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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

December 15, 2004

The Honorable James E. Stewart, Jr.
Member, House of Representatives
584 Beaver Dam Road
Aiken, South Carolina 29805

Dear Representative Stewart:

You seek an opinion "as to the legality of the State's paying off the defaulted New Ellenton sewer system bonds." By way of background, you submit certain information regarding the issue which has been provided to you by your constituents. Such information is stated, in pertinent part, as follows:

> [s]tate law mandates that a bond custodian have an office and staff in this State where matters of sewer and water are concerned and this it post a performance bond with the State. The Bank of New York does not meet the above requirement. According to federal securities laws, the State cannot use tax generated funds to retire a revenue bond. The State's caviat [that] a law may provide funding for a political sub-division that is having trouble meeting its obligation on bond payment, is intended as a short term solution and not the situation involving New Ellenton's long standing default. The semi-annual payments the State is making on New Ellenton's bond is apparently being formatted as a loan to New Ellenton when in reality the funds are being wire transferred directly to the Bank of New York in Jacksonville, Florida by the State. The above mentioned practices have apparently been set in motion about 10 years ago in an attempt to prevent credit reporting agencies from scrutinizing the State's favorable bond rating....

Law / Analysis

Background

Your questions surround the issuance of a revenue bond in the 1990s in the amount of $5,002,500 to finance the construction and installation of a sewer system in New Ellenton. See, Berry v. McLeod, 328 S.C. 435, 492 S.E.2d 794 (1997). The background surrounding this bond issuance is well summarized in the January 10, 1997 Order of the Honorable Henry F. Floyd, Presiding Judge Aiken County Court of Common Pleas in the case of Nations Bank of South

Carolina et al. v. The Town of New Ellenton, et al. (93-CP-02-848) [herein referred to as Order]. Such Order states in pertinent part:

> [t]he Bond was issued by the Town pursuant to Title 6, Chapter 21, Code of Laws of South Carolina, 1976, as amended, authorizing and enabling the Town to provide for the issuance of bonds (the "Act") and pursuant to Ordinance No. 62590 enacted by the Town Council of the Town on June 25, 1990 (the "Bond Ordinance") for the acquisition of land, wastewater treatment facilities, wastewater trunk lines and lift stations and wastewater collection lines (the "Project") which would serve as the wastewater treatment and disposal system of the Town (the "System).
>
> The Bond Ordinance as enacted by the Town and the Bond represent binding obligations of the Town according to their terms, except as modified by the Settlement Agreement or this Order. Whatever defenses or claims may have been available to the Town, the merits of which this Court has never reached, are, it is stipulated by and among the Settling Parties, barred by the applicable Statute(s) of Limitation, including specifically any claim of ultra vires action by the Town.
>
> The Project is partially complete, and the System is partially functioning and generating revenues in the form of fees, rates, rentals and other charges levied and collected in connection with the operation of the System (the "Revenues"). The various reserve funds contemplated and established by the Bond Ordinance have been depleted, in part, pursuant to the Bond Ordinance, to fund the Town's obligations for payments under the Bond and in part, pursuant to the Bond Ordinance and the Consent Order entered by the Hon. Luke N. Brown, Jr. dated August 18, 1993, to fund certain studies of the engineering and finances related to the System and the Project and in part to reimburse the Authority and the Custodian for litigation related expenses. All expenditures pursuant to the August, 1993 Consent Order are hereby ratified by the parties involved and by this Court through this Order.
>
> As protection for the [South Carolina Resources] Authority as holder of the Bond and to secure the obligations of the Town under the terms of the Bond and the Bond Ordinance, a statutory lien upon the System as authorized by the Act was created and granted by the Town. Such lien constitutes a pledge of the Revenues as well as a lien upon the System.
>
> Under the terms of the Bond and the Bond Ordinance, the Town is obligated to make certain monthly deposits into the "Bond and Interest Redemption Fund" maintained by the Custodian in an amount sufficient to allow the transfer by the Custodian to the Authority as holder of the amounts due on each semi-annual "Interest Payment Date" as defined in the Bond Ordinance. The Town has been unable to make such deposits, and that inability to make such deposits constitutes an

> Event of Default as defined in Section 8.1(c) of the Bond Ordinance. The Custodian has, by letter dated February 3, 1993 sent by certified mail, given the notice required by Section 8.2 of the Bond Ordinance to the Town of the occurrence of such defaults and the Town has failed to correct such occurrences to or cause such occurrences to be corrected within the applicable time to do so and any extensions thereof.

