

1975 WL 29109 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 29, 1975

\*1 The Honorable James B. Edwards  
Governor

The Honorable Grady L. Patterson, Jr.  
State Treasurer

The Honorable Henry Mills  
Comptroller General

The Honorable Rembert C. Dennis  
State Senator

The Honorable F. Julian LeaMond  
Member  
House of Representative Members  
State Budget and Control Board

Gentlemen:

This Office has been requested to advise with respect to the application of the following portion of Section 20 of the current General Appropriations Act which limits the issuance of General Obligation Bonds by the Budget and Control Board so as not to exceed five percent of the revenue of the last fiscal year, and provides also as follows:

'Provided, further, that for the fiscal year 1975-76 the directive may be waived if necessary to the extent that bond issues beyond the five percent limitation may be necessary to finance projects or purposes now under contract.'

The basic Act governing the issuance of General Obligation Bonds is Act No. 1377 of 1968 and Acts amendatory thereto. Such Acts invariably designate certain projects or purposes for which General Obligation Bonds may be made available. The procedure devised by the Board for necessary funding for the various projects is for the agency involved to submit to the Board a Form E-1 which submits the necessary data for consideration by the Board and includes such matters as fees, site preparation and testing, schematic designs, construction costs, projected operation costs, etc. The Board then indicates on the form at a space provided its approval or disapproval. Withdrawal of funds as the project proceeds is then made periodically for payment of such costs.

The question now presented is as to the meaning of the phrase 'projects or purposes now under contract,' as used in the proviso set forth above.

It is considered that 'projects and purposes' are synonymous and that the matter resolves into consideration of whether the payment of amounts allocable to a project or certain initial contractual obligations, such as architects' fees, site preparation and testing, etc., means that this entire project is considered 'under contract.'

In my opinion, 'projects or purposes now under contract' has reference to those segments of an entire project which, on June 12, 1975, the effective date of the General Appropriations Act, were subject to a contractual obligation to be

completed. For example, withdrawal of funds may have been 'approved' by the Board prior to that date and contractual obligations for the employment of the services of an architect may have been entered into. Constitutional provisions require that such contractual obligations not be impaired, and whether or not the local sponsoring authority, or the Board itself, may be subject to these constitutional requirements, the appropriate course of action would clearly be for the Board to authorize such payments. In that sense, the waiver provision which the Board is authorized to undertake is meaningless. By way of further illustration, an architect may have been employed but contractual obligations have not arisen to complete any of the remaining portions of the project, such as the construction of a building or other matters. As to these, the Board has the discretion to waive the five percent limitation to grant funds necessary for the completion of the entire project.

\*2 A reasonable contention might be made that the approval or payment of a portion of a project, such as for architects' fees, site preparation and testing, etc., may be tantamount to the waiver of the entire project costs. But this view is not, in my opinion, necessarily compelled. Only a court adjudication can answer the question: 'Is the approval and payment for a portion of a preliminary part of a project equivalent to the approval of the entire project costs?' The seeking of a declaratory judgment by the Board on this issue, if the Board should follow the procedures above suggested, can be instituted to determine this.

The foregoing answers nearly all of the questions submitted. Factual data must be obtained in order to establish conclusive answers to some of the remaining.

Very truly yours,

Daniel R. McLeod  
Attorney General

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