Florida Tourism Taxes

COURT CASES AND ATTORNEY GENERAL OPINIONS CONCERNING THE MUNICIPAL RESORT TAX

Several Attorney General opinions have been issued and one court case has been heard regarding the municipal resort tax. Listed below are the most significant legal opinions that have defined and clarified portions of this law.

Attorney General Opinion No. 71-320

In 1971, the Mayor of Miami Beach asked for an opinion relating to whether a city may alter the powers of its tourist development authority or commission by a majority vote of the members of the authority and of the city council. He asked whether the voters, in a referendum election, could give the tourist development authority and the city council the ability to make alterations in their powers by a majority vote rather than by the statutorily mandated four-fifths and five-sevenths votes.

The Attorney General's Opinion was a negative response. The Attorney General stated that any change in the tourist development authority's powers would have to be approved either in an election, or by four-fifths of the authority and five-sevenths of the council. The electorate could not vote to allow all future changes to be made by a simple majority vote of the council and the authority because this would be in violation of the provisions of Chapter 67-930, Laws of Florida. In addition, any changes to the number of members of the authority, or to the amount of funds being administered or expended by the authority also must be adopted through the four-fifths and five-sevenths vote, or by individual referendums.

Attorney General Opinion No. 73-64

In 1973 a state senator from the 34th District requested an opinion from the Attorney General's office regarding whether the municipal resort tax was constitutional. The senator referred to a particular court case, City of Tampa v. Birdsong Motors, Inc., 261 So. 2d 1 (FL 1972), in which a municipal license tax was declared unconstitutional based on duplicative taxation, because a state sales tax was already being levied on the same gross sales. However, the pertinent factor in this case was that the excise tax levied by the municipality was not authorized by general law. Chapter 212 of the statutes provided that " ... no municipality shall levy any excise tax upon any privilege, admission, lease, rental, sale, use or storage for use or

consumption which is subject to a tax under this chapter unless permitted by general law;...".

Therefore, since the municipal resort tax is authorized by general law, it was the opinion of the Attorney General that the tax was constitutional.

The State of Florida, and the taxpayers of the City of Miami Beach, etc. v. The City of Miami Beach, 234 So.2nd 103 (FL 1970)

In this case the State and taxpayers of Miami Beach appealed a circuit court decision to the Supreme Court of Florida. The State contended that the municipal resort tax as it was being used in Miami Beach, for the purpose of issuing city excise tax bonds to improve a municipal convention hall, was unconstitutional. The State maintained that because the municipal resort tax was based on population classification, and the population classification was not related to the subject matter of the act, the imposition of the tax was a local act and invalid since it had not been passed according to the requirements for a local act.

The Supreme Court affirmed the decision of the Circuit Court, Dade County in favor of the City of Miami Beach. The circuit court's decision was based on the precedent that statutory classification for a general act of local applications "is permitted where reasonable, related to the purposes to be effected, and is grounded on difference in population and not on mere arbitrary lines of demarcation".

The court's opinion pointed out the fact that the tourist industry of Florida was one of its greatest assets. Because tourism is an integral part of the industry of the larger metropolitan areas of the state, population classification was a reasonable classification to use for achieving the intent of this act. Moreover, the court declared that the construction of a convention hall to be used for improving the international trade market in the area was a valid public purpose for which municipal resort taxes could be used. Finally, the court pointed out the population restrictions of the act did not eliminate some other towns and cities potentially within the prescribed population brackets, especially since the act was not limited to a particularly designated census.

Thus, the Supreme Court of Florida upheld the constitutionality of the municipal resort tax that was being levied in Miami Beach.

LOCAL OPTION TOURIST DEVELOPMENT TAX: COURT CASES AND ATTORNEY GENERAL OPTIONS

Since 1977, when the local option tourist development tax was enacted, there have been several questions and challenges to the tax, resulting in court cases and Attorney General's Opinions. Such legal opinions have provided interpretation and clarification regarding some aspects of the Local Option Tourist Development Act.

Attorney General Opinion No. 77-81

In 1977, the General Counsel for Broward requested an opinion concerning the tax. The county wanted to know whether the act authorized the creation of more than one subcounty special taxing district within a single county. In addition, it wanted to know if a county could levy a one percent tourist development tax county wide and an additional one percent tourist development tax in one or more subcounty special districts.

The Attorney General answered negatively to both questions, and stated that if a county decided to impose that tax, it must do so on a countywide basis or within a single subcounty special district which must embrace all or a significant contiguous portion of the county.

Metropolitan Dade County v. Shiver and the Miami Dolphins, 365 So.2d 210 (FL 3rd DCA 1978); and Miami Dolphin, Ltd. v. Metropolitan Dade County, 394 So.2d 981 (FL 1981)

In 1978, Shiver and the Miami Dolphins sought legal action to restrain the holding of a referendum election on the tourist development tax. They maintained that the use of the term "Tourist Room Tax" on the referendum ballot rather than "Tourist Development Tax," as used in the statute designating ballot language, should not be allowed. A trial court granted the injunction which was sought, and the county appealed to the District Court of Appeals. The District Court of Appeals determined that this language should not require removal of the referendum from the ballot, especially because there was an explanation on the ballot, concerning the purpose of the tourist tax.

Following the reversal of this injunction, an appeal by the Miami Dolphins, Ltd. was consolidated with other appeals questioning the constitutionality of the tourist development tax. The Supreme Court proffered a decision sustaining the following:

(1) The tourist development plan adopted by the Dade County Commission imposing the tourist room tax complied with all requirements of the Local Option Tourist Development Act.

