Tourist Development Tax -- Expenditures

Number: INFORMAL

Date: December 17, 2014

The Honorable Scott Ellis
Clerk of the Circuit Court
Post Office Box 999
Titusville, Florida 32781-0999

Dear Mr. Ellis:

You have requested this office's assistance in addressing several questions relating to Florida's Tourist Development Tax, authorized in section 125.0104, Florida Statutes. Attorney General Bondi has asked me to respond to your letter.

Your letter poses four questions:

1. When a substantial portion of Tourist Development Tax revenues dedicated to the BCA (Brevard Cultural Alliance) is used for administrative expenses, does that constitute a violation of Brevard County's ordinance on the Tourist Development Tax?

2. Do parts of the Brevard County's [sic] ordinance on the Tourist Development Tax – specifically subsections (3)e and (4)c of Section 102-119 ("Budget Plan") – violate F.S. s. 125.0104?

3. Does F.S. s. 125.0104(5)(a)(3) permit Tourist Development Tax revenues to be dedicated to an entity (as a whole) which arguably has as one of its main stated purposes the attraction of tourists? Or, is the dedication of such revenues limited only to specific activities, services, venues, or events (provided by that entity) for which one of the main purposes may be the attraction of tourists?

4. Would a county contracted arts and culture-focused nonprofit entity (i.e., the BCA) be classified as a "tourist bureau" as that term is used in F.S. s. 125.0104(5)(a)(4), where one of the stated purposes of that entity is arguable related to the attraction of tourists?

Your first two questions require comment on local legislation, that is, a Brevard County ordinance. The Florida Attorney General is statutorily limited to providing opinions on questions of state law.[1] This office has no authority to interpret or comment on local legislation and cannot determine violations of local ordinances. Further, this office is not authorized to determine whether violations of a statute may have occurred. Such a determination requires resolution of mixed questions of law and fact and is the province of the judiciary. Thus, no discussion of your first two questions will be provided. However, in an effort to assist you in your role as auditor and custodian of county funds,[2] I offer the following informal comments on your concerns relating to a local controversy over how tourist tax monies may be used.[3]

You refer specifically to section 125.0104(5), Florida Statutes, which provides the authorized

uses of tourist development tax revenues. As set forth in this subsection:

"(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

* * *

(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."

You ask whether section 125.0104(5)(a)(3), Florida Statutes, permits tourist development tax revenues to be dedicated to an entity (as a whole) which arguably has as one of its main stated purposes the attraction of tourists. That is, whether taxes imposed and collected pursuant to the tourist development tax are appropriately expended to cover the administrative costs, that is, the day-to-day operations of, a county cultural agency. As noted in the material you have submitted to this office, tourist development tax revenues have, in the past, been budgeted and used for such things as the salaries of personnel of the county cultural agency, marketing and printing, insurance and employee benefits for the agency. Alternatively, you ask whether the expenditure of these revenues should be limited to specific activities, services, venues, or events (provided by that entity) for which one of the main purposes may be the attraction of tourists.

Based on my review of the statutory language it would appear that the expenditure of tourist development tax funds should be directed toward particular events and activities which promote tourism rather than funding the day-to-day operations of a private county cultural organization. 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.

This office has consistently determined that tourist development tax revenues may only be used for the purposes enumerated in section 125.0104(5)(a), Florida Statutes.[4] The expenditure of tourist development tax revenues pursuant to the statute, moreover, must be based upon a determination by the governing body of the county that the activity directly and primarily promotes tourism.[5] Thus, it is the governing body of the county, not this office, which must ultimately review the facts of the particular case and make the determination that a specific expenditure of tourist development tax revenues fulfills the requirements of section 125.0104, Florida Statutes. For that reason, this discussion should not be seen as a comment on any past actions of a county in allocating tourist development tax revenues, but as suggestions for future consideration.

Section 125.0104(5)(a)3., authorizes a county to use tourist development tax revenues to "promote and advertise tourism" and requires that any expenditure for a particular "activity, service, venue, or event" directly involve "the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists[.]" To "promote" is generally understood to mean to advocate or to popularize[6] or to encourage.[7] To "advertise" is "to announce or praise (a produce, service, etc.) in some public medium of communication in order to induce people to buy or use it" or "to give information to the public about; announce publicly in a newspaper on radio or television, etc."[8] The statute requires that expenditures directly involve the attraction of tourists and that such direct involvement be evidenced. It does not appear that the payment of such things as salaries and employee benefits would directly "promote and advertise tourism" nor would such payments be directed to an "activity, service, venue, or event" which would directly involve the attraction of tourists.

