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Friday, January 2, 2026

Key West City Commission

1300 White St.

City

RE: 2026 Tourist Tax for Transit

Item 34 on the agenda for next week's meeting is a discussion: "Key West Use of Tourist Tax Funds for Transit." Its sponsor poses the question: "As the City Commission, do we support seeking tourist tax funds to fund tourist-serving transit like the Duval Loop? If also approved by the County Commission, this initiative will enhance the visitor experience, alleviate congestion, and bolster the hospitality industry." **The answer is NO.**

The information sheet suggests that "Florida Statute §125.0104(5)(a)(6) permits TDC funds to be used for:

- Transportation systems that are designed to increase tourist-related business activity.

- Capital projects, public facilities, activities and services that promote tourism.

"This means that transit services like the Duval Loop and Lower Keys Shuttle – which connect hotels, attractions, and beaches–can qualify, especially if they're marketed as tourist-serving and ridership data supports that claim."

I beg to differ. §125.0104(5) (a) (6) states Tourist Development Tax revenue may be used:

To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the boundaries of the county or subcounty special taxing district in which the tax is levied, if the public facilities are needed to increase tourist-related business activities in the county or subcounty special district and are recommended by the county tourist development council created pursuant to paragraph (4)(e). Tax revenues may be used for any related land acquisition, land improvement, design and engineering costs, and all other professional and related costs required to bring the public facilities into service. As used in this subparagraph, the term "public facilities" means major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, and pedestrian facilities. Tax revenues may be used for these purposes only if the following conditions are satisfied . . .

We are not the first people to think of using other people's money to fund our transit system. Walton County tried to fund their transit system with Tourist Development Tax revenue in 2017. Walton County proposed funding under §125.0104(5) (a) (3) :

"To promote and advertise tourism in this state and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must 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."

Their TDC posed the question to the Attorney General who replied with opinion 2017-06, which is attached.

Nothing in section 125.0104(5), Florida Statutes, suggests that the tourist development tax is a broad funding source. Rather, the tax revenues are a targeted funding source to directly and primarily promote tourism. Thus, such revenues cannot be used to fund a public transit system for the citizens of Walton County that would incidentally benefit tourists. Instead, to warrant use of tourist development tax revenues for transportation services under subsection (5)(a)3., there must be a clear and direct relationship between the promotion of tourism and the particular transportation service being offered. Such transportation services should involve routes and schedules addressing the specific needs of tourists, and might include, for example, a shuttle connecting hotels and motels with county tourist attractions.

. . .
Therefore, it is my opinion that revenues from a tourist development tax may be used for specific tourist-oriented transportation services based upon a showing that one of the main purposes of each individual service provided is to attract tourists to Walton County. [internal quotations and endnotes omitted]

It seems unimaginable that the current Duval Loop Bus would be one of main attractions in Key West, much less the Lower

Keys Shuttle. A public transit system for locals, which incidentally benefits tourists sounds like a more appropriate description of the park 'n ride/ Duval Loop system. That is not to say that we could not redesign the loop, abandon it as a circulator for locals, and instead move its stops to hotels, cruise ports, the airport, and attractions. Even then, could we legitimately, in good faith, claim that the main purpose of the loop bus is to attract tourists to Key West?

The elephant in the room is the money. They have it. We want it. In FY2024, the tourist development tax revenue was \$61,463,006. The revenue has been decreasing since COVID. Unlike the city property tax where you can just raise the tax rate, and let the landlords squeeze more money out of local residents, the Tourist Development Tax is a fixed pot of money. That means that if the TDC funds the Duval Loop, that money must be cut from someone else.

According to the latest annual report, \$8,985,393.84 was spent on capital improvements in Key West, including: the Higgs Beach Restroom, lighthouse repairs, the Historic Jail Museum, Reynolds Street Pier, and West Martello.

