

1973 WL 26859 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 27, 1973

*1 The Honorable J. Verne Smith
State Senator
Box 528
Greer, South Carolina 29651

Dear Senator Smith:

Your recent letter raises the following questions with respect to the issuance of bonds by the trustees of the Greenville Memorial Auditorium District pursuant to a statute approved July 9, 1973.

1. In Section 5 of the Hill, can the Trustees issue bonds when in their reasonable judgment seat and use tax will not be adequate to pay principal and interest? A three-mill levy is anticipated.

The answer to this question is that the Trustees probably can issue bonds without a finding that the seat and use tax will be sufficient to pay the principal and interest.

Consideration of some of the various provisions of the Act, which are somewhat inconsistent, is necessary to form a judgment on this problem:

a. The obvious intent of the Act is to minimize or eliminate the necessity of resorting to ad valorem taxes for payment of the bonds. Sections 1 and 5(a).

b. Section 5(a)(11) requires that the Trustees make an affirmative finding that revenues from the seat and use charges will be adequate to pay the bonds issued under the 1973 Act, as well as Act No. 762 of 1971. If there were nothing further stated in the Act with regard to such affirmative finding, the answer would clearly be that an affirmative finding; of the kind required would be a condition precedent to the issuance of the bonds. However other portions of the Act must be considered.

c. Section 5(g) authorizes the Trustees to pledge the revenues from the seat and use charges, or any portion thereof, to the payment of the bonds.

d. Section 5(f) provides that if seat and use charges are pledged to the payment of the bonds, the revenues from ad valorem taxes upon property in the District shall be pledged to the payment of the bonds.

Consideration of all of the foregoing provisions, read together, leads me to the conclusion that the Trustees are required to impose and pledge the seat and use charges for the payment of bonds if it is at all practicable to do so. I am informed that some or all of the seat and use charges for the existing auditorium are already pledged under the 1971 Act and, of course, there is a limit upon seat and use charges beyond which the cost of tickets and the charges for the use of the auditorium and coliseum would be prohibitive. The law seems to recognize this by authorizing the pledge of a portion of the seat and use charges and by use of the phrase if such charges are imposed. It is my view, however, that the Trustees are required to impose the charges to the limit beyond which the costs would be prohibitive. Tax revenue must then be provided to pay the remainder.

2. Are the Trustees required to use the seat and use tax or can they decide to pay off bonds with millage only?

In my opinion, the Trustees are required, as indicated above, to impose seat and use charges to the fullest extent possible, but if further seat and use charges cannot be imposed without making cost for tickets and for the use of the auditorium and coliseum prohibitive, bonds may be issued with millage only.

*2 I emphasize that different constructions of the Act can be reached with justification and that the foregoing are merely my views, attempting to give weight to the various provisions of the law. Undoubtedly, sale of the bonds in the circumstances outlined above will require a court adjudication as to the validity of the issue.

I emphasize also that the foregoing views are with respect to general obligation bonds only.

3. Could the Trustees sell ten million dollar bonds backed by seat and use tax and millage—then when they are paid down, say three million dollars, sell three million more and put the balance back up to ten million dollars? Could they do this on their own authority?

It is my opinion that general obligation bonds are limited in the amount of ten million dollars and that once bonds equal to this full amount have been issued, the right to issue further bonds under the Act is exhausted, and that additional legislation will be necessary in order to issue or reissue new bonds. The answer to this question is, therefore, 'no' with respect to general obligation bonds.

With respect to short-term borrowing, which is limited to ten million dollars at any time outstanding and revenue bonds payable solely from seat and use charges, bonds may be issued to the extent of not exceeding ten million dollars at any time outstanding. Therefore, the answer to the above question with respect to short-term borrowing and revenue bonds is 'yes'.

4. Can they (the Trustees) exceed ten million dollars in total debt, including the three methods of raising funds?

In my opinion, the answer to this question is 'yes'.

You ask additionally:

Please give example of maximum liability backed by full faith and credit of the District, plus other notes and bonds backed by only seat and use tax.

The constitutional debt limitation on the District restricts the amount of general obligation bonds that may be issued, as the full faith and credit and taxing power of the District is pledged to their repayment. Short-term obligations and revenue bonds, being solely payable from proceeds of the seat and use charges, are not affected by the bonded debt limitation applicable to general obligation bonds.

You have also enclosed a copy of a letter from a constituent, a portion of which has been answered by the foregoing comments. With respect to the constituent's comment that a majority of the Trustees must impose the seat and use charges, etc., I only note that majority action by the Trustees is required for any effective action to be undertaken by them in the issuance of bonds or any other procedures. Your constituent is correct, in my opinion, in concluding that revenue bonds and general obligation bonds may be issued, the former being authorized as 'an alternative and additional method of raising funds for capital improvements.' He is correct also, in my view, in concluding that the question to be submitted in the referendum relates only to the construction of a coliseum and authorization to issue general obligation bonds, whereas should the referendum result in approval of the question, all portions of the Act would become effective.

*3 With best wishes,
Very truly yours,

Daniel R. McLeod

Attorney General

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