

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 8-24-p20

March 20, 1985

SUBJECT: Revenue and Taxation - Levy Of Tax To Fund Bonded Debt And Sinking Fund Therefor.

SYLLABUS: A statute that pledges the full faith and credit of a political entity for repayment of bonds and requires the auditor to levy and the treasurer to collect a tax therefor is self-executing. No action is required by the governing body of the political entity for the tax levy. The auditor, however, is to determine the mills necessary to produce the tax revenue.

TO: Honorable Betty J. Catoe
Lancaster County Auditor

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

QUESTION: A statute may pledge the full faith, credit and resources of the political entity for the repayment of bonds. It may further direct that there be levied annually by the auditor and collected by the treasurer a tax sufficient to pay the principal and interest of such bonds as they respectively mature and create such sinking fund as may be necessary therefor. Under such statutes what action is needed by the governing body of the political entity for the tax levy?

DISCUSSION:

A statute similar to the above is found in § 59-71-150. It relates to a tax levy to retire a bonded debt of a school district. The statute, by its language, levies the tax for the repayment of the bonds. There is no discretion vested in the governing body or other officials thereof as to whether the tax is to be levied. The only task is for the auditor to determine the number of mills necessary to raise the required revenue.

The Supreme Court considered this issue in Stackhouse v. Floyd, 248 S.C. 183, 149 S.E.2d 437. The Court commented as follows:

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"Plaintiffs also contend that the Act is unconstitutional in that it delegates to the Auditor the authority to tax and the discretion to fix the amount of the tax to be levied to provide debt service on the bonds. The Act, however, gives no such discretionary power to the Auditor but rather compels him to levy annually 'a tax sufficient to pay the principal and interest of the bonds as they respectively mature and to create such sinking fund as may be necessary therefor.' The amount of the levy, therefore, is established by the maturity schedule of the bonds and the interest rate. The Auditor acts in a ministerial fashion as the agent of the General Assembly in this matter. *Evans v. Beattie*, supra; *McLure v. McElroy*, supra."

The amount of the tax levy is thus established by the bonds. The auditor mathematically determines the number of mills necessary therefor. No action is required of the governing body for the tax levy.

CONCLUSION:

A statute that pledges the full faith and credit for a political entity for repayment of bonds and requires the auditor to levy and the treasurer to collect a tax therefor is self-executing. No action is required by the governing body of the political entity for the tax levy. The auditor, however, is to determine the mills necessary to produce the tax revenue.

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