

1984 WL 249992 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 12, 1984

***1 SUBJECT: Revenue and Taxation—Custody of Bond and Operating Revenue of the Aiken County Nursing Home.**

The Treasurer of Aiken County, under § 44-7-1410, et seq., is not required to have custody of the bond and operating revenue of the Aiken County Nursing Home.

Mr. Michael L. Horton
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Local Government Division

QUESTION:

Is custody of the bond and operating revenue of the Aiken County Nursing Home vested in the Treasurer of Aiken County?

APPLICABLE LAW:

[§ 44-7-1410, et seq., Code of Laws of South Carolina](#), 1976; Aiken County Ordinance 81-3-16.

DISCUSSION:

A county is given authority by [§ 44-7-1410](#), et seq., to issue bonds to construct and acquire hospital facilities to serve the needs of the people of the State. Aiken County, pursuant to that authority, issued bonds in the amount of two million seven hundred thousand dollars to construct a hospital facility. A facility is defined in § 44-7-1430(d) to include nursing homes. The bonds are payable from operating revenues and the full faith and credit of the county is not pledged. The county constructed a nursing home and entered into a contract with National Health Corporation to operate and manage the home. A term of the agreement is that: 'All funds generated by the financing of the nursing home shall be managed for the owner by NHC * * *. All funds received and generated by the operation of the nursing home, * * * shall be funds of the owner and shall be deposited in a respectable bank or banks chosen by NHC, in an agency account or accounts.'

The agreement further provides that NHC:

'* * * shall be free to pay operating expenses of the nursing home and to make other payments, including amortization of any loans * * *.'

Any funds in excess of the above are to be paid the county. The excess funds, however, are placed into a special account in the name of Aiken County which is managed by NHC. Such funds cannot be expended except for the operation, improvements, expansion and any other purposes necessary therefor.

Your inquiry is whether any or all of such funds should be placed in the custody of the county treasurer.

As a general rule, the treasurer is the custodian of all county funds. The office, however, is one created by statute and the duties may be prescribed by the General Assembly. [Bank of Johnston v. Prince](#), 136 S.C. 439, 134 S.E. 387. Here, the General Assembly has provided authority for a county council to contract with another for the deposit and custody of the funds. Article VIII, Section 7 mandates that the General Assembly provide by general law for the 'structure, organization, powers, duties, functions and the responsibilities of the counties * * *'. The General Assembly by [§ 44-7-1410](#) has set forth these powers relative to a hospital facility.

Section 44-7-1440 confers upon the county council the power:

'(3) To enter into loan agreements with any hospital agency * * * prescribing payments to be made by the hospital agency to the county or its assignee to meet the payments that become due on bonds, including terms and conditions relative to the acquisition and use of hospital facilities and the issuance of bonds.

* * *

***2** (9) To do all things necessary or convenient to carry out the purposes of this article.

* * *

(10) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this article, with persons, firms, corporations, governmental agencies and others.' (Emphasis added)

Section 44-7-1450 prescribes the terms for the issuance and execution of the bonds. It specifically sets forth that the bonds:

'* * * may contain such provisions not inconsistent herewith, all of which shall be provided in the proceedings of the county board authorizing the bonds.'

The county ordinance for the bond issue recognized the terms of the management agreement heretofore quoted by an express declaration.

Section 44-7-1610 directs that the monies received from the bond issue and from other revenues, including operating revenue, be 'trust funds'. The depository acts as the trustee.

All of the above reflect legislative intent that the governing body of a county is to prescribe by ordinance for the deposit and custody of these funds. Aiken County Council has provided that NHC is to have custody and control of the funds subject to the trust created by statute. The county treasurer thus has no responsibility as to the custody and payment of such funds.

CONCLUSION:

The Treasurer of Aiken County, under [§ 44-7-1410](#), et seq., is not required to have custody of the bond and operating revenue of the Aiken County Nursing Home.

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