(2) The referendum ballot language complied with the provisions of the Act.

(3) The act and the county ordinance were not unconstitutional.

Attorney General Opinion No. 79-30

The attorney for Lee County requested an opinion in 1979 concerning the usage of tax revenues from the local option tourist development tax. His concerns were:

(1) May a county use the tax revenues from the tourist development tax solely for the maintenance of existing publicly owned and operated facilities which are listed statutorily: convention centers, sports stadiums, sports arenas, coliseums, or auditoriums?

(2) To what intent may a county use the tax revenues to acquire, construct, extend, enlarge, repair, improve, maintain, operate or promote publicly owned and operated parks or beaches?

The Attorney General concluded that tax revenues could only be used for the maintenance of existing publicly owned and operated facilities expressly mentioned in the statutes. Tourist development tax revenues cannot be used for publicly owned and operated parks or beaches under the act (This was later amended by the Legislature).

> ***Note: Chapter 96-397, Laws of Florida, expanded the authorized used of the tourist development tax revenues to include the financing of beach park facilities in addition to financing beach improvement, maintenance, renourishment, restoration, and erosion control. The uses must relate the physical preservation of the beach, shoreline, or inland lake or river. In counties having a total population less than 100,000, no more than 10 percent of the revenues may be used for beach park facilities.***

Attorney General Opinion No. 83-18

In 1983, the County Attorney for Osceola County also requested an opinion regarding the expenditure of tourist development tax revenues. Osceola County wanted to know:

1. Whether certain uses of the revenue were authorized.
2. Whether unexpended funds which have been designated for a specific purpose under a previous ordinance may be appropriated for a different purpose if the county governing body amends its tourist development plan.

The Attorney General concluded that the following purposes were included in authorized uses of the tax revenue: a multi-purpose building to be utilized as a convention center and exhibition hall, a horse show arena with stables, a softball

tournament center, a tennis and aquatic center, and a multi-purpose field or stadium. However, revenue may not be spent on parks and picnic areas, even if these areas are tourist related.

Finally, the Attorney General determined that the governing board of a county may change its tourist development plan, and reallocate funds which have not yet been expended, as long as the new usage of these funds falls under the authorized purposes approved by the Local Option Tourist Development Act.

> ***Note: As stated in the notation following the previous Attorney General's Opinion, current law does include the financing of beach park facilities as an authorized use of tourist development tax revenues***.

Use of the local option tourist development tax revenues for the development or enhancement of sports facilities was the subject of a Florida Supreme Court ruling:

Rowe v. Pinellas Sports Authority and Pinellas Resort Organization v. Pinellas Sports Authority, 461 So.2d 72 (FL 1984)

In this case Rowe was appealing a decision by the Circuit Court of Pinellas County in which the court validated the use of tourist development tax revenues for the bond financing of a sports stadium.

The Supreme Court affirmed that funds from the tax used for this purpose did comply with the requirements of the statute. In addition, the court stated that it was not necessary for every substantive provision of the tourist development tax referendum to be reflected on the ballot. And finally, the court stated that the tourist development tax did not violate the equal protection clause of the Constitution.

Amendments to the Local Option Tourist Development Act in 1985 which allowed the counties to use tourist development revenues for beach renourishment and beach maintenance prompted new questions about the tax.

Attorney General Opinion No. 86-68

In 1986, the attorney for Okaloosa County requested an opinion concerning whether tourist development tax revenues can be spent to maintain beaches open to and used by the public along the shore of the Gulf of Mexico from the dune line to the water's edge, even if the mean high-water line has not been established. This is relevant, because under Florida law, the portion of beach in public ownership is that area between the mean low water line and the mean high water line.

The Attorney General stated that a county may expend tourist development tax revenues to finance beach cleaning and maintenance without the necessity of

establishing the mean high-water line so long as such expenditure paramountly serves a public purpose.

Attorney General Opinion No. 86-87

In 1986, the attorney for Brevard County requested an opinion concerning whether Brevard County could expend county funds to publicly advertise its position on an issue to be voted on in an upcoming referendum. The issue to be voted on was a referendum on the tourist development tax. The county commissioners wished to utilize county funds to advertise their support for passage of the tax.

The Attorney General stated that this question has not been extensively litigated in this state, courts in other jurisdictions have questioned the validity of such expenditures in the absence of specific legislative authorization. However, in section 125.01(1)(w), F.S., county commissions may perform any other acts not inconsistent with the law which are in the common interest of the people of the county and exercise all powers and privileges not specifically prohibited by law. Furthermore, in Speer v. Olson, 367 So.2d 207, 211 (Fla. 1978), the Florida Supreme Court construed s. 125.01(1), F.S., supra, and held that unless the Legislature has preempted a particular subject concerning county government by either general or special law, the county governing body, by reason of the first sentence of s. 125.01(1), supra, has full authority to act through the exercise of home rule power.

The Attorney General's opinion was that unless restricted by, and to the extent consistent with general or special law, the Brevard County Commission may expend public funds to publicly advertise its position in an upcoming referendum, provided that prior to making such an expenditure, the county commission, as the legislative and governing body of the county, determines by ordinance expressing appropriate legislative findings as to the purpose of the expenditure and the benefits accruing to the county there from, that such expenditures will serve a county purpose.

Attorney General Opinion No. 86-96

Monroe County, in 1986, had been levying a two percent local option tourist development tax in a special subcounty taxing district consisting of City of Key West. However, it had only been levying the tax countywide for two years. The county wanted to know whether, at that point, it could raise the tax to three percent throughout the county.

