

November 5, 2009

Mayor Harold Perrin

In RE: Lease payments/capital improvements

I am writing in response to your question regarding allocating a portion of the jail bill from capital improvements fund.

As you are aware, the county recently provided information to the city outlining the apportionment of expenses for operation of the county detention facility. It is my understanding they apportion 26.41% of the overall budget for the facility itself with the remaining expenditure totaling 73.59%, attributable to personnel (i.e. salaries and benefits)

Our capital improvement fund expenditures are governed by state law. The definition of capital improvements of a public nature includes, under ACA 26-75-203 (3) (m)&(p) "police facilities", and "prisons" (a copy of this provision is attached) Further, ACA26-75-206 provides that lease rentals may be paid from these funds (a copy of this code provision is attached)

Accordingly, I am of the opinion that the portion of our jail bill which represents a payment for use of the physical structure, could properly be considered a lease rented under the terms of the attached copies of the Arkansas Code. As such, I believe that sum would be a payment for lease rental of a "capital improvement of a public nature"and appropriately paid out of the capital improvements fund.

I advise that we be cautious and only utilize the portion of the bill attributable to the facility itself. Further it is my recommendation that we get a breakdown of the jail's budget from the county each year and base out calculation upon the portion representing facilities and not personnel.

Phillip

- SECTION
- § 75-219. Procedures and penalties for enforcement.
 - § 75-220. Existing taxing powers not limited
 - § 75-221. Existing city sales taxes
 - § 75-222. Maximum tax limitation. [Effective until January 1, 2008.]
 - § 75-222. Maximum tax limitation. [Effective January 1, 2008.]
 - § 75-223. Administration of Local Sales and Use Tax Trust Fund.

RESEARCH REFERENCES

- Ark. L. Rev. Comment, Municipal Bonds and Amendment No. 62: Clearing Up a Serbonian Bog, 39 Ark. L. Rev. 499.
- U. Ark. Little Rock L.J. Legislation of the 1983 General Assembly, taxation, 6 U. Ark. Little Rock L.J. 636.
- Legislative Survey, Bonds, 8 U. Ark. Little Rock L. Rev. 551.

§ 75-201. Purpose.

(a) This subchapter is intended to supplement all constitutional provisions and other acts adopted for the acquiring, constructing, and equipping of capital improvements of a public nature and the issuance of bonds for the financing of capital improvements of a public nature.

(b) When applicable, in accordance with the provisions of this subchapter, this subchapter may be used by any city as an alternative, notwithstanding and without the necessity of compliance with any constitutional provision or any other act authorizing the city, or any commission or agency of the city, to issue bonds for the purpose of financing the acquisition, construction, and equipment of capital improvements of a public nature.

(c)(1) This subchapter is intended to supplement and be levying authority for all Arkansas municipalities in addition to all other statutes authorizing municipal sales and use taxes.

(2) Collections of a tax levied by this subchapter may be used to secure the payment of bonds or for any purpose for which the municipality's general fund may be used or for a combination thereof.

History: Acts 1981 (Ex. Sess.), No. 25, § 17, as added by Acts 1983, No. 726, § 8, A.S.A. 1947, § 19-4536; Acts 2001, No. 1561, § 3.

Amendments: The 2001 amendment added (c).

RESEARCH REFERENCES

- U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

CASE NOTES

- Cited:** WSC, Inc. v. City of Jacksonville, 302 Ark. 295, 789 S.W.2d 448 (1990)

§ 75-202. Construction.

This subchapter shall be liberally construed to accomplish the purposes of it.

History: Acts 1981 (Ex. Sess.), No. 25, § 17, as added by Acts 1983, No. 726, § 8, A.S.A. 1947, § 19-4536

26-75-203. Definitions.

As used in this subchapter:

(1) "Acquire" means to obtain at any time by gift, purchase, or other arrangement any capital improvement of a public nature or any portion of a capital improvement of a public nature, whether constructed and equipped before acquisition, partially constructed and equipped before acquisition, or being constructed and equipped at the time of acquisition for such consideration and pursuant to such terms and conditions as the governing body of the municipality shall determine;

(2) "Calendar quarter" means the three-month period beginning on January 1, April 1, July 1, or October 1;

(3) "Capital improvements of a public nature" means:

