9209-9759

ALAN WILSON
ATTORNEY GENERAL

August 8, 2014

The Honorable Curtis A. Loftis, Jr.
State Treasurer
Wade Hampton Building
1200 Senate St.
Columbia, SC 29201

Dear Mr. Loftis:

By your letters dated March 26th and 27th of 2014, you ask whether a provision of the School Bond Act, Section 59-71-155 in particular, applies to a Tax Anticipation Note ("TAN") authorized pursuant to Article X, Section 15 of the South Carolina Constitution, as well as Sections 11-27-50(4) and 59-69-270 of the South Carolina Code. Our response follows.

## I. Background

Your letter indicates general obligation TANs have been issued by various participating school districts as part of an offering managed by the South Carolina Association of Governmental Organizations ("SCAGO") and known as the South Carolina TAN program ("SC TAN"). According to SCAGO, the SC TAN program "is a cash management tool that maximizes investments by utilizing a pool structure that provides opportunities that allow instant liquidity when only short term borrowing is required." See SCAGO 2014-15 TAN Program (available at http://www.scago.org/201415tanprogram.html, last visited July 31, 2014). Your letter indicates school districts participating in the SC TAN program received a combined $115,098,000 in funds last year.

As indicated in your letter, notes issued as part of the SC TAN program are general obligations of the participating district; are secured by an irrevocable pledge of the "full faith, credit, resources and taxing power" of each district; and are payable from the proceeds of the respective district's *ad valorem* tax levy together with reimbursements from the State of South Carolina in lieu of certain property taxes. According to the circular attached to your letter, investments are further secured as a result of Article X, Section 15, Paragraph 4 of the State Constitution, known as the "Constitutional Withholding Provision" which in the event of a default requires the State Treasurer to withhold funds from the applicable school district's funds to satisfy the debt; as well as Section 59-71-155 of the Code, known as the "Statutory Intercept" which avoids a potential default by advancing money from the State's general fund to remedy a potential default. See Offering Circular, dated June 27, 2013 at p. 2. As we understand it, it is the applicability of the Statutory Intercept to a TAN that serves as the basis of your question.

## II. Law

TANs are general obligation debts of a school district used for cash flow purposes until property tax revenue is collected. See Op. S.C. Att'y Gen., 1980 WL 120783 (July 23, 1980) (explaining TANs are "secured by a pledge of [*ad valorem*] taxes or license fees and a pledge of the full faith, credit and taxing power of the political subdivision.") (citing S.C. Const. Art. X, § 15(7)); Op. S.C. Att'y Gen., 1972 WL 20474 (July 5, 1972) ("[TANs] are short-term obligations payable out of current taxes."); see also Davenport v. City of Rock Hill, 315 S.C. 114, 115 n. 1, 432 S.E.2d 451, 452 n. 1 (1992) ("[TANs] are short term obligations issued during a fiscal year in anticipation of taxes already levied but not collected."). The authority to issue a TAN is specifically provided for in Article X, Section 15(7) of the State Constitution, which states:

> General obligation debt may also be incurred in anticipation of the collection of ad valorem taxes (tax anticipation notes) under such terms and conditions as the General Assembly may prescribe by law. Such tax anticipation notes shall be secured by a pledge of such taxes and a pledge of the full faith, credit and taxing power of the school district. All tax anticipation notes shall be expressed to mature not later than ninety days from the date as of which such taxes may be paid without penalty.

Pursuant to the terms of Article X, Section 15(7)'s mandate that the General Assembly prescribe the terms and conditions for the issuance of TANs, Section 11-27-50 of the Code, entitled "[e]ffect of [n]ew [a]rticle X on bonds of school districts" explains, via subsection four, that:

> [A]ll school districts are authorized and empowered to incur general obligation debt in anticipation of the collection of ad valorem taxes (tax anticipation notes). Tax anticipation notes shall be expressed to mature not later than ninety days from the date as of which such taxes may be paid without penalty. Tax anticipation notes shall be issued pursuant to a resolution adopted by the governing body.

S.C. Code Ann. § 11-27-50(4) (2011). Despite the fact these provisions clearly demonstrate that TANs are considered general obligation debts, and at least pursuant to the terms of Section 11-27-50's legislative title, may be considered a type of bond, South Carolina law has consistently concluded that a TAN does not constitute bonded indebtedness for purposes of constitutional debt limitations. See Davenport v. City of Rock Hill, 315 S.C. 114, 432 S.E.2d 451 (1993) ("TANS have been exempted historically from debt limits."); Caddell v. Lexington County Sch. Dist. No. 1, 296 S.C. 397, 373 S.E.2d 598 (1988) (explaining the eight percent debt limitation placed upon school districts does not include yearly expenses payable from current revenues because the governmental entity is not obligated to impose property taxes for their payments).

