

4946/5651



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 19, 1995

The Honorable Harry F. Cato
Member, House of Representatives
407 Blatt Building
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Representative Cato:

By your letter of May 17, 1995, to Attorney General Condon on behalf of a constituent, you requested an opinion as to various issues surrounding the Greenville Memorial Auditorium and the proposed Greenville Arena. This Office was also supplied with a number of exhibits to further explain the proposed undertaking. Each of the questions posed by the enclosures to your letter will be addressed separately, as follows.

Question 1

Your constituent's first question alleges that the proceedings relative to the Arena are illegal because the Greenville Memorial Auditorium District does not include all of Greenville County.

Research as to the exact boundaries is made difficult because not all of the acts of the General Assembly relative to the Greenville Memorial Auditorium District are listed in the South Carolina Code's Index to Local Laws. Act No. 691 of 1969 indicates that the boundary lines of the Greenville County Sewer Authority will serve as the boundaries of the Auditorium District. Reference is therefore necessary to some other reference materials (such as maps filed in the appropriate county office, perhaps) to determine the exact boundaries of the Auditorium District.

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Even though I am unable to determine exactly the boundaries of the District by reference to research materials available within our office library, I am not at all certain that the fact that the Auditorium District may encompass less than the entire county has anything to do with illegality of any undertaking. As a practical matter, I would advise that there are literally hundreds of special purpose districts in this state. Some encompass multi-county areas and many, very small areas of counties. Almost all special purpose districts predate home rule and were established because there was no other way to provide the needed services in a particular geographic area. Merely because such a district occupies less than the entire area of a county, the district is not illegally in existence or in operation. Thus, this issue is without merit with respect to your constituent's questions.

Question 2

Your constituent's second question was that the operation of the current Memorial Auditorium was transferred illegally to ScheerSports in July 1994. Documents relative to the contract process were forwarded to this Office for review.

The operation of the Memorial Auditorium seems to have been accomplished by what is commonly called "privatization," that is, the use of a private company or concern to carry out certain functions traditionally carried out by a governmental body. The exact concern as to the illegality was not specified. This Office does not review contracts or comment on the wisdom or necessity or sufficiency thereof when this Office has not participated in the negotiation thereof. Op. Att'y Gen. dated November 15, 1985. Thus, I am not in a position to comment further, particularly since the specific behavior or activity giving rise to the complaint was not specified.

Question 3

Your constituent's third inquiry was that because of many improprieties in the operation of the Memorial Auditorium for the past five years, the District should be dissolved. Enclosed with your letter was an audit conducted with respect to the District.

Whether a special purpose district "should" be dissolved is a question of policy rather than a question of law; this Office is restricted to commenting on questions of law. In any event, the Office of the Attorney General is without authority to dissolve a special purpose district. County councils have been given certain dissolution authority with

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respect to special purpose districts, pursuant to S.C. Code Ann. §4-9-80; your constituent might wish to discuss his concerns with Greenville County Council.

Question 4

Your constituent's fourth inquiry states that the voters of Greenville County have turned down a proposal three times to proceed with such a project because of the exposure of public funds.

A review of the ballots shows that in 1973 an advisory referendum was conducted relative to a proposed building project and bond issue. In 1982, the referendum question voted upon by the electorate of Greenville County related to repeal of a bond ordinance:

Shall the Greenville County Council sustain Ordinance No. 925, which authorized the Greenville Memorial Auditorium District to issue not exceeding \$18,000,000 of its general obligation bonds for the purpose of construction and equipping a coliseum on lands which have already been acquired by the District adjacent to the present Auditorium, and also authorized a millage on all taxable property in the District for the purpose of paying the principal and interest on said bonds?

Thus, the 1982 referendum did not approve or reject a project; it rejected a bond ordinance which had previously been adopted by Greenville County Council. The results defeating the bond ordinance were binding on council. The referendum held in 1990 was advisory and not binding on council. The project being undertaken at this time does not appear to be the same as projects which were advised against in earlier times.

I could not say that the project being undertaken at this time has been turned down three times by the voters of Greenville County "because of the exposure of public funds."

Question 5

Your constituent's next inquiry relates to memoranda of understanding which were issued in May and June 1994. He further advised that only resolutions to proceed ensued until February 13, 1995, when a contract appeared. According to the constituent, there was no public input received on the contract dated February 1995. The Greenville County Council allegedly gave its scrutiny at a special called meeting February 13, 1995, where the bond attorneys and ScheerSports were present. No public input

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was allegedly allowed. The contract was allegedly absent of Exhibit D, Summary of Material Terms of Arena Operating Agreement.

While a county council may certainly invite input from the public on such matters, I am not aware of a statute or constitutional provision which would absolutely mandate that the public be permitted to provide input on a matter such as this.

Question 6

Your constituent's next inquiry states that public notice of a bond hearing for issuance of general obligation bonds for the Auditorium District not to exceed \$12,000,000 was published on February 18, 1995; February 25, 1995; and March 4, 1995, in the Greenville News in the Legal Notices section.

