

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: 12/1/2023

MEMORANDUM

TO: Room Tax Commissioners
FROM: Assistant City Attorney Amber McReynolds
RE: Allocating Room Tax Revenue

Question Presented

Does Wisconsin state law prohibit or limit allocating room tax revenue on efforts or events that also support the local community?

Short Answer

No. The Room Tax Commission has some discretion which allows allocating room tax revenue in a variety of ways, some which may also benefit the local community. Additionally, the statute explicitly allows for funding convention centers and does not specify how those funds must be utilized.

Discussion

At the last Room Tax Commission meeting on September 20, 2023, there was some discussion about whether the Commission was allocating money in a legal manner, whether there are restrictions on how the Commission may distribute room tax revenue, and how those funds may be spent by the recipient of those funds. Specifically, one commissioner seemed to raise a concern about whether funds could be legally allocated or spent on programming that benefits the “community”. The purpose of this memo is to summarize relevant Room Tax Commission law and clarify that the Commission did not allocate funds contrary to law.

Wisconsin Statute § 66.0615 discusses room tax law. The statute defines the term “tourism” as “travel for recreational, business or educational purposes” Wis. Stat. § 66.0615(1)(e). In addition, the statute defines the term “tourism promotion and tourism development” as such:

“Tourism promotion and tourism development” means any of the following that are significantly used by transient tourists and reasonably likely to generate paid overnight stays at more than one establishment on which a tax under sub. (1m)(a) may be imposed, that are owned by different persons and located within a municipality in which a tax under this section is in effect; or, if the municipality has

only one such establishment, reasonably likely to generate paid overnight stays in that establishment:

1. Marketing projects, including advertising media buys, creation and distribution of printed or electronic promotional tourist materials, or efforts to recruit conventions, sporting events, or motorcoach groups.
2. Transient tourist informational services.
3. Tangible municipal development, including a convention center.

Wis. Stat. § 66.0615(1)(fm).

Using the above definitions, a commission “shall use the room tax revenue that it receives from a municipality for tourism promotion and tourism development” in the municipality. Wis. Stat. § 66.0615 (1m)(d)3. The only explicit statutory prohibition on how room tax revenue can be used is that the “commission may not use any of the room tax revenue to construct or develop a lodging facility.” Wis. Stat. § 66.0615 (1m)(d)5.

The League of Wisconsin Municipalities notes that there is some discretion in how room tax revenue is distributed and summarizes the above statutes as follows:

“When read together these provisions state that a commission must use room tax revenue for tourism promotion and tourism development and must contract with a tourism entity or, if none exists, another organization to market the community to tourists and travelers. A commission may spend room tax revenue on marketing, tourist information services, and “tangible municipal development” that is used by transient tourists and is reasonably likely to generate paid overnight stays at lodging establishments in the community. A commission is expressly prohibited from using room tax revenue to construct a lodging facility.”

League of Wisconsin Municipalities Taxation FAQ #13; <https://www.lwm-info.org/1273/Taxation-FAQ-13#:~:text=2015%20Act%2055%20requires%20municipalities,entity%20or%20a%20tourism%20commission> (last visited 12/1/2023).

The statute explicitly provides the ability to fund “convention centers”. There is no mention in the statute of the commission’s duty or ability to direct how a convention center uses those funds. Additionally, there is no legal standard or case law about what consists of “reasonably likely” when it comes to measuring what may possibly generate paid overnight stays. Many events that benefit the local community may also be “reasonably likely” to generate paid overnight stays. It might not be possible to distinguish a “tourism” event from a “community” event. Not only may that be difficult to distinguish, but it is not required by statute that the commission or recipients of room tax revenue make that distinction. Nor does the statute require that funding be dispersed to groups or events that *only* serve people who are generating paid overnight stays. There could be marketing value and financial value in bringing people to Madison for “community programs” and these programs may indeed be reasonably likely to generate paid overnight stays. In addition, exposing people to programs such as events at Monona Terrace could enhance the possibility they consider using Monona Terrace for all types of revenue generating events

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in the future, including ones that are reasonably likely to generate overnight stays.

In sum, given the statutory authority and discretion afforded the Room Tax Commission, the City Attorney's Office believes that the Commission has not made legal errors in the distribution of Room Tax revenue and that the allocations were consistent with state law.