Tourist Development Tax expenditures

Number: INFORMAL

Date: February 08, 2013

Mr. Jeffrey A. Klatzkow
Collier County Attorney
3299 East Tamiami Trail
Suite 800
Naples, Florida 34112-5749

Dear Mr. Klatzkow:

On behalf of Collier County, you ask whether the county's policy regarding expenditures of tourist development tax revenues for erosion control structures is a lawful expenditure of such taxes, whether the county's ordinance allowing expenditure of tourist development taxes for "pass and inlet maintenance" is proper, and, if not, whether tourist development taxes may be used to dredge the inlet and pass when the sand will be used for beach renourishment.

Initially, I must note that this office does not interpret local codes and ordinances, but rather renders opinions on the application of state statutes. Additionally, this office must presume the validity of a duly enacted ordinance or local act. Accordingly, this office will not render an opinion on the county's existing ordinance and policy governing the expenditure of tourist development taxes for erosion control structures and the dredging of the inlet pass for sand to be used for beach renourishment. The following general comments, however, are offered for your consideration.

Generally, this office has found that the expenditure of tourist development taxes pursuant to section 125.0104, Florida Statutes, must be based on a determination by the governing body of the county that the activity directly and primarily promotes tourism.[1] Section 125.0104(5)(a)4., Florida Statutes, specifically authorizes the expenditure of such tax revenues

"[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. . . ."

Opinions of this office have consistently stated that the enumeration of those things which may be funded by tourist development taxes precludes the expenditure of such funds for other purposes.[2] Ultimately, however, the determination of whether a project promotes tourism and falls within the enumerated authorized expenditures under the act is one which must be made by the governing body of the county and cannot be made by this office.

In Attorney General Opinion 87-16, this office was asked whether a county could expend tourist development tax revenues to improve, maintain, renourish, or restore public shoreline or beaches of inland freshwater lakes. At that time section 125.0104, Florida Statutes, authorized

the expenditure of such funds to "finance beach improvement, maintenance, renourishment, restoration, and erosion control."[3] While the statute was subsequently amended to reflect authorization to spend tax revenues for shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers,[4] the opinion concluded that the county could use tourist development tax revenues for beaches and shorelines of inland freshwater lakes, if such expenditures were primarily related to promoting tourism within the county.

I trust that these informal comments will provide guidance in your resolution of the questions you have raised.

Sincerely,

Lagran Saunders
Assistant Attorney General

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

[2] *See, e.g.,* Ops. Att'y Gen. Fla. 10-09 (2010) (use of tourist development tax to stock lake with fish questionable in light of restriction of use to enhancement of physical aspects of lakes and rivers); 00-25 (2000) (tourist development tax may not be used to fund private sports facility; however, the promotion of a private event which primarily attracts tourists authorized); 00-29 (2000) (where tourist development plan specifies how each of the projects set forth in the plan are to be funded, excess funds may not be transferred between such accounts without amending the plan as prescribed in s. 125.0104(4)(d), Fla. Stat.).

[3] *See* s. 125.0104, Fla. Stat. (1986 Supp.).

[4] *See* s. 6, Ch. 87-280, Laws of Fla., effective Oct. 1, 1987; Ops. Att'y Gen. Fla. 87-16 (1987) was rendered Feb. 18, 1987.