

November 20, 1998

VIA FAX & U.S. MAIL

The Honorable Georgie A. Thomas
State Treasurer
25 Capitol Street, Rm. 121
Concord, NH 03301-6312

Dear Treasurer Thomas:

You have asked whether you, as State Treasurer, have the legal authority to purchase authorized school bonds and notes of any municipal government which will come due on or before March 31, 1999. More specifically you have asked whether authorized bonds issued pursuant to RSA 33 and due on or before March 31, 1999 remain backed by the issuer's ability to levy taxes for the repayment of principal and interest in light of the Claremont II decision. For the reasons that follow, I answer your question in the affirmative.

FACTS

Various municipal governments have issued, or will issue, authorized school bonds and notes pursuant to RSA 33 which will become due on or before March 31, 1999, such as bond anticipation notes (BANS) or bonds for authorized school capital improvements. You have specifically identified two outstanding BANS from the towns of Dover and Pittsburgh that mature on December 30, 1998, and an additional amount of debt that is authorized and may be issued by Dover for school construction and will be due on or before March 31, 1999. The date of March 31, 1999 is significant because it is the end of the 1998 tax year, RSA 76:2, and the date under the Claremont II decision after which the current system of financing public education no longer remains in effect. You have expressed an interest in investing state funds in these school bonds and notes and requested an opinion regarding your legal authority to make such an investment.

THE STATUTORY AUTHORITY OF THE TREASURER

RSA 6 generally contains the powers and authority of the treasurer. Investment authority is contained in RSA 6:8 which provides:

All funds over which the state has exclusive control, aside from such sums of money as the treasurer may deem necessary to hold or deposit for meeting current expenses, shall be invested by the treasurer, with the approval of the governor and council, in obligations of the United States government, in obligations which are legal investments for savings banks and trust companies, in all types of savings accounts, in participation units in the public deposit investment pool established pursuant to RSA 383:22, in certificates of deposit of state or federally chartered banking institutions within New Hampshire, or in certificates of deposit of national banks within the commonwealth of Massachusetts.

One investment which is authorized by RSA 6:8 is obligations which would be legal investments for savings banks to make. These obligations are described in RSA 387:6 which provides, in pertinent part:

The following described securities are legal investments: ...

III. NEW HAMPSHIRE PUBLIC OBLIGATIONS. The authorized bonds and notes of the state of New Hampshire or any municipal government therein, including all authorities, commissions, districts or similar divisions of state or municipal government, provided:

(a) The district (sic) obligations of the state of New Hampshire or any municipal government therein are backed by the issuer's ability to levy taxes for the repayment of principal and interest

You have the authority to invest in school bonds and notes of any municipal government so long as they meet the criteria of RSA 387:6. In particular, you have asked whether bonds and notes that become due prior to March 31, 1999 are "backed by the issuer's ability to levy taxes for the repayment of principal and interest ...", RSA 387:6, III(a) in light of the Claremont II decision.

CLAREMONT DECISION

On December 17, 1997, the New Hampshire Supreme Court in Claremont II, Claremont School District, et al. v. Governor, et al., 142 N.H. 462, 465 (1997) held that the present system of financing elementary and secondary public education in New Hampshire is unconstitutional.

The Court recognized that this holding "raises issues concerning the interim viability of the existing tax system ... " and that "the legislature must be given a reasonable time to effect an orderly transition to a new system" Id. at 476. Consequently, the Court provided that "the present funding mechanism may remain in effect through the 1998 tax year." Id. at 476-477. RSA 76:2 provides that, "The property tax year shall be April 1 to March 31"

OPINION

In Claremont II, the Court allowed the existing tax system to remain in effect for the 1998 tax year, until March 31, 1999.

The direct answer to your question is in the affirmative. School bonds and notes of municipal governments that become due on or before March 31, 1999 are backed by the issuer's ability to levy taxes for the repayment of principal and interest. Claremont II leaves intact the issuers' ability to do so through the 1998 tax year. As such, these bonds and notes satisfy the criteria of RSA 387:6, III (a) and you are legally authorized to invest in them pursuant to RSA 6:8.

I note that this opinion is consistent with an opinion issued to Stanley R. Arnold, Commissioner of the Department of Revenue Administration, on September 2, 1998 in which, in answer to a general question, I expressed the general opinion that he did not have the legal authority to certify school tax rates for the 1999 tax year in light of the Claremont II decision.

You should be aware that the New Hampshire Municipal Bond Bank has recently filed a motion to intervene in the Claremont case for the purpose of seeking clarification that school bonds and other debt instruments issued prior to March 31, 1999 remain valid, enforceable and collectible both before and after that date. I have consented to the intervention of the Bond Bank so that it may seek the Court's opinion on this question.

I trust this opinion has satisfactorily answered your questions. Please do not hesitate to contact me if you have any further questions.

Very truly yours,

Philip T. McLaughlin
Attorney General

PTM/SJJ/sb

cc: Stanley R. Arnold, Commissioner Department of Revenue Administration