Tourist Development Tax, trash removal

Number: INFORMAL

Date: March 13, 2012

The Honorable Marcia M. Johnson
Clerk of the Circuit Court
Franklin County, Florida
33 Market Street, Suite 203
Apalachicola, Florida 32320

Dear Ms. Johnson:

As clerk of the circuit court, acting as county auditor, you ask for this office's assistance in determining whether tourist development tax revenues may be used pursuant to section 125.0104(5)(a)2., Florida Statutes, to pay for trash and debris removal on state-owned bridges within the county.

You state that you are the county budget officer and that in such capacity you are responsible for signing warrants for payment of county obligations. Your county commission has recently taken action to approve the receipt of $9,000.00 from the county's tourist development council to pay a private contractor to remove trash and debris from bridges within the county. You have expressed your concern to the commission that tourist development revenues may not be used for trash clean-up under the provisions in section 125.0104(5), Florida Statutes. You indicate that the commission's position is that since the bridges are the gateway to the county's tourist areas, such expenditures would be considered a "promotional" expense under the statute.

This office has been advised by the county's attorney that the commission has voted to expend the funds for such purpose and that it does not wish to join in your request. While this office acknowledges your position as county auditor and that you have personal liability for signing warrants for expenditures that are not supported by law, a determination 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, such that this office may not render a formal opinion to resolve the matter.[1]

In order to provide assistance, however, the following general comments are offered.

Section 125.0104, Florida Statutes, known as the Local Option Tourist Development Act,[2] 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.[3] This office has determined that 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."[4]

Pursuant to section 125.0104(5)(a), Florida Statutes:

"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, or auditoriums, 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. . . ." (e.s.)

Moreover, in a county with a population less than 750,000, tourist development tax revenues may be used "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."[5]

Section 125.0104(5)(a), Florida Statutes, specifically provides that tourist development tax revenues are to be used by the imposing county "only" for the enumerated purposes. Where 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] Thus, the specific enumeration in section 125.0104(5)(a) and (b), Florida Statutes, of those projects for which tourist development tax revenues may be spent implies the exclusion of any others.

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.[7] 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.[8] Thus, it is the governing body of the county, not this office, which must make the determination that a specific expenditure of tourist development tax revenues fulfills

the requirements of section 125.0104, Florida Statutes.

In Attorney General Opinion 10-09, this office concluded that the use of tourist development tax revenues for stocking freshwater lakes with game fish was questionable, in light of the statute's limitation on the use of such funds to projects involving the preservation of the physical aspects of inland lakes and rivers. In contrast, in Attorney General Opinion 90-59, this office determined that tourist development tax revenues could be used for the removal of hydrilla and other water weeds from the inland lakes and rivers of the county to which there is public access, if the county determined that such expenditure was primarily related to tourism in the county.[9]

As noted above, there is an assertion that the bridges serve as a gateway to the tourist attractions within the county and, therefore, the cost of removal of trash and debris from the bridges is part of the cost of promoting tourism. A similar argument was made in Attorney General Opinion 90-14 (1990) where a county wished to expend tourist development tax revenues to provide additional police protection during special events and holidays which attracted tourists to the area. The opinion recognized that the funding of general law enforcement within the county or the provision of additional law enforcement at special events or during particular holidays may, in fact, affect and benefit tourism within the county. However, the provision of such law enforcement functions owed to the public at large, whether generally or at special events or during certain holidays, was found to not have the promotion and advertisement of tourism as its primary purpose.

This office may not supplant the determination by a county's governing body that the expenditure of tourist development tax revenues primarily serves the purpose of directly promoting tourism.[10]

I trust that these informal comments will be of assistance to you.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tsh

---

[1] *See* Frequently Asked Questions About Attorney General Opinions, www.myfloridalegal.com, stating that "[opinions] should not be sought to arbitrate a political dispute between agencies or between factions within an agency or merely to buttress the opinions of an agency's own legal counsel. Nor should an opinion be sought as a weapon by only one side in a dispute between agencies."

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

[3] *See* s. 125.0104(3)(a), Fla. Stat., stating that 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 . . . ."

[4] Op. Att'y Gen. Fla. 83-18 (1983). *See also* Ops. Att'y Gen. Fla. 95-71 (1995), 94-12 (1994), and 87-16 (1987), reiterating this conclusion.

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

[6] *See Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976). *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.

[7] *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).

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

[9] *See also* Op Att'y Gen. Fla. 91-62 (1991) (county authorized to expend tourist development tax revenues to finance the dredging of silt and debris in the main spring of a river if it is determined by the county's governing body that the activity is primarily related to tourism within the county).

[10] *See* Ops. Att'y Gen. Fla. 00-25 (2000) (whether a particular venue or event is tourist related and furthers the purpose of promoting tourism is a decision that must be made by the governing body of the county and not by the Attorney General), 87-16 (1987), and 83-18 (1983).