The Attorney General responded that the tax could not be raised to three percent countywide until it had been levied throughout the county for at least three

years. As a result, Monroe County increased the tax rate to three percent for the City of Key West in 1986, and waited until June 1987 to raise the tax to three percent countywide.

Many counties use a portion of their tourist development tax revenues for arts and cultural activities. Although the statutes do not specifically identify arts and culture as an authorized use of these collections, county commissions have exercised some discretion by funding the programs and activities in order to enhance and promote tourism.

Vincent Lee, et. al. v. Palm Beach County, et. al., 478 So.2d 889 (FL 4th DCA 1986)

In this case, a local motel owner from Palm Beach County challenged the validity of the Palm Beach ordinance levying the tax, and the use of revenues for cultural and fine arts entertainment, festivals, programs and activities.

The Circuit Court used the previous decisions from the Miami Dolphins v. Metropolitan Dade County case and the Rowe v. Pinellas Sports Authority case to affirm the validity of Palm Beach County's ordinance enacting the tax. In addition, it upheld the argument of the counties that sports and culture are related to the tourism trade in Florida, and that money from the local option tourist development tax could be spent for these purposes to promote and enhance tourism in the state and county.

Attorney General Opinion No. 87-16

In 1987 the attorney for Osceola asked whether that county could expend tourist development tax revenues to improve, maintain, renourish or restore public shoreline or beaches of inland freshwater lakes.

In the absence of a statutory definition for "beach," the Attorney General advised that the use of tourist development tax revenues for beach renourishment or maintenance was not limited to the coastal zone of the state. He stated that funds could be used for the public beaches on freshwater lakes, if these expenditures were related to tourism in the county.

Note: Following this opinion, the Legislature revised the act in 1987, and specifically included shoreline protection and maintenance of inland lakes and rivers to which there is public access, in the authorized uses of the tax.

The Legislature's decision to allow counties which had been levying the local option tourist development tax for at least three years to increase the tax an additional

one percent prompted a question by Department of Revenue and the attorney for Monroe County.

Attorney General Opinion No. 88-37

In 1988, the Department of Revenue requested an opinion concerning whether the department was responsible for auditing the Local Option Tourist Development Tax and the Convention Development Tax in counties which have adopted an ordinance providing for the collection and administration of such taxes on a local basis.

The Attorney General's opinion was that he could not conclude that s. 125.0104(10), F.S., or s. 212.0305(5), F.S., which authorize counties to provide for the local administration of the Local Option Tourist Development Tax and the Convention Development Tax, relieve the department of its responsibility to perform audits of the taxes imposed therein.

Note: Current law does require that any county, administering either tax on a local basis, to adopt an ordinance electing either to assume all responsibility for auditing the records and accounts of dealers or to delegate such authority to the Department of Revenue. If the county elects to assume the responsibility, it shall be bound by those applicable rules promulgated by the Department as well as those rules pertaining to the sales and use tax on transient rentals imposed by s. 212.03, F.S. It may use any power granted to the Department of Revenue to determine the amount of tax, penalties, and interest to be paid by each dealer and to enforce payment of such tax, and interest.

Attorney General Opinion No. 88-49

In 1988, the attorney for the County of Monroe requested an opinion concerning whether Monroe County may use tourist development tax funds pursuant to s. 125.0104(5)(a)4., F.S., to acquire real property to provide beach access for the public.

The authorized uses for revenues generated, as set forth in s. 125.0104(5)(a)4., F.S., provides that:

(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:

4. To finance beach improvement, maintenance, renourishment, restoration, and erosion control...(e.s.)

The Attorney General stated that it is a well-recognized principle of statutory construction that the mention of one thing in a statute implies the

exclusion of another. Therefore, the Attorney General was of the opinion that in the absence of specific authorization in s. 125.0104(5)(a)4., F.S., for the purchase of real property for providing public beach access, he could not conclude that Monroe County may expend tourist development tax revenues for such purpose.

Attorney General Opinion No. 89-50

In 1989, the attorney for the Clerk of the Circuit Court for St. Johns County requested an opinion concerning whether travel expenses reimbursed by the county from tourist development tax revenues to representatives of the chamber of commerce who promote and advertise tourism in St. Johns County were subject to s. 112.061, F.S. (1988 Supp.).

The Attorney General's opinion was that as an exception to s.112.061, F.S. (1988 Supp.), the county, pursuant to s. 125.0104(9), F.S. (1988 Supp.), was authorized to reimburse the actual reasonable and necessary costs of travel, meals, lodging, and incidental expenses of authorized persons when meeting with travel writers, tour brokers, or other persons connected with the tourist industry, and while attending or traveling in connection with travel or trade shows.

Attorney General Opinion No. 90-14

In 1990, the attorney for the County of Monroe requested an opinion concerning whether Monroe County could use tourist development tax funds pursuant to s. 125.0104(5)(a)2., F.S., to fund regular police protection and whether Monroe County could use tourist development tax funds pursuant to s. 125.0104(5)(a)2., F.S., to fund extra police protection in connection with Fantasy Fest parade weekend, New Year's Eve, and Spring Break.

The Attorney General's opinion was that any expenditures of revenues derived from the tourist development tax must be primarily for tourism, and any expenditures pursuant to s. 125.0104(5)(a)2., F.S., may only be used to promote and advertise tourism. Since the provision of law enforcement by the county is a general governmental function owed to the public at large, such revenues may not be used to generally fund law enforcement within the county or to fund such functions during special events or holidays.

