

1981 S.C. Op. Atty. Gen. 100 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-79, 1981 WL 96605

Office of the Attorney General

State of South Carolina

Opinion No. 81-79

September 17, 1981

**\*1 SUBJECT: Statutory procedure to challenge or repeal a county ordinance authorizing a bond issue.**

A county ordinance that authorizes a bond issue for a special purpose district may be challenged under § 6-11-880 or repealed under § 4-9-1220.

TO: Honorable Dill Blackwell  
Representative  
District No. 17

QUESTION:

Are the provisions of § 4-9-1220 and § 6-11-880 available to challenge or seek the repeal of a county ordinance that authorizes a bond issue for a special purpose district?

APPLICABLE LAW:

[Article X, § 14 of the South Carolina Constitution](#); §§ [6-11-880](#), [4-9-120](#), [4-9-1220](#) and [11-27-40\(8\) of the 1976 Code of Laws](#).

DISCUSSION:

The Greenville County Council has by ordinance authorized the Greenville Memorial Auditorium District to issue \$18,000,000 in general obligation bonds. The full faith and credit of the District is pledged for repayment. You request the opinion of this office of whether the provisions of [§ 6-11-880 of the 1976 Code of Laws](#) is the only remedy available to challenge the council's action. The section provides:

‘Any person affected by the action of the county board may, by action de novo instituted in the court of common pleas for such county, within twenty days following the last publication of notice prescribed by § 6-11-870, but not afterwards, challenge the action of the county board.’

The above was enacted in 1974 as a part of Act 1189. This was an act to permit the governing body of a county to authorize special purpose districts existing within the county prior to March 7, 1973, to issue bonds. The Greenville Council acting under the 1974 act by resolution of August 19, 1981, first authorized the issuance of the bonds. Upon advice probably given by reason of [§ 4-9-120 of the 1976 Code](#), the council subsequently authorized the issue by ordinance. [Section 4-9-120](#) provides in part that:

‘The council shall take legislative action by ordinance \* \* \*.’

The above was a part of the Home Rule Act of 1975 and is legislation subsequent to the 1974 act that authorized the bond issue by resolution. The two provisions necessarily had to be construed together. By reason of settled rules of statutory construction, we take no exception to the advice given the council that the bond issue should be authorized by ordinance.

[Section 4-9-1220 of the 1976 Code](#) provides as follows:

'Within sixty days after the enactment by the council of any ordinance authorizing the issuance of bonds, notes or other evidence of debt the repayment of which requires a pledge of the full faith and credit of the county, or requires the approval of the issuance of bonds by a public service district within the county a petition signed by qualified electors of the county equal in number to at least fifteen percent of the qualified electors voting in the last preceding county council election, or if such ordinance relates to a bond issue for a public service district, fifteen percent of the qualified electors of the district voting in such election, may be filed with the clerk of the county council requesting that any such ordinance be repealed.'

\*2 The above was a part of the 1975 Home Rule Act, Act 283, Acts of 1975.

Subsequent to the above, Article X of the Constitution was amended in 1977. [Section 14\(2\)](#) of the Article provides in part that: '(2) The political subdivisions of the State shall have the power to incur bonded 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.'

The bond issue can thus be issued only as authorized by the General Assembly.

In 1977 by Act 125, now codified as [§ 11-27-40\(8\)](#), the General Assembly provided as follows:

'The governing body of each of the political subdivisions of the State shall be empowered to incur general obligation debt for their respective political subdivisions as permitted by [Section 14](#) of New [Article X](#) and in accordance with its provisions and limitations. All laws shall continue in force and effect after the ratification date, but each of such laws is amended as follows: 8. The initiative and referendum provisions contained in Article 13, Chapter 9 of Title 4 and Chapter 17 of Title 5 of the 1976 Code, shall not be applicable to any other ordinance authorizing the issuance of general obligation bonds unless a notice, signed by not less than five qualified electors, of the intention to seek a referendum be filed both in the office of the Clerk of Court of the county wherein such political subdivision is situate and with the Clerk or other recording officer of the political subdivision. Such notices of intention to seek a referendum shall be so filed within twenty days following the publication by the governing body of the political subdivision of notice in a newspaper of general circulation in such political subdivision of the adoption of such ordinance.'

The question therefore is whether the ordinance may be challenged by the provisions of [§ 4-9-1220](#) and/or [§ 6-11-880 of the 1976 Code](#) of Laws.

In the opinion of this office, it may. The settled rules of construction require that the 1974 and 1975 acts be harmonized.

'Different statutes in pari materia, though enacted at different times, and not referring to each other, must be construed together as one system and as explanatory of each other.' [Fishburne v. Fishburne](#), 171 S.C. 408, 172 S.E. 426. For other cases see 17 S.C.D., [States](#), Key 223, et seq.

It is evident that [§ 6-11-880](#) is intended for the judicial review of the ordinance or resolution for errors of law that would invalidate the ordinance. The court cannot substitute its judgment for that of the council of whether the bonds should or should not be issued. That is a legislative function and the judicial exercise of that power would be beyond the court's jurisdiction.

'The relationship of the courts to the other departments of government is such that they cannot perform executive duties or interfere with the performance of legislative duties. They are not endowed with visitorial powers to approve or disapprove the manner in which county commissioners or supervisors exercise the powers conferred upon them. They cannot reach or control the commissioners in this regard unless in some manner the latter have brought themselves within judicial cognizance. So long as the commissioners act honestly and in good faith and keep within the limits of the powers given them by the law, the courts have no authority to interfere with or control their legitimate discretion. \* \* \*.' 56 Am.Jur.2d, Municipal Corporations, § 192, p. 242.

\*3 Section 4-9-1220 provides for a direct challenge to the ordinance by the electorate upon need or discretion. The action of the electorate under this section is not a challenge of the legality of the ordinance. It instead seeks the repeal of the same.

Under such, there is no conflict between § 6-11-880 and § 4-9-1220 and the provisions of either or both sections may be pursued. It should be noted that the provisions of § 11-27-40(8) must be satisfied before the procedure provided in § 4-9-1220 is available.

CONCLUSION:

A county ordinance that authorizes a bond issue for a special purpose district may be challenged under § 6-11-880 or repealed under § 4-9-1220.

Joe L. Allen, Jr.  
Deputy Attorney General

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