

Florida Attorney General Advisory Legal Opinion

Number: AGO 2000-50

Date: September 8, 2000

Subject: Tourist Development Tax, welcome signs

Mr. David W. Wagner
Alachua County Attorney
Post Office Box 2877
Gainesville, Florida 32603

RE: COUNTIES--TAXATION--TOURIST DEVELOPMENT TAX--use of tourist development tax revenues for welcome signs and islands. s. 125.0104, Fla. Stat.

Dear Mr. Wagner:

You ask substantially the following question:

May tourist development tax revenues be used to construct welcome signs and welcome islands at various entrances to the Gainesville metropolitan area in Alachua County?

In sum:

Provided that the Alachua County Board of County Commissioners makes the requisite findings that such expenditures will promote tourism within the county, tourist development tax revenues may be used to construct welcome signs and welcome islands at various entrances to the Gainesville metropolitan area in Alachua County.

You state that the Alachua County Board of County Commissioners is interested in constructing welcome signs and welcome islands at the entrances to the Gainesville metropolitan area in Alachua County. On one side of the sign would be the statement "Welcome to Gainesville and Alachua County"; on the other side, "Thank you for Visiting Our Community." The county commission is interested in using revenues from the tourist development tax imposed pursuant to section 125.0104, Florida Statutes, to pay for these signs.

Section 125.0104, Florida Statutes, is the "Local Option Tourist Development Act." The act authorizes a county to impose a tax on short-term rentals of living quarters or accommodations in "any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, or condominium" within the county unless such activities are exempt pursuant to Chapter 212, Florida Statutes.

Subsection (5) of the act sets forth the authorized uses of revenue generated by the tourist development tax. Pursuant to section 125.0104(5) (a), Florida Statutes:

"(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 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. In counties of less than 100,000 population, no more than 10 percent of the revenues from the tourist development tax may be used for beach park facilities."

In addition, section 125.0104(5)(b), Florida Statutes, allows counties with a population of less than 600,000 to also use tourist development tax revenues 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." 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.[1] The specific provisions of the statute limit the use of revenues generated from the tourist development tax to the purposes specified therein.[2] This office, therefore, has consistently concluded that tourist development tax revenues may only be used for the purposes enumerated in section 125.0104, Florida Statutes.[3]

The only provision of the act that might authorize the use of the tourist tax revenues for the construction of welcome signs and islands is section 125.0104(5)(a)2., Florida Statutes, which allows the use of tourist development tax revenues "[t]o promote and advertise tourism in the State of Florida[.]" The purpose of expenditures of such funds must, therefore, be primarily related to the advancement and promotion of tourism.

While the expenditure of funds for signs welcoming tourists to the area and thanking them for visiting would not appear to be outside the realm of section 125.0104(5)(a)2., Florida Statutes, 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. Such a 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.

Accordingly, it is my opinion that, provided the Alachua County

Board of County Commissioners makes the requisite findings that such expenditures will promote tourism within the county, tourist development tax revenues may be used to construct welcome signs and welcome islands at various entrances to the Gainesville metropolitan area in Alachua County.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

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

[2] 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.

[3] See, e.g., Ops. 97-48 (1997) and 88-49 (1988), stating that the expenditure of tourist development tax revenues is limited to those purposes set forth in the statute.

[4] See, Op. 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.).