# Tourist Development Tax, uses

**Number:** AGO 2012-38

**Date:** November 16, 2012

**Subject:**
Tourist Development Tax, uses

The Honorable Scott A. Brannon
Chairman, Walton County Board of
County Commissioners
Post Office Box 1355
DeFuniak Springs, Florida 32435

RE: TOURIST DEVELOPMENT TAX - TAXATION - BEACHES - BRIDGES - TRAILS - MULTI-USE PATHWAY - use of tourist development tax for multi-use pathway, bridges, and purchase of real property for parking for beach parks. s. 125.0104(5), Fla. Stat.

Dear Mr. Brannon:

On behalf of the Board of County Commissioners of Walton County, you have requested my opinion on the following questions:

1. May Tourist Development Tax proceeds be used to maintain, repair, improve, and expand a multi-use pathway which is part of the recreational network in the southern area of Walton County along County Highway 30-A?

2. As part of the improvement of the multi-use pathway, may Tourist Development Tax proceeds be used to build pedestrian bridges to connect the multi-use pathway so as to not require users of the pathway to travel onto the road surface when the pathway crosses over water bodies?

3. May Tourist Development Tax proceeds be used to acquire land and adjacent right-of-way which would be used to provide public parking facilities to serve beach access areas and other beach park facilities?

In sum:

1. and 2. The use of Walton County tourist development tax revenues for the maintenance, repair, improvement and expansion of a multi-use pathway used by tourists for biking, hiking, walking and running which is part of the recreational network of Walton County is permissible if these projects are determined by the county to satisfy the statutory requirement that they constitute an extension, enlargement, remodeling, or improvement of a nature center. Because pedestrian bridges over inland lakes and other water bodies would appear to serve as extensions and improvements of the multi-use pathway, making it safer and more useful, it is my opinion that the expenditure of tourist development tax proceeds for such purposes is also authorized by section 125.0104(5)(b), Florida Statutes, if the county makes the appropriate

findings.

3. Tourist development tax proceeds may be used by the county to acquire land and adjacent rights-of-way to provide public parking facilities to serve beach access areas and other beach park facilities upon making the appropriate legislative findings.

Your letter states that Walton County has created the Walton County Tourist Development Council as provided in section 125.0104, Florida Statutes. The county has also, through various ordinances, levied and collected the tourist development tax authorized by section 125.0104, Florida Statutes.

You have requested an opinion from this office concerning the authority of the county to use the proceeds of these taxes for various proposed uses. The specific uses related in your letter are for the maintenance, repair, improvement and expansion of a multi-use pathway in the South Walton County area and the acquisition of property and rights-of-way which would be used to provide public parking facilities to serve beach access areas and other beach park facilities. The particular area in which these improvements will be made is located in South Walton County, adjacent to County Road 30-A. You state that this area includes a high concentration of tourists who seek to utilize and enjoy the various natural resources located within the county and in that area.

Questions One and Two

You advise that Walton County has constructed an 18 mile multi-use pathway along County Road 30-A which is adjacent to state parks, beaches, coastal dune lakes, coastal forests, and the Gulf of Mexico. The multi-use pathway is widely used by tourists for biking, hiking, walking, and running and generally provides access to the beach area and these other nature attractions. As you note, an increasing number of visitors to the South Walton area are bringing bicycles to take advantage of the county's network of multi-use pathways as part of their recreational enjoyment on their vacation. The availability of the multi-use pathway as a recreational amenity for tourists is promoted on Walton County's tourism website. You have asked whether Tourist Development Tax proceeds may be used to maintain, repair, improve, and expand the multi-use pathway as part of the county's recreational network.

Section 125.0104, Florida Statutes, the Local Option Tourist Development Act (the act), authorizes any county of this state to levy and impose a "tourist development tax."[1] This office has previously determined that the purpose of the act 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."[2] Thus, the construction of publicly owned facilities financed by the proceeds from a tourist development tax must be primarily related to the advancement and promotion of tourism. The determination of whether a particular facility or project is tourist related and primarily promotes such a purpose is a factual determination that must be made by the governing body of the county. This factual determination must be based on appropriate legislative findings and due consideration of the peculiar and prevailing local conditions and needs.

The act sets forth the uses for which tourist development tax revenues may be used in section 125.0104(5), Florida Statutes, which provides:

"(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 publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, auditoriums, 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. Tax revenues received pursuant to this section may also be used for promotion of zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public. . . .
2. To promote and advertise tourism in the State of Florida and nationally and internationally; . . . .
3. 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, . . . .
4. 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. . . . In counties of less than 100,000 population, no more than 10 percent of the revenues from the tourist development tax may be used for beach park facilities.[3]
(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.[4]

* * *

(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.)

Thus, the statute itself limits the collection and expenditure of tourist development tax revenues to those purposes specifically set forth therein.[5]

In Attorney General Opinion 94-12, this office determined that expenditures from tourist development tax revenues for the acquisition of a railway right-of-way and construction of a public recreational trail would appear to be within the scope of expenditures authorized by section 125.0104, Florida Statutes. The opinion considered the provision in section 125.0104(5)

allowing counties with a specified population to use tourist development tax revenues "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."[6] Relying on a general definition of the term "nature center"[7] and the use of that term along with zoological parks and fishing piers, the opinion concludes that tourist development tax revenues in counties with populations of less than 600,000 (now 750,000) persons could be used to acquire property for a project similar to a nature trail or preserve open to the public.

