

Regulation of Gambling Cruise Ships

Number: INFORMAL

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Mr. Robert J. Riggio
Attorney for the Town of Ponce Inlet
125 North Ridgewood Avenue, Second Floor
Daytona Beach, Florida 32114

RE: MUNICIPALITIES--GAMBLING--LAW ENFORCEMENT--CRUISE SHIPS--ability of town to impose fee to fund law enforcement on cruise ships to ensure compliance with state gambling laws. ss. 166.021 and 166.221, F.S.

Dear Mr. Riggio:

You ask what the Town of Ponce Inlet may do to extend enhanced municipal services to docks and surrounding areas where gambling cruise vessels operate.

There has been an explosion of "cruise to nowhere" businesses in ports along the Florida coast. While the operation of many businesses in a town may affect the health and welfare of its citizens, the operation of casino gambling cruises particularly create increased traffic and place an inordinate strain on municipal services. These consequences are compounded by the attraction of undesirable elements seeking to prey upon the patrons of such businesses. All of these elements create a need for increased monitoring of potential criminal activity by local law enforcement and regulation by local governments to protect public safety.

As you have pointed out, businesses currently operating cruises from private docks in the Town of Ponce Inlet have reportedly used gambling paraphernalia while these vessels are in the jurisdictional limits of the town and in state waters. You are concerned that there is no mechanism for town law enforcement officials to effectively monitor the activities of the gambling boats in order to assure compliance with the gambling laws and to otherwise protect public safety.

A municipality has the authority to levy reasonable business, professional and occupational regulatory fees pursuant to section 166.221, Florida Statutes. Such fees, pursuant to the statute, must reflect the cost of the regulatory activity and regulation of a particular business must not have been preempted by the state. Regulation of cruise ships is not currently preempted to the state.[1]

A regulatory fee differs from an occupational license tax by the need for standards for regulation and control of the registrant following payment of the fee.[2] If an applicant is merely required to pay a fee, thereby gaining the right to carry on an occupation, without further conditions or regulations, then the fee is considered a license tax that must be authorized by general law.[3] Moreover, before an activity may be regulated, it must affect the public interest and then be regulated only in so much as is reasonably necessary to preserve the public interest.[4] Thus,

the town may craft an ordinance that has a reasonable relationship to protecting the public health, morals, safety and general welfare of its citizens and one that is reasonably designed to correct a condition affecting the public good.[5] The town's governing body also must make legislative findings that support the imposition of a regulatory fee and calculate a fee that reflects the cost of carrying out the regulatory activity.

Casino gambling vessels create increased traffic, the need for enhanced security when patrons leave their vehicles unattended during the cruise and the potential for robberies due to the presence of large sums of cash. These factors clearly establish a need for enhanced municipal services to the affected areas and form the basis for intervention by local law enforcement to protect the public peace.

I trust these informal comments will assist you in advising the town as to possible steps it may take toward imposing a regulatory fee for casino cruise ships operating within the town's jurisdiction.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] See Op. Att'y Gen. Fla. 95-70 (1995) (state may regulate gambling on cruise ships dependent upon federal law, the registry or ownership of the vessel and the location of the gambling activity); Inf. Op. to The Honorable Evelyn J. Lynn, April 7, 1997, recognizing nothing that would prohibit the state from delegating its authority to prohibit "cruises to nowhere," but concluding that the advisable path would be for the state to generally prohibit such cruises while allowing a local option for counties and municipalities to remove their jurisdictions from the prohibition.

[2] See Op. Att'y Gen. Fla. 74-21 (1974).

[3] See *Tamiami Trail Tours, Inc. v. City of Orlando*, 120 So. 2d 170 (Fla. 1960).

[4] See *City of Miami v. Kayfetz*, 92 So. 2d 798 (Fla. 1957); *Maxwell v. City of Miami*, 100 So. 147 (Fla. 1924); and *City of Miami v. Shell's Super Store*, 50 So. 2d 833 (Fla. 1951).

[5] *City of Miami v. Kayfetz*, 92 So. 2d 798, 801 (Fla. 1957).