

1980 WL 120990 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 3, 1980

\*1 Mr. John Stephen Hooks, Jr.  
Office of the Governor  
Post Office Box 11450  
Columbia, South Carolina 29211

Dear Mr. Hooks:

You have requested an opinion concerning the power of the Governor and the State Treasurer to refuse to issue State Institution Bonds pursuant to [§ 59-107-70, Code of Laws of South Carolina](#), 1976, and State Highway Bonds pursuant to [§ 57-11-290, Id.](#) It is the opinion of this Office that either executive officer may refuse to issue those bonds even if he finds sufficient revenues to support the bonds.

As to the State Institution Bonds, the statute provides that '[i]t shall be the duty of the Governor and the State Treasurer to examine the request [by the Budget and Control Board for the issuance of said bonds], and if they shall jointly approve it . . . they shall be empowered to provide for the issuance of State Institution Bonds in the amount approved by the State Board.' [§ 59-107-70, Id.](#) The wording of this statute provides that the two executive officers have discretionary authority with respect to the issuance of said bonds. It first provides that they must jointly 'approve' the bond issue. [Id.](#) And then after the other requirements of the statute are met, they are simply 'empowered' to provide for the issuance of the bonds. The ordinary meaning of the word 'empowered' is a grant of permission rather than a command to perform an act. [Bregel v. Julier, 251 A.2d 891, 896, 253 M.D. 103 \(1969\)](#); but see [Hotel Casey Co. v. Ross, 23 A.2d 737, 740, 343 P.A. 573 \(1942\)](#). Since the statute does not command that these two officers issue the bonds, it is the opinion of this Office that either or both could refuse to issue State Institution Bonds, without regard to the reason for their refusal.

Likewise with respect to the issuance of State Highway Bonds, the applicable statute provides that after certain conditions are met, 'the Governor and State Treasurer shall be empowered to issue bonds in accordance with the request of the resolution of the State Board.' [§ 59-11-290, Id.](#) (emphasis added) The meaning of words used in these two statutes *in pari materia* should be construed consistently. [§ 51.02 SUTHERLAND, STATUTORY CONSTRUCTION \(4th ed.\)](#). For reasons stated above, if an official is empowered to perform an act, the import is that of permission rather than command. [Bregel v. Julier, supra](#); but see [52 Am.Jur.2d, 'Mandamus' § 175](#). Therefore either executive officer may, in the exercise of his discretion, decline to do that which the law merely permits him to do.

For these reasons, it is the opinion of this Office that the Governor and the State Treasurer may refuse to issue State Institution Bonds and State Highway Bonds. Either executive officer may refuse to issue those bonds even if the finds sufficient revenues to support the bonds.

Sincerely yours,

David C. Eckstrom  
Assistant Attorney General

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