Tourist Development Tax, trolley service

Number: INFORMAL

Date: March 14, 2013

The Honorable Kenneth Pridgen
Chairman, Board of County
Commissioners of Walton County
Post Office Box 1355
DeFuniak Springs, Florida 32435

Dear Mr. Pridgen:

On behalf of the Board of County Commissioners of Walton County, you have asked for this office's assistance in determining the legality of expending tourist development tax proceeds collected pursuant to section 125.0104, Florida Statutes, to fund a trolley/tram service. Your letter suggests that the details of this project have not been finalized so that matters such as the sources of funding for such a tram/trolley service have not been determined. In light of the absence of specific information on important details of any such project, I offer the following general comments and concerns.

According to your letter to this office, the Walton County Tourist Development Council has recently been approached by a group of private citizens seeking funding for a trolley/tram operation. The proposals have generally focused on providing a transit system that would allow people to ride between certain locations along a main roadway adjacent to the Walton County Beaches and beach communities. The primary area where the service has been proposed is along County Road 30-A which runs adjacent to state parks, beaches, coastal dune lakes and forests, beachfront communities, and the Gulf of Mexico.

Your letter advises that no proposal has established exactly how funding would be used, beyond asserting that funding is necessary to establish this business and sustain its operation. The proposals have generally suggested a private enterprise, that is, a private for-profit company would own and operate the business and would charge a fee to those riding the trolley/tram.

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] Subsection (5) of the act sets forth the purposes for which revenues from the tourist development tax may be used.

Specifically, section 125.0104(5)(a), Florida Statutes, provides:

"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. However, these purposes may be implemented through service contracts and leases with lessees with sufficient expertise or financial capability to operate such facilities;
2. To promote and advertise tourism in the State of Florida and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall 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;
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, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency; or
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. . . ."

Where a statute enumerates those things upon which it will operate or forbids certain things, it is ordinarily construed as excluding from its operation all things not expressly mentioned.[3] Thus, the specific provisions of section 125.0104(5)(a), Florida Statutes, limit the expenditure of tourist development tax revenues to those enumerated and imply the exclusion of all others.[4]

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.[5] Your letter suggests that the trolley/tram transit service may promote or advertise tourism pursuant to section 125.0104(5)(a)(2), Florida Statutes, and thus, would be an appropriate use of tourist development taxes. That statute provides that tourist development tax revenues may be used:

"To promote and advertise tourism in the State of Florida and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall 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[.]"

The term "service" is not defined for purposes of section 125.0104(5), Florida Statutes, but is commonly understood to mean "[t]he act or means of serving[;] [d]uties performed as an occupation"[6] and "an act of helpful activity; help; aid[;]"[7] and "the supplying or a supplier of public communication and transportation[.]"[8] The determination, however, as to whether a particular project is tourist related and furthers the purpose of promoting tourism is one which must be made by the governing body of the county and not by this office.[9]

An issue raised in your letter is a concern with using tourist development tax revenues to fund a private business enterprise. I would caution that this office has, on more than one occasion, suggested that funding private business is not an appropriate use of these tax revenues.[10]

Section 125.0104(5), Florida Statutes, repeatedly speaks to the authority to use these revenues for "publicly owned and operated" facilities or those that are "publicly owned and operated or owned and operated by not-for-profit organizations and open to the public[.]"[11] The statute authorizes accomplishment of the purposes related in subsection (5)(a)1., "through service contracts and leases with lessees with sufficient expertise or financial capability to operate such facilities[.]" This office, in our recent opinion to Walton County, Attorney General Opinion 2012-38, focused on the authority extended to the county through subsection (5)(b) which applies to counties with a population of less than 750,000. This subsection specifically approves the use of these tax revenues for facilities "which are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public."

You have also asked whether the fact of a limited service area is problematical in determining whether tourist development tax revenues may be used for a particular project. Nothing in the statute would appear to require that any service funded with tourist development taxes be offered equally throughout the county. Your letter does not suggest that availability of the transportation service would be limited to those staying in a particular part of the county or in particular lodgings. Rather, I would assume that tourists from all parts of the county could take advantage of this transportation service to access the recreational activities, restaurants, and other tourist related businesses located along the designated stretch of County Road 30-A. While the service itself appears to be geographically limited, use of the service would appear to be open to all. It may be advisable, however, for the county to consider accessibility of use of this service by those outside the service area. Availability of parking for those who may use the trolley/tram service but are staying outside the service area may alleviate some concerns about service for a limited geographic area.

I trust that these informal comments will be helpful to you in considering the proposed use of tourist development tax revenues under section 125.0104, Florida Statutes. This informal Attorney General Opinion is provided to you by the Department of Legal Affairs in an effort to be of assistance. The conclusions expressed herein are those of the writer and do not constitute a formal opinion of the Attorney General.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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

[2] *See* s. 125.0104(3)(a), Fla. Stat., which states that it is the intent of the Legislature that every person who rents, leases, or lets for consideration any 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 Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976). *And see* Op. Atty Gen. Fla. 88-49 (1988) (the expenditure of tourist development tax revenues is limited to those purposes set forth in the statute).

[4] *And see Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952) and *Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944), for the proposition that a legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way.

[5] *See* Ops. Atty 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. Atty 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).

[6] The American Heritage Dictionary (office edition 1987), p. 624.

[7] Webster's New Universal Unabridged Dictionary (2003), p. 1750.

[8] *Id.*

[9] *See* Ops. Att'y Gen. Fla. 98-74 (1998), 97-48 (1997), 92-66 (1992), 87-16 (1987), and 83-18 (1983), concluding that a determination of whether a project is tourist related and furthers such primary purpose is a factual determination which must be made by the legislative and governing body of the county founded upon appropriate legislative findings and due consideration of the peculiar and prevailing local conditions and needs.

[10] *See, e.g.,* Op. Atty Gen. Fla. 96-54 (1996), in which this office concluded that s. 125.0104(5)(a)1., Fla. Stat., does not authorize the use of county tourist development funds for a sports stadium or arena, such as the Gainesville Raceway, that is owned and operated by a private not-for-profit organization; and Op. Atty Gen. Fla. 00-25 (2000), in which this office stated that the plain language of s. 125.0104(5)(a)1., Fla. Stat., limits the use of tourist development tax funds to publicly owned and operated sports stadiums or arenas.

[11] *See* s. 125.0104(5)(a)1. and (b), Fla. Stat.