Funding transit system with tourist development tax

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Subject:
Funding transit system with tourist development tax

Mr. Tim Norris
Chairman, Walton County Tourist
Development Council
25777 US Highway 331 South
Santa Rosa Beach, Florida 32459

RE: COUNTIES – TOURIST DEVELOPMENT TAX – TRANSIT SYSTEM OPERATED BY A PRIVATE COMPANY – whether the county may use revenues received from the tourist development tax to fund a transit system to be operated by a private company. § 125.0104(5)(a)3., Fla. Stat.

Dear Mr. Norris:

This office has received your inquiry on behalf of the Board of County Commissioners of Walton County, asking the following question:

Whether the county may use proceeds of the tourist development tax under section 125.0104(5)(a)3., Florida Statutes, to fund, in whole or in part, a transit system operated by a private company.

In sum:

Section 125. 0104(5)(a)3., Florida Statutes, which authorizes use of tourist development tax revenues for “an activity, service, venue, or event” when one of its main purposes is to attract tourism, does not encompass funding to operate a transit system in general, but would support funding for specific transportation services that are clearly intended to attract tourism.

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]

The projects that can be funded by the tourist development tax are enumerated in subsection (5) of the statute.[2] Each is related to the attraction of tourists to the county.[3] You suggest that section 125.0104(5)(a)3., Florida Statutes, provides the specific authority to fund the operation of a transit system. That provision states:

“(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

* * *

3. To promote and advertise tourism in this state and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists[.]” (e.s.)

This provision is specifically tailored to authorize funding for the promotion[4] and advertisement of various attractions within the county to tourists.

“Nothing in section 125.0104(5), Florida Statutes, suggests that the tourist development tax is a broad funding source. Rather, the tax revenues are a targeted funding source to directly and primarily promote tourism.”[5] Thus, such revenues cannot be used to fund a public transit system for the citizens of Walton County that would incidentally benefit tourists. Instead, to warrant use of tourist development tax revenues for transportation services under subsection (5)(a)3., there must be a clear and direct relationship between the promotion of tourism and the particular transportation service being offered.[6] Such transportation services should involve routes and schedules addressing the specific needs of tourists, and might include, for example, a shuttle connecting hotels and motels with county tourist attractions.

Although subsection (5)(a)3. does not restrict services eligible for funding to those which are publicly provided,[7] each qualifying service must clearly enhance the County’s ability to attract tourists, and each must be promoted to tourists in a manner demonstrating that tourism is one of its central purposes. Therefore, before allocating revenues to any transportation service for which funding is sought, the Walton County Board of County Commissioners must make a case-by-case factual determination, based on a consideration of these factors, regarding whether a main purpose of the service is to attract tourists.

These principles are reflected in prior opinions discussing the use of tourist development funds. In Attorney General Opinion 2000-25, this office was asked about a county’s use of tourist development funds (1) to cosponsor with a private corporation a bass fishing tournament at a county facility, and (2) to sponsor a two-day event at a private racetrack. This office concluded that tourist development funds could not be used to operate or promote a private sports facility, because subsection (5)(a)1. requires that sports facilities be publicly owned to receive tourist development tax dollars. Revenues could be used, however, pursuant to what is now subsection (5)(a)3., for the particular attraction or event being held, so long as the governing body made the legislative determination that one of the main purposes of the event was to attract tourists.

In an informal opinion provided to Circuit Court Clerk Scott Ellis of Titusville, this office was asked about using tourist development revenues for the day-to-day operations of a “county contracted arts and culture-focused nonprofit entity,” the Brevard Cultural Alliance.[8] Such operations would include salaries of agency personnel, costs of marketing and printing, and insurance and employee benefits. This office concluded that under section 125.0104(5)(a)3., Florida Statutes, tourist development tax revenues could be used for particular events and

activities put on by the organization to promote tourism, but not for its daily administrative expenses.

Therefore, it is my opinion that revenues from a tourist development tax may be used for specific tourist-oriented transportation services based upon a showing that one of the main purposes of each individual service provided is to attract tourists to Walton County.

Sincerely,

Pam Bondi
Attorney General

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[1] Op. Att'y Gen. Fla. 83-18 (1983). *See also* Ops. Att'y Gen. Fla. 14-02 (2014) and 13-29 (2013).

[2] *See, e.g., Alachua County v. Expedia, Inc.*, 175 So. 3d 730, 736 (Fla. 2015); *Freni v. Collier County*, 588 So. 2d 291, 293 (Fla. 2d DCA 1991).

[3] "Tourist" means "a person who participates in trade or recreation activities outside the county of his or her permanent residence or who rents or leases transient accommodations as described in paragraph (3)(a)." §125.0104(2)(b)2., Fla. Stat.

[4] "Promotion" means "marketing or advertising designed to increase tourist-related business activities." § 125.0104(2)(b)1., Fla. Stat.

[5] Informal Opinion to Hon. Scott Ellis, December 16, 2014.

[6] *See* Ops. Att'y Gen. Fla. 15-14 (2015), 14-02 (2014), 12-38 (2012), 10-26 (2010), and 10-09 (2010).

[7] You have indicated that the transit system in question will be operated by a private company. Because Art. VII, § 10 of the Fla. Const. prohibits a county from using its taxing power to aid a private entity, even those projects authorized by § 125.0104, Fla. Stat., must be shown to "serve a paramount public purpose," with only "incidental benefits" accruing to a private party, to be eligible for funding. *State v. Osceola County*, 752 So. 2d 530, 539 (Fla. 1999) (affirming the validation of bonds issued to acquire a convention center from a private entity that would operate the facility, using revenues from a tourist development tax to pay the debt service, finding that "[t]he fact that the proposed project will be operated by a private entity does not negate the public character of the project").

[8] *See supra*, n.5.