As Judge Floyd's Order indicates, the "holder" of the Bond was the South Carolina Resources Authority, a body politic and public instrumentality of the State of South Carolina. See also, Op. S.C. Atty. Gen., Op. No. 94-37 (June 14, 1994). [referencing revenue bonds issued by the South Carolina Resources Authority to finance water and sewer infrastructures of local governments].

Debt Service of New Ellenton Bond Issue by Annual Appropriations of General Assembly

Commensurate with the Town's Default, beginning with the 1994 Appropriations Act, the General Assembly has annually appropriated funds to pay the debt service of the bonds in question. A proviso was inserted for that year as part of the Appropriation Act's Section concerning the Division of Operations of the Budget and Control Board. This Proviso stated that "[o]f the Grant Funds appropriated under the Division of Operations, up to $425,000 may be expended for debt service if funds are not made available for such purpose in this act or any act supplemental thereto." See, Section 17E.27 of Act No. 497 of 1994. A similar Proviso was inserted in a number of subsequent Appropriations Acts. The Proviso itself no longer appears in the Appropriations Act; however, the appropriation for debt service of the bond issuance for the Town of New Ellenton continues as a line item appropriation as part of the Budget and Control Board's budget. See, Act No. 248 of 2004 at p. 273.

Generally Applicable Legal Principles

We begin analysis of your question with reference to a number of generally applicable legal principles concerning the power of the General Assembly. Our Supreme Court has previously noted that "[i]t is always to be presumed that the Legislature acted in good faith and within constitutional limits ...." Scroggie v. Scarborough, 162 S.C. 218, 160 S.E. 596, 601 (1931). The General Assembly is "presumed to have acted within ... [its] constitutional power." State v. Solomon, 245 S.C. 550, 572, 141 S.E.2d 818 (1965).

Moreover, our Court has often recognized that the powers of the General Assembly are plenary, unlike those of the federal Congress, whose powers are expressly enumerated. State ex rel. Thompson v. Seigler, 230 S.C. 115, 94 S.E.2d 231, 233 (1956). Accordingly, any act of the General Assembly must be presumed valid and constitutional. A statute will not be considered void unless its unconstitutionality is clear beyond a reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland Co., 190 S.E. 270, 2 S.E.2d 779 (1939). Every doubt regarding the constitutionality of an act of the General Assembly must be resolved favorably to the

statute's constitutional validity. More than anything else, only a court and not this Office, may strike down an act of the General Assembly as unconstitutional. While we may comment upon an apparent conflict with the Constitution, we may not declare the Act void. Put another way, a statute "must continue to be followed until a court declares otherwise." Op. S.C. Atty. Gen., June 11, 1997.

Furthermore, it is well recognized that the General Assembly possesses full authority to make such appropriations as it deems necessary in the absence of a specific constitutional limitation. Clarke v. S.C. Public Service Authority, 177 S.C. 427, 181 S.E. 481 (1935). Such power residing in the Legislature to appropriate funds – i.e., the designation of how public monies are to be spent – is plenary, except as restricted by the Constitution. Cox v. Bates, 237 S.C. 198, 116 S.E.2d 828 (1960). Indeed Art. X, § 9 of the Constitution specifies that "money shall be drawn from the Treasury only in pursuance of appropriations made by law." Most recently, in Condon v. Hodges, 349 S.C. 232, 562 S.E.2d 623 (2002), the South Carolina Supreme Court stated that "there is no provision in the South Carolina Code or Constitution which provides that members of the executive branch have the ability to transfer funds from those to whom the General Assembly has appropriated money." 349 S.C. at 245. See, Gilstrap v. S.C. Budget and Control Bd., 310 S.C. 210, 423 S.E.2d 101 (1992) [the General Assembly cannot delegate its legislative power to appropriate money to executive branch members such as the Budget and Control Board].

Our Supreme Court has particularly emphasized this point – that the General Assembly possesses virtually plenary power to appropriate money – in Myers v. Patterson, 315 S.C. 248, 433 S.E.2d 841 (1993). There, the Court noted that former Article X, section 3 of the Constitution had provided that "[n]o tax shall be levied except in pursuance of a law which shall distinctly state the object of the same: to which object the tax shall be applied." The Court observed that such provision "was substantially amended in 1977 and provisions similar to that section were incorporated into article X, section 5," which now reads as follows:

> [n]o tax, subsidy or charge shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.

