1978 WL 35116 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
September 19, 1978

***1** Huger Sinkler, Esquire
Sinkler Gibbs & Simons, P.A.
Post Office Box 340
Charleston, South Carolina 29402

Dear Mr. Sinkler:
You have requested the opinion of this Office as to the propriety of the State Housing Authority to issue revenue bonds for a program described below.

Section 5 of the Housing Authority Act of 1977 (Act No. 76 of 1977) sets forth a number of programs in furtherance of which the Authority may issue revenue bonds with the approval of the Budget and Control Board. The Authority's decision as to which one or ones of these programs to use is apparently dictated by practical considerations such as the cost of the program vis-a-vis the cost of servicing the bonds. At present, the most feasible among the programs is some form of Mortgage Purchase Plan. § 5(1)(c) of the Act authorizes one form of such a plan. Under the plan provided for in that section, the Authority would use the proceeds of its bonds to purchase mortgages from lenders. The lenders would then have new capital available which would be used to originate new mortgage loans to purchasers within the Act's beneficiary class. The lenders would receive the money first and then use it to make loans.

This method has run into two problems. The first is in finding enough existing mortgages with the quality of security necessary to secure the bonds. The second problem lies in policing the lenders, i.e., in making sure that the funds once received by them are used only for mortgages for the beneficiary class.

The aforementioned problems have led to the program which the Authority now has proposed. Under that method, the Authority makes a commitment to a mortgage lender in lieu of actually advancing the funds. The lender is required to use its own money to make FHA or VA (i.e. qualified under the Act) loans to the beneficiary class and the Authority then buys those loans once they have been made. The Authority thus purchases mortgages which have the requisite degree of security and which will already have been made only to persons in the beneficiary class.

In summary, the plan which comports with the literal language of the act has the Authority advancing its funds first, the loans being made subsequently. The proposed plan has the loans being made first, and give the Authority the power to not purchase the mortgages unless they are ‘security-qualified’ and made only to persons within the beneficiary class. The mortgage lenders, rather than the Authority, bear a greater burden under this proposal. The proposal still involves the purchase of qualified mortgages with the proceeds of bond sales. The only real difference is in the time when the bond proceeds go to the lenders, and that change results in greater security for the Authority. The difference thus appears to be more one of form rather than substance.

The legal question presented is whether bonds may be issued under the Act for this program although the Acts' literal language does not so provide. The program, as suggested above, is not so much an extension of power as it is a more restrictive use of the power granted under § 5(1)(c).

***2** As you have noted in your letter of September 12, 1978, Section 5(10) gives the Authority broad discretion in structuring its programs. That section provides in part:

The Authority may exercise * * * all or any part or combination of the powers granted herein [and may] do any and all such acts and things as may be necessary or convenient or desirable in order to secure its notes or bonds or . . . as will tend to make the notes or bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein . . ..

In this case the Authority would change only the form of the transaction in a way that will better secure its bonds, while leaving the substance of the method the same. It is therefore the opinion of this Office that the proposal here in question is within the Authority's powers as set forth in Sections 5(1)(c) and 5(10) taken in combination.

Case law in this state and elsewhere is to the same effect. In Doyle v. Rosen, 229 S.C. 67, 91 S.E.2d 887 (1956), the Court held that the Revenue Bond Act for utilities should be liberally construed to accomplish the legislative objectives. In addition, the general law is usually to the effect that general welfare legislation should be liberally construed to aid in the accomplishment of its objectives. See, e.g., 3 Sands, Sutherland on Statutory Construction, §§ 71.10, 71.04 and 71.08 (1974). See also Law v. Prettyman & Sims, 149 S.C. 178, 146 S.E. 815 (1929) (legislation promoting public safety).

To repeat and to conclude, it is our opinion that the program outlined above would be within the powers of the State Housing Authority as set forth in Section 5 of Act No. 76 of 1977.
Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

1978 WL 35116 (S.C.A.G.)

End of Document