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The State of South Carolina



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July 9, 1990

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

Dear Senator Rose:

As a follow-up to our opinion to you dated February 14, 1990 concerning a county or municipality incurring general obligation indebtedness to fund bridge or road projects, you have asked whether a county could secure general obligation debt with its full faith, credit, and taxing power but nevertheless actually repay the debt from "C" funds pursuant to a contract between the county and the South Carolina Department of Highways and Public Transportation. For the reasons following, such would be most doubtful.

With reference to the various constitutional and statutory provisions for incurring general obligation debt by political subdivisions as outlined in the earlier opinion, it is noted that the "full faith, credit and taxing power" of the involved political subdivision will be pledged for repayment thereof. The taxing power is that "power to require money to be 'paid to the [political subdivision] as a [political subdivision],'" Standard Oil Co. of California v. Aghsalud, 633 F.2d 760, 765 (9th Cir. 1980), or the "actual enforcement and collection from every lawful object of taxation of its proportionate share of the public burdens." Anderson v. Ritterbusch, 22 Okl. 761, 98 P. 1002, 1009 (1908). Taxing power is also defined as raising revenue. Dept. of Treasury v. Midwest Liquor Dealers, Inc., 113 Ind. App. 569, 48 N.E.2d 71 (1943); Robinson v. City of Norfolk, 108 Va. 14, 60 S.E. 762 (1908); I.M. Darnell & Son Co. v. City of Memphis, 116 Tenn. 424, 95 S.W. 816 (1906). It would not be sufficient to pledge only the full faith and credit of the affected political subdivision; the taxing power, or the means by which revenue is raised, is also pledged. "C" funds are not generated by the taxing power of the county.

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"C" funds are generated by the imposition of a tax on the sale of gasoline, as provided for in Section 12-27-400 of the South Carolina Code of Laws. That Code section provides for the funds to be expended "on the State Highway Secondary System for construction, improvements, and maintenance..." The statute further specifies that some "C" funds may be expended for rock or improving county roads, for street and traffic signs, and for other paving projects. Various stipulations are placed upon the use of "C" funds by Section 12-27-400 and by Provisos 126.12, 126.13, and 126.14 of Act No. 658 of 1989. These statutory provisions are in accord with Article X, Section 5 of the State Constitution ("Any tax which shall be levied shall distinctly state the public purpose as to which the proceeds of the tax shall be applied."); failure to apply the proceeds of the gasoline tax as specified by statute, as required by the Constitution, would be unconstitutional. And, as noted previously, "C" funds are not generated pursuant to the taxing power of a county.

In addition to the foregoing considerations, it must be noted that the Department of Highways and Public Transportation has not been given the authority, by its enabling legislation, to enter into such a contract as you contemplate. Moreover, that agency could not vary the terms of a statute by contract. Finally, an agency of the State cannot bind the State by contract over a multi-year period unless there is a valid annual appropriation according to Article X, Section 3 of the State Constitution (money is to be drawn from the State treasury only in pursuance of appropriations made by law). See Ops.Atty.Gen. dated February 22, 1982 and November 15, 1983.

Based on the foregoing, it is doubtful that a county could incur general obligation debt, to be secured by its "full faith, credit and taxing power" while attempting to contract with the South Carolina Department of Highways and Public Transportation to repay the debt from "C" funds. Such a scheme would most probably be deemed violative of the statutory and constitutional provisions discussed above and in the opinion of February 14, 1990.

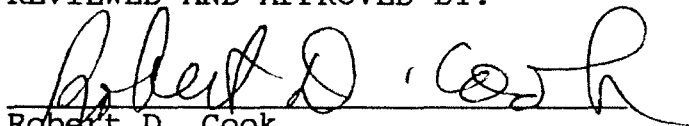
Sincerely,

Patricia D. Petway

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Assistant Attorney General

PDP/nnw

REVIEWED AND APPROVED BY:



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