In the Myers Court's opinion, this change in the language of the Constitution was deemed pivotal. The Court found that the 1977 Constitutional Amendment removed

> ... the constitution's limitation of the Legislature's power to appropriate revenues as needed among legitimate government objectives. Accordingly, we hold that article X, section 5 only requires the Legislature to state the public purpose for which the taxes are levied. Article X, section 5, unlike former article X, section 3, does not prohibit the Legislature from amending the public purpose to which tax proceeds may be applied.

315 S.C. at 252.

Furthermore, in Op. S.C. Atty. Gen., June 26, 1997, we commented that an appropriation by the General Assembly does not generally constitute a debt or indebtedness for purposes of restrictions contained in the Constitution. There, we quoted 81A C.J.S., States, § 220 to the effect that

> "[i]t is ... well accepted that obligations for the necessary and current expenses of the government do not constitute 'indebtedness' within constitutional limitations."

As our Supreme Court has recognized in Caddell v. Lexington Co. School Dist., 296 S.C. 397, 373 S.E.2d 598 (1998), "general obligation debt embraces neither yearly expenses payable from current expenses nor contingent liabilities of the governmental entity."

Consistent with these principles, cases in other jurisdictions have recognized the power of the Legislature to appropriate funds to retire local bonds where a default has occurred. For example, in Davis v. Moon, 77 Idaho 146, 289 P.2d 614 (1955), the Court upheld an act of the Idaho Legislature which sought to pay off bonds and interest originally issued by the board of trustees of Northern Idaho College of Education for a dormitory financed several years earlier. The college had ceased operations after the issuance of the bonds. Then, in 1955, the Idaho Legislature enacted legislation which provided

> ... that the state treasurer shall remit a sufficient sum to First Security Bank of Idaho, National Association, Lewiston Branch, Lewiston, Idaho, as the designated paying agent of [said] bond issue, to pay the principal sum of bonds Nos. 1 to 25, inclusive, and the interest accrued upon all the bonds as of May 1, 1955; that the bank shall pay the same after notice given as by the act provided, upon presentation of the bonds to the bank by May 1, 1955, and upon receipt of such sum by the bank from the state treasurer pursuant to the bank's claim presented to the treasurer for the amount sufficient to pay such bonds and interest.
>
> The act directs the state board of education to use available moneys for the payment of interest when due upon the bonds which have not matured and the principal thereof as the same becomes due; and provides that if there be insufficient funds for such purposes the state treasurer, upon notification as by the act provided, shall transmit to the bank as paying agent funds sufficient to pay such obligations. The act then provides that any bonds retired by payment from the dormitory bond redemption fund shall be delivered to the state treasurer and by such officer held for future reimbursement from sources pledged for payment of the bonds.

289 P.2d at 616.

However, the State treasurer refused to honor the directive of the Legislature that the funds be paid to the bank as the paying agent, in accordance with the appropriation. He contended that such appropriation violated the state Constitution because it "attempted to convert into a debt of the state that which is not and never was so intended when the bonds were issued and, that a moral obligation will not sustain the appropriation unless made for a public purpose ..." Id.

Notwithstanding the Treasurer's argument, however, the Court concluded that the appropriation was valid. In the Court's view,

> [t]he legislature has absolute control over the finances of the state. The power of the legislature as to the creation of indebtedness, or the expenditure of state funds, or making appropriations, is plenary, except only as limited by the state Constitution. .... Furthermore, the Constitution nowhere prohibited the legislature from enacting [the statute in question] ..., nor thereby amending or modifying the contract which its governmental instrumentality, the state board of education, entered into with the holders of the dormitory revenue bonds pursuant to the Educational Institutions Act of 1935; particularly is this true inasmuch as no vested right appears affected adversely by such legislation, and since the bondholders indicate herein their desire to accept the conditions of such legislation. The legislature has unlimited power to legislate where legislation is not prohibited. ....

Id. at 617. The Court also determined that the statute served a public purpose – that of the promotion of education. Thus, the appropriation did not conflict with the provision of the State Constitution which prohibited the loaning or giving of the State's credit in aid of an individual or corporation. The Court found that "... the enactment is not invalidated, in the light of its public purpose, merely because the obligation of the state in relation to the subject matter of such legislation is a moral rather than a mandatory one ... nor by the fact that a private individual or organization may benefit thereby .... Id. at 618-619.

