S T A T E O F T E N N E S S E E
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Opinion No. 08-158

Expenditure of Hotel-Motel Tax Revenues on "Tourist Related Activities"

QUESTIONS

1. Does state law mandate the city of Goodlettsville to spend some or all of the revenue it collects that is generated by the city's hotel-motel tax only on the operation of the city's historic sites?

2. Can revenues generated by the city's hotel-motel tax be expended to routinely operate and maintain facilities that are also used in hosting and providing a venue for events such as youth athletic tournaments (baseball, soccer, softball, football)?

3. Can revenues generated by the city's hotel-motel tax be expended to cover expenses incurred by the city in providing municipal services specifically for the safe and successful conduct of special sporting events conducted in and on city sports facilities? Do these events meet the definition of "tourist related activities"?

4. Can revenues generated by the city's hotel-motel tax be expended to cover expenses incurred by the city in providing municipal services specifically for the safe and successful conduct of other "special events" held throughout the year in Goodlettsville? Do these events meet the definition of "tourist related activities"?

OPINIONS

1. No. Tenn. Code Ann. § 7-4-110(e) mandates that revenues generated by the city of Goodlettsville's hotel-motel tax "shall be . . . used exclusively for tourist related activities within the municipality." Although the operation of Goodlettsville's historic sites qualifies as a tourist related activity, there is no requirement in the statute that Goodlettsville must expend the revenues from its hotel-motel tax only on this particular tourist related activity.

2. Yes, provided that the events that are hosted by Goodlettsville in its facilities attract visitors from outside of Goodlettsville.

3. Yes, revenues generated by Goodlettsville's hotel-motel tax can be expended to cover expenses incurred in providing municipal services specifically for the safe and successful conduct of special sporting events conducted in and on Goodlettsville sports facilities, provided

that these special sporting events attract visitors from outside of Goodlettsville. Special sporting events that attract visitors from outside of Goodlettsville meet the definition of "tourist related activities."

4. Yes, revenues generated by Goodlettsville's hotel-motel tax can be expended to cover expenses incurred in providing municipal services specifically for the safe and successful conduct of other "special events" held throughout the year in Goodlettsville, provided that these other "special events" attract visitors from outside of Goodlettsville. Other "special events" that attract visitors from outside of Goodlettsville meet the definition of "tourist related activities."

ANALYSIS

The four questions addressed in this opinion concern the hotel-motel tax authorized by Tenn. Code Ann. § 7-4-102(c) and the requirement in Tenn. Code Ann. § 7-4-110(e) that the proceeds from that tax be used "exclusively for tourist related activities within the municipality." Tenn. Code Ann. § 7-4-102(c) provides:

> A municipality with a population of five thousand (5,000) or more, according to the 1980 federal census or any subsequent federal census lying partly within a county with a metropolitan form of government and partly within an adjacent county may levy a privilege tax on the privilege of occupancy in any hotel of each transient in an amount, set by the governing body of such municipality, in an amount not exceeding that set in subsection (a). The tax shall be collected and distributed as provided in this chapter.

The city of Goodlettsville is a municipality with a population greater than five thousand lying partly within a county with a metropolitan form of government (Davidson County) and partly within an adjacent county (Sumner County). Hence, Tenn. Code Ann. § 7-4-102(c) applies to Goodlettsville and authorizes the city to levy a hotel-motel tax in an amount not exceeding that set in Tenn. Code Ann. § 7-4-102(a), which provides:

> (1) There is hereby authorized a privilege tax upon the privilege of occupancy in any hotel of each transient in an amount not to exceed three percent (3%) of the consideration charged by the operator, except as provided in subsection (b). The tax so imposed is a privilege tax upon the transient occupying the room and is to be collected and distributed as provided in this chapter, and the tax shall be approved by ordinance of the metropolitan council.
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> (2) In addition to the tax authorized in subdivision (a)(1) and subsection (b), there is hereby authorized an additional privilege tax upon the privilege of occupancy in any hotel of each transient in an amount not to exceed one percent (1%) of the consideration charged by the operator in metropolitan counties having a

> population in excess of one hundred thousand (100,000) according to the 1990 federal census or any subsequent federal census. The tax so imposed is a privilege tax upon the transient occupying the room and is to be collected and distributed as provided in this chapter, and the tax shall be approved by ordinance of the metropolitan council.

