

The State of South Carolina



Office of the Attorney General

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August 7, 1991

Jack S. Flynn, Esquire
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Dear Mr. Flynn:

On behalf of Union County Council, you have requested the opinion of this Office on legal questions arising from a proposed expenditure of public funds by Union County to assist in constructing a water line from the City of Union to the Town of Jonesville. Your specific questions are:

1. May Union County, without imposing any special tax, service charge or other special levy upon the initial users or those initially benefitting therefrom, incur bonded indebtedness to obtain \$250,000.00 to grant toward the construction of a water line along the newly constructed four-lane highway between the City of Union and the Town of Jonesville? It is believed that such a water line would encourage economic development for the benefit of all citizens of Union County in an area that has a good, new accessible highway/transportation system; or
2. May Union County incur debt, by promising to pay \$250,000.00 plus interest to the City of Union, to obtain \$250,000.00 to grant toward construction of such a water line?

Background

You have advised that construction of the water line to the Town of Jonesville is anticipated to be a joint undertaking, in that the Town of Jonesville and the City of Union will, together, contribute \$700,000.00 to the project, while Union County Council has voted to contribute \$250,000.00 to the project. The water line would be constructed from the City of Union to the Town of Jonesville, along the newly constructed four-lane highway.

The Town of Jonesville has apparently been working with the Department of Health and Environmental Control to remedy problems with its water supply. As far back as 1989 the Town requested assistance from the City of Union about the possibility of the City furnishing water for the Town's water system. Clearly the Town and those served by its water system will directly and immediately benefit from construction of the water line.

It is suggested that the construction of the four-lane highway in that area of Union County under discussion has opened (or will open) a substantial area of the county which may be a prime area for economic and/or industrial development. Construction of the water line in this area would make water accessible, which might serve to attract new industry to Union County, thus possibly resulting in economic development, enhancement of the tax base, creation of jobs, and similar sorts of benefits.

Discussion

Contributions of public funds by one political subdivision to assist another in a particular undertaking have been examined in numerous judicial decisions and found to be authorized by relevant constitutional or statutory provisions. See, for examples, Cothran v. Mallory, 211 S.C. 387, 45 S.E.2d 599 (1947); DeLoach v. Scheper, 188 S.C. 21, 198 S.E. 409 (1938); Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (1976); Gray v. Vaigneur, 243 S.C. 604, 135 S.E.2d 229 (1964); Stackhouse v. Floyd, 248 S.C. 183, 149 S.E.2d 437 (1966); Shelor v. Pace, 151 S.C. 99, 148 S.E. 726 (1929); Smith v. Robertson, 210 S.C. 99, 41 S.E.2d 631 (1947); and Allen v. Adams, 66 S.C. 344, 44 S.E. 938 (1903), among many others. See also Art. VIII, § 13 of the State Constitution as to joint undertakings by two or more political subdivisions and sharing the costs thereof.

In addition, opinions of this Office have previously examined such contributions and have found such contributions to be most likely permissible. In Op. Atty. Gen. No. 85-5, a contribution of funds by a county to assist in the construction of a performing arts

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center was determined likely to serve a public purpose and a corporate purpose and thus likely to be generally permitted, though no particular financing arrangement was examined.

That such an expenditure by a county must be for a public purpose and a corporate purpose is clear. See Article X, § 14(4) of the State Constitution. According to Bauer v. S.C. State Housing Authority, 271 S.C. 219, 246 S.E.2d 869 (1978),

"... a public purpose has for its objective the promotion of the public health, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political subdivision...." Caldwell v. McMillan, 224 S.C. 150, 77 S.E. (2d) 798, 201 (1953) (quoting other authority). It is a fluid concept which changes with time, place, population, economy and countless other circumstances. Id. It is a reflection of the changing needs of society.

Id., 271 S.C. at 227. See also Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975) (public purpose serves "all the inhabitants or residents, or at least a substantial part thereof." 265 S.C. at 162).

Taxation or expenditure of public funds for a corporate purpose has been explained in County of Livingston v. Darlington, 101 U.S. 407, 25 L.Ed. 1015 (1880):

... a tax for a corporate purpose is a "Tax to be expended in a manner which shall promote the general prosperity and welfare of the community which levies it; that every individual tax payer shall have a direct interest in the object for which the tax is levied, or be directly benefited by the expenditure, is unattainable in the very nature of things. General results are all that can be expected...."

Id., 25 L.Ed. at 1018. Discussing whether a particular expenditure in another situation was for a corporate purpose, the Court continued:

If it was for a public purpose, for the benefit of the inhabitants of the municipality, then it would be for a corporate purpose. The latter cannot be distinguished from the former; and all

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that we have said in relation to the public purpose of the tax will apply with equal force to a corporate purpose. *** In Taylor v. Thompson, 42 Ill., 9, this court defined a corporate purpose to mean 'a tax to be expended in a manner which shall promote the general prosperity and welfare of the municipality which levies it.'

Id.

As we understand it, the county would utilize general obligation bonds, pledging the full faith, credit, and taxing power to repay the indebtedness. Such is permitted by Art. X, § 14 of the State Constitution and the County Bond Act, § 4-15-10 et seq., assuming the above-discussed tests are met, which is a decision to be made by Union County Council. Other funding mechanisms might be available; a special tax district involving only that part of Union County to be affected could be established pursuant to § 4-9-30(5) would be one example, if the nature and level of governmental services provided in that area of Union County will differ from the nature and level of governmental services provided generally in Union County. For such a joint undertaking as is anticipated, however, the issuance of general obligation bonds for which all county taxpayers will be taxed (rather than a special tax, service charge, or other special levy) would appear to be appropriate, as stated above.

Enclosed are copies of previously-rendered opinions of this Office concerning cooperative ventures between or among political subdivisions, for your review; these are dated February 15, 1967; October 8, 1990; and January 21, 1985. A four-prong standard for determining whether an expenditure would meet the public purpose test, from Nichols v. S.C. Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986), is discussed at length in the opinion dated October 8, 1990; Union County Council might find that test or standard useful in assessing the question of public purpose in this situation.

Your second question is, effectively, whether Union County may pledge its credit and taxing power for the benefit of another political subdivision (the City of Union). A well-settled rule of taxation is set forth in 85 C.J.S. Taxation § 1057, at page 647:

... the benefits of taxation should be directly received by those directly concerned in bearing the burdens of taxation, so that a legislature cannot divert taxes raised by one taxing district to the sole use and benefit of another district; and, in general, state, county, and

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district tax moneys must be expended respectively for state, county, and district purpose, except in so far as the constitution may provide for an exception to that rule.

In other words, while a joint undertaking as described in your first question and as permitted by Art. VIII, § 13 of the State Constitution, would be an acceptable means of funding such a project (if council decides that public and corporate purposes are being served), a county's levying of taxes merely for the use and benefit of the municipality would not be acceptable. See Art. X, § 5 (as to taxation without representation) and Art. X, § 7 (as to a political subdivision levying taxes to meet its estimated expenses); Op. Atty. Gen. No. 1813 dated March 11, 1965, as an example.

We trust that the foregoing has adequately responded to your inquiry. If there are additional questions, please advise. With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

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