

The State of South Carolina

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March 27, 1989

The Honorable James M. Waddell, Jr.  
Senator, District No. 46  
111 Gressette Building  
Columbia, South Carolina 29202

Dear Senator Waddell:

You have asked whether S-379 may originate in the Senate in conformity with Article III, §15 of the South Carolina Constitution. While you question ultimately is one which must be resolved by the General Assembly, it is our opinion that Article III, §15 is not violated if S-379 originates in the Senate.

Article III, §15 provides in pertinent part:

Bills for raising revenue shall originate in the House of Representatives but may be altered, amended or rejected in the Senate; all other Bills may originate in either House, and may be amended, altered or rejected by the other.

Our Supreme Court has consistently interpreted this provision to "only appl[y]...to bills to levy taxes in the strict sense of the word, and not to bills for other purposes, which may incidentally raise revenue." State v. Stanley, 131 S.C. 513, 517, 127 S.E. 574 (1925). See also, State ex rel. Colman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936). The opinions of this Office are in accord. See, e.g., 1964-65 Op. Atty. Gen. No. 1817, p. 66; Op. Atty. Gen., May 21, 1981; Op. Atty. Gen., Sept. 3, 1985. In order for the constitutional provision to be applicable, it is generally recognized that the bill in question must have the

avowed purpose of increasing the funds for meeting the general governmental needs by a compulsory imposition without giving any direct and immediate equivalent in return for the payout thereof.

71 Am. Jur.2d, State and Local Taxation, §9.

The Honorable James M. Waddell, Jr.

Page 2

March 27, 1989

Moreover, it is acknowledged that the question of origin of a particular bill "is not often litigated." Indeed,

[t]he general tendency favors narrow construction of what constitutes a revenue bill which originates in the lower house. There is general agreement for example that the constitutional provision does not apply to bills which serve other primary purposes and only incidentally produce revenue.

1 Sutherland, Statutory Construction, §9.06. As one authority has observed,

[i]n most instances, attacks upon legislation on the ground that it originated in the upper legislative body and not in the lower house ... have failed for the reason that the particular legislation was deemed not to be a revenue bill within the meaning of such requirement.

4 A.L.R.2d 973 at 975.

With these general principles in mind, we turn now to their application to S-379.

The title to S-379 reads as follows:

A BILL  
TO DECLARE THE LEGISLATIVE INTENT WITH RESPECT TO  
THE IMPLEMENTATION OF ACT 682 OF 1988 ESTABLISH-  
ING THE SOUTH CAROLINA RESOURCES AUTHORITY AND  
AUTHORIZING IT TO ISSUE BONDS WHOSE PROCEEDS WILL  
BE USED TO MAKE LOANS AND GRANTS AVAILABLE TO  
LOCAL GOVERNMENTS FOR PROJECTS APPROVED BY THE  
AUTHORITY: AND TO REAFFIRM ACT 682 OF 1988.

More specifically S-379 notes that Act 682 of 1988 created the South Carolina Resources Authority "which proposes to issue its revenue bonds in accordance with the act for the purpose of refunding outstanding bonds of local governmental units held by the Farmers Home Administration." The Bill further states the desirability that the Authority issue bonds "within the next ninety days so that proceeds may be used to enable local governmental units to pay off outstanding loans to the Farmers Home Administration at a substantial discount which will not be available after May 9, 1989." S-379 further notes that certain portions of Act 682 of 1988 will likely "be presented to the court for a confirmation of their constitutionality."

The Honorable James M. Waddell, Jr.

Page 3

March 27, 1989

The purpose of the General Assembly, in S-379 is stated, therefore, to be that the authority proceed to issue "bonds which can be issued independent of the prospective court challenge. It is expressly declared that "the General Assembly declare that the remaining portion of Act 682 of 1988 is capable of being executed in accordance with the legislative intent, wholly independent of those features described above, or any of them." Finally, S-379 reaffirms in all respects Act 682 "consistent with the legislative intent set forth in this act."

A brief summary of Act 682 of 1988 is also helpful. Act 682 created the South Carolina Resources Authority, declared to be a public instrumentally of the State. The powers and duties of the Authority are detailed. The principal power specified is to issue revenue bonds and use both public and private funds and make loans and grants to local governments for projects approved by the Authority. A "project" is defined by the Act to include "any water supply, sewer system, sewage, wastewater treatment facility, or any other project hereafter committed to the Authority by subsequent enactment of the General Assembly." A "local government" is defined to include counties, municipalities, special purpose or special service district, Commission of Public Works and "any private eleemosynary water companies, private eleemosynary sewer companies and private eleemosynary sewer companies and private eleemosynary companies which provide both water and sewer services." While the Authority is authorized to issue bonds, Act No. 682 expressly declares that such bonds do not constitute a "debt" or a pledge of the State's credit, but are payable solely from the revenues of the Authority.