The project you describe, an 18-mile multi-use pathway that has been constructed along County Road 30-A adjacent to state parks, beaches, coastal dune lakes, coastal forests, and the Gulf of Mexico is comparable to the public recreational trail considered in Attorney General Opinion 94-12. Like the county in the 1994 opinion, Walton County has a population of less than 750,000 and may take advantage of the additional purposes authorized in section 125.0104(5)(b), Florida Statutes.[8] The multi-use pathway is a recreational amenity for tourists that is promoted on the county's tourism website. It is used by tourists for biking, hiking, walking, and running in addition to providing an access point to nature activities and opportunities.

Thus, it appears that the expenditure of Walton County tourist development tax revenues for the maintenance, repair, improvement and expansion of a multi-use pathway used by tourists for biking, hiking, walking and running which is part of the recreational network of Walton County is permissible if these projects are determined by the county to satisfy the statutory requirement that they constitute an extension, remodeling or improvement of a nature center. Because pedestrian bridges over inland lakes and other water bodies would appear to serve as extensions and improvements of the multi-use pathway, making it safer and more useful, it is my opinion that the expenditure of tourist development tax proceeds for such purposes is also authorized by section 125.0104(5)(b), Florida Statutes, if the county makes the appropriate legislative findings.

Question Three

You also ask whether Walton County may expend tourist development tax revenues pursuant to section 125.0104(5), Florida Statutes, to acquire land and adjacent rights-of way to provide public parking facilities to serve beach access areas and other beach park facilities.

Section 125.0104(5)(a)4., Florida Statutes, provides specific authorization for the use of tourist development tax funds

"[t]o 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. . . . In counties of less than 100,000 population, no more than 10 percent of the revenues from the tourist development tax may be used for beach park facilities."

Prior to its amendment in 1996, section 125.0104(5)(a)4., Florida Statutes, authorized the use of tourist development tax funds:

"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."

Based on this more limited language, this office, in Attorney General Opinion 91-62, determined that the statute did not authorize the use of these tax funds for "beach facilities" such as parking facilities or boat ramps.[9] Attorney General Opinion 90-55 considered whether the language of the statute would authorize the construction of artificial structures, such as sanitary facilities, upon the beach. That opinion concluded that the terms "beach improvement, maintenance, renourishment, restoration, and erosion control" related to the actual, physical nature of the beach rather than authorizing the construction of artificial structures upon the beach or authorizing other activities which did not protect or enhance the physical nature of the beach.

However, in 1996, the Legislature amended this statute to include the financing of "beach park facilities,"[10] thus clearly authorizing the use of tourist development tax funds for the construction of certain "facilities." A review of the definition of this term indicates that such things as public parking facilities may well come within the scope of the statute. The word "facility" is defined as "something designed, built, installed, etc., to serve a specific function affording a convenience or service. . . ."[11]

Attorney General Opinion 97-48 considered 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 facility within the scope of section 125.0104(5)(b), Florida Statutes, the opinion concluded that tourist development taxes could be used for its development. The opinion notes that "[u]ltimately, however, the determination of whether a particular expenditure satisfies the requirements of section 125.0104, Florida Statutes, is the responsibility of the governing body of the county and cannot be delegated to this office."

Similarly, based on a determination by Collier County that the purchase of real property would promote tourism or that the purchase of an "out parcel" would improve, maintain or restore a beach park, Attorney General Opinion 01-42 concluded that tourist development tax revenues could be used to fund such a project. That opinion also suggests that the beach park area might well be characterized as a nature center that was publicly owned within the scope of section 125.0104(5)(b), Florida Statutes, and that Collier County, as a county with a population of less than 600,000 (now 750,000), could use tourist development tax revenues to "acquire, . . . extend, enlarge, . . . [or] improve . . . ." such a center.

Thus, it is my opinion that tourist development tax proceeds may be committed by Walton County to be used by the county to acquire land and adjacent rights-of-way to provide public parking facilities to serve beach access areas and other beach park facilities if the county commission makes the requisite findings that such expenditures will promote tourism within the county or that the purchase of this property will improve, maintain, or restore beach park facilities.

Sincerely,

Pam Bondi
Attorney General

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[1] *See* section 125.0104(3)(b), Fla. Stat.

[2] *See* Ops. Att'y Gen. Fla. 83-18 (1983), 00-15 (2000), 10-09 (2010), and Inf. Op. to Johnson, dated March 13, 2012.

[3] Research indicates that the population of Walton County, Florida, is under 100,000. *See* www.googlepublicdata, reflecting information from the U.S. Census Bureau updated as of July 31, 2012.

[4] *Id.*

[5] *See Thayer v. State*, 335 So. 2d 815 (Fla. 1976), *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341 (Fla. 1952), *Ideal Farms Drainage District v. Certain Lands*, 19 So. 2d 234 (Fla. 1944), for the principle of statutory construction that the mention of one thing implies the exclusion of another - *expressio unius est exclusio alterius*. Thus, when a statute enumerates the things upon which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all things not expressly mentioned.

[6] Section 125.0104(5)(b), Fla. Stat.

[7] *See* Op. Att'y Gen. Fla. 94-12 (1994), stating that the "term 'nature' is defined as 'the aspect of the out-of-doors (as a landscape): natural scenery.' Use of the word 'center' connotes 'a point around which things revolve: a focal point for attraction, concentration, or activity.'"

[8] *Supra* n.3.

[9] *Cf.* Op. Att'y Gen. Fla. 90-55 (1990), in which this office concluded that the statute would not authorize the expenditure of these funds for the construction of artificial structures such as those authorized in s. 125.0104(5)(a)1., Fla. Stat., relating to convention centers, sports stadiums, etc.; as that opinion notes "the Legislature has provided for using tourist development tax revenues to construct certain facilities which do not include beach parks."

[10] *Sees*. 44, Ch. 96-397, Laws of Fla.

[11] Webster's New Universal Unabridged Dictionary (2003), p. 690.