



STEVE CLARK
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

OPINION NO. 85-226

December 27, 1985

Joe David Rice, Director
Tourism Development
Arkansas Department of
Parks and Tourism
One Capitol Mall
Little Rock, AR 72201

Dear Mr. Rice:

This is in response to your recent request for an opinion.

You state that your department has been approached by someone interested in constructing a recreational facility financed by tourism bonds. You note that several tourism bond issues have been ruled invalid in recent years because of various problems.

Your first question is as follows:

Is it likely that the constitutional problems of tourism bond issues would be solved if the proposals provided public benefit and were approved by the electorate?

The proposed facility outlined in your letter is a water-slide attraction. No further facts are stated regarding how the project would benefit the public.

Section 1 of Act 380 of 1971 defines tourism activities to be an industry as used in Amendment 49 which provided for bond issues for the purpose of securing and developing industry. That amendment was since repealed by Amendment 62 which also authorizes bond issues for that same purpose. It is proper for the general assembly to legislatively determine that tourism is an industry as used in the amendment. Purvis v. City of Little Rock, 282 Ark. 102, 667 S.W.2d 936 (1984) (hereinafter referred to as Purvis II).

The language authorizing bonds to secure and develop industry is the same in Amendment 49 and Amendment 62. That

provision appears to be an expansion of the definition of public purpose in Amendment 13. Whether bonds are used for this public purpose depends upon whether the entire undertaking is to alleviate unemployment. Wayland v. Snap, 232 Ark. 57, 334 S.W.2d 633 (1960). Every commercial venture does not constitute an industrial undertaking to eliminate unemployment. There must be more than a slight reduction of employment or all commercial enterprises would be eligible for a bond issue. Purvis II, supra, at 121. Therefore, a public purpose must exist which must be more than a slight reduction in unemployment.

It should be noted that in Justice Dudley's concurring opinion in Purvis II, supra, at 121-122, the motel was found to be a freestanding commercial structure and not a functional part of a convention center, a public park, or a recreation center even though the motel was located near a zoo, amusement park, tennis center, golf course, football stadium, baseball stadium and health care facilities. Accordingly, the public purpose was not fulfilled by its location adjacent to other facilities.

There are insufficient facts in the opinion request to state an opinion as to whether the proposed waterslide would result in more than a slight reduction in unemployment, be a part of a larger recreational center, or otherwise constitute a public purpose.

The next issue is whether approval of the electorate would solve constitutional problems in relation to tourist bonds. Amendment 62, like Amendment 49, requires that the majority of voters approve a bond issue. However, past Supreme Court decisions have held that no election was required when bonds were to be paid solely from revenue generated by the improvement and were not, therefore, general obligations of the originating governmental entity. Purvis v. Hubbell, Mayor, 273 Ark. 330, 620 S.W.2d 282 (1981) (hereinafter referred to as Purvis I). In Purvis II the plurality opinion held Act 380 of 1971 is invalid when it purports to authorize bonds to be issued without an election because neither Amendment 49 nor other constitutional provisions permit same. However, Justice Dudley states that the majority of the Court approves the long series of decisions which permit bond issues without electorate approval for authorized public purposes when debt is to be paid out of revenue. Purvis II, supra at 125-126. Therefore, until a decision is rendered on this specific

issue, it seems prudent to obtain voter approval of tourism bond issues to avoid possible constitutional infractions. However, an election will not replace the necessity of a public purpose as addressed above.

Your second question is as follows:

Did Amendment 64 and its companion Act 871 of 1985 offer any possibilities of public/private cooperation in tourism type developments? For example, would it be possible for a community to use the local government bond Act/Amendment to construct a facility (like a waterslide) which could then be leased to private enterprises? Could such developments be located on private property?

A constitutional amendment is to be construed liberally to carry out the obvious purpose of the people, and authority is implied to employ reasonable means to effectuate that purpose. Therefore, a bond issue to alleviate unemployment by constructing a building to be leased to a privately owned enterprise was upheld under Amendment 49. That project would benefit the issuing municipality which can own and hold title to property in any situation unless prohibited by law. Wayland, supra at 65-66.

The general purposes of Amendment 62 did not seem to change from those in Amendment 49 in relation to developing and securing industry and providing for capital improvements of a public nature. The language authorizing the securing and developing of industry is substantially the same in both amendments. Consequently, the interpretation given Amendment 49 should apply to the similar provision in Amendment 62. Peterson Produce Co. v. Chaney, Commissioner, 237 Ark. 600, 274 S.W.2d 809 (1964). Therefore, it appears that there is implied authority in Amendment 62 for a municipality to own and hold title to property which it can lease to private enterprise for a public purpose.

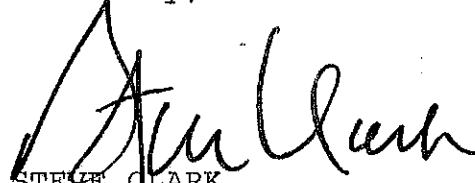
The next question is whether a facility can be located on privately owned property. The precise nature of the relationship concerning this property between the owner and the entity issuing the bonds is not stated. While there is authority that facilities built with the proceeds of a bond issue can be located on leased lands, Vaughn v. City of

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Searcy, 199 Ark. 585, 135 S.W.2d 319 (1940), the lack of facts regarding this relationship precludes an opinion on this issue.

The foregoing opinion which I hereby approve was prepared by Assistant Attorney General Thomas S. Gay.

Sincerely,

A handwritten signature in dark ink, appearing to read "Steve Clark", written over the typed name.

STEVE CLARK
Attorney General

JSC:TSG:jk