

3947 Library

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

February 14, 1990

The Honorable Michael T. Rose
Senator, District No. 38
606 Gressette Building
Columbia, South Carolina 29202

Dear Senator Rose:

By your letter of January 15, 1990, you have inquired as to the legal authority to fund bridge or road projects in a certain matter. You wish to obtain money from the issuance of bonds by the particular county or the State of South Carolina or from loans from lending institutions and to repay these bonds or loans with "C" or other funds pledged by the South Carolina Department of Highways and Public Transportation. However, you do not wish to treat obligations as general obligations of the issuer of the bond or of the county or municipality. Instead, you want the highway department to be under the contractual obligation to repay the loan or pay the bond out of "C" or other highway department funds.

To respond fully to your question, it is necessary to consider the various constitutional and statutory provisions relative to incurring indebtedness.

State Constitution

Article X, Section 13 specifies the manner in which the State of South Carolina may incur bonded indebtedness. Section (2) contains the definition of "general obligation debt," which is "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." Issuance of highway bonds payable from other sources of revenue is covered by section (6)(a), and incurrence of indebtedness repayable solely from a revenue-producing project, by section (9); neither of these would be a means of incurring indebtedness as described in your letter, however.

The Honorable Michael T. Rose
Page 2
February 14, 1990

Incurring of indebtedness by political subdivisions of this State is governed by Article X, Section 14 of the State Constitution. Section (3) defines "general obligation debt" as "any indebtedness of the political subdivision which shall be secured in whole or in part by a pledge of its full faith, credit and taxing power." Incurring of general obligation debt by the issuance of tax anticipation notes is governed by section (8), and such is to be secured "by a pledge of such taxes or license fees and a pledge of the full faith, credit and taxing power of the political subdivision." Similarly, bond anticipation notes are authorized in section (9), and such are to be secured by a pledge of the proceeds of the bonds and "by a pledge of the full faith, credit and taxing power of the political subdivision." Indebtedness repayable from a revenue-producing project is governed by section (11), but a pledge of the full faith, credit and taxing power of the political subdivision is not permitted.

The plain language 1/ of the foregoing constitutional provisions clearly requires that when the State or one of its political subdivisions is to incur general obligation debt, its full faith, credit, and taxing power are to be pledged for the repayment thereof. Repayment would be effected from the State's or political subdivision's source of general revenues.

No constitutional provision examined by this Office appears to give the State or a political subdivision thereof the constitutional right to incur general obligation indebtedness and escape the repayment itself by assigning the responsibility elsewhere.

Statutory Considerations

The County Bond Act is found in Section 4-15-10 et seq., Code of Laws of South Carolina (1976, as revised). It is noted that Section 4-15-150 provides for the creation of a sinking fund for the repayment of bonds issued under the County Bond Act; that section provides that "the full faith, credit and taxing power of the county are irrevocably pledged" No authority is found therein to pledge the credit of any other political subdivision or state agency for the repayment of such indebtedness.

1/ In interpreting a statute or constitutional provision, words are given their plain and ordinary meanings in the absence of ambiguity. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980).

The Honorable Michael T. Rose
Page 3
February 14, 1990

The Home Rule Act, codified at Section 4-9-10 et seq. of the South Carolina Code of Laws (1976, as revised), provides in Section 4-9-30(10) that county governing bodies are authorized to "establish and implement policies and procedures for the issuance of revenue and general obligation bonds subject to the bonded debt limitations." No authorization has been located for a county governing body to incur bonded or other indebtedness (i.e., through a loan) yet obligate some other entity for the repayment thereof.

The Municipal Bond Act is found in Section 5-21-210 et seq. of the Code. Creation of a sinking fund to retire the bonds is provided for in Section 5-21-400, which states that "the full faith, credit and taxing power of the municipality shall be irrevocably pledged" Paving bonds may be issued by a municipality pursuant to Section 5-21-610 et seq. of the Code; by Section 5-21-780 of the Code, the "full faith, credit and taxing power of the municipality shall be pledged ..." to retire the debt. In neither instance would the municipality be authorized to incur indebtedness and obligate an entity other than the municipality to repay the debt.

Allocation of gasoline tax funds commonly called "C" funds is found in Section 12-27-400 of the Code. No provision is made therein for the expenditure of such funds to repay general obligation debt incurred by the highway department or a political subdivision of the State. Nor have we located any provision relative to the highway department which would permit or mandate that agency to assume indebtedness incurred by a political subdivision of this State.

Conclusion

It is the opinion of this Office that a county or municipality incurring general obligation debt would be required to pledge its full faith, credit, and taxing power to repay the debt. No political subdivision has been authorized by constitutional or statutory provision to incur such indebtedness and then obligate another entity to repay the indebtedness. Instead, such repayment would be made from the general revenue sources of the political subdivision incurring the debt.

To permit the type of financial transaction envisioned by your letter would require amendment of the State Constitution, the various statutes relative to indebtedness of political subdivision, the enabling legislation relative to the highway department, and perhaps the statutes relative to disposition of the gasoline tax proceeds if such are to be used as a source of repayment funds.

The Honorable Michael T. Rose
Page 4
February 14, 1990

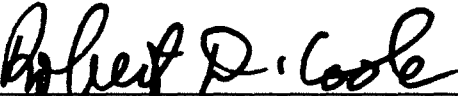
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions