

The State of South Carolina



Office of the Attorney General

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October 29, 1987

Mr. Elliott E. Franks, III
Chief Executive Officer
South Carolina Jobs-Economic
Development Authority
Number One Main Building
1203 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Franks:

You have requested an opinion whether the South Carolina Jobs-Economic Development Authority (JEDA) has the authority to issue taxable revenue bonds, that is bonds which are not tax exempt under federal income tax laws. It is our opinion that JEDA has the authority to issue revenue bonds, in compliance with its enabling act, without regard to their treatment under federal tax law.

We have reviewed the several opinion letters you have provided from private bond counsel which support this conclusion. As was indicated, JEDA is authorized to issue revenue bonds pursuant to § 41-43-110, S.C. CODE, 1976 (as amended). The only reference in the JEDA enabling act to tax treatment of such bonds is § 41-43-130, supra, which provides that "[t]he bonds and the income therefrom are exempt from all taxation in the State except for inheritance, estate, or transfer taxes." (emphasis added). Obviously, the General Assembly has not purported to prescribe how these bonds are to be treated under federal law. In fact, the act makes no explicit reference to federal tax law. It does, however, exempt from State income tax the interest income received from such bonds.

Statutes authorizing the issuance of public securities must be construed in such a way that "when such powers are given ... they are confined to the particular case so authorized." 64 Am.Jur. 2d, "Public Securities and Obligations," § 37. The authority given to JEDA to issue revenue bonds neither expresses nor implies any limitations as to federal tax treatment of

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interest on those bonds. The term "bonds" itself, as used in the enabling act, does not necessarily imply that the bonds must be exempt under federal law. In State of Florida v. Division of Bond Finance, 495 So.2d 183, 184 (Fla. 1986), the Florida Supreme Court concluded that "the term 'bonds' includes both taxable and tax-exempt bonds" We have found no other authority to the contrary. Consequently we conclude that the authority given to JEDA by the General Assembly to issue revenue bonds includes the authority to issue bonds without regard to federal tax treatment. Approval or issuance of any such bonds is proper insofar as the proceedings comply with State law.

It is acknowledged that the State's experience with such bonds, historically, has been that they were treated as tax-exempt under federal law. But there is no mandate in State law that the only revenue bonds which may be approved or issued by the State are those which may be deemed tax-exempt under federal law. The purposes of this act, which are to promote business development and job creation, § 41-43-70, supra, are fully served by the issuance of such bonds whether the interest received by bond holders is treated as taxable or tax-exempt under federal law. For all these reasons it is our opinion that JEDA is authorized to issue such revenue bonds without regard to federal tax consequences. This opinion, of course, does not address the policy issues applicable to a determination as to whether a bond issue should be approved for any particular project.

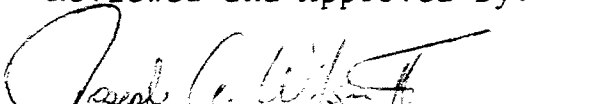
Sincerely yours,




David C. Eckstrom
Assistant Attorney General

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Reviewed and Approved By:



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