In addition, subsection (5) does contain language which would authorize the operation and maintenance of certain publicly owned and operated convention centers, sports centers, and auditoriums in subparagraph (5)(a)1. A legislative determination of such authority elsewhere in the statute would argue against the implication of such authority in subparagraph (5)(a)4. It is a general rule of statutory construction that where the Legislature has used a term in one section of the statute, but omits it in another section of the same statute, the court will not imply it where it has been excluded.[9]

Thus, the expenditure of tourist development tax revenues for the promotion and advertisement of tourism as provided in section 125.0104(5)(a)3., Florida Statutes, would not clearly appear to include payment of the administrative expenses incurred in the day-to-day operations of a county cultural agency. Nor would payment of the day-to-day operational expenses of a county cultural agency appear to directly involve the attraction of tourists. In light of this requirement of the statute, I cannot determine that the expenditure of tourist development taxes for administrative expenses of a county cultural agency would be authorized by section 125.0104(5)(a)3., Florida Statutes. Rather, the statute appears to be directed more narrowly at funding particular activities,

services, venues, or events to attract tourists which may be accomplished through a county cultural agency.

You have also asked whether an arts and culture-focused nonprofit entity with which Brevard County contracts may be classified as a "tourist bureau" as that term is used in section 125.0104(5)(a)4., Florida Statutes. While this office cannot make a definitive determination of whether a particular entity falls within the scope of the statute, I offer the following suggestions for consideration.

Section 125.0104(5)(a)4., Florida Statutes, authorizes the use of tourist development tax revenues to fund "convention bureaus, tourist bureaus, tourist information centers, and news bureaus[.]" These are described in the statute as "promotion agenc[ies]" and may be funded as county agencies or by contract with the chambers of commerce or similar organizations in the county. In considering what the Legislature may have meant by use of the term "tourist bureaus," the terms used in the statute should take meaning based on their context or association with other words in the statute, that is, they take color from each other. Under the statutory construction doctrine *noscitur a sociis*, the meaning of statutory terms, and the legislative intent behind them, may be discovered by referring to words associated with them in the statute.[10] The entities specifically enumerated in the statute appear to be particular types of tourist promotional agencies rather than agencies with a primary mission not directly involving tourism, but which may tangentially accomplish some tourist related purpose. Again, this agency is not a fact-finder and cannot definitively resolve the question of whether a particular entity comes within the scope of the statute. However, by providing you with the rules of statutory construction which may be used to determine what the Legislature may have intended in adopting the statute, I hope to be of assistance.

This informal advisory opinion was prepared by the Opinions Division of the Florida Attorney General's Office in an effort to be of assistance to you. The opinions expressed herein are those of the writer and do not constitute a formal Attorney General's Opinion.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* s. 16.01(3), Fla. Stat., and Department of Legal Affairs Statement Concerning Attorney General Opinions (available at: www.myfloridalegal.com / Legal Resources / AG Opinions / Frequently Asked Questions).

[2] *See* Art. V, s. 16 and Art. VIII, s. 1(d), Fla. Const., *and see* s. 125.17, Fla. Stat.

[3] This office acknowledges your position as county auditor and notes that you have personal liability for signing warrants for expenditures that are not supported by law. However, a discussion of whether the county commission has appropriately determined that funds are to be

spent for a particular purpose necessarily would involve comment upon the authority of the commission and the Brevard County Commission has not joined in this request. Thus, this office may not render a formal opinion to resolve this matter. *See* Department of Legal Affairs Statement Concerning Opinions (available at: www.myfloridalegal.com / Legal Resources / AG Opinions / Frequently Asked Questions).

[4] *See* Ops. Att'y Gen. Fla. 86-68 (1986) (tourist development tax revenues may be used for beach cleaning and maintenance) and 87-16 (1987) (tourist development tax revenues may be used to improve, maintain, renourish or restore public shoreline or beaches of inland freshwater lake). *Cf.* Ops. Att'y Gen. Fla. 91- 62 (1991) (construction of boat ramps and attendant parking facilities in proximity to inland lakes and rivers not a proper use of tourist development tax revenues); 90-55 (1990) (no authority to use tourist development tax revenues to construct beach parks, fund additional law enforcement patrols or lifeguards on the beach, or build and maintain sanitary facilities on or near the beach); and 88-49 (1988) (no authority to use tourist development tax revenues to acquire real property for public beach access).

[5] *See* Op. Att'y Gen. Fla. 10-09 (2010).

[6] *See* The American Heritage Dictionary (1983), p. 549.

[7] Webster's New Universal Unabridged Dictionary (2003), p. 1548.

[8] *Id.* p. 29.

[9] *Metropolitan Dade County v. Milton*, 707 So. 2d 913 (Fla. 3d DCA 1998)*. And see Alsop v. Pierce*, 19 So. 2d 799 (Fla. 1944); *Thayer v. State*, 335 So. 2d 815 (Fla. 1976) (a legislative direction as to how a thing is to be done is, in effect, a prohibition against it being done in any other way).

[10] *See Turnberry Isle Resort and Club v. Fernandez,* 666 So. 2d 254 (Fla. 3d DCA 1996) (under the doctrine of *noscitur a sociis*, the meaning of statutory terms, and the legislative intent behind them, may be discovered by referring to words associated with them in the statute); *and* Ops. Att'y Gen. Fla. 00-07 (2000), 90-55 (1990) (terms of section should be construed in connection with, and their meaning ascertained by reference to, the other words and phrases of the section with which they are associated).