

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

June 23, 1989

SUBJECT: Taxation & Revenue - Taxing, Bonding And
Borrowing Authority Of Stroud Memorial
Hospital District.

- SYLLABI:
1. The Stroud Memorial Hospital District is without authority to unilaterally levy a tax.
 2. Should it be held in a judicial action that the Stroud Memorial Hospital District is a political subdivision of the State, then it may issue indebtedness bonds as authorized by the General Assembly.
 3. While not free of doubt, the Stroud Memorial Hospital District, if it be determined that it is a political subdivision of the state, may in all probability incur indebtedness by a pledge of income from a revenue-producing project or from a special source.

TO: Ms. Earlene G. Jones, Administrator
Stroud Memorial Nursing Home

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: What is the authority of the Stroud Memorial Hospital District to levy taxes, issue bonds and borrow funds?

APPLICABLE LAW: Article X, Section 14, South Carolina Constitution; Section 6-11-810, et seq.; Section 11-27-10, et seq., South Carolina Code of Laws, 1976; Act 1239, Acts of 1964; Acts 613 and 624, Acts of 1965.

DISCUSSION:

Act 1239, Acts of 1964, created the District and set forth its powers. That Act was subsequently amended in 1965. The question is treated in three parts.

- a. The authority to levy a property tax.

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Section 4(18) of the 1964 Act provides in part that:

"The commissioners shall have the following powers and duties:

(18) To raise funds for discharging the duties vested in it. The commission [the district is governed by a commission] shall notify the auditor and treasurer of any desired tax whereupon they shall levy and collect the tax requested . . . "

A similar legislative grant of taxing power was held to violate Article X of the South Carolina Constitution.

"Accordingly we hold that the General Assembly may not, consistent with Article X, Section 5, delegate the unrestricted power of taxation to an appointive body."

Crow v. McAlpine, 277 S.C. 240, 285 S.E.2d 355 (1981).

The members of the Commission are appointed, and accordingly, the District is without authority to unilaterally levy a tax.

CONCLUSION:

The Stroud Memorial Hospital District is without authority to unilaterally levy a tax.

(b) The issuance of bonds.

Act 624, Acts of 1965 provides in part that:

". . . the Stroud Memorial Hospital District is hereby divested of all authority to issue bonds."

By this legislation, the District is without authority to issue indebtedness bonds.

Article X of the South Carolina Constitution, however, was amended in 1977 and now provides in subsection 2 of Section 14 that:

"The political subdivisions of the State shall have the power to incur bonded

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indebtedness in such manner and upon such terms and conditions as the General Assembly shall prescribe by general law within the limitations set forth in this section and Section 12 of this Article."¹

The 1964 Act created the District as a public corporation. Whether the District is a political subdivision within the intent and meaning of the above-quoted language is not free of doubt.² This question cannot be conclusively settled without a judicial determination and such would in all probability be necessary to any bond issue. Should the District desire to issue bonds, it should confer with its attorney so that this issue may be resolved and the procedure and conditions for the bond issue followed.³

¹The General Assembly has provided a procedure in Section 6-11-810, et seq., for special purpose districts to issue bonds. The same requires approval by an elective body, the county council. If this was not required then Crow v. McAlpine, supra, would apply. Section 11-27-40 further continues the provisions of Section 6-11-810 and authorizes bond debt as provided by Article X, Section 14.

²A public corporation exists for public political purposes only, such as counties, cities, towns and villages. York County Fair Assn. v. South Carolina Tax Commission, 249 S.C. 337, 154 S.E.2d 361. The District is probably a political subdivision of the State, however, a judicial action is needed to resolve the question.

³Should the court conclude that the District is not a political subdivision of the State, then in such event, the issue is whether the provisions of the 1964 and 1965 Acts are controlling. We do not address that issue, however, would advise that under such a holding, the District would be a part of the Greenville County government as provided by home rule legislation.

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CONCLUSION:

Should it be held in a judicial action that the Stroud Memorial Hospital District is a political subdivision of the State, then it may issue indebtedness bonds as authorized by the General Assembly.

(c) The power to borrow funds.

The 1965 Act, Number 624, further provided the authority to the district:

"To negotiate and make loans with any governmental agency, . . . "

As stated, Article X of the South Carolina Constitution was amended and now sets forth the authority of a political entity to incur indebtedness.

It provides in part that:

"Such political subdivisions shall have the power to incur indebtedness in the following categories and in no others:

- (a) General obligation debt; and
- (b) Indebtedness payable only from a revenue-producing project or from a special source as provided by subsection (10) of this section . . . "

The Article further provides:

"(10) Indebtedness payable solely from revenue-producing projects or from a special source, which does not involve revenues from any tax or license, may be issued upon such terms and conditions as the General Assembly may authorize by general law . . . "

The Legislature must therefore provide by general law for the district to incur this kind of indebtedness.

The General Assembly by Act 125, Acts of 1977, now codified as Section 11-27-10, et seq., provided that:

"All laws now in force permitting any politi-

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cal subdivisions to incur indebtedness (and to issue bonds or other evidences of debt) which shall be payable solely from a revenue-producing project or from a special source, which source does not involve revenues from any tax or license, shall continue in force and effect after the ratification date . . . "

Section 11-27-40(7).

Under this language, the provisions of Act 625, Acts of 1965, continue in force and effect. Subsection 3 of the Act adds to the powers of the Commission.

"(19) To negotiate and make loans with any governmental agency, including Greenville County, which may appear to be in the best interest of the district and to provide in such loans the manner in which the loan is to be repaid."

Upon consideration of the constitutional language authorizing a political subdivision to incur indebtedness with a pledge of non-tax revenue and the provisions of Section 11-27-40(7) and Act 625, Acts of 1965, The Stroud Memorial Hospital District most probably can make loans with other governmental agencies.⁴

CONCLUSION:

While not free of doubt, The Stroud Memorial Hospital District, if it be determined that it is a political subdivision of the state, may in all probability incur indebtedness by a pledge of income from a revenue-producing project or from a special source.

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⁴The effect, if any, of Crow v. McAlpine, supra, upon this authority, is not known and can only be determined by a judicial action. Additionally, the 1965 Act is a special and not a general law. There is a serious question of whether the 1977 Act gives effect to a special law that authorized the District to borrow the funds. See Michelin Tire Corp. v. Spartanburg, 281 S.C. 31, 314 S.E. 2d 8.