

**State of Georgia**  
**Department of Law**

Thurbert E. Baker  
Attorney General

40 Capitol Square, SW  
Atlanta, GA 30334-1300

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Direct Dial 404-656-3338  
Fax 404-657-3239  
E-Mail [shirley.kinsey@law.state.ga.us](mailto:shirley.kinsey@law.state.ga.us)

**MEMORANDUM**

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To: Russell W. Hinton, State Auditor  
From: Shirley R. Kinsey, Assistant Attorney General  
Re: Use of General Obligation Bond Proceeds to Pay Certain Construction Costs

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You have requested guidelines concerning whether certain types of expenses can be properly charged against general obligation bond proceeds. Specifically, you are concerned with: (1) whether a user agency (*i. e.*, the agency designated by the General Assembly to receive proceeds of general obligation debt) may pay the salaries of its employees with the bond proceeds if the employees are working on the construction project funded by the bonds and (2) whether a user agency may pay labor costs of another agency or authority if the other entity is performing the work on a bond-funded project by contract with the user agency. The answers to these questions involve interpretation both of state constitutional and statutory law.

The relevant provision of the state constitution provides that the state may incur

[g]eneral obligation debt to acquire, construct, develop, extend, enlarge, and improve land, waters, property, highways, buildings, structures, equipment, or facilities of the state, its agencies, departments, institutions, and of those state authorities which were created and activated prior to November 8, 1960.

Ga. Const. art. VII, sec. IV, para. I(c). The question, broadly stated in the context of “acquiring, constructing, developing, extending, enlarging, or improving” state property using general obligation bond proceeds, is: Which expenses incurred by an agency to which a general obligation bond appropriation is designated are expenses that may be properly charged against the bond proceeds?

Past informal advice from the staff of the Department of Law has been to the effect that operating expenses of a state entity should not be paid from bond proceeds. Although not explicitly articulated in the previous memoranda, an important principle of financial management underpins this statement of a general rule. “One commonly used financing strategy is to match debt maturities and asset maturities.” Eugene F. Brightman & Louis C. Gapenski, *Financial Management: Theory and Practice* 553—554 (5th ed. 1988). In other words, the expected useful life of the asset being financed should match the term of the associated debt. Financing a

long-term asset with short-term debt exposes the borrower to interest rate volatility, while financing a short-term asset with long-term debt can cause the accretion of debt without the existence of a productive asset to generate the means of repayment. *Id.*

Thus, the one guiding principle available at this point is that general operating expenses of the user agency cannot be properly charged against the bond proceeds. Your questions have pointed out that the generality of this statement does not provide guidance with respect to every factual situation that user agencies regularly face. Therefore, more detailed guidance is needed.

In attempting to offer additional, more detailed guidance, the governing precept must be "to ascertain the legislative intent and purpose in enacting the law, and then to give it that construction which will effectuate the legislative intent and purpose." *City of Jesup v. Bennett*, 226 Ga. 606, 608 (1970) (citation and internal quotation marks omitted). This precept applies to the interpretation of constitutional as well as statutory provisions. *See Stephens v. Reid*, 189 Ga. 372, 379 (1939). Another settled rule of statutory construction is that effect is to be given to all the words of a statute. *Smith, Barry & Co. v. Davis Brothers*, 85 Ga. 625, 629 (1890). Additionally, words should be given their ordinary signification, unless they are words of art or words connected with a particular trade or subject matter. O.C.G.A. §1-3-1 (1990).

The phrase, "land, waters, property, highways, buildings, structures, equipment, or facilities," can be viewed as a functional description of capital assets. A "capital asset" is defined as "a long-term asset, such as land or a building." *The American Heritage® Dictionary of the English Language* (4th ed. 2000). In other words, a capital asset is an asset that will be used beyond the fiscal year in which it is acquired. "Capital expenditures" are "funds spent for the acquisition of a long-term asset." *Id.* I would add that expenses that add to the value or useful life of a capital asset can also be considered a capital expenditure. It is reasonable to infer that the framers of the state constitution intended only capital expenditures to be charged against general obligation bond proceeds, since the purposes stated in the constitution for which such debt can be incurred have to do with capital assets.

