Tourist Development Tax - Nature Centers

Number: AGO 2015-14

Date: September 30, 2015

Subject:
Tourist Development Tax - Nature Centers

Ms. Michelle Blankenship Jordan
County Attorney for Jackson County
1512 Highway 90
Chipley, Florida 32428

RE: TOURIST DEVELOPMENT TAX – COUNTIES – NATURE CENTERS – use of tourist development tax for boat ramp and observation platform in a nature center. s. 125.0104, Fla. Stat.

Dear Ms. Jordan:

On behalf of the Jackson County Board of County Commissioners, you ask substantially the following question:

May tourist development tax revenues be used to construct a boat ramp and an elevated platform on the Chipola River, with the elevated platform used as an observation area for viewing birds and the natural landscape?

In sum:

Section 125.0104(5)(b), Florida Statutes, authorizes a county with a population of less than 750,000 to expend tourist development tax revenues for the construction of a nature center which may contain a boat ramp and an elevated platform for observation of birds and the landscape, when the county makes the appropriate legislative determination that such project relates to tourism and primarily promotes such a purpose.

You state that Jackson County has proposed the use of tourist development tax revenues to fund the construction of a ramp for launching boats and an elevated platform for nature observation on the Chipola River as part of a larger "Blueway," *i.e.*, a scenic waterway providing a water path or trail with launching points, camping and picnic locations, and points of interest for paddlers. You indicate that "Blueways" are typically developed to encourage recreation, education, and community development. The county contends that such a facility would constitute the construction, extension, enlargement, remodeling, improvement, or promotion of a "nature center" within the scope of section 125.0104(5)(b), Florida Statutes.

Section 125.0104, Florida Statutes, known as the "Local Option Tourist Development Act,"[1] authorizes a county to impose a tax on short-term rentals of living quarters or accommodations within the county unless such activities are exempt pursuant to Chapter 212, Florida Statutes.[2]

The purpose and intent of section 125.0104, Florida Statutes, is 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.”[3]

The Local Option Tourist Development Act requires that construction of publicly owned facilities financed by proceeds from the tourist development tax be primarily related to the advancement and promotion of tourism. It is the governing body of the county that must make the factual determination of whether a particular facility or project is related to tourism and primarily promotes such a purpose. This determination must follow appropriate legislative findings and due consideration of the specific needs and conditions of the particular locality.[4] Any such determination must show a distinct and direct relationship between expenditure of tourist development tax revenues and the promotion of tourism.

Section 125.0104(5), Florida Statutes, provides the authorized uses of tourist development tax revenues:

“(5) AUTHORIZED USES OF REVENUE.—
(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:
1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:
a. Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the boundaries of the county or subcounty special taxing district in which the tax is levied; or
b. 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;
2. To promote zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public;
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;
4. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency; or
5. To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river. . . .

Subparagraphs 1. and 2. may be implemented through service contracts and leases with lessees that have sufficient expertise or financial capability to operate such facilities.

(b) Tax revenues received pursuant to this section by a county of less than 750,000 population

imposing a tourist development tax *may only be used by that county for the following purposes in addition to those purposes allowed pursuant to paragraph (a)*: 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 not-for-profit organizations and open to the public. All population figures relating to this subsection shall be based on the most recent population estimates prepared pursuant to the provisions of s. 186.901. These population estimates shall be those in effect on July 1 of each year.

* * *

(d) Any use of the local option tourist development tax revenues collected pursuant to this section for a purpose not expressly authorized by paragraph (3)(l) or paragraph (3)(n) or paragraph (a), paragraph (b), or paragraph (c) of this subsection is expressly prohibited." (e.s.)

You advise that Jackson County has a population of less than 750,000 and, thus, subsection (5)(b) above would authorize the county to use tourist development taxes for the additional purposes described therein. The county wishes to expend its tourist development tax revenues for the construction of the boat ramp and the observation platform as part of a "nature center."

Initially, I would note that this office has consistently found that tourist development tax revenues may not be used for the construction of boat ramps.[5] Attorney General Opinion 91-62 considered whether tourist development tax revenues could be used pursuant to what is now section 125.0104(5)(a)5., Florida Statutes, for the repair, construction, and improvement of boat ramps and parking facilities to serve inland lakes and rivers in Citrus County. After a consideration of the language of the statute, the opinion concludes:

"[T]he terms of s. 125.0104(5)(a)4., F.S. (1990 Supp.),[6] relate to the 'actual, physical nature of the beach and [do] not contemplate the construction of artificial structures upon the beach or otherwise authorize activities which do not protect or enhance the physical nature of the beach.'[7] Similarly, the provisions relating to inland lakes and rivers should be read to authorize the direct physical enhancement or protection of these water bodies rather than authorizing the construction of artificial structures upon them or other activities which do not protect or enhance such lakes or rivers.

Thus, the construction of boat ramps and attendant parking facilities in proximity to inland lakes and rivers would appear to be outside the scope of expenditures authorized in s. 125.0104(5)(a)4., F.S. (1990 Supp.)."

Attorney General Opinion 91-62 is distinguishable from the instant situation, as it was based upon the use of tourist development tax revenues under section 125.0104(5)(a), Florida Statutes, and does not address the additional uses for tourist development tax revenues under subsection (5)(b). It should be noted, however, that this office is of the position that the provisions in subsection (5)(b) do not enlarge the uses described in subsection (5)(a). Rather, subsection (5)(b) authorizes a county with a population of less than 750,000 to expend tourist development tax revenues for "zoological parks, fishing piers or nature centers" in addition to those purposes described in subsection (5)(a).

