

The State of South Carolina



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May 12, 1987

The Honorable Dill Blackwell
Member, House of Representatives
335-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Blackwell:

You have requested an opinion as to whether certain bonds issued by the Greenville County School Districts in 1987 should be counted toward the 8% bonded indebtedness limit imposed by Article X, Section 15(6) of the South Carolina Constitution.

Article X, Section 15(6) provides that school districts cannot incur bonded indebtedness exceeding 8% of the assessed value of all taxable property in the school district. However, indebtedness incurred through November 30, 1982, that is, five years after Article X took effect (see Act No. 71 of 1977, Sec. 3) are not counted toward the 8% limitation.

The Greenville County School District had, through November 30, 1982, issued a large amount of bonds at a relatively high interest rate. In 1987, the remaining indebtedness on the 1982 (or earlier) bonds was retired by the issuance of a new series of bonds.

When bonds were issued in 1987 at a lower interest rate, it can be said that technically a new indebtedness was incurred; the School District borrowed money, paid off its pre-1982 bonds, and issued bonds in the amount necessary. However, this can be said to have incurred new indebtedness only in the most technical sense; in reality, indebtedness at a lower interest rate was substituted for indebtedness at a higher interest rate. If this substitute indebtedness were counted toward the 8% limitation, the result would obviously be to discourage school districts from taking the economical step of refinancing debt at a lower interest rate. It is therefore doubtful that a court would interpret Article X, Sec. 15(6) to have this effect.

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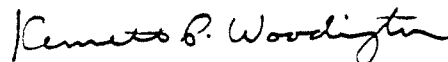
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The one difficulty with the above proposition would occur if the 1987 bond issue would cause the original indebtedness to extend for more than 30 years. Article X, Sec. 15(3) requires all school district general obligation debt to mature within 30 years from the time such indebtedness is incurred. We have no knowledge of the time period for maturity of the 1987 bonds, but if runs longer than 30 years, a difficult question would be presented.

You have also asked who is responsible for seeing that the school district does not issue bonds in excess of the limitation without holding the required referendum. There is no specific statutory or constitutional duty imposed on anyone in this regard, other than the trustees' oath of office. As a practical matter, however, the opinion of bond counsel is necessary before the bonds can be marketed, and this provides an ample safeguard. In the highly unlikely event that both the trustees and bond counsel were to misconstrue the legal requirements, a taxpayer's suit could seek an injunction against the issuance of the bonds.

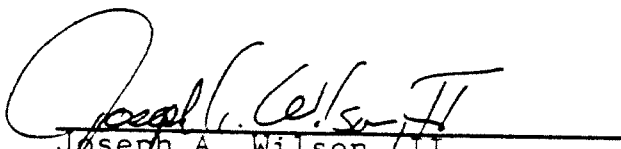
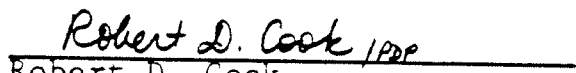
Sincerely yours,



Kenneth P. Woodington
Senior Assistant Attorney General

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