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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 7, 1995

The Honorable James A. Lander
Senator, District No. 18
2029 Main Street
Newberry, South Carolina 29108

RE: Informal Opinion

Dear Senator Lander:

By your letter of June 7, 1995, to Attorney General Condon, you had sought advice as to several issues related to "letters of intent" concerning the issuance of bonds generally and particularly as to the Newberry County School District. You advised that the Newberry County School District offered bonds to be sold legitimately (as you understood it) under the eight percent rule for a period of one year. The entire bond issue would be repaid in one year which, you have been told, is legal and constitutional. However, this year a group of five citizens placed a Letter of Intent with the Clerk of Court's Office which could have had the effect of blocking the sale of bonds or causing the interest rate to be higher than it would have been had the Letter of Intent not been presented. Subsequently, the bonds have been sold and closed, and a lawsuit has been filed.

You have raised several questions concerning the Letter of Intent. Due to the pending litigation in Newberry County, this Office is unable to undertake an opinion on any matter which may be pending before a court or administrative body for resolution. This Office has a long-standing policy of declining to undertake an opinion in such circumstances to avoid even the appearance of usurping the court's prerogative to decide matters before it. I will attempt to provide some guidance on your questions without commenting on the matters which may be in litigation.

Enclosed is a copy of Chapter 27, Title 11, Code of Laws of South Carolina (1976, revised 1986), concerning the effect of new Article X of the State Constitution on bonded

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and other types of indebtedness. The "Letter of Intent" to which your letter refers seems to be that notice of intent found in S.C. Code Ann. §11-27-40.8; that statute refers to the notice of intention to seek a referendum relative to an ordinance authorizing the issuance of general obligation bonds of counties and municipalities. Reference is made in §11-27-40 to bonds of political subdivisions; part 8 specifically refers to the initiative and referendum procedures applicable to municipalities and counties. Section 11-27-50 pertains to the issuance of general obligation bonds by school districts; that statute does not contain language similar to the language of §11-27-40 as to the notice of intent relative to initiating a referendum. Due to the specific references in §11-27-40 to counties' and municipalities' statutes concerning initiative and referendum and the specific provision for incurring debt by school districts in a separate statute, I am of the view that §11-27-40 and its reference to the notice of intent most probably does not apply to school districts.

The notice of intent in §11-27-40.8 does not refer to the filing of a lawsuit; instead, it signifies the intention of at least five qualified electors to seek a referendum. The statute requires that the notice be filed "within twenty days following the publication by the governing body of the political subdivision of notice in a newspaper of general circulation in such political subdivision of the adoption of such ordinance." The provision is not triggered unless and until the political subdivision files such notice.

I do not see a similar provision in Chapter 27 of Title 11 as to the notice of intent being filed as to bonds of school districts or state bonds.

Certainly the filing of a notice of intent can cause problems for the entity which is on the threshold of issuing bonds. Such an action would cause the bond counsel for the entity to be cautious in advising the entity to proceed with the issue and to be diligent in issuing his or her advice that all statutes have been followed with respect to the bond issue. Filing of such notice could have the effect of delaying the bond issue, with a resulting change in interest rates. Too, there is some irony in a group of five citizens at the least being potentially able to halt, at least temporarily, the bond issue. By way of contrast, I am enclosing copies of §4-9-1220, a part of the county initiative and referendum statutes (fifteen percent of the qualified electors of a county must petition for repeal of an ordinance relative to the issuance of bonds, notes, or other evidences of debt as specified therein within sixty days after the adoption of such ordinance), and §5-17-20, a part of the municipal initiative and referendum statutes (similar provisions for municipalities). Perhaps legislative clarification could clear up some of these potential problems.

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This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I hope that it will be of some assistance, given the limitations of this Office due to the pending litigation. Please advise if I may be of further assistance.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosures