

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

March 29, 1991

SUBJECT: Taxation and Revenue - Investment by County Treasurer of Money not Necessary for Current Expenses in General Obligations of the County.

SYLLABUS: A county treasurer may invest funds not needed for current expenses in a bond anticipation note of the county.

TO: Honorable William H. Linder
Richland County Treasurer

FROM: T. Travis Medlock *T.T.M.*
Attorney General

QUESTION: It is understood that Richland County proposes to issue bonds. Pending the issuance of the bonds, the county will execute a bond anticipation note. The question is whether the county treasurer may invest funds that are not currently needed in the bond anticipation note.

APPLICABLE LAW: S.C. Code Ann. §§ 6-5-10, 12-45-220 and Chapter 17 of Title 11, and S.C. Const. art. X, § 14.

DISCUSSION:

Both §§ 6-5-10 and 12-45-220 provide authority for the investment of funds. Section 6-5-10 was adopted in 1967 by Act 438.

Section 12-45-220 was first adopted in 1912 by Act Number 106. The section was last amended by Act 326, Acts of 1990. While the language of the two statutes differs in some respects, for the issue here presented, they are alike. Since, however, § 12-45-220 is the latest expression from the General Assembly, its provisions are deemed controlling.

The pertinent language is that:

- (A) A county treasurer may invest or reinvest any sum of money not necessary

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for current expenses in:

* * *

(2) general obligations of this State or any of its political subdivisions.

A county obviously is a subdivision of the State. (See § 4-1-10 and Parker v. Bates, 216 S.C. 52, 56 S.E.2d 723 (1950).

A treasurer may therefore invest funds not needed to fund current expenses in general obligations of a county.

Support for the above is found in S.C. Const. art. X, § 14. That section provides the constitutional authority for counties to incur debt. Subsection 9 of the section provides that:

(9) General obligation notes may also be issued in anticipation of the proceeds of general obligation bonds . . . under such terms and conditions that the General Assembly may prescribe by general law. Such bond anticipation notes shall be secured by a pledge of the proceeds of the bonds . . .

It should be noted that the above-quoted provision refers to a bond anticipation note as a "general obligation note."¹

The procedure for a county to issue a bond anticipation note is found in Chapter 17 of Title 11 of the Code.

¹The Constitution treats a general obligation debt differently than a general obligation bond anticipation note. The first is secured by the county's full faith and credit while the latter is secured by a pledge of the bond proceeds. Sections 12-45-220 and 6-5-10 authorize an investment in general obligations and is thus not limited to general obligation debt. The language of the Constitution and the statutes is to govern the ordinary and generally accepted meaning. For cases see 17 S.C.D., Statutes, Key 188 and 6 S.C.D., Constitutional Law, Key 14.

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CONCLUSION:

A county treasurer may invest funds not needed for current expenses in a bond anticipation note of the county.

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