

LIB 2375

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 86-57p-13 August 11, 1986

SUBJECT: Taxation and Revenue - Amount Of Sinking Fund
And Officer Charged With Duty Thereon.

SYLLABUS: A sinking fund should be in an amount
sufficient to meet the bond indebtedness with
interest that matures and is payable in the
next ensuing year. The County Auditor is to
calculate and levy the amount of tax
necessary therefor and the County Treasurer
is to collect the same.

TO: Honorable Margaret D. Jackson
Clarendon County Treasurer

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: A school district issued bonds to finance the
construction of a high school. The remainder due on the
bonds is \$6.08 million dollars. The present balance in the
sinking fund for payment of the bonded debt is \$431,000. It
is contended that the amount of the sinking fund is
excessive. The question is whether the same is excessive?

APPLICABLE LAW: § 59-71-150, South Carolina Code of Laws,
1976.

DISCUSSION:

It is assumed that the bonds were issued pursuant to Chapter
71 of Title 59 of the South Carolina Code of Laws. Section
59-71-150 provides that:

"For the payment of the principal and
interest on such bonds as they
respectively mature and for the creation
of such sinking fund as may be necessary
therefor the full faith, credit and
resources of the operating school unit
are irrevocably pledged and there shall
be levied annually by the auditor of
each county wherein such operating
school unit is located, and collected by
the treasurer of such county in the same

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manner as county taxes are levied and collected, a tax, without limit, on all taxable property in such operating school unit sufficient to pay the principal and interest of such bonds as they respectively mature and to create such sinking fund as may be necessary therefor." (Emphasis added)

It should be noted that this statute is a direct levy of the tax to repay the bonds, interest thereon and to create the sinking fund.

"The Act is not an unconstitutional delegation of taxing power for another reason. The Legislature itself has levied the tax, and the sub-district has no discretion thereabout, as will be seen from Section 6 of the Act, which reads in part: 'Until the principal and interest of all bonds issued under this Act shall be fully paid, there shall be levied annually upon all taxable property in the sub-district a tax sufficient to pay such interest * * * and to provide a sinking fund * * *. Said annual tax shall be levied and collected by the same officers and in the same manner as is now provided for the levy and collection of taxes for county purposes in Greenville County.'" Floyd v. Parker Water & Sewer Sub-District, 203 S.C. 276, 17 S.E.2d 223. See also Evans v. Battie, 137 S.C. 496, 135 S.E. 538; Lillard v. Melton, 103 S.C. 10, 87 S.E. 421.

The statute, by its express language, imposes the duty upon the County Auditor to calculate the amount of tax due and enter the same upon the tax duplicate. The County Treasurer is required to collect the tax so levied. The levy is the mathematical determination of the amount of tax due and the entry thereof upon the tax duplicate.

The issue here is the determination of the amount of the sinking fund. Such a fund is defined in § 5 of 64 Am.Jur.2d, Public Securities and Obligations, as follows:

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"A 'sinking fund' is a fund accumulated by a debtor, usually a public body debtor, which is instituted and invested in such a manner that its gradual accumulations will enable it to meet and wipe out a debt at maturity thereof. It may be, and generally is, intended as a cumulative security for the payment of the debt with which it is connected, and is specially earmarked for the extinction of the debt. It has also been defined as a fund, arising from particular taxes, imposts, or duties, which is appropriated toward the payment of the interest due on a public loan, and for the gradual payment of the principal. The object of every sinking fund is to diminish the debt whose existence warranted its foundation." (For other similar definitions see 39 Words & Phrases, Sinking Fund.)

The sinking fund here involved is in the amount of \$431,000 with required annual bond payments of approximately \$817,000. It is further understood that a payment of approximately \$198,000 is due the latter part of 1986, however, before the end of the time in which to pay the 1986 taxes levied for bond debt.

Exact mathematical calculations of the amount of the sinking fund, while desired, are not possible nor probable. Lee County v. Stevens, 277 S.C. 421, 289 S.E.2d 155.

The amount required to annually satisfy the bonded debt, however, is capable of determination. An estimated annual tax to meet those obligations should therefore be levied. Payments, however, are due before the annual tax is collected. Accordingly, the tax levy for the year preceding the year in which such payments are to be made, must of necessity include an amount sufficient to pay those obligations. One of the conditions of a sinking fund is that the tax be collected in advance of the maturity date of the debt obligations. 64 Am.Jur.2d, Public Securities and Obligations, § 425, citing the case of Memphis v. Brown, 20 Wall (US) 289, 22 L.Ed. 264. The 1986 tax levy for the bonded debt payments should, therefore, be in an amount that is sufficient to satisfy the payments due in 1987. The levy

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should take into account any estimated balance in the sinking fund after payment of the 1986 obligations.

CONCLUSION:

A sinking fund should be in an amount sufficient to meet the bond indebtedness with interest that matures and is payable in the next ensuing year. The County Auditor is to calculate and levy the amount of tax necessary therefor and the County Treasurer is to collect the same.

JLAJr:wcg