

8111 Liberty



HENRY MCMASTER  
ATTORNEY GENERAL

March 9, 2006

The Honorable Kent M. Williams  
Senator, District No. 30  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Williams:

We received your letter requesting an opinion of this Office regarding the issuance of bonds by the Marlboro County School Board (the "Board"). You informed us that the Board "will be voting on a bond referendum in the amount of \$66 million" this month. Further, you state:

Approximately 10 to 12 years ago, a bond referendum was approved in the amount of \$12 million to build a new Marlboro County High School. The school board has planned to incorporate the balance of the \$12 million referendum into the new \$66 million referendum (if approved) instead of allowing it to sunset.

Thus, you request an opinion "as to whether or not this is legal."

After a review of the pertinent constitutional and statutory authority, we opine the Board may issue bonds for which part of the proceeds are used for capital improvements and part are used for the refunding of previously issued bonds.

#### Law/Analysis

The South Carolina Constitution grants school districts the power incur general obligation debt. S.C. Const. art. X, § 15 (Supp. 2005). "The school districts of the State shall have the power to incur general obligation debt 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." *Id.* The School Bond Act generally governs the issuance of school bonds. S.C. Code Ann. §§ 59-71-10 *et seq.* (2004 & Supp. 2005). Section 59-71-30 of the South Carolina Code (2004), contained in the School Bond Act, states: "The authorities of any operating school unit may issue general obligation bonds of such operating school unit for the purpose of defraying the cost of capital improvements to any amount not exceeding the constitutional debt limitation applicable to such operating school unit . . . ." The School Bond Act does not specifically address a school district's ability to issue bonds for the purpose of refunding previously issued bonds. However, we find the Refunding Act adopted by the Legislature gives school districts such authority.

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Section 11-15-420 of the South Carolina Code (1986), contained within the Refunding Act, provides: "This article is intended to authorize and provide the procedure for the issuance of general obligation bonds whose proceeds are to be used to pay, in whole or in part, sums due on general obligation bonds previously issued." The term "issuer," according to the Refunding Act,

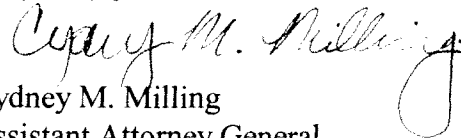
shall mean any incorporated city or town, school district, county, or other political division or subdivision of the State which shall have outstanding and unpaid, whether matured or unmatured, bonds for whose payment the full faith, credit, taxing power and resources of such political division or subdivision have been pledged, whether or not such general obligation bonds be additionally secured by pledge of other revenues.

S.C. Code Ann. § 11-15-430(1) (1986) (emphasis added). Further, section 11-15-440 of the Refunding Act (Supp. 2005) states:

The governing body of any issuer may issue general obligation bonds of such issuer to such extent as such issuer shall be indebted by way of principal, interest, and redemption premium upon any outstanding general obligation or revenue bonds, maturing or called for redemption, less all sinking funds and other monies on hand applicable thereto. The issuer may utilize the provisions of Sections 11-27-40 and 11-27-50 in connection with the issuance of such refunding bonds.


Thus, school districts wishing to issue general obligations for the purpose of paying in whole or in part sums due on obligations previously issued by the school district may do so under the Refunding Act. However, we note the South Carolina Constitution, the School Bond Act, and the Refunding Act contain provisions that must be complied with in order for the bonds to be validly issued. Thus, we advise you and the Board to consult these provisions prior to the issuance of any bonds.

Very truly yours,



Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General