Attorney General Opinion No. 90-55

In 1990, the attorney for Nassau County requested an opinion concerning whether Nassau County might be able to use tourist development tax funds pursuant to s. 125.0104(5)(a)4., F.S., to fund:

(a) the construction of beach parks;
(b) additional Sheriff's patrols and lifeguards on the beach;
(c) the building and maintenance of sanitary facilities on or near the beach.

The Attorney General's opinion was that Nassau County was not authorized by s. 125.0104(5)(a)4., F.S., to use tourist development tax revenues to construct beach parks, fund additional law enforcement patrols (for which he referred to AGO 90-14) or lifeguards on the beach, or build and maintain sanitary facilities on or near the beach.

Note: Current law allows the revenues to be used to finance beach park facilities. In counties having a total population less than 100,000, no more than 10 percent of tourist development tax revenues may be used for beach park facilities.

Attorney General Opinion No. 90-59

In 1990, the attorney for Citrus County requested an opinion concerning whether tourist development tax revenues might be used to fund a program of mechanical harvesting and herbicide applications to improve inland lakes and rivers.

The Attorney General's opinion was that a county may expend tourist development tax revenues to finance 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 determines that such expenditure is primarily related to tourism in the county.

The Attorney General cited s. 125.0104(5)(a)4., F.S., in formulating his opinion, in which such funds may be used to finance beach improvement, maintenance, renourishment, restoration, and erosion control, <u>including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access</u>. (e.s.)

Attorney General Opinion No. 90-83

Also in 1990, St. Johns County requested the Attorney General to issue an opinion on whether county tourist development councils and promotion agencies are subject to the waiver of sovereign immunity for state agencies under s. 768.28, F.S., and whether their employees and representatives are immune from tort liability under this statute. The Attorney General rendered the opinion that as county agencies, tourism promotion agencies are subject to the waiver of sovereign immunity as are tourist development councils which act on behalf of the county and carry out statutorily authorized governmental purposes. Additionally, this opinion

stated that members, employees and representatives of such agencies and councils are immune from tort liability while they are acting within the scope of their employment or function.

Attorney General Opinion No. 91-62

In 1991, the attorney for Citrus County requested an opinion concerning whether tourist development tax revenues might be used pursuant to s. 125.0104(5)(a)4., F.S. (1990 Supp.), to fund the repair, construction, and improvement of boat ramps and parking facilities which serve inland lakes and rivers in Citrus County. In addition, he requested an opinion concerning whether tourist development tax revenues might be used to fund the dredging of silt and debris from the main spring which feeds Crystal River, pursuant to s. 125.0104(5)(a)4., F.S. (1990 Supp.).

The Attorney General's opinion was that s. 125.0104(5)(a)4., F.S. (1990 Supp.), does not authorize the use of tourist development tax revenues for the repair, construction, and improvement of boat ramps and parking facilities. However, it does allow tourist development revenues to be used to dredge silt and debris from the main source of the Crystal River if the Citrus County Commission determines that this expenditure is primarily related to tourism in the county.

Attorney General Opinion No. 92-3

The attorney for St. Johns County asked whether the clerk of the court, as the local official designated to collect local option tourist development taxes, has the authority to enforce the collection of such delinquent taxes in the same manner as the Department of Revenue pursuant to s. 212.10, F.S., and Rule 12A-1.090, F.A.C. In response, the Attorney General rendered the opinion that, as the delegated tourist development tax collector pursuant to s. 125.0104, F.S. (1990 Supp.), the clerk of the court has the authority to collect such delinquent taxes in the same manner as the Department of Revenue.

Attorney General Opinion No. 92-16

In 1992, the attorney for Citrus County on behalf of that county's Tourist Development Council, asked whether a particular event could be publicized through the use of local option tourist development tax revenues. The TDC wished to promote the Florida Orchestra's "Concert in the Park" as a free entertainment event for Citrus County residents and visitors in an effort to spotlight the county as a desirable place to live or visit.

The Attorney General cited subsection (5) of s. 125.0104, F.S., and reiterated the determination that since this subsection enumerates the authorized uses of tourist development tax revenues, the implication is that any proposed use not specifically listed is excluded. "To promote and advertise tourism in the State of Florida and nationally and internationally;" is, however, an authorized use of tourist development tax revenues pursuant to this subsection. Consequently, the Attorney General offered the opinion that the determination 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. For that reason, the county would be authorized to expend tourist development tax revenues to promote and advertise the "Concert in the Park," if the governing body of the county makes the appropriate legislative determination that such activity is primarily related to promoting tourism in the county.

Of growing concern to all entities involved with local option tourist development taxes is the determination as to who has the ultimate authority to decide how tax revenues will be used.

Attorney General Opinion No. 92-34

In 1992, the Monroe County attorney on behalf of the Board of County Commissioners, asked the Attorney General for an opinion on whether the board could approve the use of tax revenue expenditures for a use not recommended or actually opposed by the tourist development council.

The Attorney General's Opinion stated that the county governing body, after approving the tourist development plan (offered by the tourist development council and adopted by referendum as part of the initial ordinance to levy the tax), could amend that plan by a majority plus one vote. Consequently, the board could approve a use of tourist development tax revenues, authorized pursuant to s. 125.0104(5), F.S., which could be opposed to or not recommended by the tourist development council, However, the council is authorized to review such expenditures and report any which it considers are unauthorized to the governing body of the county and the Department of Revenue.