The TDC also reported having funded the following events:

- Cfk Swim Around Key West And Swim Meets
- Conch Republic Independence Celebration
- Florida Keys Seafood Festival
- Hemingway 5k Run And Paddle Board
- Hemingway Look Alike Contest
- Kelli Mcgillis Classic
- Key West Brewfest
- Key West End Of Prohibition Celebration
- Key West Film Festival
- Key West Holiday Fest
- Key West Literary Seminar
- Key West Paddle Classic
- Key West Pride
- Key West Triathlon
- Key West Tropical Heat
- Key West Winter Wonderland
- Key West Womenfest
- Legends Of Music Row
- New Years Eve Shoe Drop
- Papio Kinetic Sculpture Parade
- Pole Vault In Paradise
- Presidential Families Weekend
- Rams Head Presents
- Rokisland Fest
- Run Conch Republic Southernmost 5k/10k
- Tennessee Williams Key West Festival
- The Key Lime Festival
- The Southernmost Regatta
- Truman Waterfront Farmers Market
- Christopher Petersons Eyecons
- Conch Blowing Contest
- Fringe Theater Key West
- Key West Art & Historical Society Cultural Heritage Series
- Key West Burlesque
- Key West Garden Club
- Key West Headdress Ball
- Key West Home Tours
- Key West Impromptu Classical Concerts
- Key West Tropical Forest & Botanical Garden
- Keys Concerts By Candlelight And Cabaret
- Mel Fisher Maritime Museum
- Randy Roberts Live
- Red Barn Theatre
- South Florida Symphony Orchestra

- Tennessee Williams Theatre
- The Studios of Key West
- Tropic Cinema
- Truly Amazing Art
- Waterfront Playhouse
- I Love Stock Island
- Lower Keys Chamber Of Commerce Island Art Festival
- Underwater Music Festival
- Florida Keys Celtic Festival Keys To Country At Hawks Cay Resort
- Marathon Community Theatre
- Community Arts And Cultural Presents
- History Of Dive Museum
- Morada Way Arts And Cultural District Art Walk
- Pops In The Park
- Key West Fishing Tournament
- Key West Gator Club Dolphin Derby
- Key West Kingfish Mayhem
- Key West Marlin Tournament
- Key West Sailfish Tournament
- March Merkin
- Spanish Fly Shark Tournament
- Vfw Fishing Tournament
- Cuda Bowl Fishing Tournament
- Florida Keys Pba Dolphin Tournament
- Guides And Gals
- Lower Keys Chamber Dolphin Tournament
- Sugarloaf Showdown
- Marathon Offshore Bull & Cow Dolphin Tournament
- Mothers Day Dolphin Tournament
- Marathon Premier Sailfish Tournament
- Fish For Holly Sailfish Tournament
- Florida Keys Gold Cup Sailfish Championship
- Islamorada Sailfish Tournament
- Ladies Lets Go Fishing Screamin Reels
- Nick Sheahan Dolphin Rodeo
- Swamp Guides Ball
- Skippers Dolphin Tournament
- Big Gay Key West
- Marathon Of The Florida Keys
- Swim Around Key West
- Coast Is Clear
- Key West Brewfest
- Key West Film Festival
- Key West Holiday Fest
- Key West Triathlon
- Key West Womenfest

- Key West Tropical Heat
- New Years Eve Shoe Drop
- Rams Head Presents
- Southernmost Half Marathon
- Rwo Offshore Championship
- Capital Projects
- Higgs Beach Cleaning
- West Martello Repairs
- Smathers Beach Cleaning
- Higgs Beach Restrooms
- Reynolds Street Pier Repairs
- Lighthouse Stables/Bathrooms Renovations
- West Martello Air And Electrical
- East Martello Hvac/Windows/Brick Repair
- Key West Wildlife Welcome Center Building Replacement/Aviary
- Mallory Square Public Restrooms
- Mallory Square Sunshades/Landscape
- Key West Womens Club Renovations
- City Of Key West Amphitheater
- Smathers Beach Pavilions
- Customs House Archive Repairs
- Oldest House Improvements
- Mel Fisher Museum Improvements
- Key West Southernmost Point
- Uscgc Ingham
- Mote Coral Restoration
- Coral Restoration Reef Renewal

For every winner there has to be a loser, who will get defunded?