As you have indicated that Jackson County has a population of less than 750,000 and that tourist development tax revenues may be used in such circumstance for the construction of a nature center, the question is now whether a boat ramp and elevated platform on the Chipola River may be constructed as part of a “nature center” for purposes of section 125.0104(5)(b), Florida Statutes.

This office has previously recognized that the term “nature center” is not defined for purposes of the statute. By deconstructing the term and individually defining the words, however, it was concluded that the plain meaning of the term may be derived: “nature” being defined as “the aspect of the out-of-doors (as a landscape): natural scenery;” and “center” connoting “a point around which things revolve: a focal point for attraction, concentration, or activity.” In Attorney General Opinion 94-12, it was determined that given this common meaning along with its placement with zoological parks and fishing piers in the statute, the Legislature apparently contemplated that tourist development tax revenues could be used to acquire property for a nature trail or preserve open to the public. The opinion reiterated that it is the governing body of the county which must ultimately make the determination that the expenditure is for a purpose that falls within the enumerated authorized uses in section 125.0104(5), Florida Statutes.

In Attorney General Opinion 97-48, this office was asked to consider whether a county could use tourist development tax dollars to construct an artificial reef to provide diving and snorkeling opportunities in waters bordering the county. Information provided with the opinion request suggested that the proposed artificial reef was to be part of a larger scheme to develop an aquatic nature center. After determining that an aquatic nature center could be characterized as a nature center within the scope of section 125.0104(5)(b), Florida Statutes, it was concluded that tourist development taxes could be used for its development.[8]

Finally, in Attorney General Opinion 2012-38, this office considered whether tourist development tax revenues could be used to repair, improve and expand a multi-use pathway as part of a recreational network, including the construction of pedestrian bridges to connect the pathway over inland lakes and other bodies of water. Characterizing the pathway as part of a nature center, the opinion concluded that the expenditure was permissible should the county satisfy the statutory requirement that the pedestrian bridges constitute an extension, remodeling or improvement of a nature center. Of particular note, the opinion found that the pedestrian bridges over the inland lakes would serve as extensions and improvements of the multi-use pathway, making it safer and more useful.

Much like a nature trail, an artificial reef, or a multi-use pathway, it would appear that an area on a river could be designated as a “nature center” as a natural part of the landscape and a focal point for activity. Moreover, the specific mention of a fishing pier, makes clear that the construction of an artificial structure is contemplated under the provisions of subsection (5)(b). While this office would maintain that the construction of a boat ramp does not relate to the physical preservation of an inland lake or river, prescribed under section 125.0104(5)(a), Florida Statutes, and would not fall within the authorized uses for tourist development tax revenues pursuant to that subsection, I cannot definitively conclude that the construction of a boat ramp and an elevated platform as part of a nature center would fall outside the authorized uses under subsection (5)(b). Much like the pedestrian bridges considered in Attorney General Opinion 2012-38, a boat ramp and observation platform may serve as improvements to the nature

center, making it safer and more useful. Ultimately, the county must make the appropriate legislative determination that the construction of a boat ramp and observation platform serve as a part of a nature center and that such construction relates to and primarily promotes tourism. While the construction of such structures does not protect or enhance the natural state of the river as required by subsection (5)(a), there may be instances where they act as an integral part of a nature center.

Accordingly, in a county with a population of less than 750,000, section 125.0104(5)(b), Florida Statutes, authorizes the expenditure of tourist development tax revenues for the construction of a nature center which may contain a boat ramp and an elevated platform for observation of birds and the landscape, when the county makes the appropriate legislative determination that such project relates to and primarily promotes tourism.

Sincerely,

Pam Bondi
Attorney General

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[1] Section 125.0104(1), Fla. Stat.

[2] *See* s. 125.0104(3)(a), Fla. Stat., stating it is the intent of the Legislature that every person who rents, leases, or lets living quarters or accommodations in "any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, condominium, or timeshare resort for a term of 6 months or less is exercising a privilege which is subject to taxation under this section . . . ."

[3] *See* Ops. Att'y Gen. Fla. 10-09 (2010), 95-71 (1995), 94-12 (1994), 87-16 (1987), and 83-18 (1983).

[4] *See e.g.,* Ops. Att'y Gen. Fla. 94-12 (1994) (governing body of the county must make determination that expenditure of tourist development tax revenues for the acquisition of a railway right-of-way and construction of a public recreational trail falls within the scope of expenditures authorized by s. 125.0104, Fla. Stat.), 10-09 (2010), and 98-74 (1998).

[5] *See* Op. Att'y Gen. Fla. 91-62 (1991) and Inf. Op. to the Hon. W.N. Chapman, Walton Co. Bd. of Comms., November 5, 2014.

[6] Section 125.0104(5)(a)4., Fla. Stat. (1990 Supp.), provided authorized uses of tourist development tax revenues:

"To finance beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access."

[7] *Citing* Op. Att'y Gen. Fla. 90-55 (1990).

[8] *See also* Op. Att'y Gen. Fla. 13-29 (2013) (tourist development tax revenues may be used for a coral outplanting project to repair or improve a naturally occurring reef as the repair of a zoological or nature center).