

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 05-164

Construction of Enactment Providing for Grant to the City of Spencer to Relocate Currently Permitted Wastewater Discharge Point

QUESTIONS

1. Does 2005 Pub. Ch. 502 (the "Supplemental Bond Act") permit the City of Spencer (the "City") to use the \$1.6 million grant provided therein to relocate the City's currently permitted discharge point from Lick Branch by completing the discharge line to mile point 104.6 of the Caney Fork River?

2. Does 2005 Pub. Ch. 503 (the "Appropriations Act") amend the Supplemental Bond Act?

OPINIONS

1. The Supplemental Bond Act permits use of the \$1.6 million grant to the City for sewage treatment facilities. Such facilities could include the relocation of the City's currently permitted discharge point from Lick Branch through completion of the discharge line to mile point 104.6 of the Caney Fork River, as well as a relocation of the discharge line to any other permitted point or any other expenditure for sewage treatment facilities. Any use of the grant funds provided under the Supplemental Bond Act, of course, must first be approved by the State Building Commission prior to issuance of bonds or bond anticipation notes pursuant to the Supplemental Bond Act.

2. The Appropriations Act does not amend the Supplemental Bond Act.

ANALYSIS

1. Under the Supplemental Bond Act, the Legislature authorized the State to issue and sell bonds to fund "necessary repairs, replacements, additions and betterments of buildings and facilities." Section 4 of the Supplemental Bond Act specifies the amounts and uses for the bond proceeds. Section 4 allocates bond proceeds in part as follows: "[f]urther, the sum of one million six hundred thousand dollars (\$1,600,000) shall be allocated to the Department of Finance and Administration for purposes of making a grant to the City for sewage treatment facilities."

The Supplemental Bond Act language that makes a grant to the City is very broad and states

that the purpose of the grant is “for sewage treatment facilities.” That language supports the conclusion that the Legislature intended for the City to use the grant for any project pertaining to its wastewater treatment facility, *e.g.*, relocating the Lick Branch discharge point to the Caney Fork River.

2. Under the Appropriations Act, the Legislature provided the initial debt service required by § 8 of the Supplemental Bond Act and stated in part in the last sentence of § 67, Item 2, that the proceeds of such bond issue are “to fund a grant to relocate the currently permitted discharge point from the facilities project as provided in such bond bill.” The Appropriations Act places no restrictions or limitations on the appropriation of initial debt service. The description in the Appropriations Act of the intended use of the bond proceeds to be granted to the City, however, does not precisely mirror the provisions of the Supplemental Bond Act concerning use of those funds, notwithstanding the “as provided in such bond bill” statement.

The caption of the Appropriations Act provides:

AN ACT To make appropriations for the purpose of defraying the expenses of the state government for the fiscal years beginning July 1, 2004, and July 1, 2005, in the administration, operation and maintenance of the legislative, executive and judicial branches of the various departments, institutions, offices and agencies of the state; for certain state aid and obligations; for capital outlay, for the service of the public debt, for emergency and contingency; to repeal certain appropriations and any acts inconsistent herewith; to provide provisional continuing appropriations; and to establish certain provisions, limitations and restrictions under which appropriations may be obligated and expended. This act makes appropriations for the purposes described above for the fiscal years beginning July 1, 2004, and July 1, 2005.

Article II, § 17, of the Tennessee Constitution states in pertinent part, “[n]o bill shall become a law which embraces more than one subject, that subject to be expressed in the title.” Furthermore, Tenn. Code Ann. § 9-4-5108(c) provides that, “[t]he appropriation bill shall not contain any provisions of general legislation.” Therefore, placing items of general legislation in the appropriations bill would violate both Article II, § 17, of the Tennessee Constitution and Tenn. Code Ann. § 9-4-5108(c) because the general legislation, not being germane to the subject of appropriations, constitutes the introduction of another subject in the appropriations bill. Ops. Tenn. Atty. Gen. 99-198 (September 28, 1999); 85-249 (September 26, 1985)

It is the opinion of this Office that § 67, Item 2, of the Appropriations Act would constitute an unconstitutional attempt to change the general law, the Supplemental Bond Act, if its misstatement of the provisions of the Supplemental Bond Act with respect to the use of bond proceeds is intended to amend such Act. The Supplemental Bond Act is general legislation pursuant to which the State has the authority to issue and sell bonds to fund “necessary repairs, replacements, additions and betterments of buildings and facilities” across the State. Section 67, Item 2, of the Appropriations Act seemingly attempts to change the purpose of § 4 of the Supplemental Bond Act by restricting the grant to the City for sewage treatment facilities to only relocating “the currently

permitted discharge point from the facilities project as provided in such bond bill.” The inclusion of such a substantive provision in the Appropriations Act would violate both Article II, § 17, of the Tennessee Constitution and Tenn. Code Ann. § 9-4-5108(c).

If the language in the Appropriations Act is intended to merely mirror the language of the Supplemental Bond Act as it purports to do, then it can be disregarded as a mere inaccurate reference. In either event, the last sentence of § 67, Item 2, of the Appropriations Act does not amend the Supplemental Bond Act.

The unconstitutionality of the last sentence of § 67, Item 2, of the Appropriations Act, moreover, would not affect any other provisions of the Appropriations Act, including but not limited to the appropriations for debt service on the Supplemental Bond Act made in the preceding sentences of § 67, Item 2, since the offending sentence would be severed pursuant to § 55 of the Appropriations Act.

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