KW Transit has collapsed. The fixed routes are gone. The loop is gone. KW Rides does not work. Transit services are not available at the busiest times.

Transit needs secure funding. We cannot continue this boom-bust cycle of grant funding. The cost of transit needs to be divided between the tax payers and the users.

I tried to take rides home last week. Rides was not available. Not an hour wait. Not a two hour wait. Just not available. Instead, I took a \$30 dollar cab ride (\$25 fare, %5 tip).

Walk down Duval Street at 8 o'clock in the evening, the stores are all open, the restaurants and bars are serving customers, the sidewalks are full of people, and yet our transit system is shutting down for the night. None of those people are able to use our poorly designed transit system.

I get refused service about 1/3 of the time that I request a ride on the app. The director has confirmed that my experience is not an anomaly. What if an ambulance only came to 2/3 of heart attacks? What if 1/3 of the time, a school bus did not bring your child home from school? What if your child's classroom only had a teacher 2/3 of the days? In many circumstances anything less than 100% performance is unacceptable. Transit is one of them.

Although as an elderly city resident, I can ride for free, a free ride is no good if the bus never comes. The city needs to set competitive user fees that support a quality bus service, a dollar or two is inadequate. We should never get a no rides available message, even if everyone at transit headquarters has to go out and drive a bus.

No, you should NOT support seeking tourist tax funds to fund tourist-serving transit like the Duval Loop. Yes, you need to provide city residents a working transit system.

Cordially,

John Walsh

Funding transit system with tourist development tax

Number: AGO 2017-06

Issued November 21, 2017

Subject: Funding transit system with tourist development tax

Mr. Tim Norris
Chairman, Walton County Tourist
Development Council
25777 US Highway 331 South
Santa Rosa Beach, Florida 32459

RE: COUNTIES – TOURIST DEVELOPMENT TAX – TRANSIT SYSTEM OPERATED BY A PRIVATE COMPANY – whether the county may use revenues received from the tourist development tax to fund a transit system to be operated by a private company. § 125.0104(5)(a)3., Fla. Stat.

Dear Mr. Norris:

This office has received your inquiry on behalf of the Board of County Commissioners of Walton County, asking the following question:

Whether the county may use proceeds of the tourist development tax under section 125.0104(5)(a)3., Florida Statutes, to fund, in whole or in part, a transit system operated by a private company.

In sum:

Section 125.0104(5)(a)3., Florida Statutes, which authorizes use of tourist development tax revenues for “an activity, service, venue, or event” when one of its main purposes is to attract tourism, does not encompass funding to operate a transit system in general, but would support funding for specific transportation services that are clearly intended to attract tourism.

The Local Option Tourist Development Act, section 125.0104, Florida Statutes, authorizes counties to impose a tax on short-term rentals of living quarters or accommodations within the county (with certain exceptions not pertinent here). This office has often stated that “the intent and purpose of the act was to provide for the advancement, generation, growth and promotion of tourism, the enhancement of the tourist industry, and the attraction of conventioneers and tourists from within and without the state to a particular area or county of the state.”[1]

The projects that can be funded by the tourist development tax are enumerated in subsection (5) of the statute.[2] Each is related to the attraction of tourists to the county.[3] You suggest that section 125.0104(5)(a)3., Florida Statutes, provides the specific authority to fund the operation of a transit system. That provision states:

“(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

* * *

3. To promote and advertise tourism in this state and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must 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[.]” (e.s.)

This provision is specifically tailored to authorize funding for the promotion[4] and advertisement of various attractions within the county to tourists.

