



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

June 26, 1997

James M. Holly, Chief of Staff  
Office of the State Treasurer  
Post Office Box 11778  
Columbia, South Carolina 29211

Re: Informal Opinion

Dear Mr. Holly:

You have sought an opinion concerning the constitutionality of Section 65 of Part II of the 1997 Appropriations Bill. You note that "Section 65 establishes a new statutory pre-default school district bond remedy in addition to the post-default bond remedy that is provided in Article X, Section 14(5) of the South Carolina Constitution." You further state that this "legislation is similar to that adopted by a number of states for the purpose of enhancing the credit security of school district bond issues ..." which "results in improved credit ratings and lower borrowing costs." Your request is to "review Section 65 to confirm that it does not constitute general obligation debt of the State or contravene any provisions of Article X of the South Carolina Constitution or similar provisions."

**LAW / ANALYSIS**

Section 65 adds to the Code S.C. Code Ann. Sec. 59-71-155 which provides as follows:

Section 59-71-155 (A) This section applies to existing and future obligations bonds issued by an operating school unit. For purposes of this section, general obligation bonds are obligations expressly secured by the full faith, credit, and taxing power of the operating school unit that issues the bonds.

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(B) The county treasurer of a county in which any operating school unit has outstanding general obligation bonds shall notify the State Treasurer on the fifteenth day prior to the due date of any payment of principal or interest on the bonds if the county treasurer does not have on deposit, or there is not on deposit with a paying agent, the sum required to make that payment. If the county treasurer or paying agent does not have on deposit the sum required to make that payment on the third business day prior to the due date, the State Treasurer shall transfer to the county treasurer from the general fund of the State the sum necessary to enable the county treasurer or paying agent to make payment of principal and interest then coming due. However, the total amount to be advanced to operating school units for this purpose in any fiscal year may not exceed the amount appropriated in that year under the Education Finance Act. Immediately upon receipt of the sum from the State Treasurer on a bond for which a paying agent other than the county treasurer has been appointed, the county treasurer shall transfer to the paying agent all amounts required to effect punctual payment of the sum due. The State Treasurer shall withhold from the operating school unit from the next and subsequent distribution of any revenue to that operating school unit sufficient monies necessary to reimburse the general fund of the State for the sums applied to pay the principal and interest on the bonds and for the investment earnings that would have been received on the monies advanced from the general fund. In addition, the State Treasurer may direct the county treasurer to apply to the payment due on the bonds any monies being held by the county treasurer in any fund, other than the sinking fund, derived from state revenue for the operating school unit.

(C) The amounts forwarded to any county treasurer by the State Treasurer under subsection (B) must be applied by the county treasurer or paying agent solely to the payment of the principal of or interest on the bond. The State Treasurer shall notify the State Department of Education, the county auditor, and the superintendent of the operating school unit of payments made and sums withheld pursuant to this section.

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(D) Whenever the State Treasurer makes a payment to a county treasurer pursuant to subsection (B) and withholds sums from revenue to the operating school unit pursuant to this section, or directs a county treasurer to apply monies for this purpose, the county treasurer shall pay to the operating school unit all collections of property taxes levied for the payment of the operating school unit's general obligation bonds until the sums so withheld or applied have been paid by the county treasurer to the operating school unit for such tax levies.

(E) A county auditor in any county in which the provisions of subsection (B) have been implemented for the payment of principal and interest on the general obligation bonds of an operating school unit shall adjust the millage levied for the payment of those bonds in the next fiscal year to the level necessary to provide for the punctual payment of all sums due during that year and shall file a report with the State Treasurer demonstrating compliance with this subsection not later than five business days after setting the millage for this fiscal year. (emphasis added).

Of course, it bears repetition that if enacted, any Act of the General Assembly must be presumed valid and constitutional. No statute will be deemed to infringe the Constitution unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland Co., 190 S.C. 270, 2 S.E.2d 777 (1939). Every doubt regarding the constitutionality of an Act of the General Assembly must be resolved favorably to the statute's constitutional validity. More than anything else, only a court, and not this Office, may declare an Act to be void for unconstitutionality.

Art. X, § 13 of the South Carolina Constitution provides that "(1) [s]ubject to the conditions and limitations in this section, 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." This section of the Constitution "specifies the manner in which the State of South Carolina may incur bonded indebtedness." Op. Atty. Gen., Op.No. 90-20 (February 14, 1990). The provision "authorizes the State of South Carolina to incur bonded indebtedness, using either general obligations or revenue bonds." Op. Atty. Gen., Op.No. 88-26 (March 16, 1988). "General obligation debt" is defined in

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Section 13(2) as "any indebtedness of the State which shall be secured in whole or in part by a pledge of the full faith, credit and taxing power of the State." Section 13(3) permits general obligation debt to be incurred only for a public purpose. *Id.* The concern here, as I understand it, is the fear that the State is assuming a liability of the school district, and thus creating an indebtedness secured "in whole or in part by a pledge of the full faith, credit and taxing power of the State."

However, certainly, not every expenditure of tax funds constitutes a debt or bonded indebtedness. As we recognized in Op. Atty. Gen., Op.No. 85-140 (December 9, 1985),

[i]t is ... well accepted that obligations for the necessary and current expenses of the government do not constitute "indebtedness" within constitutional limitations. 81A C.J.S., States, § 220. Article X, § 7(a) of the Constitution provides that

The General Assembly shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year. Whenever it shall happen that the ordinary expenses of the State for any year shall exceed the income of the State for such year, the General Assembly shall provide for levying a tax in the ensuing year sufficient with other sources of income to pay the deficiency of the preceding year together with the estimated expenses for such ensuing year.

