STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

June 1, 2018

Opinion No. 18-24

County's Appropriation of Hotel-Motel Tax Revenue for Tourism Promotion

Question

May a county legislative body appropriate the hotel-motel tax revenue collected pursuant to Chapter 905 of the Public Acts of 1980 for the purpose of promoting tourism to a Convention Visitors Bureau or must the tax revenue be appropriated to a Tourist Development Agency?

Opinion

Under Chapter 905 of the Public Acts of 1980, as amended by Chapter 444 of the Public Acts of 1983 and Chapter 918 of the Public Acts of 1988, a county has discretion to appropriate hotel-motel tax revenues for the purpose of promoting tourism to a Convention Visitors Bureau or to a Tourist Development Agency.

ANALYSIS

Chapter 905 of the Public Acts of 1980, as amended by Chapter 444 of the Public Acts of 1983 and Chapter 918 of the Public Acts of 1988 (collectively, the "Act"), is a public act of special application and is not codified in Tennessee Code Annotated. The Act allows an eligible county to assess "a privilege tax upon the privilege of occupancy in any hotel of each transient in an amount not to exceed four percent (4%) of the consideration charged by the operator" (the "hotel-motel tax") to fund a sports arena-coliseum facility, certain specified projects, and tourism promotion. Act, § 2. Taxes collected by a hotel pursuant to the Act must be remitted directly to the county. Act, § 3.

Section 10 of the Act directs how the hotel-motel tax revenues are to be allocated. The tax revenues must first be allocated to meet any debt service for the construction of a sports arena-coliseum facility. Act, § 10(b). After the debt service for the sports arena-coliseum facility is satisfied, the tax revenues are allocated to specific projects identified in the Act. Act, § 10(b). Section 10(d) identifies seven projects that are to be funded by the hotel-motel tax revenue collected and the required allocation for each one. Section 10(e) provides that "[t]he county legislative body shall appropriate annually at least eight hundred thousand dollars ($800,000) from the revenues of this act for the purpose of promoting tourism." Section 10(e) further provides that the county may make the appropriation required in Section 10(e) to the Chattanooga Convention and Visitors Bureau ("CCVB") or a similar agency performing the promotional purposes performed by the CCVB. Finally, once all of the indebtedness for any bonds issued to finance the sports arena-coliseum facility and the specified projects have been funded, the hotel-motel tax revenue "shall be budgeted for tourism related activities by the county legislative body, including

capital expenditures, [and] all other expenditures allowed to counties relating to tourism related activities, including but not limited to the provision of Tennessee Code Annotated, Title 5, Chapter 9, Part 2." Act, § 10(f).[1]

For the purpose of promoting tourism, the Act also creates an agency known as the Tourist Development Agency ("TDA"). Act, §§ 11-12. The county legislative body is authorized, but not required, to make appropriations from the hotel-motel tax to the TDA for the purpose of promoting tourism. If any hotel-motel tax revenues are appropriated to the TDA, "[n]ot less than seventy-five percent (75%) of the funds appropriated for tourism shall be utilized for those sorts of programs and projects provided for in Section 12 of this Act." Act, § 13(a)(1).

Thus, in allocating hotel-motel tax revenue for tourism promotion, the county legislative body in a county covered by the Act has discretion to appropriate, within certain limits, the revenues to a Convention Visitors Bureau or to a Tourist Development Agency. That is, under the Act, both the TDA and the CCVB are authorized to receive hotel-motel tax revenue for tourism promotion, but the Act does not mandate that either agency receive any funding from the tax revenue. This is similarly mirrored in Tenn. Code Ann. § 5-9-202, which addresses a county's general authority to appropriate funds for tourism promotion and which provides that such funds may be used and expended "by *such agency or agencies* as [the county] shall prescribe, and under such rules and regulations as they see fit." (Emphasis added.)

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[1] Pursuant to Tenn. Code Ann. § 5-9-201(b), a county legislative body or other governing body is authorized to appropriate monies from the county's general fund for tourist promotion. Any funds appropriated under Tenn. Code Ann. § 5-9-201 "shall be used and expended under the direction and control of the county legislative bodies so appropriating the funds, or through such agency or agencies as they shall prescribe, and under such rules and regulations as they see fit." Tenn. Code Ann. § 5-9-202.

Requested by:

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