

... shall receive as his yearly compensation for his official services from the whole or part of the fees or commissions so collected, the following sum only: all the net income from his office not to exceed seven thousand five hundred dollars *unless otherwise provided by law.* (Emphasis supplied.)

The special act increased the maximum amount of the net income which could be retained by him as his annual compensation, but it did not have the effect of awarding to him a fixed annual salary within the purview of §145.141, *supra*.

The resolution of deficiencies in fee officers' office income and compensation is outlined in 8 Fla. Jur. *Counties* §33.

073-394—October 24, 1973

MUNICIPALITIES

PURCHASING ADVERTISING SPACE IN TOUR BROCHURES

To: Allen Clements, Jr., Attorney for Miami Beach Tourist Development Authority,
Miami Beach

Prepared by: Sharyn Smith, Assistant Attorney General

QUESTION:

May the Miami Beach Tourist Development Authority advertise the virtues of Miami Beach as a tourist area in package tour brochures which feature certain named hotels selected by the tour operators?

SUMMARY:

The Miami Beach Tourist Development Authority may advertise Miami Beach as a tourist area in package tours, and such advertising is a statutorily authorized "municipal purpose." Further, such advertisements only incidentally benefit private financial interests and, therefore, do not violate Art. VII, §10, State Const.

According to your letter, the Tourist Development Authority (hereafter referred to as the authority) is contemplating the purchase of advertising space in brochures formulated by tour operators in order to induce the tour operators to package group travel plans to Miami Beach. The tour operators who package group travel plans make arrangements for accommodations with certain hotels of their own choosing and these hotels in turn are listed and publicized in travel brochures. The hotels so selected receive direct benefit from the activities of the tour operators. The authority would have no part in the selection of the hotels featured in the travel brochures in which a cross-section of hotels of varying sizes and price structures would be featured. The advertising space bought by the authority is intended solely to extol the virtues of Miami Beach as a tourist center and *none* of the hotels featured in the brochures would be mentioned in any such advertising. The advertising space purchased in the tour brochures would be highly selective, based upon a determination by the authority that the package tours to be offered would be successful and that the resulting tax revenues generated by the tours would be considerably greater than the expenditure for advertising.

Chapter 67-930, Laws of Florida, which authorized, *inter alia*, the creation by the City of Miami Beach of the authority, provides, at §6, that municipal resort tax funds collected under Ch. 67-930, *supra*, may be used solely for certain specified purposes, among which are the enhancement of tourism and publicity and advertising.

Section 43 1/2, Miami Beach City Charter, further provides that the municipal

resort tax levy is to be kept in a fund separate from the general fund and such levy is to be used solely for the promotion of the tourist industry by such means as publicity, advertising, promotional events, etc.

There can be no question that the purchase of advertising in such brochures is an authorized purpose under both Ch. 67-930, *supra*, and §43 1/2, Code of the City of Miami Beach and is, likewise, a statutorily authorized *municipal purpose* which the courts will not interfere with unless clearly erroneous. *City of Jacksonville v. Oldham*, 150 So. 618 (Fla. 1933). The use of the taxing power and expenditure of tax revenues by a local governmental body for advertising, promotion, and publicity, has been repeatedly held to be a valid "municipal purpose." *Miller v. Ryan*, 54 So.2d 60 (Fla. 1951); *City of Fernandina v. State*, 197 So. 454 (Fla. 1940); *C. V. Floyd Fruit Company v. Florida Citrus Commission*, 175 So. 248 (Fla. 1937); *City of Jacksonville v. Oldham*, *supra*; *City of DeLand v. Moorehead*, 119 So. 117 (Fla. 1928); *Earle v. Dade County*, 109 So. 331 (Fla. 1926). *Accord*: Attorney General Opinion 067-47. The advertising in question is *specifically* authorized so long as the purpose is the enhancement or promotion of tourism within the city.

Even though the questioned purchase of advertising space would incidentally benefit the hotels featured in the travel brochures, the primary benefit of the advertising clearly accrues to the city in the form of increased tourism which has been continually held to be a valid public purpose. *State v. Reedy Creek Improvement District*, 216 So. 2d 202 (Fla. 1968); *State v. Daytona Beach Racing & Rec. Fac. Dist.*, 89 So.2d 34 (Fla. 1956); *State v. Inter-American Center Authority*, 84 So.2d 9 (Fla. 1955); *State v. Escambia County*, 52 So.2d 125 (Fla. 1951).

As stated by the court in *State v. Board of Control*, 66 So.2d 209, 219 (Fla. 1953):

The mere fact that some one [sic] engaged in private business for private gain will be benefited by every public improvement . . . should not and does not deprive such improvement of its public character or detract from the fact that it primarily serves a public purpose. An incidental use or benefit which may be of some private benefit is not the proper test in determining whether or not the project is for a public purpose.

Although the purchase of the advertising space might violate Art. VII, §10, State Const., which prohibits the use of the city's taxing power or credit to aid private individuals or corporations if such advertising space was purchased primarily to benefit the private business or commercial interests involved, this is clearly not the intention nor the result of such advertising purchases by the authority nor of Ch. 67-930, *supra*, which specifically authorizes and requires expenditure of these tax revenues for "enhancement of tourism, publicity and advertising purposes." The advertising space is intended solely to encourage and develop those purposes spelled out in the enabling act, Ch. 67-930.

In consideration of the foregoing, I am of the opinion that the expenditure of the municipal resort tax revenues to purchase advertising in such travel brochures to extol the virtues of Miami Beach as a tourist center and to promote the tourist industry within the city is an authorized expenditure of public funds for a municipal purpose and is not violative of Art. VII, §10, State Const.

073-395—October 24, 1973

TAXATION

COUNTY TAX COLLECTOR'S RESPONSIBILITY FOR COLLECTING SALES TAXES

To: Lester L. Bauer, Broward County Tax Collector, Fort Lauderdale

Prepared by: J. Kendrick Tucker, Assistant Attorney General