Precedent from Alaska offers some insight into this inquiry. The Alaska Constitution provides, in relevant part, that "[n]o debt shall be contracted by any political subdivision of the State, unless authorized for *capital improvements*. . . ." Alaska Const. art. IX, sec. 9 (Emphasis added). The Alaska Supreme Court has analyzed the phrase, capital improvements, as follows:

'Capital', therefore, seems generally to be associated with value represented by real or personal property in some form and with relative permanency. 'Improvement' in its broad sense means betterment.

The Constitution Convention evidenced a clear intent to protect the financial integrity of all political subdivisions. Limiting the purposes for which they could incur indebtedness to capital improvements was one means selected. [Cit. omitted.] This limitation was not intended to permit indebtedness to accomplish *all* desirable improvements sponsored by the governing body and

approved by the electorate. If this had been the intent, it would have been clearly stated by simply omitting the word 'capital'.

*Juneau v. Hixson*, 373 P.2d 743, 747 (Alaska 1962) (Emphasis in original.). The Alaska Attorney General, in reviewing and opining concerning an inquiry as to the appropriateness of certain expenditures, stated:

We are more concerned about your using bond proceeds for items, e.g., the calculator and desk, which are not part of the projects. So long as the item for which bond proceeds are expended is an integral part of a capital improvement or a direct and necessary incident of it, e.g., the appraisal of real property, the expenditure is proper. But where the item is not one or the other but rather falls within an agency's continuing, day-to-day business, it is an operational expense and may not be paid for from bond proceeds.

It appears that the calculator and desk which you cited as examples may well be items which had to be acquired as a direct and necessary incident of the capital improvements, that they would not have otherwise been acquired, and that therefore, the use of bond proceeds to pay for them was proper. This rationale may not, however, be extended much beyond this point. For if it were, bond proceeds could easily be consumed by what are, in fact, operational expenses. That result would be directly contrary to the constitution's dictate that they be used solely for capital improvements. [Cit. omitted.]

1977 Op. Att'y Gen. (Alaska, August 23; J-66-079-78); 1977 Alas. AG LEXIS 353. Thus, the interpretation espoused in this opinion is not inconsistent with the similar interpretation given under the laws of Alaska.

The question then becomes: Are all capital expenditures properly chargeable against general obligation bond proceeds, or are there yet finer distinctions to be made among various capital expenditures? The answer to this question lies in a review of the constitutional provisions that govern the state budget process in Georgia.

The draft of the general appropriations bill that the Governor submits to the General Assembly each year provides "for the appropriation of the funds necessary to operate all the various departments and agencies. . .for the next fiscal year." Ga. Const. art. III, sec. IX, para. II(a). Through a general appropriations bill, as enacted by the General Assembly, the General Assembly "annually appropriate[s] those state and federal funds necessary to operate all the various departments and agencies." Ga. Const. art. III, sec. IX, para. II(b). The expenses to be paid through budget appropriations are, among others, the "ordinary expenses of the executive, legislative, and judicial departments of the government." Ga. Const. art. III, sec. IX, para. III. Thus, the constitution makes provision to deal with annual budget appropriations to agencies and departments for current fiscal year operating expenses. Agency expenses, in the constitutional sense, should be funded through annual budget appropriations in a general

appropriations act and should not be paid or reimbursed from general obligation bond proceeds, even if those expenses could be considered capital expenditures, in that they contribute to the improvement of a capital asset. Thus, by way of example, the salaries of employees of the user agency involved in the construction process should not be charged against bond proceeds but, rather, should be paid from funds received in the annual budget of the user agency. By providing for agency operations through annual appropriations, the constitution clarifies the uses of bond proceeds, by way of implicit limitation. The same meaning must apply to all users of bond proceeds. Thus, by way of example, a state authority should not use bond proceeds to pay for ordinary operating expenses through an intergovernmental contract with a state agency.

In summary, the expenses that are properly chargeable to general obligation bond proceeds are capital expenditures that are not customarily funded through annual budget appropriations in a general appropriations act. Personal services of agency or authority employees and supplies and materials ordinarily needed to operate an agency or authority irrespective of any construction or capital improvement activity should not be charged directly, or indirectly through intergovernmental agreements, against general obligation bond proceeds.

If you have further questions or need further clarification, please feel free to contact me.