The statute which sets forth notice requirements relative to authorization of a special purpose district to issue bonds, by a county council, are found in S.C. Code Ann. §6-11-840 (1976):

The notice required by §6-11-830 shall be published once a week for three successive weeks in a newspaper of general circulation in the county. Such notice shall state:

(a) The time of the public hearing, which shall be not less than sixteen days following the first publication of the notice.

(b) The place of the hearing.

(c) The proposed amount of bonds to be issued by the special purpose district.

(d) A statement setting forth the purpose for which the proceeds of such bonds are to be expended.

(e) A brief summary of the reasons for the issuance of such bonds and the method by which the principal and interest of such bonds are to be paid.

From one of the enclosures with your letter, I observe that the first notice was published on February 18, 1995. The public hearing was held on March 7, 1995. A review of the legal notice shows that it contained all of the required information and further that the date of the hearing was in compliance with §6-11-840. It therefore appears that the statutory requirements with respect to notice were met, upon review of information provided to this Office.

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Question 7

Your constituent's next question states that on March 9, 1995, a final version of an Arena Development Agreement was made available to Greenville County Council. It is alleged that this document contains many, many areas of undefined exposure to public funds.

Your constituent's letter does not contain specific allegations as to the "many, many areas of undefined exposure to public funds." As stated earlier, this Office does not comment on contracts concerning which this Office has not participated in the negotiation. Such would be a matter to discuss with Greenville County Council as the contracting entity.

Question 8

Your constituent's next inquiry states that all conversation involving the new Coliseum has hinged on no tax increase. The bond notice plainly states: full faith, credit and taxing power of the District shall be irrevocably pledged and there shall be levied annually by the Auditor of Greenville County and collected by the Treasurer of Greenville County in the same manner as county taxes are levied and collected, a tax without limit on all taxable property in the District sufficient to pay the principal and interest on the bonds as they mature and to create such sinking fund as may be necessary therefor.

Article X, Section 14 of the South Carolina Constitution authorizes political subdivisions of the State to incur bonded indebtedness; such includes special purpose districts. Subsection (3) of that section defines "general obligation debt" to mean "any indebtedness of the political subdivision which shall be secured in whole or in part by a pledge of its full faith, credit and taxing power." Moreover, S.C. Code Ann. §6-11-990, as to issuance of bonds by special purpose districts, requires:

For the payment of the principal and interest of all bonds issued pursuant to this article, as they respectively mature, and for the creation of such sinking fund as may be necessary therefor, the full faith, credit and taxing power of the special purpose district shall be irrevocably pledged, and there shall be levied annually by the auditor, and collected by the treasurer of the county in which the special purpose district is located, in the same manner as county taxes are levied and collected, a tax without limit on all taxable property in the special purpose district sufficient to pay the principal

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and interest of such bonds as they respectively mature and to create such sinking fund as may be necessary therefor. Such bonds may be additionally secured by a pledge of revenues derived from the undertaking to be financed and, if so additionally secured, the tax levy herein ordered shall be reduced to the extent that moneys for the payment of the principal or interest of such bonds shall be in the hands of the county treasurer on the occasion for the imposition of the tax levy herein otherwise ordered; provided, that the ad valorem tax levy shall also be reduced to the extent that there has been deposited with the county treasurer moneys derived from any revenues not pledged to additionally secure such bonds on the occasion in each year when the ad valorem tax levy is to be made, and in all instances where an annual tax levy is so reduced, the moneys derived from such unpledged revenues be applied to the payment of principal and interest of the bonds and to no other purpose.

Clearly, upon the issuance of such indebtedness, the special purpose district must pledge the full faith, credit, and taxing power of the district for the payment of the principal and interest of the debt. From the enclosures with your letter, it is obvious that all parties intend and anticipate that the current one mill tax levy will be sufficient to repay the debt. It is required nevertheless that the full faith, credit, and taxing power be pledged in the event that a shortfall in anticipated revenue should occur. This is not illegal and is in fact required for the issuance of such bonds.

Question 9

Your constituent's last inquiry indicates that a copy of a proposed ordinance along with a bond amortization schedule was acquired by him on March 16, 1995. He noted that such proposed ordinance already had an April date placed in anticipation of passage without public consent. Another copy of this same ordinance and bond amortization schedule was allegedly presented at the Greenville County Council meeting on Tuesday, March 21, 1995, also with an April date printed in anticipation of passage.

S.C. Code Ann. §6-11-890 permits but does not require a special election to be held relative to the issuance of bonds by a special purpose district. Article X, Section 14 of the Constitution requires an election only if the debt limitation will be exceeded by issuance of such bonds; from documents enclosed with your letter, it is apparent that the debt ceiling will not be exceeded. Thus, consent of the people is not needed in this instance. I am not aware of any other issue inherent in the question which would invalidate the proposed ordinance.

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This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it satisfactorily responds to your constituent's inquiries.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General