A similar conclusion was reached in Lonegan v. State of New Jersey, 341 N.J.Super. 465, 775 A.2d 586 (2001). There, plaintiffs argued that the Debt Limitation Clause of the New Jersey Constitution was violated by a statutory provision which enabled the State Treasurer and the Economic Development Authority to enter into a contract under which the Treasurer agreed to pay from the General Fund to the EDA "an amount equal to the debt service amount due to be paid in the State fiscal year on the bonds or refunding bonds ...." Bonds of the EDA were designated as not constituting a debt of the State and were "subject to and dependent upon" annual appropriations of the Legislature. According to the Court,"[t]he State Treasurer uses solely taxpayer generated funds from the general treasury to pay interest and principal on EFCFA bonds." 775 A.2d at 591.

Plaintiffs in Lonegan contended that such bonds increased the State's debt without voter approval in violation of the Debt Limitation Clause of the State Constitution. However, the Court concluded that no violation of the Clause had occurred because the contract between the Treasurer

and the EDA "although perhaps imposing a moral obligation, does not legally obligate the Legislature to make the necessary appropriations to make principal and interest payments on the bonds or pay the principal at maturity." Id. at 594. The Court further stated that

> Lonegan argues that it is irrelevant that the Legislature is not legally obligated to pay the debt service on the bonds, referring to such provisions as a "legal fiction" because it is inconceivable that the Legislature would fail to appropriate the funds. That the Legislature will likely appropriate funds to repay the bonds is undisputed. As stated above, however, regardless of the likelihood that the Legislature will in fact make the payment, if a future legislature is not legally bound to make the appropriations, then there is no present debt offending the Debt Limitation Clause .... Our case law has not considered it significant that the Legislature will almost certainly have to authorize payments in the event of an authority's default. The point is that should nonpayment occur, the State would not be in default as it has no legal obligation on the bonds.

Id. at 594-595.

Moreover, in an opinion, dated June 26, 1997, we concluded that legislation was constitutionally valid which authorized the State Treasurer, in those cases where the county treasurer had on deposit insufficient funds for debt service on school bonds, to transfer from the general fund of the State "the sum necessary to enable the county treasurer or paying agent to make payment of principal and interest then coming due ...." In that opinion, we recognized the well accepted principle that "not every expenditure of tax funds constitutes a debt or bonded indebtedness." Moreover, we stated that,

> [o]ur Supreme Court has held that the limitation of the Constitution placed upon the power of the General Assembly to increase the public debt "does not extend to debt incurred for the ordinary and current business of the State ... ." Lott v. Blackwood, 166 S.C. 58, 61-62, 164 S.E. 439 (1932); see former Article X, § 11. Compare, Duncan v. Charleston, 60 S.C. 532, 39 S.E. 265 (1901).

This is consistent with the general law wherein

> [a]n obligation although amounting to a technical debt, is not forbidden by the provisions of the constitution limiting either its creation or its amount, if funds are in the treasury to meet it, or if the uncollected revenue provided for the year in which it is created will be sufficient to meet it when collected, although payment is deferred. Obligations which run current with revenues are not debts within a

> constitutional limitation, as for example, rental payments from current revenues.
>
> Likewise, an appropriation from public funds available for that purpose, a mere transfer from one fund to another of money in the treasury ... does not create a debt within a constitutional limitation.

81A C.J.S., States, § 220. In Caddell v. Lexington Co. School Dist., 296 S.C. 397, 373 S.E.2d 598 (1988), our Supreme Court noted that "general obligation debt embraces neither yearly expenses payable from current expenses nor contingent liabilities of the governmental entity." And in Haddon v. Cheatham, 161 S.C. 384, 159 S.E. 843 (1931), the Court held that the indebtedness of a political subdivision secured by a pledge of taxes to be collected for the current fiscal year does not constitute bonded indebtedness within the full faith, credit and taxing power of the subdivision.

As you indicate in your letter, Section 65 provides by statute a pre-default remedy for school bond payments to go along with the post-default remedy contained in Art. X, § 14(5). Such provision states that

> [n]o general obligation debt shall be incurred by any political subdivision unless prior to the delivery thereof a schedule showing the date and the principal and interest payments to become due thereon shall be filed in the office of the State Treasurer. If at any time any political subdivision shall fail to effect the punctual payment of the principal of or interest on its general obligation debt, then, in such instance, the State Treasurer shall withhold from such political subdivision sufficient moneys from any state appropriation to which such political subdivision may be entitled and apply so much as shall be necessary to the payment of the principal and interest on the indebtedness of the political subdivision then due. Any and all appropriations for political subdivisions of the State shall be subject to the provisions of this subsection.

