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The State of South Carolina



Office of the Attorney General

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June 14, 1994

Mr. George L. Schroeder
Director
Legislative Audit Council
400 Gervais Street
Columbia, SC 29201

Dear Mr. Schroeder:

You have asked several questions regarding revenue bonds issued by the South Carolina Resources Authority (SCRA). You have stated that these bonds are issued to finance water and sewer infrastructures for local governments and that these bonds are being marketed as "moral obligation" bonds. You have inquired if the General Assembly may appropriate funds in support of these bonds and if the bonds actually are moral obligation bonds.

The statutory provisions establishing the South Carolina Resources Authority are set out in S. C. Code Ann. §11-37-10, et seq. (Supp. 1993). The statutes clearly authorize the State to secure bond obligations of the Authority, §11-37-80; appropriate monies to the Authority's capital reserve fund, §11-37-170; and make grants to the Authority, §11-37-190. The statutes also clearly reflect that

- (1) neither the State, nor any of its political subdivisions, nor the Authority is obligated to pay the principal of or interest on the bond or other costs incident to the bond except from the revenue, money, or property of the Authority pledged;
- (2) neither the faith and credit nor the taxing power of the State, or any of its political subdivisions, is pledged to the payment of the principal of or interest on the bond . . . [.]

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S. C. Code Ann. §11-37-90, emphasis added. See also S. C. Constitution, Article X, §11.

S. C. Constitution, Article X, §13, provides in part that

- (1) . . . the State shall have power to incur indebtedness in the following categories and in no others: (a) general obligation debt; and (b) indebtedness payable only from a revenue-producing project or from a special source as provided in Subsection 9 hereof.

* * *

- (9) The General Assembly may authorize the State or any of its agencies, authorities or institutions to incur indebtedness for any public purpose payable solely from a revenue-producing project or from a special source, which source does not involve revenues from any tax . . . [.]

When all of these statutes and constitutional provisions are read together it is clear that it is not the legislature or constitutional intention that the State's full faith and credit be pledged in support of bonds issued by the Authority. However, I understand from your letter that the Authority's indebtedness is payable only from revenues received from the water or sewer infrastructures that are built. If that is so, the State would appear to have the power, but not the duty, to incur indebtedness on behalf of these revenue-producing bonds. S.C. Constitution, Article X, §13.¹

In Carl v. S.C. Jobs-Economic Development Authority, 327 S.E.2d 331 (S.C. 1985), the Court was presented with a challenge to the constitutionality of the Act that created the Jobs-Economic Development Authority. One of the issues was whether the Act unconstitutionally pledged the credit of the State. The Court stated in part that

¹ This reading of the Constitution is not necessarily free from doubt. I note your own counsel has reached an opposite conclusion. However, I am attaching a copy of a prior opinion of this Office which addresses some of the issues raised by your inquiry and reaches a similar conclusion. Letter dated March 4, 1986 to Governor Riley from David Eckstrom.

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[t]he Act in no way imposes any pecuniary liability on the State. Appellant speculates that if the Authority defaults on its bonds, the State may choose to pay off the bonds. The purpose of the constitutional limitation is to prevent the State from being obligated to use State tax revenues to pay off the bonds. [cites omitted]

Carl, p. 335, emphasis in original.

It would appear that similar to the JEDA bonds addressed in Carl, although the State is not obligated to pay off the Authority's bonds, it also would not absolutely be prohibited. However, the law is not all together clear in this area and it is unknown how a court would rule on this issue.

It is not known to this Office, from the information provided in your letter, why these bonds are being marketed as "moral obligation" bonds or if they should be marketed in this manner. Clearly, as was stated in Casey v. S. C. State Housing Authority, 215 S.E.2d 184, 188 (1975)

[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.

In 63A Am.Jur.2d, Public Funds §73 it is stated that

[i]t has been said that to constitute a moral obligation of the state, for the discharge of which public funds may be appropriated, it is generally necessary that there be an obligation or duty created or imposed upon the state by prior statutes to compensate a person for injury or damage sustained by him by reason of its violation by the state or its agencies, or to compensate him for injury, damage, or loss incurred by him in or by his performance of any act authorized or required by such statute, or an obligation or duty, legal or equitable, not imposed by statute but created by a

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contract or resulting from wrongful conduct,
which would be judicially recognized as legal
or equitable in cases between private persons.

See also R. AMDURSKEY & C. GILLETTE, Municipal Debt Finance Law
(1992) §1.3.2.

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 by the General Assembly on a 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 definitely rule on the questions that you have raised.

As you are aware in consultations with your office, we discussed the possibility of reviewing our conclusions with a bond attorney. It appears that due to the nature of your request which concerns an audit, it does not appear to be feasible to consult with a bond attorney in this State. It should be noted that the practice of bond law is a very specialized area of the law; and this Office does not have on staff any attorneys who practice law in this area. Therefore, this letter must be substantially caveated in that it is possible that a bond attorney could interpret these questions differently especially as to the nature and necessity of "moral obligation bonds". In addition, this Office would specifically reserve the right to re-examine this issue if subsequent to your release of this opinion, we receive information from bond counsels that would affect our perception of this issue.

Sincerely yours,

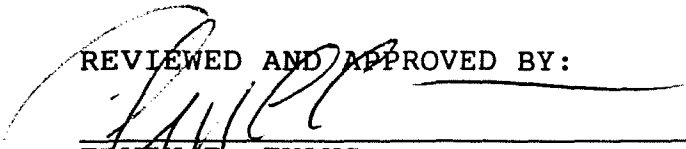


Treva G. Ashworth
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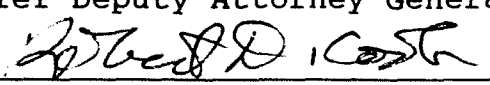
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