



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

ROGER W. TOMPKINS
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOTLINE
(800) 368-8808

January 5, 1990

The Honorable Robert "Chuck" Chambers
Speaker, West Virginia House of Delegates
Charleston, West Virginia 25305

Dear Speaker Chambers:

Your letter of November 8, 1989, requested an opinion concerning Chapter 17, Article 16A, Section 23, of the West Virginia Code of 1931, as amended; Code 31-15-8 and Code 17-16A-22. Your letter posed the following questions:

1. Are Code 17-16A-23 and 31-15-8 constitutional under the provisions of Article X, Sections 4 and 6, of the West Virginia Constitution?
2. May funds received from the issuance of parkway revenue refunding bonds of Code 17-16A-22 be transferred for use in projects outside of those set forth in Code 17-16A-22?
3. What is the effect of any applicable United States Treasury Regulation on Code 17-16A-22?

Before responding to the first request, it is necessary that we set out the Constitutional provisions and the statutory provisions under discussion:

West Virginia Constitution, Article X, Section 4, provides:

Limitation on Contracting of State Debt

No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion or defend the State in time of war; but the payment of any liability other than that for the ordinary expenses of the State, shall be equally distributed over a period of at least twenty years.

West Virginia Constitution, Article X, Section 6, provides:

Credit of State Not to Be Granted in Certain Cases

The credit of the State shall not be granted to, or in aid of any county, city, township, corporation or person; nor shall the State ever assume, or become responsible for the debts or liabilities of any county, city, township, corporation or person; nor shall the State ever hereafter become a joint owner, or stockholder in any company or association in this State or elsewhere, formed for any purpose whatever.

West Virginia Code Section 17-16A-23 provides:

Special highway fund; appropriations from fund.

(a) There is hereby created a special fund in the state treasury which shall be designated and known as the "West Virginia special highway fund." The special highway fund shall consist of (i) all funds allocated and disbursed to the state department of highways by the parkways authority, including without limitation the proceeds of any parkway revenue bonds or revenue refunding bonds issued by the parkways authority pursuant to sections eleven, twenty-one or twenty-two [Sections 17-16A-11, 17-16A-21 or 17-16A-22] of this article, in repayment of the amount of state funds used to upgrade the West Virginia Turnpike to federal interstate standards, (ii) any appropriations, grants, gifts, contributions or other revenues received by the special highway fund from any source, and (iii) all interest earned on moneys held in the fund. When any funds are received by the state department of highways from the parkways authority pursuant to this section, they shall be paid into the state treasury by the commissioner of the department of highways and credited to the special highway fund, and shall be disbursed in the manner set forth in subsections (b) and (c) of this section. The special highway fund shall not be treated by the auditor and treasurer as part of the state road fund or as part of the general revenues of the state.

(b) The governor shall have the authority to transfer to the insurance fund created in section eight [Section 31-15-8], article fifteen, chapter thirty-one of this code, on any date or dates after the enactment of this section, up to thirty-five million dollars of the funds received or earned by the special highway fund, which funds may be used and applied by the West Virginia economic development authority in the manner and to the extent set forth in article fifteen of said chapter thirty-one [section 31-15-1 et seq.]. On or

before the thirty-first day of December, one thousand nine hundred ninety-four, the economic development authority shall retransfer to the special highway fund the thirty-five million dollars advanced to the insurance fund pursuant to this section. All interest earned on the thirty-five million dollars while being held in the insurance fund shall remain in, and be the property of, said insurance fund.

