2013-050

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

May 21, 2013

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

Honorable Matthew Capps
Executive Director
Dauphin Island Park and Beach Board
109 Bienville Boulevard
Dauphin Island, Alabama 36528

Park and Recreation Boards – Lodging Taxes – Camps and Camping – Exemptions – Transient Occupancy Tax – Municipalities – Municipal Ordinances – Mobile County

The municipal lodging tax for the Town of Dauphin Island imposed by Ordinance 72D is applicable to the Dauphin Island Park and Beach Board.

Section 11-22-13 of the Code of Alabama does not exempt the Dauphin Island Park and Beach Board from collecting and remitting the lodging tax established by Ordinance 72D.

Dear Mr. Capps:

This opinion of the Attorney General is issued in response to your request on behalf of the Dauphin Island Park and Beach Board.

QUESTIONS

Is the municipal lodging tax for the Town of Dauphin Island imposed by Ordinance 72D applicable to the Dauphin Island Park and Beach Board?

Does section 11-22-13 of the Code exempt the Dauphin Island Park and Beach Board from collecting the lodging tax established by Ordinance 72D?

FACTS AND ANALYSIS

The Dauphin Island Park and Beach Board ("Board") was formed pursuant to sections 11-18-1 through 11-18-3 of the Code of Alabama. ALA. CODE §§ 11-18-1 to 11-18-3 (2008). Previously, this Office determined that the Transient Occupancy Tax, expressed in sections 40-26-1 through 40-26-21 of the Code, commonly referred to as the lodging tax, was applicable to the Dauphin Island Park and Beach Board. *See* opinion to Honorable Thomas M. Galloway, Attorney, Dauphin Island Park and Beach Board, dated September 24, 1997, A.G. No 97-00291. At this point, you question whether the municipal lodging tax is also applicable to the Board, or whether section 11-22-13 of the Code may exempt the Board from both the municipal and state provisions.

As part of your request, you submitted a copy of Ordinance 72D. This particular municipal ordinance states, in pertinent part, as follows:

> Section 1: There is hereby levied, in addition to all other license taxes on every kind now imposed by law, and shall be collected as herein provided, a privilege tax upon every person, firm or corporation, including rental agents, engaging within the corporate limits of the Town of Dauphin Island in:
>
> > (a) The business of renting or furnishing of any room or rooms or lodgings to transients in any house, apartment, condominium, hotel, motel, tourist court, tourist cabin, or rooming house, or ***any other place in which rooms or lodgings*** are regularly furnished to transients for a consideration, said tax to be in an amount equal to five percent (5%) of the gross income received for such room, rooms, or lodging, including the charge for use or rental of personal property sold or services furnished in such room.
> >
> > (b) The tax referred to in the foregoing subsection (a) shall apply only to, and be measured only by the charges for, the rental of rooms or lodging supplied to transients, and shall not apply to, or be measured by the charges for, the rental of rooms or lodgings supplied for a period of 180 continuous days, or longer.

Dauphin Island, Ala., Ordinance 72D (July 20, 2004). Based on the plain language used in this ordinance, a privilege tax is to be collected by every firm

or corporation that is engaged in the business of renting or furnishing rooms or lodgings to transients.

In your request, you questioned the applicability of the ordinance to the Board because the Board rents campground spaces, which you do not believe would be considered rooms or lodgings. This Office does not dispute that a space at a campsite does not qualify as a room. That same area on a campground, however, may be considered lodging. Webster's Third New International Dictionary defines the term "lodging" as "a place to live; a place in which to settle or come to rest; sleeping accommodations; a temporary place to stay . . . ." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1329 (2002).

This Office has previously determined that every word, sentence, or provision is intended for some useful purpose and that some effect is to be given to each. Opinion to Honorable John F. Porter, Attorney, Jackson County Commission, dated July 30, 2004, A.G. No. 2004-192. Thus, the words "rooms," "lodgings," and "accommodations," when used together, are to be given different meanings. *Id.* Based on the foregoing, it is the opinion of this Office that the Board is supplying lodging, which is different than rooms. As such, the municipal lodging tax implemented pursuant to Ordinance 72D is applicable to the Board.

In your letter of request, you assert that the Board, pursuant to section 11-22-13 of the Code, is exempt from paying taxes. You further contemplate the possibility that this particular section may exempt the Board from remitting taxes collected as a result of someone staying on the campgrounds. Section 11-22-13 states as follows:

> The corporation, the property and income of the corporation, all bonds issued by the corporation, the income from such bonds, conveyances by or to the corporation and leases, mortgages and deeds of trust by or to the corporation shall be exempt from all taxation in the State of Alabama. No sales, use, license or excise tax may be imposed on any corporation in respect of the privilege of engaging in any of the activities authorized by this chapter.

ALA. CODE § 11-22-13 (2006).

Section 11-22-13 of the Code makes clear that the Board is not subject to taxation with regard to its income, nor is the Board subject to sales, use, license, or excise tax with respect to engaging in the activities authorized in chapter 22 of title 11. Ordinance 72D, along with section 40-26-21 of the Code, however, does not seek to impose any type of a tax directly on the Board.

Instead, the lodging tax expressed in these provisions is applicable directly to the persons renting the room, lodging, or other accommodation. As such, it is incumbent upon the Board to collect and remit the fees imposed as a result of such rentals. *See, generally*, *Galloway* at 3; ALA. ADMIN. CODE r. 810-6-5-.13(5) (2012).

CONCLUSION

The municipal lodging tax for the Town of Dauphin Island imposed by Ordinance 72D is applicable to the Dauphin Island Park and Beach Board.

Section 11-22-13 of the Code does not exempt the Dauphin Island Park and Beach Board from collecting and remitting the lodging tax established by Ordinance 72D.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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