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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

January 18, 2005

The Honorable Catherine Ceips
Member, House of Representatives
326-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Ceips:

You have submitted a question raised by your constituent concerning the effect of the issuance of bond anticipation notes upon the time limitations imposed by the State Constitution for the issuance of general obligation bonds. Specifically, the question you have presented is whether the "issuing of bond anticipatory notes [serve to] ... extend the five year period on the notes for the northern Beaufort High School and a new central office. ..." Reference is made by your constituents to S.C. Code Ann. Section 11-27-50(5) which, they observe, "affirms the right of school districts to issue bond anticipatory notes ...," as well as to Article X, § 15(5)(b) of the South Carolina Constitution which authorizes the issuance of general obligation bonds for school districts, but requires that "such general obligation debt shall be issued within five years of the date of such referendum" In concurrence with the opinion of bond counsel, it is our opinion that, pursuant to S.C. Code Ann. Section 11-17-120, the issuance of bond anticipation notes fulfills the five year time limitation imposed by the State Constitution in Art. X, § 15(5)(b).

Law / Analysis

Art. X, § 15 (1) of the South Carolina Constitution authorizes school districts to incur bonded indebtedness "only in such manner and upon such terms and conditions as the General Assembly shall prescribe by law within the limitations set forth in this section." Subsection (5) of Art. X, § 15 further provides as follows:

[i]f the general obligation debt be authorized by a majority vote of the qualified electors of the school district voting in a referendum authorized by law, there shall be no conditions or restrictions limiting the incurring of such indebtedness except:

- (a) those restrictions and limitations imposed in the authorization to incur such indebtedness;

The Honorable Catherine Ceips

Page 2

January 18, 2005

- (b) such general obligation debt shall be issued within five years of the date of such referendum;
- (c) the provisions of subsection (3) hereof.

Pursuant to subsection (3), general obligation debt may only be imposed for a public purpose and the corporate purpose of the applicable school district. Moreover, the eight percent debt limit mandated by Art. X, § 5 is made applicable to school districts by subsection (6) of Art. X, § 15.

General obligation notes for school districts are authorized by subsection (8) of Art. X, § 15. Subsection (8) provides as follows:

[g]eneral obligation notes may be issued in anticipation of the proceeds of general obligation bonds which may lawfully be issued (bond anticipation notes) under such terms and conditions that the General Assembly may prescribe by law. Such bond anticipation notes shall be secured by a pledge of the proceeds of the bonds in anticipation of which such bond anticipation notes are issued and by a pledge of the full faith, credit and taxing power of the school district.

Bond anticipation notes shall be expressed to mature not later than one year following the date of issuance, but if the General Assembly shall so authorize by law, bond anticipation notes may be refunded or renewed.

Pursuant to Art. X, § 15(2), the general obligation debt of a school district is defined as "any indebtedness of the school district secured in whole or in part by a pledge of its full faith, credit and taxing power." In previous opinions, we have advised that bond anticipation notes "are secured by a pledge of the proceeds of the bonds and 'by the full faith, credit and taxing power of the political subdivision.'" Op. S.C. Atty. Gen., Op. No. 90-20 (February 14, 1990). Thus, there is no question that bond anticipation notes constitute general obligation debt.

Several statutory provisions, enacted to implement the foregoing provisions of new Art. X, § 15, in accordance with "... such terms and conditions as the General Assembly may prescribe by law," are also instructive here. S.C. Code Ann. Section 11-27-50(5) authorizes school districts to issue bond anticipation notes, and reads as follows:

[t]he provisions of Chapter 17 of Title 11, relating to the issuance of bond anticipation notes, shall continue in force and effect after the ratification date with respect to all school districts, and the governing body of each school district is hereby authorized and empowered to issue bonds anticipation notes pursuant to and in accordance with the provisions of Chapter 17 of Title 11 and the limitations imposed by paragraph 8 of Section 15 of new Article X.

In addition, § 11-17-10 et seq. provides authority for borrowing by the State, state agencies and political subdivisions. Section 11-17-20, in pertinent part, empowers

[a]ny borrower, whenever authorized by general or special law, to issue bonds, pending the sale and issuance thereof, but within the limitations set forth in § 11-17-60 of this chapter, [to] borrow in anticipation of the proceeds of bonds from any person, and evidence the debt by a note duly executed by the officers of the borrower authorized by the governing body of the borrower.