(c) Upon the transfer of thirty-five million dollars to the insurance fund as provided in subsection (b) of this section, the Legislature shall annually appropriate all or any part of the balance of the funds deposited in the special highway fund for the construction, reconstruction, improvement, maintenance or repair of any parkway project or projects: Provided, That all of such funds shall be appropriated to (i) the upgrading or addition of interchanges; (ii) the construction of expressways or feeder roads; or (iii) the upgrading or construction of information centers, visitors' centers, rest stops, or any combination thereof, and that all such feeder roads, expressways, interchanges, information centers, visitors' centers or rest stops shall connect to the West Virginia Turnpike and within seventy-five air miles of the West Virginia Turnpike as it existed on the effective date of this legislation, or any subsequent expressway, turnpike or feeder road constructed pursuant to this subsection. The appropriation of funds pursuant to this subsection shall be expended on more than one project.

West Virginia Code Section 31-15-8 provides:

Insurance fund.

(a) There is hereby created an insurance fund which shall be a continuing, nonlapsing, revolving fund that consists of:

(1) Moneys appropriated by the state to the insurance fund;

(2) Premiums, fees, and any other amounts received by the authority with respect to financial assistance provided by the authority from the insurance fund;

(3) Upon the satisfaction of any indebtedness or other obligation owed on any property held or acquired by the authority, such proceeds as designated by the

authority from the sale, lease, or other disposition of such property;

(4) Income from investments made from moneys in the insurance fund; and

(5) Any other moneys transferred to the insurance fund or made available to it for the purposes described under this section, under this article or pursuant to any other provisions of this code.

Subject to the provisions of any outstanding insurance agreements entered into by the authority under this section, the authority may enter into covenants or agreements with respect to the insurance fund, and establish accounts within the insurance fund which may be used to implement the purposes of this article. If the authority elects to establish separate accounts within the insurance fund, the authority may allocate its revenues and receipts among the respective accounts in any manner the authority considers appropriate.

If the authority at any time finds that more money is needed to keep the reserves of the insurance fund at an adequate level, the authority, with the consent of the chairman, shall send a written request to the Legislature for additional funds.

(b) The insurance fund shall be used for the following purposes by the authority to financially assist projects so long as such financial assistance will, as determined by the authority, fulfill the public purposes of this article:

(1) To insure the payment or repayment of all or any part of the principal of, redemption or repayment premiums or penalties on, and interest on bonds or notes whether issued under the provisions of this article or under the Industrial Development and Commercial Development Bond Act, the West Virginia Hospital Finance Authority Act or, with respect to health care facilities only, article thirty-three [Section 8-3-1 et seq.], chapter eight of this code;

(2) To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on any instrument executed, obtained, or delivered in connection with the issuance and sale of bonds or notes whether under the provisions of this article or under

the Industrial Development and Commercial Development Bond Act, the West Virginia Hospital Finance Authority Act or, with respect to health care facilities only, article thirty-three [Section 8-33-1 et seq.], chapter eight of this code;

(3) To insure the payment or repayment of all or any part of the principal of, prepayment premiums or penalties on, and interest on any form of debt instrument entered into by an enterprise, public body or authority of the state with a financial institution, including, but not limited to, banks, insurance companies and other institutions in the business of lending money, which debt instruments shall include, but not be limited to, instruments relating to loans for working capital and to the refinancing of existing debt: Provided, That nothing contained in this subsection or any other provision of this article shall be construed as permitting the authority to insure the refinancing of existing debt except when such insurance will result in the expansion of the enterprise whose debt is to be refinanced or in the creation of new jobs;

(4) To pay or insure the payment of any fees or premiums necessary to obtain insurance, guarantees, letters of credit or other credit support from any person or financial institution in connection with financial assistance provided by the authority under this section; and

(5) To pay any and all expenses of the authority, including, but not limited to:

(i) Any and all expenses for administrative, legal, actuarial, and other services related to the operation of the insurance fund; and

(ii) All costs, charges, fees, and expenses of the authority related to the authorizing, preparing, printing, selling, issuing, and insuring of bonds or notes (including, by way of example, bonds or notes, the proceeds of which are used to refund outstanding bonds or notes) and the funding of reserves.

(c) The total aggregate amount of insurance from the insurance fund with respect to the insured portions of principal of bonds or notes or other instruments may not exceed at any time an amount equal to five times the balance in the insurance fund.