Freni v. Collier County, 573 So.2d 1054 (FL 2d DCA 1991) (Freni I)

Freni v. Collier County, 588 So.2d 291 (FL 2d DCA 1991) (Freni II)

In the first case, the county governing board's procedure in enacting the levy of the local option tourist development tax was questioned. Collier County's tourist development council was appointed according to the requirements in s. 125.01014, F.S., but the council did not submit a tourist promotion plan. Such a plan is required to be adopted by the county governing board as part of the ordinance levying the tax. Consequently, the county governing board approved a plan to use the tax revenues for the county's baseball spring training facility. This plan was included on

the referendum ballot levying the tax. Initially, the circuit court which heard the case ruled in favor of the county commission. However, the 2nd District Court of Appeals ruled the tax invalid because the county wrongly filed the tax revenue expenditure plan. During the initial period of tax collection, the county received $4.7 million.

> ***Note: In 1992, s. 125.0104, F.S., (1992 Supp.) was amended to provide a curative provision for Collier County to reenact the tax and use the proceeds of the original tax levy. This amendment ratified the previously imposed taxes which were subject to invalidation due to the court's findings in Freni II. Voters in Collier County approved another tourist tax in accordance with the provisions of the amended law, and provided for the disposition of the revenues collected from the initial tax. However, the circuit court awarded the taxpayers refunds from the revenues of the initial tax. Consequently, Collier County filed a suit contesting this decision.***

Collier County v. Freni, 639 So.2d 145 (FL 2d DCA 1994)

Collier County filed this case in an effort to reverse the decision in Freni II which awarded taxpayers refunds of the revenues collected under the initial tourist tax. The county argued that the initial tax was ratified through the corrective legislation passed in 1992, and the subsequent referendum approval of a new local option tax. The court agreed with the county and stated that, "Although the tourist tax was subject to invalidation for want of following the procedural requirements of the Act, the legislature acted within its capacity in ratifying the tax by providing a means to correct the procedural defect of the absence of a plan for tourist development." The court reversed the circuit court's order awarding refunds to the taxpayers and remanded the case for further proceedings consistent with this opinion. At the time of this report, an appeal had been filed with the Florida Supreme Court regarding the decision of this case.

Attorney General Opinion No. 92-66

The Flagler County Board of County Commissioners requested an opinion from the Attorney General on whether tourist development tax revenues could be used to purchase all-terrain vehicles for use by the Flagler Beach police and fire departments. These vehicles would be used by the police and fire departments to facilitate the monitoring of beach erosion, enforcement of local dune protection provisions, protection of citizens and tourists, and other municipal functions.

The opinion offered by the Attorney General maintained the position taken in AGO 90-55, that the terms "beach improvement, maintenance, renourishment, restoration, and erosion control" (s. 125.0104(5), F.S.) must be read together to relate to the actual, physical nature of the beach. In that opinion, the primary function of the tax revenue use in question was found to be in keeping with the statutorily authorized physical preservation of the beach, even though the secondary function provided a service to citizens and visitors. In this opinion (92-66), the Attorney General indicated that the primary function of the vehicles to be bought with tax

revenues would be to facilitate "a monitoring system for activities on the beach i.e., protecting beachgoers." However, The Attorney General also stated that ultimately, the governing body of the county would have to make a determination, based on proper legislative findings, as to whether the vehicles served to control erosion.

Attorney General Opinion No. 94-12

Lake County asked the Attorney General in 1994, whether counties could use tourist development tax revenues to acquire and construct a rail trail for use by the public. The Attorney General issued and affirmative opinion citing that s. 125.0104(5)(b), F.S., authorizes counties with less than 600,000 in population to use tax revenues to Aacquire, 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 a not-for-profit organization and open to the public. Since the term Anature center@ is not defined in statute, the Attorney General stated that its components could be defined individually in order to give the term meaning. However, the Attorney General also stated in this opinion that ultimately, the county's governing body must make the determination of whether the tax revenue use authorized by the county falls within the enumerated authorized uses.

Attorney General Opinion No. 95-71

In 1975, Lake County asked the Attorney General whether a county may use its tourist development tax revenues to acquire land that would be used for a state Florida Agriculture Museum. The Attorney General offered the opinion that when s. 125.0104(5)(a)a., F.S., authorizes the use of tax revenues for a museum, it does not specifically require that the public entity owning or operating the museum be the county. Therefore, using the funds for a state museum would not violate the provisions of s. 125.0104, F.S.

Attorney General Opinion No. 96-26

In 1996, Bay County asked the Attorney General whether the Board of County Commissioners could create another subcounty district or expand the existing subcounty district for the purpose of levying local option tourist development taxes. The county also asked the Attorney General what procedure should be followed if the answer to the first question was affirmative.

The Attorney General cited an earlier AGO (77-81) which concluded that a county could not create more than one subcounty district under s. 125.0104, F.S. The Attorney General did offer the opinion that s.125.0104, F.S., did not preclude the Board of County Commissioners from adopting an ordinance creating a new county wide district or subcounty special district that is larger than the current district

if the county followed the original procedure for levying the tax which calls for a county plan for tourist development and a referendum by the voters of the district. Additionally, the Attorney General stated as part of this opinion that the county may only use those taxes collected under the existing ordinance for the purposes designated in the original tourist development plan. The new ordinance and tourist development plan would determine how monies collected within the new subcounty district would be used.

