



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

November 12, 1997

FILE NO. 97-024

FINANCE:
Use of Bond Proceeds

The Honorable Michael A. Rowland
State's Attorney, Franklin County
202 West Main Street
Benton, Illinois 62812

Dear Mr. Rowland:

I have your letter wherein you inquire whether the proceeds of park district bonds issued after referendum approval for the express purpose of repairing and remodeling an existing swimming pool may be used for razing the pool in anticipation of the construction of a recreational complex, which would include a new pool. For the reasons hereinafter stated, it is my opinion that the proceeds of bonds issued for the specific purpose of repairing and remodeling a swimming pool cannot be used for another purpose, even though the purposes may be related.

You have stated that the following proposition appeared on the ballot at the April 1, 1997, election in the West Frankfort Park District and was approved by the electorate:

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"Shall bonds of the Frankfort Community Park Park District to the amount of \$395,000 be issued for the purpose of repairing and remodeling the existing swimming pool?"

Subsequently, the park district board voted to solicit bids for tearing out the pool in anticipation of the construction of a new recreational complex, which would include the construction of a new pool. The question has been raised whether proceeds of bonds issued for the repair of the existing pool may properly be used for removal of the pool.

Based upon the form of the ballot question and the purpose of the bonds, I will assume that the bonds in question are general obligation bonds of the park district issued pursuant to sections 6-2 and 6-4 of the Park District Code (70 ILCS 1205/6-2, 6-4 (West 1996)). There has apparently been no challenge to the validity of the bonds themselves.

It is well established that the proceeds of municipal bonds constitute a special fund which can be used only for the purposes designated in the ordinance or referendum by which they are authorized. Therefore, in People ex rel. City of Chicago v. Hummel (1905), 215 Ill. 43, it was held that proceeds of permanent improvement bonds could not be used to pay previously issued tax anticipation warrants.

Although there are few Illinois cases on point, the rule requiring strict construction of bond purposes has been uniformly applied in numerous other jurisdictions. For example,

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in City and County of Denver v. Currihan (Colo. 1961), 362 P.2d 1060, voters had approved a bond issue for fifteen specific projects, with provision made for any excess funds to be used for other stated purposes. After fourteen of the fifteen projects were completed, the city attempted to substitute one of the additional projects for the fifteenth. It was held to be without authority to make the substitution so long as that fifteenth approved project was not literally impossible. Similarly, in McNichols v. City & County of Denver (Colo. 1949), 209 P.2d 910, it was held that bonds authorized to be issued for improving, extending and equipping a hospital could not be used for building an office building for the Bureau of Public Welfare, whose offices were located in a wing of the existing hospital building. Further, the proceeds of bonds issued for construction of a new hospital could not lawfully be used for purchase of a residence building to be remodeled and converted into a hospital, according to the Oklahoma Supreme Court in City of Alva v. Mason (Okla. 1931), 300 P.784, and, in Walker v. Wheeler (Ga. 1954), 80 S.E.2d 691, it was held that bond funds voted for purposes of "constructing and equipping a city hall" could not be diverted for the purchase of a tract of land and a building erected thereon.

Even a change of circumstances rendering the originally approved purpose for the bond issue unnecessary or impractical does not justify use of bond proceeds for other purposes. Thus, in City of Fayetteville v. Huddleston (Ga. 1928), 142 S.E.280,

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bonds had been approved for installing a lighting system. Subsequently, an electric utility company was granted a franchise to operate an electric light system in the city, making the city's expenditure unnecessary. A plebiscite approved using part of the bond fund to complete a waterworks system, but the court nevertheless enjoined the diversion of the funds. In Young v. Bossier City (1923), 154 La. 625, 98 So.45, city voters approved a bond issue in 1917 for the purpose of erecting, operating, maintaining, repairing, or replacing a system of waterworks for the city. The First World War caused greatly increased costs, and no action on the project was taken until 1922, at which time the city entered into an agreement with another municipality for the supply of water. When the city proposed to use the bond proceeds to build a pipe to connect with the other municipality's waterworks system, the court held that the construction was not within the authorized purposes of the funds.

There are a few cases in which courts have determined that the purpose of a bond issue was broad enough to encompass a project not specifically envisioned at the time of the vote thereon. For example, in Wood v. City of Birmingham (Ala. 1964), 165 So.2d 95, the court approved use of bond proceeds voted "for the purpose of improving highways in the City" to contribute to construction of an expressway through the city. In Moses v. City of Key West (1895), 15 Misc. Rep. 15; 36 NYS 979, the court held that "a system of surface drainage and underground sewerage"

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included the curbing, grading and paving of streets. In Allen v. City of Atlanta (Ga. 1928), 142 S.E.262, a vote in favor of bonds "for a city hall and site therefore [sic]" did not preclude the city council from selecting a site for the city hall different from that originally contemplated but not mentioned in the ballot question. These cases are, however, in the minority.

Two basic principles are generally cited to support the rule that bond funds raised for designated purposes cannot lawfully be diverted to other purposes. Firstly, the right of the electorate to vote upon the purposes for which the municipality may incur debt would be subverted if the proceeds could be diverted to uses which could not have been within the contemplation of voters at the time of the election. Secondly, bond holders have an interest in having the funds which stand as security for the debt applied for proper purposes so that either the fund itself is available or taxes can be validly levied for repayment of principal and interest.

In the present case, the park district electorate approved a bond issue for the very specific purpose of repairing and remodeling an existing swimming pool. That proposal made no reference to the destruction of the pool to make way for a new recreational complex, and it cannot be said that repairing and remodeling an existing structure ordinarily includes razing the structure to make way for a new and different one. Voters who

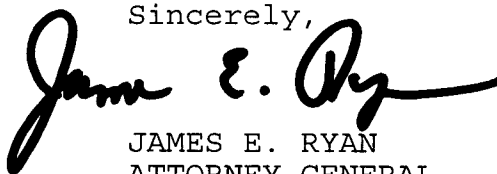
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avored repairing the existing pool may not favor the larger project.

This situation is not unlike that addressed in Sanders v. Green (Ark. 1948), 214 S.W.2d 67, wherein a city sought to use funds voted for construction of an addition to and remodeling of the city hospital for a larger project involving a county and university. Although the larger project would likely have provided the services contemplated by the original proposal, and more, the court nonetheless held that the special fund created by bonds issued pursuant to a referendum was limited to the purposes contemplated in the referendum and the ordinance leading to it, and that the more extensive project was not within that contemplation.

Based upon the cases cited above, it is my opinion that the proceeds of bonds issued for the express purpose of repairing and remodeling an existing swimming pool cannot be used to defray the cost of tearing out the pool in order to facilitate the construction of a new recreational complex. The application of the funds to a project that was not contemplated in the original bond referendum would constitute the unlawful diversion of those funds.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Ryan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

JAMES E. RYAN
ATTORNEY GENERAL