Tourist development tax -- for-profit museum

Number: AGO 2019-13

Date: December 04, 2019

Subject:
Tourist development tax -- for-profit museum

Mr. Robert B. Shillinger
Monroe County Attorney
1111 12th Street, Suite 408
Key West, FL 33040

Dear Mr. Shillinger:

On behalf of the Monroe County Board of County Commissioners, you have requested an opinion on the following question:

> Whether, under section 125.0104(5)(a), Florida Statutes (2019), tourist development tax funds can be used to repair or improve a publicly owned museum which is operated by a for-profit corporation?

In sum:

> Section 125.0104(5)(a) does not authorize the use of tourist development tax funds to repair or improve a publicly owned museum which is operated by a for-profit corporation.

Your letter reflects that this question arises from a proposal by the City of Key West, as a potential applicant for a grant funded by tourist development taxes, to upgrade and install a new fire sprinkler system at the Key West Shipwreck Museum. The museum is located on property owned by the city but operated by a for-profit corporation which leases the facility from the city.

The Local Option Tourist Development Act, section 125.0104, Florida Statutes, authorizes counties to impose a tax on short-term rentals of living quarters or accommodations within the county (with certain exceptions not pertinent here). This office has often stated that "'the intent and purpose of the act was to provide for the advancement, generation, growth and promotion of tourism, the enhancement of the tourist industry, and the attraction of conventioneers and tourists from within and without the state to a particular area or county of the state.'"[1]

Subsection (5) of the act sets forth various purposes for which revenues from the tax may be

expended. Pursuant to section 125.0104(5)(a)1., such funds may be used:

> 1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:
> * * *
> c. Aquariums or *museums* that are *publicly owned and operated* or *owned and operated by not-for-profit organizations and open to the public*, within the boundaries of the county or subcounty special taxing district in which the tax is levied….

(Emphasis added.) This language makes it clear that tourist development tax revenues may only be used for specified purposes related to the operation of museums that are either (1) publicly owned and operated and open to the public or (2) owned and operated by not-for-profit organizations and open to the public. The property you describe fits neither category. The statute makes no provision for the use of tourist development tax revenues for repair of publicly owned buildings leased to for-profit corporations operating a museum on the premises.

"[W]here a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned."[2] Further, "[w]hen the Legislature has prescribed the mode, that mode must be observed. When the controlling law directs how a thing shall be done that is, in effect, a prohibition against its being done in any other way."[3] Given the statute's straightforward requirements, this office is unable to render a formal opinion which would further clarify the statute.

Therefore, it is my opinion that section 125.0104(5)(a) 1., Florida Statutes, does not authorize the use of tourist development tax funds to repair or improve a publicly owned building which is operated as a museum by a for-profit corporation.

Sincerely,

Ashley Moody
Attorney General

AM/tlm

[1] Op. Att'y Gen. Fla. 2017-06 (2017) (quoting Ops. Att'y Gen. Fla. 14-02 (2014); 13-29 (2013); 83-18 (1983)).

[2] *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).

[3] *Alsop v. Pierce*, 19 So. 2d 799, 805–06 (Fla. 1944).