

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_

June 7, 1993

SUBJECT: Taxation and Revenue - Duties of County  
Treasurer To Distribute Bond Funds To  
School Districts Under S.C. Code Ann.  
Section 59-69-215 (1976).

SYLLABUS: Funds resulting from the School Bond Act of  
Article 1, Chapter 71 of Title 59 are special  
funds which are not to be disbursed to the  
school district under § 59-69-215. The  
proceeds from such bonds and the sinking fund  
associated with such bonds are required to be  
maintained by the county treasurer pursuant  
to S.C. Code Ann. §§ 59-71-150, 59-71-180 and  
related sections (1976). To the extent that  
opinions prior to Anderson County School  
District 1 v. Anderson County Board of  
Education, 296 S.C. 260, 371 S.E.2d 807,  
(1988), and OAG No. 91-23 have reached a  
different conclusion, such earlier opinions  
are modified to conform to the views  
expressed in this opinion.

TO: Mr. Michael L. Horton  
Assistant Comptroller General

FROM: Ray N. Stevens *RNS*  
Chief Deputy Attorney General

QUESTION: In a county in which the school district and the  
county governing body have adopted the provisions of §  
59-69-215, does the county treasurer disburse to the school  
district all funds related to school district bonds under  
the School Bond Act at S.C. Code Ann. § 59-71-10 (1976), et  
seq.?

APPLICABLE LAW: S.C. Code Ann. Sections 59-69-215,  
59-69-220, 59-69-230, 59-71-150 and 59-71-180 (1976).

DISCUSSION:

Mr. Michael L. Horton  
Page Two

June 7, 1993

There are two methods under which the county treasurer may release funds to a school district. One method is the "warrant method" of §§ 59-69-220 and 59-69-230 and the other method is the "disbursement method" of § 59-69-215. Under the warrant method, the county treasurer maintains custody of the school district funds. Upon receipt by the treasurer of an approved warrant from the governing body of the school district, the county treasurer issues a check to cover the expenditure called for in the warrant.

Under the disbursement method, the county treasurer disburses funds to the school district as such funds become available. Under § 59-69-215, the funds disbursed to the school district are those "for use in the operation of the school district." Unlike the warrant method where the county treasurer deposits, pays out and invests such funds, under the disbursement method the school district assumes all of these duties. The disbursement method is adopted when approved by the governing body of the school district and by the governing body of the county.

Your inquiry concerns the effect of § 59-69-215 on bond funds derived for school districts under § 59-71-10, et seq. Specifically you inquire as to the handling of the bond funds created by the issuance of school district bonds in such a county.

School districts may issue bonds pursuant to the authority of Article 1 of Chapter 71 of Title 59. Bond issues typically create two types of funds. First, proceeds from the bond issuance create a fund until the bond proceeds are fully expended for the bond purposes. Second, funds are collected from the taxpaying public and are placed into a sinking fund so that the bonds can be retired upon maturity. Your inquiry is whether either of these funds are required to be released to the school district under § 59-69-215.

In an Attorney General's opinion dated July 30, 1982 to Michael L. Horton, Assistant Comptroller General, § 59-69-215 was construed. The opinion stated the following:

The question is thus whether taxes collected for repayment of issued bonds are funds available for use in the operation of the school district. In this connection it is necessary

Mr. Michael L. Horton  
Page Three

June 7, 1993

to note that the full faith and credit of the school district are pledged for repayment of the bonds by section 59-71-150.

Under statute law, prior to the Act here considered, the treasurer could not disburse the taxes except by order of the board of trustees of the school district (§ 59-69-230). The bond debt is thus the obligation of the school district and must be timely paid in order for the district to properly function and operate. Operation is defined in Webster's New Collegiate Dictionary to mean: "The act, process or effect of operating \* \* \*."

The opinion then concluded the statute authorized the county treasurers to pay over to the school districts taxes collected for payment of school bonds.