(d) The authority may, in its sole and absolute discretion, set the premiums and fees to be paid to it for providing financial assistance under this section. The premiums and fees set by the authority shall be payable in the amounts, at the time, and in the manner that the authority, in its sole and absolute discretion, requires. The premiums and fees need not be uniform among transactions, and may vary in amount: (1) Among transactions, and (2) at difference stages during the terms of transactions.

(e) The authority may, in its sole and absolute discretion, require the security it believes sufficient in connection with its insuring of the payment or repayment of any bonds, notes, debt or other instruments described in subdivisions one, two, three and four, subsection (b) of this section.

(f) The authority may itself approve the form of any insurance agreement entered into under this section or may authorize the chairman or his designee to approve the form of any such agreement. Any payment by the authority under an agreement entered into by the authority under this section shall be made at the time and in the manner that the authority, in its sole and absolute discretion, determines.

(g) The obligations of the authority under any insurance agreement entered into pursuant to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this state or of any county, municipality or any political subdivision of this state for the payment of any amount due thereunder or pursuant thereto, but the obligations evidenced by such insurance agreement shall be payable solely from the funds pledged for their payment. All such insurance agreements shall contain on the face thereof a statement to the effect that such agreements and the obligations evidenced thereby, are not debts of the state or any county, municipality or political subdivision thereof but are payable solely from funds pledged for their payment.

First, we will discuss the relevant law and then apply it to the provisions you asked us to consider in your first question.

The purpose of Article X, Sections 4 and 6, of the West Virginia Constitution is "to protect the fiscal integrity of the State by prohibiting creation of any present indebtedness that would obligate subsequent legislatures to make appropriations." State ex rel. W. Va. Res. Recovery v. Gill, ___ W. Va. ___, 323

S.E.2d 590, 592-93 (1984). This constitutional concern is often raised when a state agency or authority issues bonds. Such is the case with Code 17-16A-23. The new West Virginia Parkways, Economic Development and Tourism Authority has issued revenue refunding bonds pursuant to Code 17-16A-22 and revenue bonds pursuant to Code 17-16A-11. However, with respect to Code 31-15-8, the West Virginia Economic Development Authority is not issuing bonds, but rather insuring the debt instruments of various West Virginia businesses and, therefore, fostering economic growth in the state. Notwithstanding the dissimilarity in the type of transactions involved with these two Code provisions, we must address the same questions in looking at both statutes. First, is the state, incurring unconstitutional state debt; and secondly, is the state placing its name on private debt? We will first survey the current state of the law relative to these questions.

Recently, the West Virginia Supreme Court of Appeals examined the first question when it reviewed a bond issue of the West Virginia Resource Recovery -- Solid Waste Disposal Authority and held it constitutional. State ex rel W. Va. Res. Recovery v. Gill, ___ W. Va. ___, 323 S.E.2d 590 (1984). The court in Gill, after assessing the relevant case law, reduced the "state debt" question to a simple determinative question: are future Legislatures "obligated" to make successive appropriations in order to support the contended debt? It should be noted that the court placed great emphasis on the word "obligated" in its query, for Gill overruled an earlier decision which had held that the important query was whether or not the state debt "may be paid from future legislative appropriations." (Emphasis added.) Gill, at 596.

The Gill court also addressed the second question, *i.e.*, is the state placing its name and credit on private debt? Gill implicitly held that this constitutional question is resolved if the state debt question is resolved. The court stated: "Having decided that the agreement does not create an unlawful state debt, it is evident that it works neither as a pledge of the state's credit nor an unlawfully extended obligation upon a state agency." Gill, at 596. Other decisions have more explicitly and fully considered the second question.

