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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

February 7, 2001

Jill Kintigh  
Greenville County Treasurer  
301 University Ridge, Suite 600  
Greenville, South Carolina 29601-3660

Dear Ms. Kintigh:

By your letter of February 6, 2001, you have requested an opinion of this Office concerning the investment of excess county funds. Specifically you write:

I would like to ask your assistance in clarifying sources of investment for excess funds on the county level. Are they limited to Certificates of Deposits and Treasuries? I interpret the South Carolina Code to include Government sponsored enterprises (GSEs), but ask for your opinion.

South Carolina Code of Laws Section 6-5-10 authorizes counties and other local governmental entities to invest surplus funds in:

- (1) *Obligations of the United States and agencies thereof;*
- (2) General obligations of the State of South Carolina or any of its political units;
- (3) Savings and Loan Associations to the extent that the same are insured by an agency of the federal government;
- (4) Certificates of deposit where the certificates are collaterally secured by securities of the type described in (1) and (2) above held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest; provided, however, such collateral shall not be required to the extent the same are insured by an agency of the federal government.
- (5) Repurchase agreements when collateralized by securities as set forth in this section.
- (6) No load open-end or closed-end management type investment companies or investment trusts registered under the Investment Company Act of 1940, as amended, where the investment is made by a bank or trust company or savings and loan association or other financial institution when acting as trustee or agent for a bond or other debt issue of that local government unit, political subdivision, or county treasurer if the particular portfolio of the

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investment company or investment trust in which the investment is made (i) is limited to obligations described in items (1), (2), and (5) of this subsection, and (ii) has among its objectives the attempt to maintain a constant net asset value of one dollar a share and to that end, value its assets by the amortized cost method.

S.C. CODE ANN. §6-5-10(a)(emphasis added). Section 12-45-220 contains a similar provision, allowing county treasurers to invest in "obligations of the United States and its agencies[.]" and also authorizes investments in certificates of deposits and no load open-end or closed-end management type investment companies, provided certain limitations are met. See S.C. CODE ANN. §12-45-220(A)(4) and (5).

This Office has interpreted these provisions on numerous occasions, concluding that certain investments are authorized by the statutes, such as certificates of deposits collaterally secured by bonds or debentures of a federal home loan bank, and some are not, such as mutual funds and futures contracts for natural gas. See Ops. Atty. Gen. June 25, 1998; Jul. 23, 1990; Apr. 21, 1987; and Aug. 18, 1986. These opinions are enclosed for your review. Your particular question—whether "obligations of the United States and agencies thereof" is limited to certificates of deposits and treasuries—has not yet been addressed by this Office, nor is there any case law in South Carolina on point. The rules of statutory construction, however, should provide some guidance.

First, in construing a statute, its words must be given their plain and ordinary meaning without resort to a subtle or forced construction to limit or expand the statute's operation. See Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). The phrase "obligations of the United States and agencies thereof" contains no restrictions or limitations placed on the kinds of obligations, as long as the United States or a United States agency is obliged to pay the debt. To read into the provision a limitation only to certificates of deposits and treasuries would limit the statute's operation.

Moreover, another cardinal rule of statutory construction is "expressio unius est exclusio alterius" or "the enumeration of particular things excludes the idea of something else not mentioned." See Pennsylvania National Mutual Casualty Insurance Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (1984). Sections 6-5-10 (a)(4) and 12-45-220(A)(4) authorize investment in certificates of deposits upon certain conditions. These provisions aid in the interpretation of §6-5-10(a)(1) and 12-45-220(A)(1) for two reasons. First, it demonstrates that the General Assembly understood how to place limitations on an investment option if it chose to do so. Second, by separately listing certificates of deposits in the statutes, the General Assembly must have intended to distinguish these instruments from "obligations of the United States and agencies thereof." Under the doctrine of "expressio unius," the inclusion of the certificates of deposits provision, with its accompanying limitations, indicates that Sections §6-5-10(a)(1) and 12-45-220(A)(1) should not be construed so narrowly as to be limited to certificates of deposits and treasuries.

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Again, in conclusion, it is the opinion of this Office that the authorization for county treasurers to invest surplus funds in obligation of the United States and its agencies, as provided in Sections 6-5-10 and 12-45-220, is not limited to certificates of deposits and treasuries. So long as the United States or an agency of the United States backs the obligations, then such would be permissible investments under the statutes. Of course, this Office does not attempt to advise how, in fact, the county should invest its surplus funds. That decision remains in your discretion as county treasurer.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole  
Assistant Attorney General