

The State of South Carolina



Office of the Attorney General

Opinion 887-18
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February 18, 1987

Jesse A. Coles, Jr., Ph.D.
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State Budget and Control Board
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Dear Dr. Coles:

You have requested an opinion regarding the following question:

Is it proper legally for the Budget and Control Board, under the terms of Code Section 2-47-50 and in view of the provisions of Part I, Section 130, of Act 540 of 1986, to approve the establishment of any permanent improvement project which proposes to abate asbestos in or to remove asbestos from any dormitory facilities of any State institution of higher learning using capital improvement bond proceeds authorized in Act 538 of 1986 or in any other Act as the source of funds for such project?

It is our opinion that capital improvement bond proceeds may be used as the source of funds for such projects. However, the Board of Trustees for the appropriate institution of higher learning would most probably be required to adjust the student housing fee to reflect that additional expense and to make corresponding payments to the general fund or to give some other consideration in compensation for the financing thereby received.

As indicated in your letter, Part I, Section 130, of Act No. 540 of 1986 (1985-86 General Appropriations Act) provides that:

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[d]uring the Fiscal Year 1986-87, student fees at the State institutions of higher learning shall be fixed by the respective Boards of Trustees as follows:

(1) Fees applicable to student housing, dining halls, student health service, parking facility, laundries and all other personal subsistence expenses shall be sufficient to fully cover the total direct operating and capital expenses of providing such facilities and services over their expected useful life.

Another proviso in the current year's appropriations act requires that:

all such revenues or income so collected shall be carried in a special continuing account by the State Treasurer, to the credit of the respective institutions, and may be requisitioned by said institutions... and expended to fulfill the purpose for which such fees or income were levied, but no part of such income shall be used for permanent improvements without the express written approval of the State Budget and Control Board and the Joint Legislative Capital Bond Review Committee....

Part I, § 131, Act No. 540 of 1986. The General Assembly has routinely placed similar provisos in general appropriations acts in previous years. This Office has previously concluded that this proviso requires that student fees should be set so that the activity would "be self-supporting in total." A. G. Op. dated March 26, 1980. Therefore, so long as this proviso remains in effect, any financial arrangements regarding the "direct operation and capital expenses" for student housing must be structured on a self-supporting basis.

A question might be raised whether the cost of asbestos abatement or removal falls within the category of "direct operating and capital expenses" which must be included in the computation of the fee set by the board of trustees. We can find no basis to exclude such costs, even though they might be deemed extraordinary. A plain reading of the proviso requires that all such "direct" costs be included in the calculation. A direct cost is one that is proximate or immediate, and not remote. Southeast Milk Sales v. Swaringen, 290 F. Supp. 292, 304 (M.D.N.C. 1968). It would appear, therefore, that the General Assembly intended that costs such as these be included in the calculation setting the fee which would make that activity self-supporting.

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Your specific question was whether capital improvement bond proceeds may be used for such an asbestos abatement project. The proviso at issue here is silent as to how a State institution of higher learning should finance any particular capital expense which it might incur for student housing or other such personal subsistence services. Specifically, there is no limitation that an institution use only revenue bond financing. Although we are advised that revenue bond financing is frequently used in this situation, nonetheless the General Assembly has also on occasion provided for the issuance of capital improvement bonds to fund certain capital expenditures for such facilities. [See e.g., Craig Union Cafeteria renovation and expansion for College of Charleston, § 1(6), Act No. 538 of 1986 (vetoed by Governor); cafeteria expansion for Francis Marion College, Part I, § 1(6), Act No. 194 of 1979.] There can be no dispute that such an expenditure would serve a valid public purpose. See, Hunt v. McNair, 255 S.C. 71, 177 S.E.2d 362 (1970), vacated on other grounds and remanded, 403 U.S. 945 (1971). For these reasons we would advise that capital improvement bond proceeds may lawfully be used for an asbestos abatement project approved by the Budget and Control Board pursuant to the authority granted it in § 2-47-50, S. C. CODE, 1976 (as amended).

We would advise further that, if general obligation bond proceeds are used to finance capital expenses for such facilities, the proviso at issue here, Part I, Section 130, Act 540 of 1986, would most probably require that the institution pay some consideration from its special continuing account for student housing fees in an amount which would be appropriate in light of the financing thereby extended.¹ A question might be asked as to whether the authorization of general obligation bond financing in the Capital Improvement Bond Act (Act 538 of 1986) for asbestos removal would not create an exception to the proviso requiring the facility to be self-supporting in that the debt service for the capital improvement bonds would be provided by the General Assembly in a separate appropriation. See, § 5, Act No. 1377 of 1968. However, it is a general rule of statutory interpretation that statutes on the same subject must be construed together so that effect is

¹ Of course, this requirement for a corresponding payment could be eliminated by the General Assembly if it were to amend the proviso to exclude the cost of asbestos abatement or removal as a cost which must be "fully covered" by the applicable student fee. If such an amendment were enacted, then no payments would need to be made from that special continuing account following the use of the bond proceeds.

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given, if possible, to every provision in all of them. § 51.02, SUTHERLAND, STATUTORY CONSTRUCTION. These separate statutory provisions may be construed together by permitting the use of the capital improvement bond proceeds authorized in § 1(3) of Act No. 538 for asbestos removal in a dormitory, provided that the institution makes appropriate payment as required by Part I, § 130 of Act No. 540 of 1986. It should be noted further that this specific project is not identified by name in the Capital Improvement Bond Act. No opinion is expressed as to the effect which would result if a project had been specifically so identified by name. Given the language of this Capital Improvement Bond Act, it would appear that appropriate payments are required by the proviso.

This opinion does not address the mechanics as to how such payments would be effected from the institution involved. It is intended only to advise that there is no legal prohibition on the use of properly authorized capital improvement bond proceeds to abate asbestos in or to remove asbestos from any dormitory facilities of any State institution of higher learning, provided that appropriate financial arrangements are made with that State institution receiving the funds as mandated by the current proviso.

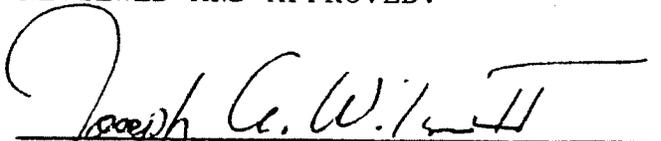
Sincerely yours,



David C. Eckstrom
Assistant Attorney General

DCE/shb

REVIEWED AND APPROVED:



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