In State v. Gainer, 149 W. Va. 740, 143 S.E.2d 351 (1965), our court upheld the use of state road funds for relocation costs of public utilities in order to facilitate the construction of an interstate highway. The court stated that at its essence Article X, Section 6, of the West Virginia Constitution was employed "to prevent the practice which obtained earlier in Virginia of lending the state's credit to counties or to private internal development projects such as railroads, canals, toll roads and turnpikes". Gainer, at 364. Yet, our court has

further held that this provision was not "intended to inhibit the use of the State's funds in carrying out public purposes." State ex rel. W. Va. etc. v. Waterhouse, 158 W. Va. 196, 212 S.E.2d 724, 731 (1974) quoting State ex rel. Dyer v. Sims, 134 W. Va. 278, 58 S.E.2d 766 (1950), reversed on other grounds in 341 U.S. 22, 71 S. Ct. 557, 95 L. Ed. 713 (1951). The Waterhouse court, in determining that bonds of the Housing Development Fund were constitutional, reiterated the rule that the Legislature has broad discretion as to the definition of "public purpose." "It having been declared by the legislature that the subject act was designed to fulfill a public purpose, we find that it does not authorize the pledging of the credit of the state as proscribed by our constitution." Waterhouse, at 732. Accord, State ex rel. Hughes v. Board of Education, 154 W. Va. 107, 174 S.E.2d 711 (1970), appeal dismissed, 403 U.S. 944, 29 L. Ed. 2d 854, 91 S. Ct. 2274 (1971). Conversely, if the Legislature clearly acts to appropriate state funds for completely private purposes, then such measures are unconstitutional. E.g., State ex rel. Lippert v. Gainer, 146 W. Va. 840, 122 S.E.2d 618 (1961). Therefore, the acid test is whether the "purpose" is public or private. The court, in its analysis, will generally accord significant discretion to the Legislature in achieving public ends. Also, if there is doubt as to whether or not the appropriation is for a public purpose, then such doubt will be resolved in favor of the appropriation. State ex rel. Davis Trust Co. v. Sims, 130 W. Va. 216, 46 S.E.2d 90 (1947).

Having surveyed the judicial construction of these pertinent questions, we must now apply these rules to the present statutes. First, we will apply the rules to Code 17-16A-23.

Code 17-16A-23 is part of the recently enacted legislation which created the West Virginia Parkways, Economic Development and Tourism Authority. The Parkways Authority has issued bonds. The fact that these bonds are not the debt of the state is quite clear: "Parkway revenue bonds and revenue refunding bonds issued under the provisions of this article shall not be deemed to constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision, but such bonds shall be payable solely from the funds herein provided therefor from revenues." Code 17-16A-2. This point is amplified by the Parkway bond trust agreement provision of the Parkways article which states: "Any such trust agreement may pledge or assign the tolls, rents, fees, charges and other revenues to be received, but shall not convey or mortgage any project or any part thereof." Code 17-16A-12. Additional provisions of the Parkways Authority statute make this point abundantly clear -- its debt is supported by its own revenue. Accordingly, as to the first question, that is, whether or not future Legislatures are "obligated" to make further appropriations on this debt, it is evident that future

Legislatures are not obligated to support the Parkways debt. Therefore, this debt satisfies the requirement outlined in Gill.

In addition, it is also clear that the Parkways debt is not unconstitutional as to the "public purpose" question. Among the various purposes or objectives of the Parkways Authority are the following objectives: (1) to relieve congestion on state roads; (2) to enhance state tourism; (3) to promote agriculture and economic development in the state; and (4) to provide for modern express highways. Code 17-16A-1. In short, the Legislature established the Parkways Authority so as to further develop the state road system, state tourism, and, finally, the state's industrial and agricultural economy. To be sure, it is quite ambitious, but importantly the statute's ambitious nature is for the good of the public. The Parkways debt, we conclude, is in compliance with the "public purpose" test of Waterhouse and other related cases. We must now apply our conclusions arrived at thus far to your first questions concerning Code 17-16A-23.

