**MEMORANDUM**

**To: Members of the Tourist Development Council**

**From: Jim McCain, TDC Counsel**

**Re: Delegation of the TDC’s Authority**

**Date: March 26, 2014**

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An expenditure of tourist development tax revenues pursuant to Section 125.0104, Florida Statutes, must be based on a factual determination by the Tourist Development Council that the activity to be funded directly and primarily promotes tourism. Op. Att’y Gen. 2010-09. “This determination must follow appropriate legislative findings and due consideration of the specific needs and conditions of the particular locality.” Id. Further, this determination is the responsibility of the TDC and cannot be delegated. Id. Both the courts and the Attorney General have recognized

the general rule that a public officer cannot delegate his or her discretionary powers, except as prescribed by statute. Thus in determining whether a delegation of authority is proper, a distinction between ministerial duties and discretionary functions must be made. Those duties which do not involve the exercise of an independent governmental discretion, judgment or authority are considered ministerial and may be delegated. By contract, those duties involving the exercise of independent judgment and discretion may not be delegated, absent statutory authority.

Op. Att’y Gen. 88-61. See also *State v. Inter-American Center Authority*, 84 So.2d 9 (Fla. 1955)(“We are familiar with the rule that in the absence of statutory authority, a public officer cannot delegate his powers, even with the approval of the court”).

In Op. Att’y Gen. 2001-29, the Attorney General considered the question of whether the Clerk of Circuit Court of Flagler County was authorized to pay county bills without prior approval of each specific bill by the county commission. Quoting the general rule set forth above and recognizing that the county commission was authorized to act in the interests of the people of the county, the Attorney General reasoned, “County funds, therefore, must be expended for a county purpose. That determination involves the exercise of the county commission’s independent judgment and must be made by that body.” The Attorney General also noted that “[t]here is nothing in Florida law that allows the clerk’s pre-auditing function to supplant the commission’s duty to make a legislative finding that expenditures of county funds are for a county purpose,” and concluded that “[t]o attempt a delegation of such power to the clerk would disrupt the legislatively created system that ensures that county funds will only be expended for a county purpose.”

This decision of the Attorney General is applicable to the proposed delegation of the TDC’s governmental authority. The TDC is a quasi-legislative body charged by Florida statute with the duty to determine whether an expenditure of TDC funds directly and primarily promotes tourism. Its decision to grant funding to entities based on such a determination is a discretionary function which may not be delegated. See e.g. Op. Att’y Gen. 88-61 (“It appears that the authority to execute contracts which obligate the county involves the exercise of independent discretion and judgment which may not be delegated absent statutory authority”). To paraphrase the Attorney General, there is nothing in Florida law that allows a private third party’s negotiations to supplant the TDC’s duty to make a legislative finding that expenditures of TDC funds will be for a purpose that directly and primarily promotes tourism. Delegating such power to a private third party would disrupt the legislatively created system that ensures that TDC funds will only be expended for a purpose directly and primarily promoting tourism.