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BONDS OF AN "INSTRUMENTALITY OF A STATE"—BONDS MUST COMPLY WITH ALL REQUIREMENTS OF SECTION 3907.14 (H) (1) RC—BONDS OR OBLIGATIONS—VALID REVENUE BONDS—ELIGIBLE FOR INVESTMENT BY DOMESTIC LIFE INSURANCE COMPANIES—SCHOOL AUTHORITY, PENNSYLVANIA MUNICIPALITY AUTHORITIES ACT, 1945—SCHOOL CONSTRUCTION PROJECTS—LEASED FOR OPERATION OF SCHOOL DISTRICTS—INSTRUMENTALITY OF COMMONWEALTH OF PENNSYLVANIA.

SYLLABUS:

A School Authority formed under the Pennsylvania Municipality Authorities Act of 1945, P. L. 382, which finances school construction projects and leases them for operation to school districts, is an instrumentality of the Commonwealth of Pennsylvania, and bonds or obligations issued by it are eligible for investment by domestic life insurance companies as being bonds of an "instrumentality of a state" within the purview of Section 3907.14 (H) (1), Revised Code, provided that the bonds comply with other requirements found in that section.

Columbus, Ohio, March 15, 1954

Hon. Walter A. Robinson, Superintendent of Insurance
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"Your opinion is respectfully requested as to whether a school authority created pursuant to the Municipality Authori-

ties Act of 1945, P. L. 382, as amended, is an instrumentality of the Commonwealth of Pennsylvania so as to make bonds issued by such authority eligible for investment under the provisions of Section 3907.14 (H) (1) of the Revised Code of Ohio."

You have informed me that the bonds in question are revenue bonds and not general obligations.

Section 3907.14, Revised Code, reads in material part:

"The capital, surplus, and all accumulations of every domestic life insurance company *shall* be invested as follows:

* * *

* * *

"(H) (1) * * * and in any other bonds or obligations payable from and secured by revenues of the United States, *any state or instrumentality of either*, or of the District of Columbia or of any commission, board, or other instrumentality of one or more of them, provided there is a specific pledge of revenues, and provided further that there is adequate provision for payment of interest prior to completion of construction and that rates, fees, tolls or charges fixed shall after completion of construction be sufficient to pay all expenses of operation and maintenance and the principal and interest when due; * * *" (Emphasis added.)

You have further informed me that your sole doubt as to whether the bonds in question comply with the proviso above arises from a consideration of whether the School Authority, created under the Act of 1945, P. L. 382, is an instrumentality of a state within the meaning of the Ohio statute.

Surveying Section 3907.14 (H) (1), Revised Code, in its entirety, it would appear that the intention of the legislature was and is to authorize investment by domestic life insurance companies in general obligations of a state, municipality, district or subdivision, or to authorize investment in revenue obligations of a state, a state instrumentality, board or commission.

To be sure the Ohio act contains no definition of terms. It is my opinion, however, that the legislature meant to open the way to these companies to invest in *various* kinds of governmental obligations, and in so doing, that body did not deign to engraft any special *Ohio* catalogue of governmental units upon the statute to the exclusion of different or peculiar governmental creatures of other states. Hence, if there exists in Pennsylvania, for example, a particular state instrumentality having no exact counterpart in Ohio, such a fact by itself does not operate to exclude the bonds of the Pennsylvania instrumentality from the permissible invest-

ment area marked out for domestic life insurance companies. So far as revenue bonds are concerned, it would seem that so long as the issuing authority exercises *sovereign state functions* it fulfills the status of an "instrumentality" of the state or commonwealth.

Webster's New International Dictionary defines "instrumentality" as follows:

"Quality or state of being instrumental; that which is instrumental; means; medium; agency."

The same volume defines the word "instrument" to be:

"1. That by means of which any work is performed or result is effected; a medium; means."

Is a School Authority, organized under the Pennsylvania Municipality Authorities Act of 1945, a governmental medium, means, or agency of the Commonwealth of Pennsylvania?

Turning to the Municipality Authorities Act of 1945, 53 Penna. Statutes, Sec. 2900z-1, et seq., I find the following in Section 2900z-2:

"(a) The term 'Authority' shall mean a *body politic and corporate*, created pursuant to this act or pursuant to the 'Municipality Authorities Act of 1935' repealed hereby."
(Emphasis added.)

