

Informal AG Opinion Clarifies Lodging Tax Awards

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We've received many questions in the past about awarding lodging tax funds, and specifically whether a municipality may award an amount to a recipient that is different from the recommendations made by the lodging tax advisory committee (LTAC). An [informal opinion](#) from the Attorney General's office, released last week (August 17), answers this question and provides municipalities with some additional options for the distribution of awards beyond what we thought previously.

First, Some Background...

In 2013, the legislature amended [RCW 67.28.1816](#) and expanded the role of the LTAC for municipalities with population of 5,000 or more. Applicants seeking lodging tax distributions must now submit an application directly to the LTAC, and the LTAC must select candidates from the pool of applications and provide a list of the candidates and recommended awards to the municipality for final determination.

[RCW 67.28.1816](#)(2)(b)(ii) states:

The local lodging tax advisory committee must select the candidates from amongst the applicants applying for use of revenues in this chapter and provide a list of such

candidates and recommended amounts of funding to the municipality for final determination. The municipality may choose only recipients from the list of candidates and recommended amounts provided by the local lodging tax advisory committee.

Previous MRSC guidance on this issue has been that a city or county does not have to fund the full list as recommended by the LTAC and can choose to make awards in the recommended amounts to all, some, or none of the candidates on the list.

What Does the Informal AG Opinion Say?

The [informal opinion](#), written by Assistant Attorney General H. Lee Overton, provides some clarity to the question of whether a municipality can award an amount that differs from the LTAC recommendation. In his opinion letter, he writes in his brief answer:

When awarding lodging tax revenues pursuant to [RCW 67.28.1816](#)(2)(b)(ii), a municipality may award amounts different from the local lodging tax advisory committee's recommended amounts, but only after satisfying the procedural requirements of [RCW 67.28.1817](#)(2), according to which the municipality must submit its proposed change to the advisory committee for review and comment at least forty-five days before final action on the proposal.

So what does this mean for local legislative bodies? The informal opinion basically says that the roles of the LTAC and the municipality are clear: the LTAC is to make recommendations and the municipality is to make a final determination. The legislative body has the ability to award an amount that differs from the recommendation, but in order to do so it must first submit the proposed changes to the LTAC under the provisions of [RCW 67.28.1817](#)(2) which states in part:

Any municipality that proposes [...] a change in the use of revenue received under this chapter shall submit the proposal to the lodging tax advisory committee for review and comment. The submission shall occur at least forty-five days before final action on or passage of the proposal by the municipality. The advisory committee shall submit comments on the proposal in a timely manner through generally applicable public comment procedures. The comments shall include an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism, and the extent to which the proposal will affect the long-term stability of the fund created under [RCW 67.28.1815](#). Failure of the advisory committee to submit comments before final action on or passage of the proposal shall not prevent the municipality from acting on the proposal.

Accordingly, the role of the advisory committee is preserved while also preserving the authority of the municipality as the final decision maker.

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