

1975 S.C. Op. Atty. Gen. 94 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4021, 1975 WL 22318

Office of the Attorney General

State of South Carolina

Opinion No. 4021

April 23, 1975

*1 Honorable Solomon Blatt
Speaker Emeritus
House of Representatives
State House
Columbia, South Carolina

Dear Mr. Blatt:

You have requested an opinion as to the constitutionality of that portion of a bill bearing Calendar No. H.2535 which authorizes the issuance of \$5,000,000 of State capital improvement bonds to allow the South Carolina Public Railway Commission to construct and operate a railway line in the vicinity of Witherbee. The issuance of the bonds is conditioned on a proviso set forth in the bill which recites:

Provided, Further, That the issuance of bonds authorized under this Item is conditioned on the State's obtaining an agreement with the Amoco Chemical Corporation, which will guarantee to reimburse the State of South Carolina for interest and principal payments on these bonds to the extent that such payments may not be covered by railway revenues as provided for above; and for any operating costs beyond such revenues. The Budget and Control Board shall require a certificate from the State Treasurer, the Attorney General and State Auditor to the effect that this condition has been met before bonds are issued.

Sections 9-371 et seq., Code of Laws of South Carolina, 1962, as amended, created the South Carolina Public Railways Commission and prescribed its duties and functions. Those Code sections do not authorize the Commission to construct railway lines; assuming, however, that the bill itself impliedly amends Sections 9-371 et seq., by providing the statutory authority for the Commission to construct a railway line, then the Commission would not be performing an unauthorized act by building it.

The provision authorizing the issuance of \$5,000,000 of State capital improvement bonds to allow the Commission to construct a railway line does not appear to be facially unconstitutional since, as it declares, the purpose is:

. . . to provide railroad service to industrial and commercial enterprises now and hereafter locating in this geographic area.

The fostering of the economic growth and development of South Carolina by assisting prospective as well as existing industries doing business here has been held to be a public purpose for the purposes of the Industrial Revenue Bond Act. See, [Elliott v. McNair](#), 250 S.C. 75, 156 S.E.2d 421 (1967).

However, the proviso conditioning the issuance of the bonds upon the guarantee of Amoco Chemical Corporation to reimburse the State for interest and principal payments on the bonds in the event the railway revenues prove insufficient may, on the facts, be violative of that portion of Article X, Section 6, to the South Carolina Constitution which provides: The credit of the State shall not be pledged or loaned for the benefit of any individual, company, association or corporation; . . .

to the extent that only Amoco makes use of the line [see, [Jacobs v. McClain](#), 262 S.C. 425, 205 S.E.2d 172 (1974)] and acts, in essence, as surety on the State bonds.

*2 It appears to us that the governing bodies of the counties through which the contemplated railway line will pass already possess the authority to issue revenue bonds, pursuant to the Industrial Revenue Bond Act of 1967, to achieve the same result as that provision of Bill H.2535 sub judice would. See, 55 STAT. 120 (1967); 57 STAT. 454 (1971). Section 2(3) of that Act defines 'project,' in part, as follows:

(3) 'PROJECT' shall mean any land and any buildings and other improvements thereon . . . and all other machinery, apparatus, equipment, . . . which shall be deemed necessary, suitable or useful by the following or any combination thereof: (a) any enterprise for the manufacturing, processing, or assembling of any agricultural or manufactured products; (b) any commercial enterprise engaged in storing, warehousing, distributing or selling products of agriculture, mining or industry; (c) any enterprise for research in connection with any of the foregoing or for the purpose of developing new products or new processes or improving existing products or processes; and (d) any enlargement, improvement or expansion of any existing enterprise in items (a), (b), and (c) of this subsection. 55 STAT. Act No. 103, §2(3) at 122 (1967).

Moreover, the fact that more than one county will be involved does not alter the applicability of the Industrial Revenue Bond Act since Section 2(2) of the Act defines 'county board' and then continues:

. . . and in the event that any project shall be located in more than one county, the term COUNTY BOARD shall relate to the governing bodies of the several counties wherein such project shall be located . 55 STAT. Act No. 103, § 2(2) at 122 (1967).

We would also point out, however, that if industrial revenue bonds are issued, then, in order to qualify as interest-bearing obligations exempt from federal income taxes, the limitations imposed by Sections 103(c)(6)(A) et seq., of the Internal Revenue Code of 1954, including a \$1,000,000 maximum on the aggregate face amount of the bonds issued, must be considered.

With kind regards,

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