STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 16-02

Purposes for Which Proceeds of Tourist Accommodation Tax May Be Used

Question 1

Is the use of proceeds of the tourist accommodation tax imposed by Moore County under Tenn. Code Ann. § 7-4-102(a)(1) limited to particular purposes?

Opinion 1

Use of proceeds of Moore County's tourist accommodation tax is limited only by Article II, Section 29, of the Tennessee Constitution, which requires that the proceeds be used for purposes of the county.

Question 2

May Moore County use proceeds of its tourist accommodation tax imposed under Tenn. Code Ann. § 7-4-102(a)(1) to build public restrooms for tourists?

Opinion 2

Yes. Providing public restrooms for tourists visiting the county would be a purpose of the county within the meaning of the Tennessee Constitution.

ANALYSIS

Article II, Section 29, of the Tennessee Constitution gives the legislature the "power to authorize the several counties and incorporated towns in this State, to impose taxes for County and Corporation purposes respectively . . . ." When the legislature authorizes such a tax, it may, consistent with Article II, Section 29, restrict the use of the tax to specifically delimited county or corporation purposes. Absent an express legislative limit on the use, the use is limited by Article II, Section 29, to "county purposes."

The legislature has authorized counties with a metropolitan form of government to impose privilege taxes on certain tourist accommodations. Tenn. Code Ann. §§ 7-4-101 to -112. Specifically, the legislature has

> 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 [4 of Title 7], and the tax shall be approved by ordinance of the metropolitan council.

Tenn. Code Ann. § 7-4-102(a)(1).

Moore County has a metropolitan form of government. Thus, the plain language of Tenn. Code Ann. § 7-4-102(a)(1) permits Moore County to levy a three percent (3%) tax on the privilege of occupying a hotel room (the "tourist accommodation tax").

Title 7, Chapter 4, does provide some limits on the use of revenue derived from the tourist accommodation tax, but none of those statutory limits applies to Moore County. Most of the use limits in Tenn. Code Ann. §§ 7-4-101 to -112 apply only to counties that exceed certain population thresholds specified in sections 7-4-102 and -110 and pegged to federal census data. Moore County's highest federal census population to date was 6,362. U.S. Census Bureau, 2010 Census. This figure is substantially below any of the statutory population thresholds or brackets; no population-dependent limits on the use of proceeds of tourist accommodation taxes apply to counties with fewer than 100,000 people. *See* Tenn. Code Ann. §§ 7-4-102(a)(2), 102(b)(1)-(3), and 7-4-110(a)-(e). Tennessee Code Annotated § 7-4-110(f) and (g) also limit the use of proceeds of tourist accommodation taxes, but those subsections apply only to counties in which there has been designated a "secondary tourism development zone." It is our understanding that Moore County does not have a "secondary tourism development zone." Thus, neither the use limitations in subsection 110(f) nor the use limitations in subsection 110(g) currently apply to limit the use of Moore County's tourist accommodation tax revenues.

Although there are no statutory limitations that currently apply to the use of Moore County's tourist accommodation tax revenues, the Tennessee Constitution does require that those revenues be used for "county purposes." Constructing public restrooms for the many tourists who visit and contribute to the economy of Moore County is such a "county purpose." *See Louisville & Nashville R.R. v. Cnty. Court of Davidson*, 33 Tenn. 637, 666 (1854) (holding that the construction of a railroad through a county is a valid county purpose); *see also Ragsdale v. City of Memphis*, 70 S.W.3d 56, 72 (Tenn. Ct. App. 2001) (holding that the construction of a sports arena is a valid public purpose). Therefore, Moore County may, consistent with the limitation in Article II, Section 29, use proceeds of its tourist accommodation tax to fund the construction of public restrooms.

In sum, no statutory provision that specifies or limits the purposes for which proceeds of a tourist accommodation tax imposed under Tenn. Code Ann. § 102(a)(1) may be spent currently[1] applies to Moore County, and Moore County may, consistent with Article II, Section 29, of the Tennessee Constitution, use proceeds of its tourist accommodation tax to fund the construction of public restrooms.

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[1] This opinion assumes that Moore County's population is below 100,000 and that no "secondary tourism development zone" within the meaning of Tenn. Code Ann. § 7-4-110 has been designated within Moore County. If either assumption is incorrect or becomes incorrect in the future then Moore County would be limited in the use of its tourist accommodation tax revenues according to the statutory provisions that would then apply to it.