Prior to the adoption of this Constitutional provision, the General Assembly enacted in 1973 a similar statutory provision, Section 59-71-310, which provides that

> [t]he district board of any school district authorized to issue general obligation bonds of the school district is hereby authorized to provide by resolution duly adopted that if the principal or interest of any general obligation bonds issued by the school district are not paid when they become due, the holder of the bonds and coupons may

> present them to the State Treasurer of South Carolina who, to the extent that moneys shall be available to the school district for any purpose and from any source, shall effect payment of them and charge such payments to the account of the school district and diminish the payments otherwise to be made to the extent thereof; provided, that no such resolution shall be effective unless it has been approved by the State Treasurer as provided in 59-71-320.

To my knowledge, there has never been any suggestion that this statutory post-default provision violated the Constitution even prior to the post-default remedy being placed in the Constitution.

Unlike some states, South Carolina does not have an express constitutional prohibition against guaranteeing a debt or the indebtedness of a political subdivision. At bottom, Section 65 is intended to provide the necessary funds from the State's general fund in advance of any default by a school district upon its bond obligations with the obvious purpose of insuring that such bond obligations are met. This clearly enhances the credit security of school bond issuances. Without doubt, the State can and often does appropriate State monies from existing funds all the time and such subserves a public purpose -- the promotion of education. See Art. XI, § 3 of the South Carolina Constitution ["The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning as may be desirable."]

In order to constitute "general obligation debt" pursuant to Art. X, § 13, an indebtedness must be secured "by a 'pledge' of the full faith, credit and taxing power of the State." Even assuming arguendo that Section 65 constitutes such a "pledge" of the State's full faith, credit and taxing power, any such obligation in the statute is clearly limited. The State is absolutely prohibited by the statute from advancing more than the "amount appropriated in that year under the Education Finance Act." This clear limitation is in contrast to the situation in Casey v. South Carolina State Housing Authority, 264 S.C. 303, 215 S.E.2d 184 (1975) wherein the Court held that the Act in question "commits the State of South Carolina, and by so doing, pledges its credit to make good any deficit arising because of default under both the Direct Mortgage Loan Program and the Mortgage Purchase Program." In short, the State obligates itself to transfer funds no further than the amount already appropriated in a single year under the EFA. An "obligation ... is not forbidden ... if funds are in the treasury to meet it ... ." 81A C.J.S., States, supra. Such would be payable from "current expenses ... ." Caddell, supra. The General Assembly possesses plenary power to appropriate and provide for the spending of existing monies for a public purpose or to provide for a tentative transfer of such existing funds for such purpose.

> Moreover, since one Legislature cannot bind subsequent ones to appropriate for this purpose, general obligation debt is not created. Caddell, supra.
>
> In conclusion, given the requirement that this Office must presume the constitutionality of any legislation, and considering the fact that the provision in question only requires expenditure of funds on hand and for a fixed (capped) amount in a single year, I see no reason why Section 65 is not a constitutionally valid exercise of the Legislature's power and thus does not constitute "bonded indebtedness" of the State.

Further, in Opinion No. 94-37 (June 14, 1994), we concluded that "although the State is not obligated to pay off the Authority's bonds, it also would not absolutely be prohibited." With respect to this same situation, we cited Carll v. S.C. Jobs-Economic Development Authority, 284 S.C. 438, 327 S.E.2d 331 (1995), in support of this conclusion. We further noted that the

> ... State's full faith and credit is specifically not pledged for these bonds and, therefore, there is no statutory or constitutional obligation upon the State to redeem these bonds. Whether the General Assembly would determine to pay off the bond would apparently be something that would have to be decided on case by case basis. As noted before, this issue as well as your previous question appear to be issues of novel impression and only a court of competent jurisdiction could definitively rule on the questions that you have raised.

The above-referenced Order of Judge Floyd concluded that "[t]he Bond Ordinance as enacted by the Town and the Bond represent binding obligations of the Town according to their terms, except as modified by the Settlement Agreement or this Order." Thus, the Court has found that the revenue bond itself is valid and is not subject to subsequent attack. Any "claim of ultra vires by the Town" is included in such validation pursuant to Judge Floyd's Order.