Attorney General Opinion No. 96-54

The attorney for Alachua County asked the Attorney General in 1996, for an opinion on whether a not-for-profit raceway facility could be funded with local option tourist development tax revenues. Specifically, the county attorney asked whether the language Aowned and operated by not-for-profit organizations and open to the public@ related generally to all the facilities mentioned in s. 125.0104(5)(a)1., F.S., or applied only to museums.

Initially, s. 125.0104(5)(a)1., authorized the use of tax revenues for a variety of publicly owned and operated facilities, including sports stadiums and arenas. Chapter 92-204, LOF, amended this section by adding museums to the end of the list, followed by the phrase Aowned and operated by not-for-profit organizations and open to the public.@ The Attorney General rendered the opinion that when this section was amended to include museums, the amendatory language should be read as an integrated phrase with owned and operated by not-for-profit organizations and open to the public referring only to museums. Therefore, the Attorney General concluded that tourist tax revenues could not be used to fund a sports stadium or arena such as the private not-for-profit Gainesville Raceway facility.

Attorney General Opinion No. 97-13

The attorney for Charlotte County asked the Attorney General in 1997, whether a county could collect local option tourist development taxes on single-family homes owned by foreign nationals which were rented out in foreign countries to other foreign nationals. The county attorney subsequently asked what enforcement procedures could be used if the rental agents did not pay the tax.

The AG gave the opinion that regardless of the nationality of the person receiving or giving consideration for the rental or lease of property in Florida for a period of 6 months or less, and regardless of where the transaction takes place, local option tourist development taxes under s. 125.0104, F.S., are due on such a transaction. Further, the AG stated that although failure to charge and collect the tax either personally or through an agent renders the person receiving the rent guilty of a misdemeanor, the county may collect delinquent tax through the issuance and execution of a warrant that would become a lien against the property.

Attorney General Opinion No. 97-48

Citrus County's attorney in 1997 asked the Attorney General whether local option tourist development tax proceeds could be used to construct an artificial reef for the purpose of providing diving and snorkeling opportunities. In his opinion response, the Attorney General pointed out several basic tenets for the application of the provisions of s. 125.0104, F.S.

(1) The county governing board must make the appropriate legislative finding that the project promotes tourism as required by s. 125.0104, F.S.

(2) 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. Section 125.0104, F.S., does make specific provisions for use of the tax proceeds so tax revenues may only be used for the purposes enumerated in that section.

(3) One of the express purposes enumerated in s. 125.0104, F.S., authorizes the use of tax proceeds in counties of under 600,000 in population for certain artificial structures, including publicly owned and operated museums, zoological parks, fishing piers or nature centers.

(4) Ultimately, the determination of whether a particular expenditure satisfies the requirements of s. 125.0104, F.S., is the responsibility of the governing body of the county and cannot be delegated to the Attorney General's Office.

The Attorney General noted that the county's tourist development council saw the construction of the reef as a way to revitalize the county's summer tourism season which had been hurt by the closing of the scalloping season in 1995. Additionally, the AG's office learned that the proposed artificial reef was to be part of the development of an aquatic nature center which could be characterized as fitting one of the enumerated uses found in s. 125.0104, F.S. Consequently, the Attorney General gave the opinion that, *... based upon the appropriate legislative finding by the governing body of the county that such a project promotes tourism, construction of an artificial reef in order to promote snorkeling and diving or as a basis for improving fishing in the coastal waters to attract tourists may be funded by tourist development tax revenues...*

Attorney General Opinion No. 97-64

The Citrus County Clerk's office, which is responsible for collecting tourist-related taxes in the county, asked the Attorney General in 1997, whether local option tourist taxes under s. 125.0104, F.S., and convention development taxes under s. 212.0305, F.S., could be imposed on the overnight use of a space in a recreational

vehicle park. In response, the AG cited several statutorily provided definitions found in both of those sections which specifically name a *recreational vehicle park* as one of the places subject to collection of taxes authorized under those sections. Additionally, the AG referenced the definitions given in the sales tax statute, s. 212.02, F.S., relating to Aleasing, letting or renting@ living quarters or sleeping or housekeeping accommodations in tourist or trailer camps and the definition which specifies that a trailer camp, mobile home park, or recreational vehicle park includes space offered with or without service facilities.

The AG concluded that in light of the statutory definitions, space rented in a recreational vehicle park would be subject to the local option tourist development and convention development taxes authorized under ss. 125.0104 and 212.0305, F.S. *It must be noted that Citrus County is only authorized to levy the local option tourist development tax under s. 125.0104, F.S.*

Attorney General Opinion No. 98-74

The Orange County Comptroller, asked the Attorney General in 1998 if tourist development tax revenues could be used to construct an "All Wars Memorial" at the Orange County Courthouse when the memorial is intended to replace a "Vietnam Veterans Memorial" at the Orange County Convention Center that had to be demolished in order to expand and renovate the center. The Comptroller stated that the original memorial was not paid for from tourist tax dollars but from other sources and was merely placed at the center as a community memorial. The County Attorney had rendered an opinion that use of tourist development taxes to pay for the new memorial as an operating or capital expense was appropriate. The Comptroller questioned the validity of the County Attorney's opinion.

In the December 1, 1998 opinion, the AG stated that the plain language of s. 125.0104, F.S., contemplates the expenditure of tax revenues to remodel, repair, improve, maintain and operate a convention center such as the Orange County center. The opinion also indicated that when a statute enumerates those things upon which it operates, it is ordinarily construed to exclude from its operation all things not expressly mentioned. Regarding the construction of a new memorial off premises of the center, the opinion noted that this was not a "logical consequence" of the remodeling and expansion nor does such construction of a new memorial "appear related to the operation of or capital improvements to the convention center."