Your first question involves Code 17-16A-23, which is part of the overall bond mechanism intended to make the improvements listed and discussed above. This section establishes a Special Highway Fund in which are deposited some of the bonds proceeds and other parkway revenues, i.e., toll money. The Transportation Department then loans some of these monies to the Insurance Fund of the Economic Development Authority. Code 31-15-8. It is our belief that under Article X, Sections 4 and 6, of the West Virginia Constitution and the judicial interpretation thereof, this provision is constitutional. The Special Highway Fund does not create or foster a "state debt" which "obligates" future Legislatures to make appropriations. Likewise, the Special Highway Fund's purposes or objectives are those of the Parkways Authority itself, and therefore are public in nature and constitutional under the provisions of Article X, Section 6, of the West Virginia Constitution. Code 17-16A-23 is in accordance with Gill and Waterhouse.

Saying that, we must now examine the constitutionality of Code 31-15-8, "The Insurance Fund," of the Economic Development Authority as established and described in Chapter 31, Article 15, of the West Virginia Code. The Legislature made it clear that the Insurance Fund's liabilities are not liabilities of the state. "The obligations of the authority under any insurance agreement entered into pursuant to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this state or of any county, municipality or any political subdivision of this state . . . (obligations) shall be payable solely from the funds pledged for their payment. . . ." West Virginia Code 31-15-8(g).

The funds pledged for the Insurance Fund are specified in 31-15-8(a):

(a) There is hereby created an insurance fund which shall be a continuing, nonlapsing, revolving fund that consists of:

(1) Moneys appropriated by the state to the insurance fund;

(2) Premiums, fees, and any other amounts received by the authority with respect to financial assistance provided by the authority from the insurance fund;

(3) Upon the satisfaction of any indebtedness or other obligation owed on any property held or acquired by the authority, such proceeds as designated by the authority from the sale, lease, or other disposition of such property;

(4) Income from investments made from moneys in the insurance fund; and

(5) Any other moneys transferred to the insurance fund or made available to it for the purposes described under this section, under this article or pursuant to any other provisions of this code.

Given the judicial construction of Article X, Section 6, of the West Virginia Constitution, we obviously must focus on the Legislature's obligation, if any, to the Insurance Fund. In order to determine if the state is obligated to finance this fund, we must follow the normal course of statutory interpretation: first, we must view the individual language, and then we must read the statute as a whole. We start with the provision of the statute that lists the sources for the fund, Code 31-15-8(a)(1). This provision does nothing more than list the sources; it does not obligate the Legislature to supply the funding and conceivably it may contribute one dollar or one million dollars. There appears to be no obligatory or mandatory language binding the Legislature to the Insurance Fund. Also, Code 31-15-8(a)(5) reveals how the Legislature's role in supplying appropriations is discretionary: "If the authority at anytime finds that more money is needed to keep reserves of the insurance fund at an adequate level, the authority, with the consent of the chairman, shall send a written request to the Legislature for additional funds." (Emphasis added.) Therefore, it seems clear that the language does not obligate the state to support the Insurance Fund. The statute explicitly states that the Fund is not the obligation of the state; moreover, there is

no language commanding the Legislature to make future appropriations. Consequently, when we read the separate parts as a whole, we see that the legislative intent was not to obligate the state to finance this program. Accordingly, since the Legislature is not obligated to support this program, we conclude that it satisfies Gill.

Next, we must apply the judicial construction of Article X, Section 6, of the Constitution to this statute and ask whether the purposes of the Insurance Fund are public or private in nature.

The Legislature quite clearly and dramatically sets out the purposes of the Economic Development Authority. In brief, the Legislature intended this authority to work toward ameliorating the economic ills that plague this state. The Authority's purpose is to attract, stimulate and cultivate economic development in this state. Code 31-15-2 and 3. It appears then that the overall objective is public in nature. We note that the Legislature seeks to serve the public in Code 31-15-8 by insuring the debt of private businesses. This measure should help to stimulate economic growth by securing the debt of new and expanding businesses. The fruits of a stimulated and cultivated economy are jobs and eventually an enhanced general welfare of the state. Accordingly, the Authority's action in securing private debt has a constitutional public purpose and, therefore, meets the test established in Waterhouse and other related cases.