- (A) Street facilities;
- (B) Road facilities;
- (C) Public parks and other recreational facilities;
- (D) Port facilities;
- (E) Tourism facilities;
- (F) Airport facilities;
- (G) Sewerage facilities;
- (H) Waterworks facilities;
- (I) Fire protection facilities;
- (J) Convention center facilities;
- (K) City halls and other municipal buildings;
- (L) Courthouses;
- (M) Police facilities;
- (N) Public transit facilities;
- (O) Auditoriums;
- (P) Prisons;
- (Q) Libraries;
- (R) Hospital and nursing home facilities;
- (S) Solid waste facilities;
- (T) Sanitation facilities;
- (U) Bridges;
- (V) Electric facilities;
- (W) Hydroelectric facilities;
- (X) Facilities for the securing and developing of industry;
- (Y) Natural gas facilities;
- (Z) Parking facilities;
- (AA) Public housing facilities;
- (BB) Pollution control facilities;
- (CC) Public education facilities;
- (DD) Drainage facilities;
- (EE) Pedestrian facilities;
- (FF) Lakes;
- (GG) Dams;
- (HH) Waterways;
- (II) Regional mobility authority surface transportation systems; and
- (JJ) Research parks;

(4) "City" means any city of the first class, city of the second class, or incorporated town of the State of Arkansas;

(5) "Construct" means to build, in whole or in part, in such manner and by such method, including contracting to build, and if contracting to build, by negotiation or bidding upon such terms and pursuant to such

advertising as determined by the governing body of the municipality, under the circumstances existing at the time, as will most effectively serve the purposes of this subchapter;

(6) "Director" means the Director of the Department of Finance and Administration, any successor of the director, or any authorized agent of the director;

(7) "Equip" means to install or place in or on any building or structure equipment of any and every kind, whether or not affixed, including, without limitations, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(8) "Facilities" means real property, personal property, or mixed property of any and every kind, including, without limitation, rights-of-way, utilities, vehicles, materials, equipment, fixtures, machinery, furniture, furnishings; buildings, and other improvements of every kind; and

(9) "Lease" means a lease of a capital improvement of a public nature by and between a city as lessee and another person as lessor, except as used in § 26-75-214.

History. Acts 1981 (Ex. Sess.), No. 25, § 1, 1983, No. 726, § 1, A.S.A. 1947, § 19-4523; Acts 1995, No. 565, § 18; 2005, No. 1930, § 1, 2005, No. 2275, § 4; 2007, No. 1045, § 6.

Amendments. The 1995 amendment deleted "of the State of Arkansas" following "Administration" in (2); added the subdivision designations in (3); and added (9).

The 2005 amendment by No. 1930 substituted "Street facilities" for "Streets" in (3)(A); substituted "Road facilities" for "Roads" in (3)(B); added "and other recreational facilities" in (3)(C); added "and other municipal buildings" in (3)(K); and inserted "vehicles" in (4).

The 2005 amendment by No. 2275 added (II) and made related changes.

The 2007 amendment added (3)(JJ), and made related changes.

26-75-204. Issuance of bonds.

(a) Cities levying the tax as permitted in this subchapter are authorized, in addition to the authority existing under the laws of the state, to acquire, construct, equip, reconstruct, extend, and improve capital improvements of a public nature, collectively referred to as a "project," within or near such cities and are authorized to issue bonds to provide funds for accomplishing projects and to pledge all or any part of the revenues which the city is entitled to receive from the tax levied by such city pursuant to this subchapter to pay lease rentals or the principal of, interest on, and fees and expenses in connection with such bonds.

(b) Bonds issued by a city pursuant to this subchapter shall be authorized by ordinance of the governing body. The bonds may:

- (1) Be coupon bonds payable to bearer or may be registered as to principal or as to principal and interest;
- (2) Be exchangeable for bonds of another denomination;
- (3) Be in such form and denominations;
- (4) Be made payable at such places within or without the state;
- (5) Be issued in one (1) or more series;
- (6) Bear such date or dates;
- (7) Mature at such time or times, not exceeding forty (40) years from their respective dates;

(8) Bear interest at such rate or rates.

(9) Be payable in such medium of payment;

(10) Be subject to such terms of redemption; and

(11) May contain such other terms, covenants, and conditions as the ordinance authorizing their issuance may provide, including, without limitation, those pertaining to:

(A) The custody, investment, and application of the proceeds of the bonds;

(B) The collection and disposition of revenues;

(C) The maintenance of various funds and reserves;

(D) The nature and extent of the security and pledging of revenues;

(E) The rights, duties, and obligations of the city and the trustee for the holders and registered owners of the bonds; and

(F) The rights of the holders and registered owners of the bonds. There may be successive bond issues for the purpose of financing the same project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this subchapter, and with each successive issue to be authorized as provided by this subchapter. Priority between the pledge of revenues and lien on the project and the rights involved may be controlled by the ordinance authorizing the issuance of bonds under this subchapter. Subject to the provisions of this subchapter pertaining to registration, the bonds shall have the qualities of negotiable instruments under the laws of the State of Arkansas. A copy of the ordinance authorizing bonds under this subchapter, certified by the clerk or recorder of the city, shall be filed with the director and with the Treasurer of the State.