In an opinion dated March 15, 1965, (1964-65 Op. Atty. Gen. No. 1817, p.66), this Office reviewed a bill authorizing the County Board of Aiken County to issue bonds to provide funds for capital expenditures of Aiken County. A number of cases were cited in that opinion including Geer v. Board of Commissioners, 95 F. 435 which had held that a Colorado statute providing for the refunding of bonded indebtedness of several counties and authorizing the levy of taxes to liquidate the bonds and coupons was not a bill for "raising revenue" within the meaning of the Colorado Constitution. Our opinion concluded that the bill in question had as its primary purpose to make certain capital improvements in Aiken County "as well as the expenditures relating to the assessment of all property in Aiken County and reclamation of an area of swampland." Therefore, concluded the opinion, Article III, §15 was not applicable.

In a second opinion, this Office concluded that a bill authorizing school districts to levy and collect a sales tax could originate in the Senate without contravening Article III, §15. 1981 Op. Atty. Gen., No. 81-46, p.49 (May 15, 1981). Finally, we have

concluded that the State Appropriations Act need not originate in the House pursuant to Article III, §15. Op. Atty. Gen., September 3, 1985. There, we concluded that, while the Appropriations Act contains a number of tax provisions, its primary purpose is to make appropriations to meet the ordinary expenses of state government.

The primary purpose of S-379 is, we believe, to declare the legislative intent regarding the implementation of Act No. 682 of 1988 by the South Carolina Resources Authority and to reaffirm Act No. 682 of 1988. Moreover, the primary purpose of Act No. 682 of 1988 was, not to raise revenue, but to establish the Resources Authority and to specify its powers and duties. 1/

It is true that much of Act No. 682 deals with the issuance of bonds for "legal government" projects as defined. It is likewise true that the Authority is deemed an instrumentally of the State with general control over the funds for use as specified in the Act. However, the primary purpose of the bill as well as that of Act No. 682 (which is reaffirmed) is to set forth the means by which the Authority is to fulfill the Legislature's specified purpose, i.e. to "encourage the investment of both public and private funds ... and to make loans and grants available to local governments for projects approved by the Authority." Therefore, in our opinion, S-379 is not a bill "to levy taxes in the strict sense of the word", but is more closely akin to a bill "for other purposes" which also raises revenue. State v. Stanley, supra; Geer v. Board of Commissioners, supra; 1964-65 Op. Atty. Gen., No. 1817, supra. This is particularly the case where §11-37-90 of Act No. 682 expressly states that bonds issued by the Authority do not constitute a debt or a pledge of the faith and credit of the State, but are payable solely from the revenue, money or property of the Authority.

Moreover, while the authorization given the Authority is deemed by the General Assembly to be a public purpose, i.e. to promote public health, welfare and safety and to foster economic growth in South Carolina, we do not deem the Bill to be, in the strict sense, one which imposes a tax "coverable into the Treasury of the effected sovereign for its own general governmental uses ...." Mikell v. Philadelphia School District, 359 Pa. 113, 58 A.2d 339. In

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1/ In addition, Act. No. 682 establishes the Water Resources Coordinating Council to set priorities for sewer, wastewater treatment and water supply facility projects, Section 11-37-200. Further, the Act provides for the creation of a water pollution revolving fund to assist in providing loans in conformity with the Federal Clean Water Act.

The Honorable James M. Waddell, Jr.

Page 5

March 27, 1989

Mikell, the bill in question imposes a tax upon the residents of first class school districts to meet the State's educational needs and such bill was not deemed a revenue-raising measure. We believe the same logic would apply here to a measure which, in order to achieve its purpose of stimulating economic growth raises revenue to aid local government projects.

Moreover, even if S-379 and Act No. 682 of 1988 are viewed primarily as bond legislation, cases in other jurisdictions have generally held that bond authorization acts need not originate in the House of Representatives. See e.g., Walton v. Carter, Ky. 337 S.W. 2d 647 (1960); Dalton v. State Property and Buildings Commission, Ky. 304 S.W.2d 342 (1957); Kervick v. Bontempo, 29 N.J. 469, 150 A.2d 34 (1959); Morgan v. Murray, 134 Mont. 92, 328 P.2d 644 (1958).

As stated earlier, it is ultimately a matter for the General Assembly to determine in which house a bill is introduced and in which house it may be introduced first. However, it is our opinion that Article III, §15 of the State Constitution does not require that S-379 be first introduced in the House of Representatives.

If I can be of further assistance, please let me know. With kind regards, I am

Very truly yours,



Robert D. Cook  
Executive Assistant for Opinions

RDC:sds