In a second opinion dated February 23, 1983, to Michael L. Horton, Assistant Comptroller General, § 59-69-215 was again addressed with the same conclusion reached:

With reference to the second question, § 59-69-215 provides in part that: "Upon establishing the disbursement method from the county treasurer to the district, the disbursement by the county treasurer shall continue to the district as funds become available unless the procedure is rescinded by action of the governing body of the district or the county governing body."

The method, once adopted, is applicable to all funds coming to the treasurer for payment to the school district. Such also includes those funds payable to the school district by § 59-21-130. The method, once approved, continues until revoked.

Section 59-21-130 as referenced in the opinion refers to funds distributed to the county treasurer by the State Treasurer pursuant to the state's school aid program.

In a third opinion, OAG No. 86-93, Samuel R. Wooten,

Mr. Michael L. Horton  
Page Four

June 7, 1993

Superintendent of the School District of Edgefield County,  
was advised as follows:

The General Assembly by Act 417, Acts of 1982, now codified as § 59-69-215, directed the county treasurer to disburse to the school districts any funds of the school district needed for its operation. The districts must, however, request the same and the county governing body must concur in the request. In an opinion of February 23, 1983, this office concluded that the disbursement included the funds collected for bond debt payments. . . .

These three opinions established that under § 59-69-215 all school district bond funds were to be turned over to the school district and the county treasurer had no control over the investing or expenditure of such funds. Later circumstances caused a different view to emerge.

In 1988, the Court of Appeals was asked to determine the right of a County Board of Education to prohibit a county treasurer from disbursing funds to a school district. The court examined the impact of § 59-69-215 and stated the following:

Attention has also been drawn to Section 59-69-215 and the procedure outlined in it for disbursal of funds. Both parties seem to argue this section is also applicable to disbursement of building funds forwarded to the county treasurer by the State. As previously stated, Section 59-69-215 does not expressly repeal Section 59-69-220. The language of Section 59-69-215 does not give any authority or responsibility for approval of disbursement of funds to the county board of education or the county superintendent. Rather, the section outlines a disbursement procedure in which the governing body of the school district requests disbursement of the funds as they become available and the governing body of the county concurs. Section 59-69-215 identifies the funds covered by its provisions as funds "available for use in the oper-

June 7, 1993

ation of the school district." It is not clear to us that funds available for use in the operation of a school district include funds received from the state specifically earmarked for capital improvements. In fact, use of approved capital improvement funds by a school district for general operation purposes would violate the school facilities provisions in the S.C. Code Ann. Sections 59-21-310 through 450 (1976 and Cum. Supp. 1987). Additionally, because Section 59-69-215 was enacted as part of Act No. 417, 1982 S.C. Acts 2468, which also amended Section 59-21-130 contained in Article I of Chapter 21 dealing with "Teachers' Salaries and Overhead," we assume the Legislature intended that Section 59-69-215 would relate to and further the procedures for disbursement of funds established in Article I as opposed to Article III.

Since the applicability of Section 59-69-215 to the disbursement of capital improvement funds is questionable, the school warrant procedure outlined in Section 59-69-220 is the relevant procedure. As previously discussed, the Anderson County Board of Education does not have discretionary authority under the facts of this case to disapprove the disbursement of capital improvement funds remitted by the State to the Treasurer of Anderson County. Accordingly, the decision of the Master is reversed and the case is remanded for proceedings not inconsistent with this opinion.

Anderson, supra, at p. 812 (S.C. App., Aug. 1, 1988) certiorari dismissed by Anderson County School Dist. 1 v. Anderson County Bd. of Educ., 300 S.C. 493, 388 S.E.2d 815 (S.C., Feb. 5, 1990).