The AG stated, however, that it was his opinion that the expenditure of tourist development tax revenues for the construction of a new memorial at the Orange County Courthouse must be based on a determination by the county's governing body that the memorial is directly related to tourism and furthers the purpose of promoting tourism in Orange County. Further, the opinion stated that any such a determination "must show a distinct and direct relationship between expenditure of tourist development tax revenues and the promotion of tourism."

Attorney General Opinion No. 2000-15

The Acting Director of the Alachua County Visitors and Convention Bureau posed a question to the AG regarding whether or not a local historic homestead/museum requesting a grant of local tourist development money was, in fact, eligible to receive such a grant. The organization in question was a not not-for-profit that was publicly owned and operated but received visitors only by appointment. The question centered on whether the visitation arrangement qualified as "open to the public" within the scope of s. 125.0104(5)(a)1., F.S.

The phrase "open to the public" is not defined for purposes of the Local Option Tourist Development Tax. However, according to the opinion, the general rule is that common words used in a statute are to be given their plain and ordinary meaning, unless it appears that they are used in a technical sense. The phrase "open to the public", therefore, is commonly understood to mean that something is available for or accessible to general public use.

In the March 1, 2000 opinion, the AG concluded that the phrase "open to the public" as it is used in s. 125.0104(5)(a)1., F.S., refers to facilities that are available for use by the general public and may include facilities that are open only by appointment.

Attorney General Opinion No. 2000-25

The Executive Director of the Okeechobee County Tourist Development Council asked the AG if the Council may use tourist development taxes to sponsor events for privately owned, for-profit businesses that may give significant exposure to Okeechobee County.

The question involved two distinct events. One was a two-day event at a local, private racetrack that could attract 7,000 to 10,000 participants and spectators, with cosponsorship by the Council including the purchase of an annual track sponsorship. The other pertained to a bass fishing tournament to be cosponsored with a private-for-profit corporation, to be held at a county facility with the potential of attracting 320 participants from across the country. The cosponsorship of the event would include an ad in program for the event or in a magazine publication.

The opinion specifically stated that the statute limits the use of tourist development tax funds to publicly owned and operated sports stadiums or arenas and, therefore, privately owned facilities, such as the raceway, may not be funded under s. 125.0105, F.S. The opinion went on to state that s.125.0104(5)(a)2., F.S., however, does allow funds to be spent for a venue or an event that has one of its main purposes the attraction of tourists. An attraction or event that may be privately

owned or promoted could have the attraction of tourists to the area as one of its main purposes. The local governing body would have to make determinations relating to the venue or event and its purpose.

The AG concluded that the governing body of Okeechobee County may exercise its authority to decide, based upon an appropriate legislative determination, that the promotion of an event has as its main purpose the attraction of tourists for which tourist development funds under s. 125.0104, F.S., may be used.

Attorney General Opinion No. 2000-29

The Brevard County Attorney, on behalf of the Brevard County Board of County Commissioners, asked if excess funds may be transferred between tourist development accounts without an amendment to the tourist development plan to supplement an anticipated shortfall in funding of a beach renourishment project.

The May 16, 2000, AG Opinion stated that the Local Option Tourist Development Act permits amendment and change to a county's tourist development plan. After enactment of the ordinance levying and imposing the tax, s. 125.0104(4)(d), F.S., states that the plan "may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the governing body." The AG stated that where the 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), F.S.

Attorney General Opinion No. 2000-50

The Alachua County Attorney asked the AG if tourist development tax revenues could be used to construct welcome signs and welcome islands at various entrances to the Gainesville metropolitan area in Alachua County. The signs would say "Welcome to Gainesville and Alachua County" on one side and "Thank You for Visiting Our Community" on the other.

The AG Opinion, dated September 8, 2000, stated that the only provision under s. 125.0104(5), F.S., which might authorize the revenue use is that which allows the tax to be used to promote and advertise tourism in the State of Florida. The purpose of the expenditures of the funds must be primarily related to the advancement and promotion of tourism. The opinion further stated that the use does not appear outside of the realm of use; however, governing body of the county must make a factual determination of whether a particular facility or project is related to tourism and primarily promotes that purpose. The determination must show a distinct and direct relationship between tax revenue expenditure and tourism

promotion. Accordingly, the opinion concluded that if such findings are made, then the tax revenues could be used for welcome signs and welcome islands.

ATTORNEY GENERAL OPINIONS CONCERNING THE CONVENTION DEVELOPMENT TAX

Attorney General Opinion No. 83-71

The Executive Director of the Department of Revenue requested an opinion on the following questions:

1. Is the Department of Revenue authorized to collect taxes imposed by ordinance pursuant to Chapters 83-354 and 83-356, Laws of Florida?
2. If yes, is the Department authorized to pay over the collected monies to the county, municipality, or other local authority or entity, in the county where the tax is levied?
3. If yes, is the Department authorized to deduct administrative costs for the collection of taxes imposed by a county?

According to the September 30, 1983 opinion, until legislatively determined otherwise, the Department of Revenue is not authorized to administer, collect, and enforce or disburse or distribute tax revenues realized through the imposition by certain counties of the convention development tax authorized to be levied pursuant to Chs. 83-354 and 83-356, Laws of Florida.

Note: Current law provides for the administration, collection, enforcement, and distribution of convention development taxes by the county itself or the Department.

