because it has failed to contract with a Tourism Entity as defined under Wis. Stat. § 66.0615(1)(f).

64. The City's creation of a Tourism Department does not meet the statutory requirements of a Tourism Entity under Wis. Stat. § 66.0615(1)(f).

65. The City has violated Wis. Stat. § 66.0615 because it has failed to contract with MAVCB, the only Tourism Entity that currently exists in the municipality.

COUNT II – DECLARATORY JUDGMENT

66. The allegations of paragraphs 1- 61 are incorporated as if fully re-alleged herein.

67. There exists a justiciable controversy between the Plaintiffs and the City as to whether the City may terminate MAVCB's contract and appoint a Tourism Department under the City's control.

68. MAVCB's and the City's interests are adverse, and MAVCB has a legally protectable interest in maintaining its tourism contract.

69. This controversy is ripe for judicial determination.

70. Pursuant to Wis. Stat. § 806.04(2), MAVCB seeks a declaration that it is entitled to remain the exclusive tourism entity in the City of Manitowoc, and that the City must contract with Tourism Entity as provided for in Wis. Stat. § 66.0615.

71. The City has interests that would be affected by the declaration and are proper parties under Wis. Stat. § 806.04.

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. Judgment in favor of the Plaintiffs;
- B. A temporary restraining order and preliminary injunction preserving status quo while MAVCB's rights under the room tax statutes can be determined;
- C. An order temporarily restraining and enjoining Defendant, pending trial or arbitration of this action, from creating a Tourism Department;
- D. An order temporarily restraining and enjoining Defendant, pending trial or arbitration of this action, from spending any room tax revenue other than the amounts it may legally retain;
- E. A declaration that the termination of the MAVCB as the sole tourism entity and the creation of a City Tourism Department violate the room tax statute;

- F. An order permanently enjoining the City from spending any room tax revenue other than the amounts it may legally retain;
- G. An award of all litigation costs incurred by Plaintiffs in this action, including Plaintiffs' reasonable and actual attorney fees; and
- H. Such other and further relief as the Court deems equitable and just.

Dated this 7th day of December, 2021.

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