



2004 - 190

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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July 28, 2004

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County Commissions – Improvement
Districts - Bonds

Under section 11-99A-15(a) of the Code of Alabama, the Winston County Commission may not provide a moral obligation pledge to repay bonds issued by the Battle Creek Improvement District.

Dear Mr. Manasco:

This opinion of the Attorney General is issued in response to your request on behalf of the Winston County Commission.

QUESTION

May the Winston County Commission provide a moral obligation pledge to repay bonds issued by the Battle Creek Improvement District?

FACTS AND ANALYSIS

The proposed resolution accompanying your letter of request states, in pertinent part, as follows:

WHEREAS, Resolution 12703 was adopted by the County authorizing the formation of the "Battle Creek Improvement District" (Battle Creek) under Chapter 99A of Title 11, Code of Alabama (1975); and

...

WHEREAS, in order to raise funds to provide financing for the project, Battle Creek intends to issue bonds

. . .

WHEREAS, the County has determined that the success of the project would be significantly enhanced if the County were to provide a "Moral Obligation Pledge" with respect to said bonds, without guaranteeing or pledging the full faith and credit of the County with respect to said project; the County has determined said "Moral Obligation Pledge" will provide an inducement to the prospective purchasers of the bonds to purchase said bonds;

NOW, THEREFORE, in consideration of the premises and covenants and agreements set forth herein, the County, and its successors and assigns, do covenant, promise and agree as follows:

Section 1. The County adopts a "Moral Obligation Pledge," as credit support for the bonds to be issued by Battle Creek. The Moral Obligation Pledge is not a legal or financial liability of the County and is not associated with a direct or general obligation debt. The Moral Obligation Pledge is not a legal guarantee but a credit support mechanism that is not legally binding on the County. This Moral Obligation Pledge is intended to enhance the bond rating beyond the underlying credit rating assessment which is based on the primary security of the first mortgage lien and revenue pledges for Battle Creek.

Section 2. The County understands that the Moral Obligation Pledge analysis implies, without clear responsibility, that the County is ready upon notification, willing, and able to

cover any shortfall or problem with the underlying asset, but also recognizes that the Moral Obligation Pledge is not legally binding, but is considered a Moral Obligation for the County to restore any deficiency in the reserve fund to its legal level if necessary.

Section 3. The mechanics of the "Moral Obligation" involve the following steps: (1) a debt service reserve fund is created and funded by the subject bond offering; (2) any deficiency that may occur is certified to the finance officials of the County; and (3) the request on behalf of the project to restore the deficiency in the debt service reserve fund is legally nonbinding upon the County, but represents a moral obligation upon the County to act. So there can be no misunderstanding: (a) all moneys paid by the County are subject to prior appropriation of the local governing body; (b) the governmental body is not obligated to appropriate the moneys, and the County is not obligated to pay them; and (c) but should a future governmental body elect to appropriate such moneys, it may legally do so.

The Alabama appellate courts and this Office have never addressed the legality of a moral obligation pledge. Research reveals only one case from another state that has directly done so. In *Libertarian Party of Wisconsin v. State*, 546 N.W.2d 424 (Wis. 1996), the Supreme Court of Wisconsin considered such a pledge by the state in support of bonds issued by baseball park districts empowered to build and maintain professional baseball park facilities. The Court analyzed the issue under the credit-lending prohibition of section 3 of the Constitution of Wisconsin. WIS. CONST. art. VIII, § 3. That provision is the corollary to Section 93 of the Constitution of Alabama, as last amended by Amendment 58, and section 94, as last amended by Amendment 558, which prohibit the state and a county from lending its credit in aid of a private person, association, or corporation. ALA. CONST. art. IV, § 93; ALA. CONST. amend. 58; ALA. CONST. art. IV, § 94; ALA. CONST. amend. 558. The Court concluded that the pledge was permissible because a moral obligation is not legally enforceable against the state. *Libertarian Party*, 546 N.W.2d at 824-25.

Section 11-99A-15 of the Code of Alabama provides for the issuance of bonds by Alabama improvement districts. This section states as follows:

(a) A district may borrow money by the issuance of bonds, which bonds shall be revenue obligations, payable exclusively out of assessments levied on land within the district, and the bonds shall not be supported by the full faith and credit of the appointing government. However, the bonds may be secured by additional revenues, guarantees, pledges, letters of credit, or other credit enhancements as may be provided by the *district, the owner of any property within the district, or any other person*, to the extent provided in the proceedings of the board with respect to the issuance of the bonds.

ALA. CODE § 11-99A-15(a) (Supp. 2003) (emphasis added). This section states that bonds issued by the district are not automatically guaranteed by the county or municipality creating the district. Sections 11-99A-15(d) and (e) grant that authority to the county or municipality. ALA. CODE § 11-99A-15(d)-(e) (Supp. 2003). Section 11-99A-15(a) does authorize additional types of security.

“Person” is not defined in the Alabama Improvement District Act (“Act”). “Public person” is defined as “[t]he United States of America, the state, any county, any municipality, and any public corporation a majority of the members of which are appointed by any public person, and any agency or political subdivision of any public person.” ALA. CODE § 11-99A-2(10) (Supp. 2003) Black’s Law Dictionary defines person as “[a]n entity,” such as a governmental entity, as well as “[a] human being.” BLACK’S LAW DICTIONARY 1162 (7th ed. 1999). It is clear, however, from their use together in a subsequent section in the Act on the same subject that the Legislature intended separate meanings for person and public person. Section 11-99A-48 provides that, “[i]n addition, the district, any other *public person*, or any other *person* may mortgage, subject to foreclosure, for the benefit of bonds . . .” ALA. CODE § 11-99A-48 (Supp. 2003) (emphasis added). Therefore, although state law specifically authorized the state of Wisconsin to provide the moral obligation pledge in *Libertarian Party*, section 11-99A-15(a) of the Code of Alabama restricts those who may provide such a pledge to entities or individuals other than the county or municipality. Only the district, a property owner

Honorable Hobson Manasco, Jr.
Page 5

in the district, or an individual is authorized by section 11-99A-15(a) to provide such a pledge.

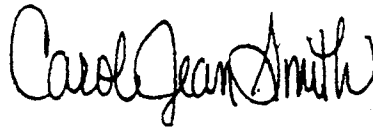
CONCLUSION

Under section 11-99A-15(a) of the Code of Alabama, the county may not provide a moral obligation pledge to repay bonds issued by the Battle Creek Improvement District.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in black ink that reads "Carol Jean Smith". The signature is written in a cursive, flowing style.

CAROL JEAN SMITH
Chief, Opinions Division

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