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THE STATE OF SOUTH CAROLINA

OFFICE OF THE ATTORNEY GENERAL

COLUMBIA

OPINION NO. _____ July 24, 1991

SUBJECT: Taxation & Revenue - Borrowing In Anticipation Of Tax Collected Pursuant To Section 32 Of The Permanent Provisions Of The 1991-1992 State Appropriations Act.

SYLLABUS: A local project sponsor, as the term is used in Section 32 of the permanent provisions of the State's 1991-1992 Appropriations Act, may not pledge the credit of the state for repayment of its indebtedness.

TO: Mr. James D. Dubs
Deputy Director
South Carolina Commission On Aging

FROM: Joe L. Allen, Jr.
Chief Deputy Attorney General

QUESTION: Can a local program which is included for funding in the "Senior Citizens Center Survey" published by the Commission On Aging in October 1989 and updated August 1990 borrow the necessary funds to conduct a project and then use its share of bingo revenue to retire the debt?

APPLICABLE LAW: Section 32 of the permanent provisions of the 1991-1992 State Appropriations Act; S.C. Const. art. X, §§ 11 and 14.

DISCUSSION:

Section 32 of the permanent provisions of the State's 1991-1992 Appropriations Act imposes an additional tax on bingo players. Nine hundred forty-eight thousand dollars of the tax is allocated annually to the "Commission on Aging Senior Citizens Centers Permanent Improvement Fund." The total allocation, however, cannot exceed eight million eight hundred thousand dollars. The monies in the fund can only be expended to fund seventy percent of the costs of projects identified in the "Senior Citizens Center Survey" published by the Commission on Aging in October 1989 and updated Au-

gust 1990. The remaining thirty percent of costs is to be funded by local project sponsors. As understood, local project sponsors are in most instances private eleemosynary corporations, and in a few instances, agencies of a county government.

The resolve of the question is found in the language of the statute. The General Assembly has provided that:

> At the time a project is requested, all matching funds and at least ten percent of the fund monies must be available. Once the project is established, monies from the fund for project completion must be made available.

The matching funds required of the local project sponsor must therefore be available when the project is requested. If such funding is not available, then the request cannot be considered.[1] "Available" as used in this statute means "present or ready for immediate use." Webster's Ninth New Collegiate Dictionary. See also 4A Words and Phrases, "Available."

Article X, Section 11 of the South Carolina Constitution further precludes pledging the state's credit for the benefit of a private corporation. The pertinent language is that:

> The credit of neither the state nor any of its political subdivisions shall be pledged or loaned for the benefit of any individual company, association, corporation . . .

Additionally, Article X, Section 14 of the South Carolina Constitution provides the manner in which a political subdivision may incur indebtedness. We find no authority for a county that is a local project sponsor to borrow funds and pledge a state tax to fund repayment.

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[1] Where statute is clear and unambiguous, there is no room for construction and terms of the statute must be given their literal meaning.

Duke Power Co. v. South Carolina Tax Commission, 292 S.C. 64, 354 S.E.2d 902. For other cases, see 17 S.C.D., Statutes, Key 190.

CONCLUSION:

A local project sponsor, as the term is used in Section 32 of the permanent provisions of the State's 1991-1992 Appropriations Act, may not pledge the credit of the state for repayment of its indebtedness.[2]

JLAJR/jws

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[2]The opinion does not treat the issue of whether a private corporation can borrow funds to construct a project. The opinion only treats the question of whether the state funds can be pledged for repayment by the local project sponsor. In the absence of a contractual impairment, the General Assembly could repeal, modify or leave Section 32 unchanged. It is doubtful that a contract would exist before project approval and completion. The interest question was not addressed because of the conclusion above stated. The general rule, however, is that interest follows the principal. University of South Carolina v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966). See also S.C. Code Ann. § 11-1-20 (1976), wherein interest on state, county or municipal funds must be accounted for to the state, county or municipality.