Understanding this, we will now address your question, whether the Statutory Intercept applies to TANs.

## III. Analysis

In order to determine whether the Statutory Intercept applies to TANs, we must first look to the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible."). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will" and "courts are bound to give effect to the expressed intent of the legislature." Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). When determining the effect of words utilized in a statute, a court looks to the "plain meaning" of the words. City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). However, courts will reject the plain and ordinary meaning of the words used in a statute when doing so would defeat the intent of the legislature. Greenville Baseball v. Bearden, 200 S.C. 363, 368, 20 S.E.2d 813, 815 (1942). Moreover, where a statute is remedial in nature it must be broadly construed in order to accomplish the object sought. S.C. Dept. of Mental Health v. Hanna, 270 S.C. 210, 213, 241 S.E.2d 563, 564 (1978); Inabinet v. Royal Exchange Assur. of London, 165 S.C. 33, 36, 162 S.E. 599, 600 (1932). Utilizing these principles of statutory construction we believe the Statutory Intercept, which is clearly a remedial statute, must be broadly construed and, as a result, despite the admittedly ambiguous language contained in the statute regarding its application, would be better viewed as applying to a general obligation debt such as a TAN.

### A. The Statutory Intercept is a Remedial Statute

The Statutory Intercept is clearly a remedial statute.[1] In fact, this Office, interpreting subsections (B) to (E) of the current version of the Statutory Intercept, previously explained the

[1] The Statutory Intercept, which as mentioned above is codified at Section 59-71-155 of the Code, states as follows:

> (A) This section applies to existing and future general obligation bonds issued by an operating school unit. For purposes of this section, general obligation bonds are obligations expressly secured by the full faith, credit, and taxing power of the operating school unit that issues the bonds.
>
> (B) The county treasurer of a county in which any operating school unit has outstanding general obligation bonds shall notify the State Treasurer on the fifteenth day prior to the due date of any payment of principal or interest on the bonds if the county treasurer does not have on deposit, or there is not on deposit with a paying agent, the sum required to make that payment. If the county treasurer or paying agent does not have on deposit the sum required to make that payment on the third business day prior to the due date, the State Treasurer shall transfer to the county treasurer from the general fund of the State the sum necessary to enable the county treasurer or paying agent to make payment of principal and interest then coming due. However, the total amount to be

statute is "intended to provide the necessary funds from the State's general fund in advance of any default" with the obvious purpose of insuring that a school district's debt obligations are met. Op. S.C. Att'y Gen., 2004 WL 3058238 (December 15, 2004). In other words, the obvious purpose of the Statutory Intercept is to remedy a school district's impending default on outstanding general obligation debt by advancing funds to satisfy such debt from the State's general fund. Thus, we believe, consistent with South Carolina law, that the terms of the Statutory Intercept must be construed broadly so as to remedy a school district from defaulting on general obligation debts.

### B. Liberally Construed, the Statutory Intercept Applies to TANs

Subsection (A) of the Statutory Intercept states, "[f]or purposes of this section, general obligation bonds are *obligations expressly secured by the full faith, credit and taxing power of the operating school unit that issues the bonds.*" S.C. Code Ann. § 59-71-155(A) (emphasis added). While we recognize this provision could be strictly construed to mean simply that "general obligation bonds" are bonds that are issued by an "operating school unit," we decline to

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advanced to operating school units for this purpose in any fiscal year may not exceed the amount appropriated in that year under the Education Finance Act. Immediately upon receipt of the sum from the State Treasurer on a bond for which a paying agent other than the county treasurer has been appointed, the county treasurer shall transfer to the paying agent all amounts required to effect punctual payment of the sum due. The State Treasurer shall withhold from the operating school unit from the next and subsequent distributions of any revenue to that operating school unit sufficient monies necessary to reimburse the general fund of the State for the sums applied to pay the principal and interest on the bonds and for the investment earnings that would have been received on the monies advanced from the general fund. In addition, the State Treasurer may direct the county treasurer to apply to the payment due on the bonds any monies being held by the county treasurer in any fund, other than the sinking fund, derived from state revenue for the operating school unit.

(C) The amounts forwarded to any county treasurer by the State Treasurer under subsection (B) must be applied by the county treasurer or paying agent solely to the payment of the principal of or interest on the bonds. The State Treasurer shall notify the State Department of Education, the county auditor, and the superintendent of the operating school unit of payments made and sums withheld pursuant to this section.