Tenn. Code Ann. § 7-4-110(e) provides that "[t]he proceeds from the tax authorized by § 7-4-102(c) shall be retained by the collecting municipality and used exclusively for tourist related activities within the municipality." Hence, the proceeds from Goodlettsville's hotel-motel tax can only be expended on "tourist related activities." Although the statute does not specifically define the phrase "tourist related activities," the statute does define the term "tourism" as follows:

> "Tourism" means the planning and conducting of programs of information and publicity designed to attract to the county tourists, visitors and other interested persons from outside the area and also to encourage and coordinate the efforts of other public and private organizations or groups of citizens to publicize the facilities and attractions of the area for the same purposes. "Tourism" also means the acquisition, construction and remodeling of facilities useful in the attraction and promoting of tourist, convention and recreational businesses[.]

Tenn. Code Ann. § 7-4-101(8).

1. Historic Sites

This office is informed that the city of Goodlettsville owns and operates an original colonial structure known as the Bowen-Campbell House and a replica of Kasper Mansker's Fort (the original of which was built by settlers in the late 1700s), as well as a visitor center directly adjacent to the house and fort. The city employs personnel to provide historic reenactment of the time periods represented by these historic sites and to staff the visitor center. The initial inquiry is whether state law mandates that Goodlettsville must expend some or all of its hotel-motel tax revenues on the operation of these historic sites.

As explained above, state law requires Goodlettsville to use the revenues generated by its hotel-motel tax "exclusively for tourist related activities within the municipality." Tenn. Code Ann. § 7-4-110(e). The statute does not include any reference to "historic sites." The operation of "historic sites" would be considered a "tourist related activity" if the operation of historic sites is "designed to attract to the county tourists, visitors and other interested persons from outside the area . . ." Tenn. Code Ann. § 7-4-101(8). The statute does not, however, specify that the operation of historic sites is preferable to other tourist related activities. The statute mandates only that the municipality must expend its hotel-motel tax revenues on activities that are tourist related as opposed to activities that are not tourist related; it does not mandate that any specific tourist related activities must be funded by the hotel-motel tax revenues at the expense of other

tourist related activities. The municipality is free to allocate its hotel-motel tax revenues to the tourist related activities that it deems most important.

The requestor notes that the historic sites attract fewer than 10,000 visitors per year, most of whom are local area students visiting the sites as part of a field-trip activity. The statute is targeted at promoting tourism. The prominent feature of "tourism" is a design "to attract to the county tourists, visitors and other interested persons from outside the area . . . ." Accordingly, if the operation of the historic sites were designed only to educate local area students as part of a field-trip activity, then the operation of the historic sites would not be considered a tourist related activity. Goodlettsville cannot expend its hotel-motel tax dollars for the sole purpose of educating local area school children, because this is a local activity rather than a tourist related activity. We believe, however, that sites of historic significance are likely to attract both local residents and tourists from outside the area, and that funding of the historic sites from the hotel-motel tax is therefore appropriate.

2. Operation and Maintenance of Facilities

The second question concerns whether the city of Goodlettsville can expend the revenues generated by its hotel-motel tax on the routine operation and maintenance of city facilities which are also used in hosting and providing a venue for events such as youth athletic tournaments. This Office is informed that Goodlettsville owns, maintains and makes available for use various sports venues including baseball and softball fields, basketball gymnasiums, soccer fields and football fields. Typically, the city's sports facilities are used by youth sports leagues, church leagues and city recreational leagues based in Goodlettsville. Goodlettsville's sports facilities, however, are also used to host tournaments in a variety of youth sports. These events typically attract hundreds of participants and attendees, mostly from areas outside of Goodlettsville.

