

1981 WL 157896 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 5, 1981

*1 The Honorable Billy L. Eaddy
House of Representatives
State House
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Eaddy:

You have asked for an informal opinion regarding the Constitutionality of the following arrangement. First, a group of incorporated municipalities in the Pee Dee area wish to establish a farm marketing center to serve their communities pursuant to Section 46-19-110, *et. seq.*, South Carolina Code of Laws (1976), as amended by Act 104 of 1981. Second, the center would be financed by revenue bonds issued in compliance with Section 4-29-10, *et. seq.*, CODE, as amended by Act 518 of 1980. Third, the center would be leased upon completion to a private entity for its operation.

Act 104 removed the population requirements contained in the original statute and further provided that a group of counties or municipalities may combine to establish a farm marketing center at the discretion of their governing bodies. The statute also authorizes the governing bodies to lease the center, or any part thereof, for operation. In order to pass constitutional scrutiny, however, it must be determined whether the center serves a proper public purpose. Based upon the highly agricultural nature of the Pee Dee and the obvious legislative intent to be inferred from the enactment of the statute, it is the opinion of this office that such a center serves a proper public purpose.

A slightly more complicated analysis is necessary to determine the constitutionality of the revenue bonds. It must first be determined whether that portion of Act 518 which extended the authority to issue industrial revenue bonds to municipalities is still in force in light of the recent case of *State of South Carolina, ex. rel McLeod v. Riley, et al.* Opinion No. 21456, filed May 20, 1981. That decision struck down portions of Sections Six and Ten of Act 518 as being unconstitutional. Included within Section Ten is an amendment of the definition of 'governing board' to include governing bodies of municipalities, thereby giving them the authority to issue industrial revenue bonds.

Because the definitions section is capable of standing alone without the addition of new words or phrases after the unconstitutional portions of Section 10 are stricken and because it was the express legislative intent for the challenged sections to be severable, it is the opinion of this office that the extension of the authority to issue industrial revenue bonds to municipalities found in Act 518 was not affected by *McLeod v. Riley*. [See *Gillespie v. Blackwell*, 164 S.C. 115, 161 S.E. 869 (1931)].

It must next be determined whether the marketing center is a 'project' as defined by Section 4-29-10. You have indicated that the center would be used for the marketing, distribution, or processing of agricultural products, all functions which qualify under the statutory definition of 'project.'

Having determined that the revenue bonds will be issued for a proper public purpose pursuant to statutory authority, the final consideration must be of the terms of the repayment of the principal and interest. The marketing center, if leased to a private entity, must be leased for a sufficient amount to recover all costs to the municipalities. [Section 4-29-30, CODE](#); [Elliott v. McNair](#), 250 S.E. 75, 156 2d 421 (1967). Under the constitutional considerations of [Elliott](#) and the express provisions of the statute, this bonding arrangement must not create a lien or other obligation against the credit or general taxing power of the municipalities.

*2 In summary, it is the opinion of this office that the arrangement you have described is constitutionally sound if there is strict compliance with the requirements of Sections 46-19-110, et. seq., and 4-29-10, et. seq., CODE.

Sincerely,

Clifford O. Koon, Jr.
Assistant Attorney General

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