

1979 S.C. Op. Atty. Gen. 163 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-116, 1979 WL 29119

Office of the Attorney General

State of South Carolina

Opinion No. 79-116

October 2, 1979

***1 SUBJECT: Municipalities—Tax Anticipation Notes and Taxes Pledged**

The taxes pledged for repayment of tax anticipation notes issued by a municipality are those taxes to be collected, or that can reasonably be expected to be collected, in the municipality's current fiscal year.

TO: Thomas O. Lawton, Jr., Esq.
Attorney for Town of Allendale

QUESTION:

The Town of Allendale did not provide for a sufficient tax levy for the fiscal year 1979–1980 to meet expected expenses. The Town is now without the necessary funds to meet expenses and by ordinance has provided for the borrowing of \$75,000. The loan is to be evidenced by a note and secured by anticipated tax collections.

The question is whether taxes to be collected for the current year are to be pledged or taxes to be collected during the fiscal year that begins July 1, 1980.

APPLICABLE LAW:

[Article X, Section 14\(8\) of the South Carolina Constitution](#); §§ 5–7–30 and 11–1–30 of the 1976 Code.

DISCUSSION:

Prior to the amendments to Article X of our Constitution, the authority for a municipality to borrow money in anticipation of tax collections was found in [Article 8, Section 7 of the Constitution](#) and Section 47–275 of the 1962 Code. Both, however, are no longer a part of the constitutional and statutory laws of this State. The language of those provisions clearly limited the right of a municipality to pledge the taxes that were to be or that could reasonably be expected to be paid during the municipality's current fiscal year.

In the case of [Luther v. Wheeler, 73 S.C. 83, 52 S.E. 874](#), the court held:

‘But even the power to contract debts for municipal purposes should be restricted to such debts as the council could reasonably expect, and in good faith did expect, to pay from the ordinary revenue of the town for the current municipal fiscal year.’

The provisions of [Article X, Section 14\(8\)](#) now provide:

‘General obligation debt may also be incurred in anticipation in the collection of ad valorem taxes or licenses (tax anticipation notes) under such terms and conditions as the General Assembly may prescribe by general law. Such tax anticipation notes shall be secured by a pledge of such taxes or license fees and a pledge of the full faith, credit and taxing

power of the political subdivision. All tax anticipation notes shall be expressed to mature not later than ninety days from the date as of which such taxes or license fees may be paid without penalty.'

The statutory authority is that:

'Wherever under the general law or a special act authority is given to borrow money in anticipation of the collection of taxes levied or to be levied in any municipality, county, school district or other political subdivision of the State for the payment of which the taxes so levied or to be levied are pledged, a negotiable promissory note or notes may evidence such indebtedness.' [Section 11-1-30](#).

*2 [Section 5-7-30](#) provides that the Town may:

'* * * borrow in anticipation of taxes; and pledge revenues to be collected and the full faith and credit of the municipality against its note * * *.'

As seen, this language contains only the limitation that the notes issued to secure the borrowed funds must mature within ninety days of the last date the taxes could be paid without penalty. Such does not, however, negate the limitation of the municipality's authority to pledge only those revenues that are to be paid during the municipality's current fiscal year. If there is doubt in the power of the municipality, such must be resolved against the power.

'The rule is generally stated that the scope of sovereignty delegated to municipal corporations should not be enlarged by liberal construction. The powers conferred are strictly construed, and any fair, substantial, and reasonable doubt concerning the existence of any power, or any ambiguity in the statute upon which the assertion of such power rests, is to be resolved against the corporation, and the power denied. * * *.' [56 Am.Jur.2d, § 195, p. 248](#).

The court held in the Luther case and restated in the case of [United States Rubber Products v. Town of Batesburg](#), 183 S.C. 49, 190 S.E. 120, that:

'The power to borrow money is not a necessary incident of municipal life, and hence does not exist unless expressly given, or unless some duties are imposed or powers conferred on the corporation which manifestly could not be exercised at all without borrowing money.' [Luther v. Wheeler](#), supra.

The court in that case in reference to the limitation further stated:

'And the general view of Judge Dillon is that the usual grants of municipal powers contemplate that the expense of the execution of such powers shall be met year by year from revenue derived from current taxation and other ordinary sources.'

CONCLUSION:

The taxes pledged for repayment of tax anticipation notes issued by a municipality are those taxes to be collected, or that can reasonably be expected to be collected, in the municipality's current fiscal year.

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