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Opinion No. 13-47

Authority of Carroll County Watershed to Issue Bonds

QUESTION

For what purposes may the Carroll County Watershed Authority ("CCWA") issue bonds?

OPINION

Pursuant to Tenn. Code Ann. § 64-1-804(a)(7), CCWA has the authority to issue bonds for capital projects related to the development of the resources of Carroll County. CCWA does not have the authority to issue refunding bonds to refinance any of CCWA's outstanding bonds.

ANALYSIS

CCWA is a statutorily created river basin development authority with the power "to do any and all things necessary or desirable in forming and executing a plan for the comprehensive development of the resources of Carroll County." Tenn. Code Ann. § 64-1-804(a). One of CCWA's enumerated powers is the ability to issue bonds to finance such development. Tenn. Code Ann. § 64-1-804(a)(7) specifically provides that the CCWA

> [m]ay issue its bonds from time to time in a total amount not to exceed twelve million dollars ($12,000,000) for the purpose of paying in whole or in part the cost of the acquisition of necessary land or interests therein and the development of the resources of Carroll County, and expenses incidental thereto; may secure such bonds by a pledge of all or any part of the revenues that may now or hereafter come to the authority from any source, by a mortgage or deed of trust of the authority's land or any part thereof, or by a combination of the two (2); and may make such contracts or covenants in the issuance of such bonds as may be necessary to ensure the marketability thereof.

The CCWA thus has express authority to issue multiple series of bonds in a total amount not to exceed $12,000,000, for the costs associated with the development of the resources of Carroll County, including the acquisition of necessary land and interests therein and expenses incidental to such capital projects. *Id.* The CCWA's plan for development can include, but is not limited to, action in cooperation with appropriate "local, state and federal agencies in the fields of agriculture, forestry, drainage and flood control, land reclamation, electric power utilization, irrigation, water conservation and supply, recreation, public health, education, manufacturing

and trade." Tenn. Code Ann. § 64-1-804(a). Thus, CCWA has broad authority to issue bonds so long as the bonds are related to the development of Carroll County resources. *See Estate of French v. Stratford House*, 333 S.W.3d 546, 554 (Tenn. 2011) (stating general rule of statutory construction that, when the terms of a statute are clear, courts will "apply the plain meaning [of the statute] without complicating the task").

CCWA however lacks authority to issue bonds to refinance bonds previously issued by CCWA. Chapter 1 of Title 64 of the Tennessee Code Annotated currently creates and empowers nine river basin development authorities,[1] including CCWA. Tenn. Code Ann. §§ 64-1-101 to -1219. Only four of the nine authorities are expressly granted the authority to issue refunding bonds. *See id.* Reading these related statutory provisions *in pari materia* confirms that, when the General Assembly intends to grant a river basin development authority the power to issue refunding bonds, it does so expressly.[2] *See Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994) (stating that "statutes 'in pari materia'—those relating to the same subject or having a common purpose—are to be construed together, and the construction of one such statute, if doubtful, may be aided by considering the words and legislative intent indicated by the language of another statute").

For example, under Tenn. Code Ann. § 64-1-604(c), the Tennessee Duck River Development Agency has express authority to issue refunding bonds so long as it complies with certain restrictions on the amounts that can be refunded. In granting refunding authority to the Tennessee Duck River Development Authority, Tenn. Code Ann. § 64-1-604(c) provides:

> Subject to the approvals required in subsection (a), any bonds or notes of the agency at any time outstanding may at any time and from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as the board of directors may deem necessary, but not exceeding the sum of the following:
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> (1) The principal amount of the obligations being refinanced;
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> (2) Applicable redemption premiums thereon;
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> (3) Unpaid interest on such obligations to the date of delivery or exchange of the refunding bonds;
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> (4) In the event the proceeds from the sale of the refunding bonds are to be deposited in trust as provided in this section, interest to accrue on such obligations from the date of delivery to the first or any subsequent available redemption date or dates selected, in its discretion, by the board or to the date or dates of maturity,

[1] Chapter 1 contains twelve separate parts, each dealing with a separate river basin development authority. Three of the parts (Parts 3, 4 and 10) have been repealed or transferred, leaving nine parts remaining. *See* Tenn. Code Ann. §§ 64-1-101 to -1219.

[2] The General Assembly has also expressly granted refunding authority to local governments with extensive statutory restrictions on how such refunding bonds are to be issued. Tenn. Code Ann. §§ 9-21-901 to -1017.

> whichever shall be determined by the board to be most advantageous or necessary to the agency;
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> (5) A reasonable reserve for the payment of principal of and interest on such bonds and/or a renewal and replacement reserve;
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> (6) If the project to be constructed from the proceeds of the obligations being refinanced has not been completed, an amount sufficient to meet the interest charges on the refunding bonds during the construction of such project and for two (2) years after the estimated date of completion, but only to the extent that interest charges have not been capitalized from the proceeds of the obligations being refinanced; and
>
> (7) Expenses, premiums and commissions of the agency, including bonds discount, deemed by the board to be necessary for the issuance of the refunding bonds. A determination by the board that any refinancing is advantageous or necessary to the agency, or that any of the amounts provided in this subdivision (c)(7) should be included in such refinancing or that any of the obligations to be refinanced should be called for redemption on the first or any subsequent available redemption date permitted to remain outstanding until their respective dates of maturity shall be conclusive.

Similarly, the West Fork Drakes Creek Dam and Reservoir Interstate Authority has express authority to issue refunding bonds with restrictions on the amounts that can be refunded. Tenn. Code Ann. §§ 64-1-905(c)-(i). The West Fork Authority must comply with statutory requirements regarding the proper way to cause notice of intention to issue refunding bonds, and in the context of an advanced refunding, it must deposit bond proceeds in trust and limit the investment of such proceeds to certain types of obligations. *Id.*

This Office is aware that CCWA was provided a grant of State funds in the Fiscal Year 2013-2014 State budget in the appropriations bill "for the purpose of the authority's refinancing its existing outstanding debt associated with the lake project" and specifically to use such funds "to pay off $5,000,000.00 of the existing debt incurred in the construction and improvement of the Carroll County Lake project." 2013 Tenn. Pub. Acts, ch. 453, § 68, Item I. Tennessee law, however, specifically provides that the "appropriation bill shall not contain any provisions of general legislation." Tenn. Code Ann. § 9-4-5108(c). Moreover, the caption of the appropriations bill reinforces this statutory proscription by limiting its scope to making "appropriations for the purpose of defraying the expenses of the state government for the fiscal years beginning July 1, 2012, and July 1, 2013." 2013 Tenn. Pub. Acts, ch. 453 at 1. This Office has previously opined that under these circumstances an appropriations bill, limited in its caption and by statute to making appropriations, cannot amend provisions of the general law. Tenn. Att'y Gen. Op. 05-164 at 2 (Oct. 24, 2005). As this Office explained:

> 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).

Id. Thus the language in the appropriations bill regarding a grant of State funds to CCWA cannot be read to have amended or expanded the general law describing CCWA's existing statutory authority.

Accordingly, reading the nine active parts of Chapter 1 of Title 64 of the Tennessee Code Annotated that pertain to river basin development authorities *in pari materia*, and noting that four of the nine include express refunding bond authority as well as certain public purpose safeguards, it is clear that when the General Assembly grants the power to issue refunding bonds, it does so expressly. *See* Tenn. Code Ann. §§ 9-21-901 to -1017. CCWA has not been expressly granted such authority by the General Assembly, and to imply such authority would broaden CCWA's authorizing statute beyond its intended scope.

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