(c) The bonds shall be executed by the mayor of the city and attested by the clerk or recorder of the city in their manual or facsimile signatures. Coupons attached to the bonds shall be executed by the facsimile signature of the mayor. In case any of the officers' signatures appear on the bonds or coupons cease, such officers before delivery of the bonds or coupons their signatures shall nevertheless be valid and sufficient for all purposes. The bonds shall be sealed with the seal of the county issuing the bonds.

(d) The bonds shall not be general obligations of the city involved, but shall be special obligations of the city and payable as provided in this subchapter. In no event shall the bonds constitute an indebtedness of the city within the meaning of any constitutional or statutory limitation. The principal of, and interest on, all bonds issued under the authority of this subchapter shall be secured by a pledge of, and shall be payable from, any part of the revenues derived from the tax levied by the city pursuant to this subchapter or from all or any part of the revenues derived from the operation of the project involved, if and to the extent permitted by the laws of the State of Arkansas authorizing the issuance of revenue bonds secured by the revenues

The ordinance authorizing the issuance of bonds together with this subchapter shall constitute a contract by and between the city and the holders and registered owners of the bonds issued by the city under the authority of this subchapter, which contract, and all covenants, agreements, and obligations therein shall be fully and promptly performed in strict compliance with the terms and provisions of the contract, and the contract shall be enforceable at law or in equity. It shall be plainly stated on the face of each bond that it has been issued under the authority of this subchapter.

The ordinance authorizing the bonds may provide for the execution by the city with a bank or trust company, within or without the State of Arkansas, of a trust indenture. The trust indenture may control the relations between and among successive issues and may contain any other terms, covenants, conditions that are deemed desirable by the governing body including, without limitation, those pertaining to:

- (1) The custody, investment, and application of the proceeds of bonds;
- (2) The collection and disposition of revenues;
- (3) The maintenance of various funds and reserves;
- (4) The nature and extent of the security;
- (5) The rights, duties, and obligations of the city and trustee for the holders and registered owners of the bonds; and
- (6) The rights of the holders and registered owners of the bonds.

Bonds issued under the authority of this subchapter may be sold at public or private sale. If sold at public sale, the bonds shall be sold on sealed bids, and notice of the sale shall be published one (1) time in a newspaper having a general circulation throughout the State of Arkansas, at least ten (10) days prior to the date of sale. In either case, the bonds may be sold at such price as the city may accept, including sale at a discount.

Bonds issued under the authority of this subchapter are made securities in which insurance companies, trust companies, banks, investment companies, brokers, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds including capital in their control or belonging to them. Such bonds are made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of funds or obligations of the state is authorized by law, including any municipality or county, or any board, commission, or other authority established by any such municipality or county, or the boards of trustees, respectively, of any retirement fund or retirement system created by or pursuant to authority conferred by the General Assembly of the State of Arkansas may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the authority of this subchapter, and bonds issued under the authority of

this subchapter shall be eligible to secure the deposit of public funds.

(h) The principal of and interest on bonds issued under the authority of this subchapter shall be exempt from all state, county, school district, community college district, and municipal taxes. This exemption shall include income, property, inheritance, and estate taxes.

(i) Revenue bonds may be issued hereunder for the purpose of refunding any obligations issued under this subchapter or under the authority of any other law for the purpose of providing all or part of the funds for the construction, reconstruction, extension, equipment, acquisition, or improvement of any capital improvements of a public nature. These refunding bonds may be combined with bonds issued under the provisions of this section into a single issue. When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations. If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof. The ordinance under which the refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby. These refunding bonds shall be issued and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of these bonds.

History. Acts 1981 (Ex. Sess.), No. 25, § 15, as added by Acts 1983, No. 726, § 6; A.S.A. 1947, § 19-4534.

26-75-205. Voter approval of bonds.

No ordinance shall be passed by the governing body of a city under § 26-75-204 until a majority of the qualified electors of the city voting on the question shall have approved, at an election called for that purpose and conducted in accordance with the general municipal election laws, the principal amount of the bonds and the purpose for which the bonds will be issued.

History. Acts 1981 (Ex. Sess.), No. 25, § 18, as added by Acts 1983, No. 726, § 9; A.S.A. 1947, § 19-4537.

26-75-206. Pledge of revenues.

Any city levying the tax as permitted in this subchapter is authorized to pledge all or any part of the revenues from the tax levied pursuant to this subchapter to the payment of lease rentals or principal of and interest on bonds issued by such city under the authority of any other law for the purpose of providing all or part of the funds for the construction, reconstruction, extension, equipment, acquisition, or improvement of any capital improvements of a public nature or on bonds issued to refund such bonds, and such bonds, including the refunding bonds, shall be deemed to have been authorized by this subchapter for purposes of §§ 26-75-207 — 26-75-212, 26-75-213, 26-75-215, and 26-75-217.

History. Acts 1981 (Ex. Sess.), No. 25, § 16, as added by Acts 1983, No. 726, § 7; A.S.A. 1947, § 19-4535.