Thus, the only issue as to the validity of the General Assembly's annual appropriation of funds for debt service for the bonds in question is whether such appropriation constitutes a valid public purpose. As our Supreme Court has stated," [a]ll legislative action must serve a public rather than private purpose." Elliott v. McNair, 250 S.C. 75, 86, 156 S.E.2d 421, 427 (1967). See also, Hucks v. Riley, 292 S.C. 492, 357 S.E.2d 458 (1987); WDW Properties v. City of Sumter, 342 S.C. 6, 535 S.E.2d 631 (2000); Johnson v. Piedmont Municipal Power Agency, 277 S.C. 345, 287 S.E.2d 476 (1982); Bauer v. S.C. State Housing Authority, 271 S.C. 219, 246 S.E.2d 869 (1978); Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975). In deciding whether governmental action satisfies a public purpose, court looks to the object sought to be accomplished. Carll v. S.C. Jobs-Economic Development Authority, supra. If a legislative act is designed to achieve a public goal, satisfy a public need or solve a public problem, the method chosen by the legislative body will not invalidate the act. Id. Moreover, the Legislature's determination as to what constitutes a public purpose or public need is entitled to great weight. Id.

In Nichols v. S.C. Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986), our Supreme Court enunciated the test for determining whether there is a public purpose involved. There, the Court set forth the criteria which must be met, as follows:

> [t]he Court should first determine the ultimate goal or benefit to the public intended by the project. Second, the Court should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be considered. Fourth, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree. (emphasis in original).

290 S.C. at 429.

Utilizing the Nichols test, the appropriation in question promotes at least two valid public purposes. In the case of Green v. City of Rock Hill, 149 S.C. 234, 147 S.E. 346 (1929), the Court noted that expenditures on behalf of the waterworks of a municipality serve constitutionally valid a public purpose in that

> [t]he general municipal purpose of a water supply is to promote the prosperity of a city. This it does by lessening the risk of destruction of property by fire, by lowering the rate of insurance, increasing the general sense of security, and therefore the general happiness, diminishing the risk of numbers of persons being thrown out of employment, and generally in giving steadiness and confidence to the life and enterprises of a city.

147 S.E. at 357. Clearly, providing suitable waterworks to a municipality meets the four-pronged test specified in Nichols: such benefit to the public is fully articulated in Green; the public, rather than private parties, will be the primary beneficiary; the project, at least when the bonds were issued, was not speculative; and the public interest was to be primarily served by the project.

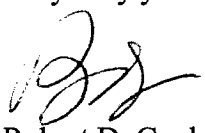
Just as importantly, perhaps more so, however, is the public purpose served by the protection of the State's credit rating through the legislative appropriation aimed at retiring the revenue bond. Courts have held that improvement of the credit rating of a governmental entity is a public purpose designed to preserve and protect the health, safety and welfare of the citizenry. White v. State of California, 105 Cal. Reptr.2d 714, 723 (Cal. 2001). Moreover, as was stated by our Supreme Court in Casey v. S.C. State Housing Authority, 215 S.E.2d, supra at 188, "[t]here is ... on the part of the legislature always a compelling desire, if not a moral obligation, to protect the credit and the good name of the state by appropriating monies to make good deficits created by state agencies." Again, applying the Nichols test, a court would likely uphold the appropriation as constituting a public purpose which would primarily benefit the public by preserving and protecting the State's credit rating.

Conclusion

In summary, we see nothing in the State Constitution which would preclude the appropriation in question. The appropriation would not, in our view, constitute bonded indebtedness or general obligation debt for purposes of Art. X, §§ 13 or 14 of the Constitution. While it could undoubtedly be argued that the State by assuming this obligation, must now continue to pay it, and thus debt has been created thereby, we do not believe a court would so hold. The State, through the General Assembly, may appropriate funds on a year-to-year basis without creating indebtedness or bonded debt. As the 1994 opinion concluded, the State has not created a binding obligation such that the Constitution has been violated. So long as the appropriation is for a public purpose – which, in our opinion, is present here – it is constitutionally valid. See, Art. X, § 11 of the South Carolina Constitution; Art. X, § 13.

Of course, it is a matter of discretion on the part of the General Assembly as to whether any appropriation is made. Whether this particular appropriation is advisable is a matter for the Legislature, rather than this Office, to determine. While it has been argued in similar circumstances that such an appropriation is a "moral obligation" of the State, and thus is mandated, the cases which we have examined have determined that the Legislature is not legally bound from year to year to appropriate such funds. Again, it is for the Legislature to ascertain whether to appropriate these payments to satisfy the bond obligations in question.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an