

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

September 24, 1990

SUBJECT: Taxation and Revenue - Expenditures Of
interest Earned From The Investment Of
Bond Sinking Fund.

SYLLABUS: Interest earned from the investment of
taxes collected to retire bond debt
must be applied to retire the bond debts.

TO: Mr. Millard G. Smith
Executive Secretary
Anderson County Department of Education

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

QUESTION: Can interest income on the investment of taxes
levied to retire bond debt be expended for purposes other
than to retire the bond debt?

APPLICABLE LAW: S. C. Code Ann., Section 12-45-220 (1976);
S. C. Const. art. X, section 5; and S.C. Code Ann., Section
59-71-180 (1976).

DISCUSSION:

Section 12-45-220 provides in part that

Whenever there is in the hands of any county
treasurer of this State any sum of money not
necessary for current expenses the county
treasurer may invest or reinvest such funds
in the following securities or investments
that will secure the best interest for the
county . . . The interest, when collected,
shall be added to the fund and paid out as
other funds of the same sort are paid.
(Emphasis added)

The interest must, by this clear expression, be applied to
pay the bond debt. A statute that directed the interest
earned on invested school funds to the county was declared
invalid in Charleston County School Dist. v. Thomas, 277
S.C. 145, 283 S.E.2d 441 (1981).

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The court there held that the interest constituted school district funds because of Section 12-45-220.

That holding is supported by the decision of the court in University of South Carolina v. Elliott, 248 S.C. 218, 149 S.E.2d 433. The issue in that case was the ownership of interest on funds paid into the court. The court favorably quoted the majority rule that "interest earned . . . is simply an increment of the principal fund."

Article X, Section 5 of the South Carolina Constitution provides in part that

Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.

Here the tax was levied for the purpose of paying bond debt. It thus necessarily follows that the interest earned on the investment of the tax must be applied to the same purpose.¹

CONCLUSION:

Interest earned from the investment of taxes collected to retire bond debt must be applied to retire the bond debt.

JLAJRjws

¹The effect is the reduction in the tax levy needed to retire the bond debt. It should be further noted that this opinion does not treat the disposition of any taxes or interest that remains after payment of the bond debt.