Attorney General Opinion No.

The Executive Director of the Department of Revenue requested an opinion on the following question:

Is the Department of Revenue responsible for auditing the Local Option Tourist Development Tax and the Convention Development Tax in counties which have adopted an ordinance providing for the collection and administration of such taxes on a local basis?

With regard to the convention development tax authorized in s. 212.0305, F.S., the issue of auditing by those counties locally administering the tax was not specifically addressed. The September 9, 1988 opinion stated that in the absence of any evidence that another agency audit Convention Development Tax funds when the tax is administered locally pursuant to s. 212.0305(10), F.S., the AG could not

conclude that the Department of Revenue was relieved of its responsibility to audit such funds pursuant to Part I, Ch. 212, F.S.

> ***Note: Current law does require that any county, administering either tax on a local basis, to adopt an ordinance electing either to assume all responsibility for auditing the records and accounts of dealers or to delegate such authority to the Department of Revenue. If the county elects to assume such responsibility, it shall be bound by those applicable rules promulgated by the Department as well as those rules pertaining to the sales and use tax on transient rentals imposed by s. 212.03, F.S. It may use any power granted to the Department to determine the amount of tax, penalties, and interest to be paid by each dealer and to enforce payment of such tax, penalties, and interest.***

Auditor General Opinion No. 97-64

In 1997, the Citrus County Clerk of the Circuit Court asked the AG if the tourist development tax authorized by section 125.0104, F.S., or the convention development tax authorized by s. 212.0305, F.S., may be imposed on the overnight use of a space in a recreational vehicle park.

The opinion states that the language in both sections of law makes the transient rental or lease of the accommodations in the facilities enumerated a taxable transaction. Both statutes refer to rentals or leases of six months or less and neither limits or otherwise restricts such rentals or leases to more than one day. Section 125.0104, F.S., does not define accommodations in a recreational vehicle park; however, s. 212.02(10), F.S., defines the term as a "place where space if offered, with or without service facilities, by any persons or municipality to the public for the parking and accommodation of two or more automobile trailers, mobile homes, or recreational vehicles which are used for lodging, for either a direct money consideration or an indirect benefit to the lessor or owner in connection with a related business, such space being hereby defined as living quarters, and the rental price thereof shall include all service charges paid to the lessor." Therefore, according to the opinion, the overnight rental of space in a recreational vehicle park would constitute a rental or lease of a living space under ss. 125.0104 or 212.0305, F.S.

The September 19, 1997 opinion concluded that the tourist development tax authorized by s. 125.0104, F.S., and the convention development tax authorized by s. 212.0305, F.S., may be imposed for the overnight use of a space in a recreational vehicle park.

Attorney General Opinion No. 98-34

On behalf of the Miami Sports and Exhibition Authority (MSEA), the Interim Miami City Attorney asked the AG if the rent revenues received by the Authority from leasing the land on which the Miami Arena is situated are considered to be

convention development tax moneys subject to the restrictions placed on such moneys by s. 212.0305(4)(b)2., F.S., or are such proceeds "other related sources of income" not subject to the same restrictions.

In the May 12, 1998 opinion, the AG concluded that the rent revenues received by the Miami Sports and Exhibition Authority from leasing the land (approximately $300,000 annually) are not convention development tax moneys subject to the restrictions on such moneys by s. 212.0305(4)(b)2., F.S. However, the opinion further stated that the revenues must be used to carry out the duties and functions of the Authority. The authorized uses for charter county convention development tax moneys, including accrued interest, appear to relate to convention development tax proceeds or revenues and accrued interest on such funds but not on rent of facilities pursuant to this opinion.

Note: The MSEA is an independent and autonomous agency of the City of Miami created pursuant to s. 212.057, F.S. (1985), which authorized the levy of a convention development tax. Section 212.057, F.S., was repealed in 1986, and provisions for the levy of convention development taxes are now contained in s. 212.0305, F.S.

COURT CASES CONCERNING THE CONVENTION DEVELOPMENT TAX

One court case concerning the Convention Development Tax has been heard. Below are the significant findings of this particular case.

The City of Miami Beach v. City of Homestead, Florida, and Sun Bank, National Association, 11th Circuit Court of Florida, June 2, 1989 (CASE NO. 89-19399)

Amended September 11, 1989 (CASE NO. 89-19399)

In this case, the City of Miami Beach was seeking a declaration of the validity of its rescission of the "Homestead Stadium Resolution" (No. 89-19566). That resolution gave the City of Homestead excess Convention Development Tax funds to construct a sports facility. The City of Homestead held that the funds, although allocated by the City of Miami Beach, were countywide funds to be used for the good of the entire County of Dade. According to statute, when the primary projects authorized by law were completed, the excess revenues could be used within the county for other authorized projects.

The case was heard in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. The Court ruled in favor of the Defendants, the City of Homestead, Sun Bank and National Association. It declared that Ordinance No. 89-19566 of Miami Beach was valid and binding upon Miami Beach and that its rescission ordinance was invalid, null

and void. The Court directed all parties to comply with the provisions of Ordinance No. 89-19566.

Case No. 89-19399 was amended on September 11, 1989, at the request of both the Plaintiff and the Defendants. Both parties had entered into a Stipulated Settlement Agreement and Resolution No. 89-19668 of Miami Beach, which amended Resolution No. 89-19566, was declared valid and binding upon all parties. Resolution No. 89-19668 revised the priority of payments that the City of Homestead had to make in repayment of its loan from the City of Miami Beach's Excess City Share.