Under Anderson, supra, the court found that funds distributed to the county under § 59-21-380 were "earmarked for capital improvements" and thus were not funds "available for use

June 7, 1993

in the operation of the school district" within § 59-69-215.<sup>1</sup> The effect of the decision in Anderson, supra, on funds to be distributed under § 59-69-215 was considered in OAG No. 91-23, p. 72, to William H. Linder, Richland County Treasurer, dated April 2, 1991. That opinion cited Anderson, supra, and held that § 59-69-215 "was not controlling ... for special funds such as those provided by section 59-21-380." This position represented a change from the earlier position of February 23, 1983 in which the view was taken that § 59-69-215 "once adopted, is applicable to all funds coming to the treasurer for payment to the school district."

Given the change in position from "all funds" being within § 59-69-215 under the opinion of February 23, 1983 to the view expressed in OAG No. 91-23 of April 2, 1991 that "special funds" are not within § 59-69-215, our issue becomes one of determining if funds received by the treasurer under the School Bond Act of § 59-71-10, et seq. are "special funds" excluded from § 59-69-215.

In OAG No. 91-23, Anderson, supra, was relied upon to establish the view that funds paid to the county treasurer under § 59-21-380 were "special funds" not within § 59-69-215. To determine when other funds also constitute special funds not within § 59-69-215, the court's rationale in Anderson is instructive.

Anderson, supra, concerned funds distributed by the State to the county treasurer under § 59-21-380. That section involves funds which have been paid to the county treasurer who is required to "pay out the money of such fund only on school warrants properly drawn by the authorities of the school district concerned . . ." The funds themselves are "to assist school districts in financing needed capital improvements." Section 59-21-320. Further, § 59-21-350 requires that the fund be "applied on the financing of capital improvements approved by the [State] Board [of Education]."

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<sup>1</sup>Anderson, supra, at p. 812, stated ". . . the applicability of § 59-69-215 to the disbursement of capital improvement funds is questionable . . ." Such language recognizes the possibility of other views.

June 7, 1993

Thus, § 59-21-380 involves a system in which the county treasurer is statutorily required to receive the fund, is given explicit duties to hold the funds and pay out such funds only as appropriate, and is responsible for a fund which concerns only capital expenditures. Further, the court noted that the fund was prohibited for general operating use. Finally, the court noted that it was reasonable to believe § 59-69-215 was intended not to govern capital funds since the section was enacted as a part of an act which amended statutes pertaining to the operating expenses of the district (Article 1 of Chapter 21 entitled Teachers' Salaries and Overhead) rather than statutes pertaining to capital expenditures (Article 3 of Chapter 21 entitled School Facilities).

The same factors involved in the Anderson, supra, analysis are present in bond funds issued by the school district under the School Bond Act. The School Bond Act involves a system in which the county treasurer is statutorily required to receive the funds, hold the funds, and pay out such funds only for the purposes for which the bonds were issued. (See §§ 59-71-150 and 59-71-180.) To maintain sufficient funds to satisfy the debt obligations, the statute requires the treasurer to establish a sinking fund for such payments. (See §§ 59-71-150 and 59-71-180.) Likewise under the School Bond Act, the fund is concerned with capital expenditures and not the operating expenses of the school district. (See § 59-71-30.) Again it is appropriate to note Anderson, supra, found that § 59-69-215 was enacted as a part of an act which amended statutes pertaining to the operating expenses of the district (Article 1 of Chapter 21 entitled Teachers' Salaries and Overhead) rather than statutes pertaining to capital expenditures (Article 3 of Chapter 21 entitled School Facilities). The School Bond Act prohibits the expenditure for any item that is not a part of the capital expenditure purpose for which the bonds were issued.

CONCLUSION:

Funds resulting from the School Bond Act of Article 1, Chapter 71 of Title 59 are special funds which are not to be disbursed to the school district under § 59-69-215. The proceeds from such bonds and the sinking fund associated with such bonds are required to be maintained by the county treasurer pursuant to §§ 59-71-150, 59-71-180 and related sections. To the extent that opinions prior to the 1988 de-

Mr. Michael L. Horton  
Page Eight

June 7, 1993

cision in Anderson, supra, and OAG 91-23 have reached a different conclusion, such prior opinions are modified to conform to the views expressed in this opinion.

RNS/jws