Tourist Development Tax

Number: INFORMAL

Date: November 05, 2014

The Honorable W. N. Chapman
Walton County Board of
County Commissioners
161 East Sloss Avenue
DeFuniak Springs, Florida 32433

Dear Commissioner Chapman:

On behalf of the Board of County Commissioners of Walton County, you have asked for my assistance regarding the Tourist Development Tax, section 125.0104, Florida Statutes. More specifically, I understand your concerns to relate to whether boat ramps would come within the scope of purposes authorized by section 125.0104(5)(a)5., Florida Statutes, as appropriate for expenditure of tourist development tax funds, in light of the conclusion in Attorney General Opinion 91-62. More generally, you ask whether tourist development tax moneys may be used to maintain, repair, improve and expand parks and recreational facilities. Attorney General Bondi has asked me to respond to your letter.

Section 125.0104, Florida Statutes, known as the "Local Option Tourist Development Act"[1] (the act), 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."

You advise that Walton County has a population of less than 750,000 and, thus, subparagraph (b) above would authorize the county to use tourist development taxes for the additional purposes described therein.

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.),[5] 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.'[6] 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.)."

The language of the statute is substantially the same as the language relied upon in Attorney General Opinion 91-62, with the addition of legislative clarifying language making it clear that such expenditures must "relate to the physical preservation of the beach, shoreline, or inland lake or river."

In light of the conclusion in the earlier opinion and the addition of language by the Legislature which would support the conclusion in Attorney General Opinion 91-62, it would appear that the construction of boat ramps and attendant parking facilities in proximity to inland lakes and rivers would be outside the authorized expenditures described in section 125.0104(5)(a)5., Florida Statutes. While section 125.0104(5)(b), Florida Statutes, provides additional uses to which these funds may be put, I do not read that paragraph as enlarging those uses described in subsection (5)(a). Rather, subsection (5)(b) would authorize 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). I cannot conclude that a boat ramp is a zoological park, fishing pier, or nature center.

More generally, you have asked whether tourist development tax moneys may be used to maintain, repair, improve, and expand parks and recreational facilities in Walton County. As discussed above, 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. The purpose of this tax is not to substitute for appropriations from general revenue for capital improvement. As this office advised the Walton County Board of County Commissioners in a recent Attorney General Opinion on the use of the tourist development tax:

"[T]he 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."[7]

I trust that these informal comments will be helpful to you in addressing your concerns.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

---

[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] 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."

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

[7] *See* Op. Att'y Gen. Fla. 12-38 (2012); *see also* Ops. Att'y Gen. Fla. 14-02 (2014), Inf. Op. to Pridgen, dated March 13, 2013, and Inf. Op. to Johnson, dated March 13, 2012 (copies enclosed).