Section 11-17-50 further requires the bond referendum to have been held with favorable result to the issuance of such bonds prior to the notes being issued. A resolution of the governing body of the borrower "obligating the borrower to issue and sell" the notes is required by § 11-17-60. Such notes must be secured by the full faith and credit of the borrower pursuant to § 11-17-70. Such notes are rendered exempt from taxation pursuant to § 11-17-110.

Section 11-17-120 speaks specifically to the question of those time limitations which may be imposed upon the issuance of general obligation bonds and such impact which bond anticipation notes might have thereupon. This provision states as follows:

[w]henever, after the issuance of general obligation bond anticipation notes, it becomes necessary to determine whether or not general obligation bonds issued to provide funds with which to pay such notes (or any notes refunding such notes) have been issued within any time limitation prescribed therefor or in obedience to any condition imposed by law, the date of the issuance of the original notes shall be used for the purpose of such determination. (emphasis added).

With respect to the applicability of § 11-17-120, fundamental principles of statutory construction are applicable. First and foremost, is the well-recognized rule that the intent of the General Assembly must be given paramount importance. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction which is consistent with the purpose and policy expressed in statute. Hay v. S.C. Tax Commission, 273 S.C. 269, 255 S.E.2d 837 (1979). In construing the statute, the words used must be given their plain and ordinary meaning without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984).

Clearly, Art. X, § 15(1) extends broad authority to the General Assembly to set forth the "terms and conditions" by which the school districts of South Carolina "shall have the power to incur general obligation debt." Pursuant to this broad authority, (as well as that contained in Art. X, § 14(2)), the Legislature has enacted § 11-17-120 to further define whether "any time limitation" prescribed by law has been satisfied. Such statutory provision clearly states that following the issuance of general obligation bond notes, if it becomes necessary to determine whether or not general obligation bonds issued to provide funds from which to pay such notes have been issued

The Honorable Catherine Ceips
Page 4
January 18, 2005

within any time limitation related thereto, "the date of issuance of the original notes" must be used "for purposes of such determination."

As we understand it, § 11-17-120 is commonly used by bond counsel in South Carolina in determining whether the five year time limitation mandated by Art. X, § 15(5) has been met. We further understand that bond counsel (here, the McNair Firm) relied upon § 11-17-120 as well.

New Art. X, § 15 was approved by the voters in 1976 and ratified by the General Assembly in 1977. Four years later, in 1981, the General Assembly enacted Act No. 3 of 1981, now codified as § 11-17-120. The title of Act No. 3 of 1981 describes this legislation as an Act "... So As To Provide That The Date of Issuance of Bond Anticipation Notes Shall Be Used To Determine Whether or Not Bonds Issued To Fund Such Notes or Refund Them Are Issued Within Any Time Limitations" (emphasis added). Such requirement is mandatory.

Of course, it is well recognized that a legislative interpretation of a constitutional provision should be given much weight. Acker v. Cooley, 177 S.C. 144, 181 S.E.10 (1934). See also, Drummond v. Beasley, 331 S.C. 559, 503 S.E.2d 455 (1998). Moreover, a contemporaneous construction given by the Legislature to the Constitution is entitled to respect by the Courts. McCull v. Marlboro Grade School Dist. No. 10, 143 S.C. 120, 141 S.E. 265 (1928). Section 11-17-120 must be presumed valid, and thus, as bond counsel has concluded, is controlling.

Conclusion

Inasmuch as bond anticipation notes constitute "general obligation debt" for purposes of Art. X, § 15(5), it is our opinion that bond counsel's determination that the five year limitation imposed by this provision of the Constitution has been met by the issuance of the bond anticipation notes is correct. Such conclusion is in accord with § 11-17-120. We thus concur in bond counsel's legal analysis that "[t]o the extent that the statutory framework is consistent with the Constitution, the terms and conditions established by the Legislature provide additional assurance that the issuance of general obligation bond anticipation notes by the School District within five years of the date of its successful referendum will satisfy the applicable constitutional and statutory requirements."

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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