STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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January 19, 2010

Opinion No. 10-05

Union City Hotel-Motel Tax

QUESTIONS

1. May Union City appropriate some or all of the proceeds received from its hotel-motel tax levied under Chap. No. 41, 1989 Private Acts, to one or more departments of the city which may or may not also receive other appropriations in the city's budget if the department receiving the appropriation from the hotel-motel tax uses the appropriation for the purposes set forth in Section 3 of the Private Act?

2. May Union City also (or instead of its usual appropriation) appropriate proceeds from the hotel-motel tax to the city's cemetery and parks department as a means of "promoting recreation" as set forth in Section 3 of the Private Act?

OPINIONS

1. Yes. The private act authorizing the Union City hotel-motel tax directs that proceeds from the hotel-motel tax are to be allocated to the city's general fund and used exclusively for the purposes specified in the act. The act does not require Union City to disburse the proceeds from the hotel-motel tax to a particular city department, nor does it prohibit a city department receiving hotel-motel tax proceeds from receiving other appropriations. Therefore, Union City may appropriate the proceeds received from its hotel-motel tax to any city department that will use the hotel-motel tax proceeds for the purposes set forth in the private act authorizing the hotel-motel tax.

2. No. The proceeds received from Union City's hotel-motel tax are not intended to be spent directly on "promoting recreation." Instead, Section 3 of the private act authorizing the hotel-motel tax directs that proceeds from the tax are to be spent on "inducing manufacturing, industrial, governmental, financial, service, commercial, recreational, and agricultural enterprises to locate in or near Union City (within Obion County)."

ANALYSIS

1. Chapter 41 of the Tennessee Private Acts of 1989 authorizes the Mayor and Council of Union City "to levy by ordinance a privilege tax, commencing not before January 1, 1990, upon the privilege of occupancy in any hotel of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator." Section 3 of the private act directs that the proceeds received by Union City from the hotel-motel tax "shall be designated and used to maintain and increase employment opportunities by promoting industry, commerce, tourism, and recreation by inducing manufacturing, industrial, governmental, financial, service, commercial, recreational and agricultural enterprises to locate in or near Union City (in Obion County)." Section 11 directs that the proceeds from the hotel-motel tax "shall be allocated to and placed in the General Fund of the City to be used for the purposes stated in Section 3 of this act."

The private act authorizing the Union City hotel-motel tax mandates that the proceeds received by Union City from its hotel-motel tax must be placed in the city's general fund and used exclusively for the purposes specified in the act. The act does not specify how the proceeds from the hotel-motel tax are to be distributed from the general fund to carry out the specified purposes, although the act does provide that the proceeds or a portion thereof may be distributed to a charitable corporation to expend the funds for any of the uses stated in Section 3. The act does not direct that Union City must distribute its hotel-motel tax proceeds to certain city departments, but not to others; the act only directs that the proceeds from the hotel-motel tax must be used exclusively for the specified purposes. The act also does not prohibit city departments that receive hotel-motel tax proceeds from receiving other appropriations. Accordingly, it is the opinion of this Office that Union City may distribute the proceeds from its hotel-motel tax to any of its departments, so long as the departments receiving hotel-motel tax proceeds use those proceeds for the purposes stated in Section 3 of the private act.

2. This Office is informed that Union City's cemetery and parks department maintains the city's parks for recreational purposes and city funds are appropriated to the department for its operation. We are asked if the city may appropriate proceeds from the hotel-motel tax to the cemetery and parks department, in lieu of or in addition to its usual appropriation, as a means of "promoting recreation" as set forth in Section 3 of the private act.

It is the opinion of this Office that the proceeds received from Union City's hotel-motel tax are not meant to be spent directly on "promoting recreation." Section 3 of the private act authorizing the hotel-motel tax directs that proceeds received from the tax must be spent on "inducing manufacturing, industrial, governmental, financial, service, commercial, recreational, and agricultural enterprises to locate in or near Union City (within Obion County)." The desired effect of this spending is "to maintain and increase employment opportunities by promoting industry, commerce, tourism, and recreation." Although "promoting recreation" is a desired effect of Union City's hotel-motel tax spending, it is clear from Section 3 of the private act that the proceeds from the hotel-motel tax are intended to be spent on inducing certain types of enterprises to locate to Union City. There is no indication that Union City's cemetery and parks department has any direct role in inducing manufacturing, industrial, governmental, financial, service, commercial, recreational, or agricultural enterprises to locate to Union City.

Accordingly, proceeds from the hotel-motel tax should not be distributed to the cemetery and parks department for the purpose of "promoting recreation."

In a recent opinion, Op. Tenn. Att'y Gen. No. 08-158 (Oct. 8, 2008), we addressed similar questions regarding the City of Goodlettsville's hotel-motel tax. In that opinion, we determined that Goodlettsville may spend proceeds from its hotel-motel tax on maintenance of facilities and other expenses related to hosting sporting events and other special events that attract visitors from outside of Goodlettsville. Our conclusions regarding how Goodlettsville may spend its hotel-motel tax proceeds are not determinative of the question of how Union City may spend its hotel-motel tax proceeds because the acts authorizing the cities' hotel-motel taxes contain different directions on how the proceeds are to be spent. The statute authorizing Goodlettsville's hotel-motel tax directs that the proceeds are to be used "exclusively for tourist related activities within the municipality." Tenn. Code Ann. § 7-4-110(e). In contrast, the private act authorizing Union City's hotel-motel tax directs that the proceeds are to be used to induce "manufacturing, industrial, governmental, financial, service, commercial, recreational, and agricultural enterprises to locate in or near Union City (within Obion County)." In other words, Goodlettsville's hotel-motel tax proceeds are intended to be spent on inducing tourists to visit Goodlettsville, whereas Union City's hotel-motel tax proceeds are intended to be spent on inducing certain types of enterprises to locate in or near Union City.

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