

1979 S.C. Op. Atty. Gen. 50 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-34, 1979 WL 29040

Office of the Attorney General

State of South Carolina

Opinion No. 79-34

February 27, 1979

***1 SUBJECT: Property Taxation—Application of Funds to Purposes Other Than for Which Levied.**

Taxes levied and collected to pay principal of unmatured bonds and interest as it accrues cannot be diverted for payment of the principal and interest of a new bond issue.

TO: Honorable John Thomas Wood
Member of House of Representatives
District 17, Greenville County

QUESTION:

There exists a surplus of funds collected pursuant to Section 11 of Act 181, Acts of 1971. Can this surplus be used to pay the principal and interest on bonds issued in 1979 or subsequent tax years?

APPLICABLE LAW:

Act 181, Acts of 1971; Article 10, Section 5, Article 10, Section 15.

DISCUSSION:

Article 10, Section 15 grants power to the General Assembly to prescribe the terms and conditions under which school districts may incur bonded indebtedness when such is not otherwise provided by the Constitution. Subsection 6 of the Section, however, carries forward existing powers of districts to issue bonds for a designated period that includes 1979. We look, therefore, to the 1971 Act and to Section 5 of Article 10 to determine the power of the school district. Section 11 of the Act provides in part that: 'For the payment of the principal of and interest on all bonds issued pursuant to this act, as they respectively mature and for the creation of such sinking fund as may be necessary therefor, the full faith, credit and taxing power of the school district shall be irrevocably pledged and there shall be levied annually by the Auditors of Greenville, Spartanburg and Laurens Counties and collected by the Treasurers of Greenville, Spartanburg and Laurens Counties in the same manner as county taxes are levied and collected a tax without limit on all taxable property in the school district (which lies in their respective counties) sufficient to pay the principal and interest of such bonds as they respectively mature and to create such sinking fund as may be necessary therefor.'

Article 10, Section 5, however, provides in the last sentence that:

'Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.'

It is academic that this provision could not have been complied with because no liability existed for the unissued bonds when the tax was collected. Our Court in the case of [State v. Osborne](#), 193 S. C. 158, 7 S.E. 2d 526 states:

‘Speaking to this point in [Morton, Bliss & Co. v. Comptroller Gen'l.](#), 4 S. C. 430, 456 when considering a similar question involving a provision of the Constitution of 1868, which is identical with our present provision, the Court said: ‘If it had been intended that the Legislature should have any discretion as to the objects to which such funds should be applied, this clause would not have been inserted in the Constitution. Its insertion evidences the intent of the Constitution to deprive the Legislature of all power of misapplication, by an authoritative and imperative appropriation to the specific object set forth in the tax law as the ground of raising the specific tax. If the construction of the constitutional provision stopped short of this, it might entirely defeat the intent, for money might be raised by the Legislature under an Act strictly conformable to the Constitution as a mere pretext, and, afterwards, applied to any purpose desired by the Legislature. The efficient remedy was to stamp at once upon the fund the direction in which it should be disbursed, and thus effectually to appropriate it in the sense of Section 12 (Article IX) which reads as follows: ‘No money shall be drawn from the Treasury but in pursuance of an appropriation made by law.’” (See similar provision in the [Constitution of 1895, Article X, Section 9.](#)) And see also [State v. Leaphart](#), 11 S. C. 458, 470.’

*2 It is understood that the bonds for which the tax was collected have not fully matured and that a liability for payment continues to exist. Under such, the ‘surplus’ funds cannot be diverted to payment of the principal and interest of a new bond issue. The surplus constitutes a part of the sinking fund as referred to in the 1971 Act for payment of the presently issued and unpaid bonds.

CONCLUSION:

Taxes levied and collected to pay principal of unmatured bonds and interest as it accrues cannot be diverted for payment of the principal and interest of a new bond issue.

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