“Nothing in section 125.0104(5), Florida Statutes, suggests that the tourist development tax is a broad funding source. Rather, the tax revenues are a targeted funding source to directly and primarily promote tourism.”[5] Thus, such revenues cannot be used to fund a public transit system for the citizens of Walton County that would incidentally benefit tourists. Instead, to warrant use of tourist development tax revenues for transportation services under subsection (5)(a)3., there must be a clear and direct relationship between the promotion of tourism and the particular transportation service being offered.[6] Such transportation services should involve routes and schedules addressing the specific needs of tourists, and might include, for example, a shuttle connecting hotels and motels with county tourist attractions.

Although subsection (5)(a)3. does not restrict services eligible for funding to those which are publicly provided,[7] each qualifying service must clearly enhance the County’s ability to attract tourists, and each must be promoted to tourists in a manner demonstrating that tourism is one of its central purposes. Therefore, before allocating revenues to any transportation service for which funding is sought, the Walton County Board of County Commissioners must make a case-by-case factual determination, based on a consideration of these factors, regarding whether a main purpose of the service is to attract tourists.

These principles are reflected in prior opinions discussing the use of tourist development funds. In Attorney General Opinion 2000-25, this office was asked about a county’s use of tourist development funds (1) to cosponsor with a private corporation a bass fishing tournament at a county facility, and (2) to sponsor a two-day event at a private racetrack. This office concluded that tourist development funds could not be used to operate or promote a private sports facility, because subsection (5)(a)1. requires that sports facilities be publicly owned to receive tourist development tax dollars. Revenues could be used, however, pursuant to what is now subsection (5)(a)3., for the particular attraction or event being held, so long as the governing body made the legislative determination that one of the main purposes of the event was to attract tourists.

In an informal opinion provided to Circuit Court Clerk Scott Ellis of Titusville, this office was asked about using tourist development revenues for the day-to-day operations of a “county contracted arts and culture-focused nonprofit entity,” the Brevard Cultural Alliance.[8] Such operations would include salaries of agency personnel, costs of marketing and printing, and insurance and employee benefits. This office concluded that under section 125.0104(5)(a)3., Florida Statutes, tourist development tax revenues could be used for particular events and activities put on by the organization to promote tourism, but not for its daily administrative expenses.

Therefore, it is my opinion that revenues from a tourist development tax may be used for specific tourist-oriented transportation services based upon a showing that one of the main purposes of each individual service provided is to attract tourists to Walton County.

Sincerely,

Pam Bondi
Attorney General

PB/tebg

[1] Op. Att’y Gen. Fla. 83-18 (1983). See also Ops. Att’y Gen. Fla. 14-02 (2014) and 13-29 (2013).

[2] See, e.g., Alachua County v. Expedia, Inc., 175 So. 3d 730, 736 (Fla. 2015); Freni v. Collier County, 588 So. 2d 291, 293 (Fla. 2d DCA 1991).

[3] “Tourist” means “a person who participates in trade or recreation activities outside the county of his or her permanent residence or who rents or leases transient accommodations as described in paragraph (3)(a).” §125.0104(2)(b)2., Fla. Stat.

[4] “Promotion” means “marketing or advertising designed to increase tourist-related business activities.” § 125.0104(2)(b)1., Fla. Stat.

[5] Informal Opinion to Hon. Scott Ellis, December 16, 2014.

[6] See Ops. Att'y Gen. Fla. 15-14 (2015), 14-02 (2014), 12-38 (2012), 10-26 (2010), and 10-09 (2010).

[7] You have indicated that the transit system in question will be operated by a private company. Because Art. VII, § 10 of the Fla. Const. prohibits a county from using its taxing power to aid a private entity, even those projects authorized by § 125.0104, Fla. Stat., must be shown to “serve a paramount public purpose,” with only “incidental benefits” accruing to a private party, to be eligible for funding. *State v. Osceola County*, 752 So. 2d 530, 539 (Fla. 1999) (affirming the validation of bonds issued to acquire a convention center from a private entity that would operate the facility, using revenues from a tourist development tax to pay the debt service, finding that “[t]he fact that the proposed project will be operated by a private entity does not negate the public character of the project”).

[8] See *supra*, n.5.