(D) Whenever the State Treasurer makes a payment to a county treasurer pursuant to subsection (B) and withholds sums from revenue to the operating school unit pursuant to this section, or directs a county treasurer to apply monies for this purpose, the county treasurer shall pay to the operating school unit all collections of property taxes levied for the payment of the operating school unit's general obligation bonds until the sums so withheld or applied have been paid by the county treasurer to the operating school unit from such tax levies.

(E) A county auditor in any county in which the provisions of subsection (B) have been implemented for the payment of principal and interest on the general obligation bonds of an operating school unit shall adjust the millage levied for the payment of those bonds in the next fiscal year to the level necessary to provide for the punctual payment of all sums due during that year and shall file a report with the State Treasurer demonstrating compliance with this subsection not later than five business days after setting the millage for this fiscal year.

do so since the Statutory Intercept was previously interpreted as a remedial statute designed to prevent school districts from defaulting on outstanding general obligation debt, meaning it, like other remedial statutes, must be broadly construed to fulfill its purpose. See Hanna, 270 S.C. at 213, 241 S.E.2d at 564 ("A remedial statute should be liberally construed in order to effectuate its purpose."); Inabinet, 165 S.C. at 36, 162 S.E. at 600 ("A statute remedial in nature should be liberally construed in order to accomplish the object sought."). Accordingly, we believe the intent of the legislature in drafting subsection (A) is better understood as redefining the phrase "general obligation bond" to mean, within the limited context of the Statutory Intercept, that *any* general obligation debt "expressly secured by the full faith, credit and taxing power of the operating school unit" is governed by the Intercept. See Brown v. Martin, 203 S.C. 84, 88, 26 S.E.2d 317, 318 (1943) ("The General Assembly has power to prescribe legal definitions of its own language, and such definitions are generally binding upon the Courts, and should prevail."); Goldston v. State Farm Mut. Auto. Ins. Co., 358 S.C. 157, 177-78, 594 S.E.2d 511 (Ct. App. 2004) ("[T]he lawmaking body's construction of its language by means of definitions of the terms employed should be followed in the interpretation of the act or section to which it relates and is intended to apply."); City of Seattle v. Buchanan, 90 Wash.2d 584, 604, 584 P.2d 918, 928 (1978) ("The general rule is that the legislature may define a word, giving it a broader meaning than its ordinary meaning."). Stated differently, subsection (A) rather than merely reiterating that general obligation bonds are school district bonds, changes the meaning of the phrase "general obligation bond" for purposes of the Statutory Intercept to mean that *any* general obligation debt "expressly secured by the full faith, credit and taxing power of the operating school unit" is subject to the Intercept's terms.[2] As a result, the Statutory Intercept, rather than designating bondholders as the only individuals subject to remedial relief in the form of funding advanced from the general fund, instead provides any individual holding general obligation debt from a school district with the anti-default protections from the Intercept. Therefore, it is the opinion of this Office that the better understanding of subsection (A) of the Statutory Intercept, is that the Legislature, for purposes of the Intercept only, redefined the phrase "general obligation bond" so as to apply the Intercept's remedial anti-default provisions to any general obligation debt secured by the full faith, credit and taxing power of the operating school district, which of course includes TANs.

## IV. Conclusion

In conclusion, because the Statutory Intercept is a remedial statute, its terms must be broadly construed as required by South Carolina law. See Hanna, 270 S.C. at 213, 241 S.E.2d at 564 ("A remedial statute should be liberally construed in order to effectuate its purpose."); Inabinet, 165 S.C. at 36, 162 S.E. at 600 ("A statute remedial in nature should be liberally construed in order to accomplish the object sought."). As a result, we believe, despite the admittedly ambiguous language contained in the statute regarding its application, the better

[2] To the extent this was not the object of the Legislature in enacting the Statutory Intercept, particularly Section 59-71-155(A), we suggest legislative clarification on the matter.

reading of the Intercept, Section 59-71-155(A) in particular, is that it redefines the phrase "general obligation bonds" to mean *any* general obligation debt "expressly secured by the full faith, credit and taxing power of the operating school unit." We are bound by this definition and therefore conclude that since the law clearly identifies a TAN issued pursuant to Article X, Section 15(7) and Section 11-27-50(4) as a general obligation debt secured by the full faith, credit and taxing power of a school district, it is the opinion of this Office that the terms of the Statutory Intercept apply to a TAN. However, because we realize subsection (A) of the Intercept is subject to more than one interpretation, we invite the Legislature to clarify subsection (A) to eliminate any confusion regarding the extent of the Intercept's applicability in cases such as these.

Sincerely,

Brendan McDonald
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REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General