Section 2900z-5 reads in part:

"A. Every Authority incorporated under this act shall be a body corporate and politic, and shall be for the purpose of acquiring, holding, constructing, improving, maintaining and operating, owning, leasing, either in the capacity of lessor or lessee, projects of the following kind and character, buildings to be devoted wholly or partially for public uses, including *public school buildings*, and for revenue-producing purposes * * *."
(Emphasis added.)

Under the Pennsylvania Act, a School Authority is incorporated by one or more school districts. The Authority is granted a corporate existence of fifty years; it has the capacity to sue and be sued; it may adopt a corporate seal; it may acquire property; it may appoint officers, agents and employees, and fix their compensation; it may borrow money and make and issue notes and bonds (to have a maturity date not longer than forty years from the date of issue); it may enter into contracts; it has the power of eminent domain; it may pledge revenues as security. In addition, bonds issued by the Authority are exempt from taxation within the

Commonwealth of Pennsylvania. The Authority secures the payment of its bonds by pledge or deed of trust of all or any of its revenues and receipts. The Authority has its own treasurer.

Once the school project is established, the school district to which such project has been leased may, by resolution, signify its desire to acquire the project. Section 2900z-19 provides that "thereupon the Authority *shall* convey such public school project to such school district or school districts by appropriate instrument upon the assumption by the latter of all the obligations incurred by the Authority with respect to that project."

Section 2900z-5 paragraph A, states the purpose of the Municipality Authorities Act as follows :

" * * * The purpose and intent of this Act being to benefit the people of the Commonwealth by, among other things, increasing their commerce and prosperity, and not to unnecessarily burden or interfere with existing business by the establishment of competitive enterprises, none of the powers granted by this act shall be exercised in the construction, improvement, maintenance, extension or operation of any project or projects which in whole or in part shall duplicate or compete with existing enterprises serving substantially the same purposes."

In defining these Authorities, it was stated in *Lighton v. Abington Township*, 336 Pa., 345, 354 :

"They are public corporations, being corporate agencies engaged in the administration of civil government. The state may modify the part performed by its agencies in government by creating other agencies, subject always to constitutional limitations."

It was held in *Commonwealth ex rel. McCreary v. Major*, 343 Pa., 355, that a member of the Board of a Municipal Authority is a public officer. The third branch of the syllabus in the case is as follows :

"To constitute a public office, it is essential that certain independent public duties, *a part of the sovereignty of the state*, should be appointed to it by law, to be exercised by the incumbent in virtue of his election or appointment to the office thus created and defined."
(Emphasis added.)

Although the municipal authorities are operated by boards appointed by municipalities as distinguished from the State, such authorities have been held to be agencies of the Commonwealth of Pennsylvania. See *Tranter v. Allegheny County Authority*, 316 Pa., 65. See also *Williams v. Samuel*, 332 Pa., 265, 274.

The most recent case on the subject is a lower court case decided by the Common Pleas Court for Bucks County, namely, Falls Township v. Levitt and Sons, Inc., 84 D & C, 223 (1953). The court said at page 227:

“It has been consistently held, both under the Act of 1945 and under other legislation involving authorities that an authority is not the creature, agent or representative of the municipality organizing it.”

The court cited the Tranter, Williams and Major cases.

The decision of Pennsylvania courts, therefore, indicate that in that commonwealth a Municipality Authority is considered to be an agency or instrumentality of the Commonwealth of Pennsylvania.

It would appear that an Authority which engages in the construction of school projects bears a direct relationship with the state government. Article X, Section 1 of the Pennsylvania Constitution requires that “the General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools wherein all school children of the commonwealth above the age of six years may be educated.”

I am therefore of the opinion that a School Authority, formed under the Pennsylvania Municipality Authorities Act of 1945, P. L. 382, which finances school construction projects and leases them for operation to school districts, is an instrumentality of the Commonwealth of Pennsylvania, and bonds or obligations issued by it are eligible for investment by domestic life insurance companies as being bonds of an “instrumentality of a state” within the purview of Section 3907.14 (H) (1), Revised Code, provided that the bonds comply with other requirements found in that section.

Respectfully,

C. WILLIAM O'NEILL

Attorney General