Our Supreme Court has held that the limitation of the Constitution placed upon the power of the General Assembly to increase the public debt "does not extend to debt incurred for the ordinary and current business of the State ... ." Lott v. Blackwood, 166 S.C. 58, 61-62, 164 S.E. 439 (1932); see former Article X, § 11. Compare, Duncan v. Charleston, 60 S.C. 532, 39 S.E. 265 (1901).

This is consistent with the general law wherein

[a]n obligation although amounting to a technical debt, is not forbidden by the provisions of the constitution limiting either its creation or its amount, if funds are in the treasury to meet it, or if the uncollected revenue provided for the year in which it is created will be sufficient to meet it when collected, although payment is deferred. Obligations which run current

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with revenues are not debts within a constitutional limitation, as for example, rental payments from current revenues.

Likewise, an appropriation from public funds available for that purpose, a mere transfer from one fund to another of money in the treasury ... does not create a debt within a constitutional limitation.

81A C.J.S., States, § 220. In Caddell v. Lexington Co. School Dist., \_\_\_ S.C. \_\_\_, 373 S.E.2d 598 (1988), our Supreme Court noted that "general obligation debt embraces neither yearly expenses payable from current expenses nor contingent liabilities of the governmental entity." And in Haddon v. Cheatham, 161 S.C. 384, 159 S.E. 843 (1931), the Court held that the indebtedness of a political subdivision secured by a pledge of taxes to be collected for the current fiscal year does not constitute bonded indebtedness within the full faith, credit and taxing power of the subdivision.

As you indicate in you letter, Section 65 provides by statute a pre-default remedy for school bond payments to go along with the post-default remedy contained in Art. X, § 14(5). Such provision states that

[n]o general obligation debt shall be incurred by any political subdivision unless prior to the delivery thereof a schedule showing the date and the principal and interest payments to become due thereon shall be filed in the office of the State Treasurer. If at any time any political subdivision shall fail to effect the punctual payment of the principal of or interest on its general obligation debt, then, in such instance, the State Treasurer shall withhold from such political subdivision sufficient moneys from any state appropriation to which such political subdivision may be entitled and apply so much as shall be necessary to the payment of the principal and interest on the indebtedness of the political subdivision then due. Any and all appropriations for political subdivisions of the State shall be subject to the provisions of this subsection.

Prior to the adoption of this Constitutional provision, the General Assembly enacted in 1973 a similar statutory provision, Section 59-71-310, which provides that

[t]he district board of any school district authorized to issue general obligation bonds of the school district is hereby

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authorized to provide by resolution duly adopted that if the principal or interest of any general obligation bonds issued by the school district are not paid when they become due, the holder of the bonds and coupons may present them to the State Treasurer of South Carolina who, to the extent that moneys shall be available to the school district for any purpose and from any source, shall effect payment of them and charge such payments to the account of the school district and diminish the payments otherwise to be made to the extent thereof; provided, that no such resolution shall be effective unless it has been approved by the State Treasurer as provided in 59-71-320.

To my knowledge, there has never been any suggestion that this statutory post-default provision violated the Constitution even prior to the post-default remedy being placed in the Constitution.

Unlike some states, South Carolina does not have an express constitutional prohibition against guaranteeing a debt or the indebtedness of a political subdivision. At bottom, Section 65 is intended to provide the necessary funds from the State's general fund in advance of any default by a school district upon its bond obligations with the obvious purpose of insuring that such bond obligations are met. This clearly enhances the credit security of school bond issuances. Without doubt, the State can and often does appropriate State monies from existing funds all the time and such subserves a public purpose -- the promotion of education. See Art. XI, § 3 of the South Carolina Constitution ["The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning as may be desirable."]

In order to constitute "general obligation debt" pursuant to Art. X, § 13, an indebtedness must be secured "by a 'pledge' of the full faith, credit and taxing power of the State." Even assuming arguendo that Section 65 constitutes such a "pledge" of the State's full faith, credit and taxing power, any such obligation in the statute is clearly limited. The State is absolutely prohibited by the statute from advancing more than the "amount appropriated in that year under the Education Finance Act." This clear limitation is in contrast to the situation in Casey v. South Carolina State Housing Authority, 264 S.C. 303, 215 S.E.2d 184 (1975) wherein the Court held that the Act in question "commits the State of South Carolina, and by so doing, pledges its credit to make good any deficit arising because of default under both the Direct Mortgage Loan Program and the Mortgage Purchase Program." In short, the State obligates itself to transfer funds no

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further than the amount already appropriated in a single year under the EFA. An "obligation ... is not forbidden ... if funds are in the treasury to meet it ... ." 81A C.J.S., States, supra. Such would be payable from "current expenses ... ." Caddell, supra. The General Assembly possesses plenary power to appropriate and provide for the spending of existing monies for a public purpose or to provide for a tentative transfer of such existing funds for such purpose. Moreover, since one Legislature cannot bind subsequent ones to appropriate for this purpose, general obligation debt is not created. Caddell, supra.

In conclusion, given the requirement that this Office must presume the constitutionality of any legislation, and considering the fact that the provision in question only requires expenditure of funds on hand and for a fixed (capped) amount in a single year, I see no reason why Section 65 is not a constitutionally valid exercise of the Legislature's power and thus does not constitute "bonded indebtedness" of the State.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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.

With kind regards, I am

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/ph