

ance of the public schools of this State, certification of teachers, supervision of agencies relative to education, and so forth. Clearly these duties involve an exercise of a portion of the sovereign power of the State.

Based on the foregoing, it is the opinion of this Office that one who would serve as a member of the State Board of Education would hold an office for dual office holding purposes. Furthermore, one who would serve concurrently on the State Board of Education and on a county board of education would most probably contravene the dual office holding prohibition of the State Constitution.

OPINION NO. 85-138

December 4, 1985

The proceeds of a bond issue cannot be diverted to other uses when the purposes of the bond issues are not satisfied.

TO: Greenville County Treasurer
FROM: Joe L. Allen, Jr.
Chief Deputy Attorney General

QUESTION:

Can the proceeds of a bond issue be applied to uses other than those for which the bonds were issued when the bond purposes are incomplete?

DISCUSSION:

It is assumed for purposes of this opinion that the bonds were issued pursuant to the provisions of Chapter 15 of Title 4 of the 1976 Code of Laws. Section 4-15-180 provides that:

"The proceeds derived from the sale of any such bonds shall be deposited with the county treasurer in a special fund to the credit of the county and *shall be applied solely to the purposes for which the bonds were issued*, except that the premium, if any, shall be placed in the sinking fund established by § 4-15-150 and the accrued interest, if any, shall be used to discharge in part the first interest to become due on such bonds."

By express statutory language, the proceeds cannot be diverted to other uses.

Additionally, the Constitution requires that:

"No tax, subsidy or charge shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied." Article X, § 5, South Carolina Constitution.

The last sentence of this provision is the same as that of Article X, § 3 prior to the amendment to Article X in 1977. In the case of *State v. Osborne*, 193 S.C. 158, 7 S.E.2d 526, the Court was confronted with legislation that diverted revenue previously earmarked for specific purposes. The Court there recognized that the General Assembly could, in connection with the imposition of taxes, change its mind from year to year as to the purposes to which each year it will apply the proceeds of a particular source of revenue. The Court there held the General Assembly to be constitutionally prohibited from imposing a tax for a particular purpose and before that purpose is accomplished, diverting the revenue to an entirely different purpose. The Court stated that:

“° ° °. ‘If it had been intended that the Legislature should have any discretion as to the objects to which such funds should be applied, this clause would not have been inserted in the Constitution. Its insertion evidences the intent of the Constitution to deprive the Legislature of all power of misapplication, by an authoritative and imperative appropriation to the specific object set forth in the tax law as the ground of raising the specific tax. If the construction of the constitutional provision stopped short of this, it might entirely defeat the intent, for money might be raised by the Legislature under an Act strictly conformable to the Constitution as a mere pretext, and, afterwards, applied to any purpose desired by the Legislature. The efficient remedy was to stamp at once upon the fund the direction in which it should be disbursed, and thus effectually to appropriate it in the sense of Section 12 (Article IX), which reads as follows: “No money shall be drawn from the Treasury but in pursuance of an appropriation made by law.” ’ (See similar provision in the Constitution of 1895, Article X, Section 9.) And see also *State v. Leaphart*, 11 S.C. 458, 470.”

This follows the general rule as set forth in 63A Am.Jur.2d, *Public Funds*, § 5:

“When funds are raised by the issuance of bonds for a designated purpose, they cannot be diverted to some other purposes. ° ° °.”

The proceeds of the bond issue must, therefore, be expended for the purpose for which the bonds were issued.¹

CONCLUSION:

The proceeds of a bond issue cannot be diverted to other uses when the purposes of the bond issue are not satisfied.

¹ We do not here consider the issue of surplus proceeds, that is, any funds remaining after the purposes for the bond issue are satisfied.