BOARD OF COUNTY COMMISSIONERS
INTER-OFFICE MEMORANDUM

To: Honorable Chairman and Members of the Board of County Commissioners

From: Herbert W. A. Thiele, Esq.
County Attorney

Date: January 28, 2009

Subject: Use of 5th Cent Tourist Development Tax

At the Board of County Commissioners' meeting of Thursday, January 15, 2009 the Board of County Commissioners discussed entering into an arrangement with both the State of Florida and the City of Tallahassee to provide certain assistance in an endeavor to attract Delta Airlines into reinstating various intra-state flights out of the City of Tallahassee's airport. It was proposed that the sum of money needed to induce Delta's resumption of these flights was approximately 2 million dollars, and that Leon County's share would be $500,000.00. Based upon the time frame involved, this amount would not be needed until approximately one year from the start of the resumptions of the intra-state flights; and, therefore, would fall within the fiscal year 2009-2010.

One of the options available to Leon County is to budget the sums from general revenue in the upcoming fiscal year budget or to pledge the use of the County's reserves at the present time and then potentially replace same during the next fiscal year.

Additionally, the Commission discussed the potential for utilizing a portion of the revenues to be derived from the 5th Cent Tourist Development Tax as set forth in § 125.0104, Florida Statutes. After having reviewed the statutes and interpretations of same, it would be the opinion of the Leon County Attorney's Office that §125.0104, Florida Statutes, would not authorize the use of Tourist Development Tax revenues, using the 5th Cent or others, to be used solely to guarantee or provide a subsidy to a privately owned airline for this purpose. However, other methodologies may be available.

§125.0104, Florida Statutes authorizes a County to levy and impose certain amount so tourist development tax who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartments hotel, motel, resort motel, apartment, apartment motel, rooming house, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less. The tax revenues received pursuant to this section may only be used for specified purposes, to wit:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate or promote one or more publicly owned and operated convention centers, sport stadiums, sports arenas, coliseums, or auditoriums, or museums that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, within the boundaries of the county or sub-special taxing district in which the tax is levied. Tax revenues received pursuant to this section may also be used for promotion of zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public;

2. To promote and advertise tourism in the State of Florida both nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue or event to tourists.

3. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as County agencies or by contract with the Chambers of Commerce or similar associations in the County, which may include any indirect administrative costs for services performed by the County on behalf of the promotion agency; or,

4. To finance beach park facilities or beach improvements, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, clean up, or restoration or inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline or inland lake or river.

Section 125.0104(5)(d), Florida Statutes, expressly prohibits using Tourist Development Tax revenues for any purpose not expressly authorized in the statute. Cases interpreting this provision have held that Tourist Development Tax revenues may only be used for the purposes expressly enumerated in the Florida Statutes. See, for example, AGO# 08-06, AGO #91-62, AGO# 90-55, AGO# 88-49, and Dobbs v. Sea Isle Hotel, 56 So.2d 341 (Fla. 1952).

However, determining whether a particular project is tourist related and furthers the purposes of promoting tourism is a decision which can be made by the governing body of the County. See AGO# 08-26. It may be argued that maintaining the operation of an airline to enable tourists to visit Leon County would be promoting such a tourism service. However, in order to meet the definitions, the funds would need to be used for marketing or advertising designed to increase tourist related business activity in Leon County.

The funds from Leon County could perhaps be utilized to assist in marketing or advertising ue of the Tallahassee Regional Airport or other such tourism marketing. While this has not been explored with the City of Tallahassee at the time of the writing of this memorandum, it is certainly an area that could be discussed should the Board wish to pursue that direction.

Furthermore, there would be a required series of public hearings and other required publications in order to enact the 5th Cent ordinance which would need to be initiated by direction of the Board of County Commissioners to the Leon County Attorney's Office to prepare the necessary ordinance and to schedule same for the requisite public hearings.

Should you have any questions, please contact the County Attorney's Office.

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