Tourist development tax - nature center - road shoulder

Number: AGO 2019-02

Date: March 14, 2019

Subject:
Tourist development tax - nature center - road shoulder

Ms. Melanie Marsh
Lake County Attorney
Post Office Box 7800
Tavares, Florida 32778-7800

RE: TOURIST DEVELOPMENT TAX REVENUE, SHOULDER OF ROAD AS NATURE CENTER – authority to use tourist development tax revenue to add contiguous shoulders to each side of paved scenic road.
§ 125.0104(5)(b), Fla. Stat. (2018).

Dear Ms. Marsh:

On behalf of the Lake County Board of County Commissioners ("Board"), you have requested an opinion addressing the following (rephrased) question:

Under section 125.0104(5)(b), Florida Statutes (2018) (which, in pertinent part, authorizes a county having a population of less than 750,000 to use tourist development tax revenues to "acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more… nature centers which are publicly owned and operated"), may the County use tourist development tax revenue to add contiguous shoulders to each side of a County-maintained road at the same time that the road is resurfaced, where the road is used by bicyclists in various competitive multi-day cycling events which draw tourists from all over Florida and the United States, and the County finds that the addition of the shoulders will primarily promote tourism in Lake County?

In sum:

Because the proposed construction of shoulders contiguous to the described scenic paved road would not "construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote" a "nature center," the County may not, under section 125.0104(5)(b), use tourist development tax revenue to add contiguous shoulders to each side of the road.

A Scenic Highway Is Not a "Nature Center"

In your letter, you describe the relevant circumstances as follows:

At 312 feet, Sugarloaf Mountain, located in Lake County, is one of the highest points in Florida and provides a scenic overlook of the surrounding area. The County maintains a road, Sugarloaf Mountain Road (the Road), that traverses up and down Sugarloaf Mountain. The Road is paved

and is twenty (20) feet wide and does not have any shoulders. The Road attracts many tourists, mainly bicyclists and other athletes, from all over Florida and the United States. Several competitive bicycling events spanning several days and triathlons that utilize the Road are held each year due to the enjoyment of the views and the challenge of traveling up Sugarloaf Mountain. These tourism events include, but are not limited to, the Mount Dora Bicycle Festival (up to 1,000 participants), the Horrible Hundred (approximately 500 participants), and the Great Floridian Triathlon (approximately 1,200 participants). Notably, the Road remains open to general traffic flow during these events, although at times there is additional traffic control to assist with the increased event traffic.

Section 125.0104(5)(b), Florida Statutes, permits a county of less than 750,000 in population to use tourist development tax dollars:

"to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more zoological parks, fishing piers or nature centers which are publicly owned and operated or owned and operated by a not-for-profit corporation and open to the public."

The operative question, then, is whether, under section 125.0104(5)(b), construction of shoulders contiguous to Sugarloaf Mountain Road would "construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote" a "nature center." In its letter, the County posits that it could find that "the shoulders are part of a public recreational trail," and that such "recreational trail" would qualify as a "nature center."

The words used in a statute should be given their plain and ordinary meaning. *State v. Peraza*, 259 So. 3d 728, 731 (Fla. 2018). The Legislature has not defined the term "nature center." Where the Legislature has not defined a term, it is appropriate to interpret the term according to its common understanding, unless the term is used in a technical sense, and to refer to dictionary definitions. *Id.*

The common understanding of the term "nature center" does not include a road shoulder. In Florida Attorney General Opinion 94-12 (1994), this office, referring to the dictionary, observed that the "term 'nature' is defined as 'the aspect of the out-of-doors (as a landscape), natural scenery,'" and "[u]se of the word 'center' connotes 'a point around which things revolve: a focal point for attraction, concentration, or activity.'" This interpretation is consistent with the statute's use of the term "nature center" in a list of other focal points like "zoological parks" and "fishing piers." In Florida Attorney General Opinion 2016-18, the Attorney General observed that "authorizing use of tourist development tax revenues to 'acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote' a nature center, appear[ed] to allow the county to direct funds only to support the actual nature center facility and environs, including personnel to run the center." While, depending on the circumstances, constructing, extending, enlarging, remodeling, repairing, improving, or maintaining freestanding recreational trails[1] providing a network for pedestrians and bicyclists to access public nature preserves might qualify under the statute, such activities pertaining to road shoulders will not.

The contiguous paved shoulders of a road—even when demarcated as "bicycle lanes"—are part of the local transportation facility[2] with which they are colocated. This is reflected in section 335.065(1)(a), Florida Statutes, which states that bicycle ways "shall be given full consideration

in the planning and development of transportation facilities, including the incorporation of such ways into…local transportation plans and programs."[3]

This interpretation is also consistent with other parts of the statute which distinguish "nature centers" from "transportation facilities." Section 125.0104(5)(a)6., Florida Statutes, allows tourist development tax revenues to be used to "acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance" major capital improvements, "including…transportation…facilities," but such funds may be used for that purpose only if the additional conditions set forth in the statute are satisfied. For all these reasons, it is my opinion that tourist development tax revenue funds may not be used, under section 125.0104(5)(b), Florida Statutes, to construct shoulders contiguous to a scenic paved road.

Sincerely,

Ashley Moody
Attorney General

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[1] *Cf.* Op. Att'y Gen. Fla. 2012-38 (discussing a project described by Walton County as an "18-mile multi-use pathway" adjacent to, inter alia, coastal dune lakes and coastal forests, and deemed comparable to the public recreational trail considered in Florida Attorney General Opinion 94-12).

[2] *See* § 334.03(30), Fla. Stat. (2018) ("'Transportation facility' means any means for the transportation of people or property from place to place which is constructed, operated, or maintained in whole or in part from public funds.").

[3] Consistent with this concept, it has been recognized that "road purposes" are fulfilled by adjacent shoulders. *See Broward Cty. v. Bouldin*, 114 So. 2d 737, 739 (Fla. 2d DCA 1959) ("[I]t is well settled that when a public easement by prescription is acquired for road purposes, the width of the easement is not limited to that portion of the roadway actually traveled or paved. It includes also the land which is *needed and used for the support and maintenance of the paved or traveled portion. This includes shoulders* and ditches."). (Emphasis added.)