Goodlettsville's sports facilities are not used exclusively for the hosting of sports tournaments that attract participants and visitors from outside the area; they are also used primarily to host purely local activities, such as youth sports leagues and church leagues based in Goodlettsville. As defined in Tenn. Code Ann. § 7-4-101(8), "tourism" includes the "acquisition, construction and remodeling of facilities useful in the attraction and promoting of tourist, convention and recreational businesses[.]" We believe that the sports tournaments hosted by Goodlettsville qualify as "tourist businesses," because they attract visitors from outside the Goodlettsville area. We also believe that the sports tournaments qualify as "recreational businesses," given that "recreation" is generally understood to mean "[r]efreshment of one's mind or body after work through an amusing or stimulating activity[,]" *Webster's II New College Dictionary* (Houghton Mifflin 2001), and includes sports activities. Therefore, based on the statutory language, it is clear that Goodlettsville could expend hotel-motel tax revenues to acquire, construct or remodel sports facilities in order to attract and promote sports tournaments. The statute is silent, however, on whether the hotel-motel tax revenues can be expended on the routine operation and maintenance of existing facilities which are used primarily for local activities, but also for tourist related activities.

We believe that the statute allows the expenditure of hotel-motel tax revenues on the routine operation and maintenance of existing facilities, provided that these facilities are used to

attract and promote tourist and/or recreational businesses. This does not mean that hotel-motel tax revenues can be used to finance purely local activities. For example, there will be costs directly attributable to hosting a local church league baseball game. This is a purely local activity and cannot be financed by hotel-motel tax revenues. The general costs of stadium upkeep, however, will provide benefit to both local activities and tourist related activities. It is therefore the opinion of this Office that hotel-motel tax revenues can be expended on the general operation and maintenance of existing facilities that are used for both local and tourist related activities. Hotel-motel tax revenues can also be spent on costs that are directly attributable to hosting tourist related activities, but not on costs that are directly attributable only to purely local activities.

3. Municipal Services

The requestor next asks whether revenues generated by the city's hotel-motel tax can be expended to cover costs incurred by the city in providing municipal services specifically for the safe and successful conduct of special sporting events conducted in and on city sports facilities. The requestor also asks whether revenues generated by the city's hotel-motel tax can be expended to cover costs incurred by the city in providing municipal services specifically for the safe and successful conduct of other "special events" held throughout the year in Goodlettsville. The answers to these questions turn on whether the events are tourist related activities.

The requestor reports that the special sporting events conducted in and on city sports facilities typically attract hundreds of participants and attendees, mostly from areas outside of Goodlettsville. Since these sporting events attract visitors from outside the area, they satisfy the requirements for tourist related activities. The requestor also reports that the city hosts two "special events" each year: a day-long celebration in one of the city's parks on each Fourth of July and a holiday parade the second Saturday evening of each December. These "special events" are attended by people from throughout the middle Tennessee area. Since the other "special events" also attract visitors from outside of Goodlettsville, they satisfy the requirements for tourist related activities.

To accommodate the safe and successful conduct of the special sporting events and other "special events," the city makes police, emergency medical and Parks and Recreation personnel available to provide services during the events. The city also provides supplies and materials for the events that are required by these personnel to render their services effectively. We believe that the additional municipal services required for the safe and successful conduct of tourist related activities can be paid for using hotel-motel tax revenues. *See, e.g., English Manor Bed and Breakfast v. Great Lakes Companies, Inc.*, 716 N.W.2d 531, 544 (Wis. Ct. App. 2006) (holding that hotel-motel tax revenues could be expended on events such as holiday celebrations and band concerts because those events encouraged out-of-town visitors to travel to the city, and also that hotel-motel tax revenues could be expended on police overtime attributable to such events because police presence contributed to the promotion and development of tourism by making visitors safer). Accordingly, the municipal services necessitated by Goodlettsville's hosting and conducting of special sporting events and other "special events" can be financed using hotel-motel tax revenues, since these events attract visitors from outside the area.

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