In your second question you ask whether or not Parkways Authority Revenue bond proceeds may be applied to objectives beyond those recited in Code 17-16A-22. A plain language reading of the statute reveals that these monies "must be used solely for parkways projects" therein described and on economic development projects pursuant to Code 17-16A-23. The statute specifically forbids use of the monies "to pay all or any part of the cost of any economic development project, except as provided in section twenty-three [Section 17-16A-23] of this article." (Emphasis added.) Thus, the proceeds from Parkways Authority refunding bonds may be used only for projects set forth in Code 17-16A-22 and 17-16A-23.

Your third question, presented in broad terms, asks this office's opinion as to the "effect of any applicable United States Treasury Regulations" on Code 17-16A-22. Given the nature of the question, our answer must also encompass a broad or wide orientation pursuant to the facts as we understand them. Therefore, in order to answer this question, we need to comment on the effects of any applicable Internal Revenue Code provisions and related Treasury Regulations on the whole statutory bond mechanism of which Code 17-16A-22 is part, and on the statutes' supporting agreements. These supporting

agreements consist of: (1) the 1989 Bonds Indenture Agreement; (2) the Interagency Agreement between the State Transportation Department, the Parkways Economic Development and Tourism Authority, and the Economic Development Authority; and (3) the amended Tripartite Agreement between the Federal Highways Administration and the old Turnpike Commission. Essentially, these instruments implement the issuance of the 1989 Bonds and facilitate the temporary transfer of Parkways Authority monies to the Economic Development Authority. In answering this question, we naturally assume that by the word "effect" you mean to ask whether or not the interest from these bonds are excluded from gross income pursuant to Internal Revenue Code Section 103. In other words, we shall answer your question by offering an opinion as to whether or not, under federal law, this interest should be excluded from federal gross income. There are, of course, an endless host of potential federal taxing questions and issues. Our response will be limited to this fundamental state and local bond question.

In answering this question we must first summarize the parts of the transaction, as we understand them, are relevant to your question. Our understanding is as follows. The Parkways Authority has issued One Hundred Forty-Three Million Dollars in Series 1989 Bonds. The proceeds from this sale will go to various transportation ends; part of the proceeds are deposited in the Special Highway Fund as discussed above. The Governor, pursuant to Code 17-16A-23, may transfer Thirty-Five Million Dollars from the Special Highway Fund to the Insurance Fund of the Economic Development Authority. The Insurance Fund, according to the same statute, must return this amount to the Parkways Authority on or before December 31, 1994. Pursuant to the Interagency Agreement, the Thirty-Five Million Dollars in transferred proceeds will consist of part bond proceeds and part Parkways revenue. As specified in this agreement, upon the transfer of these monies, the Economic Development Authority will immediately invest the bond proceeds in United States Treasury Obligations and at the same time assign those United States Treasury Obligations to the Special Highway Fund. These Obligations will mature prior to December 31, 1994, in the amount of Thirty-Five Million Dollars; therefore, the Transportation Department and Parkways Authority will consider this assignment as payment in full of the money loaned to the Development Authority. Thereafter, this money, as with essentially all of the bond proceeds money, will be expended for West Virginia highways and turnpike needs. All turnpike revenues will ultimately go towards turnpike needs as well, pursuant to the amended Tripartite Agreement and the statute cited above.

We must now specifically turn to your interest exclusion question. Given the transaction, we will appropriately focus this question on the element that involves the bond proceeds that

are instantaneously transferred to and from the Economic Development Authority. We start by summarizing the federal law. The general federal rule is that the interest of state and local bonds is not included in federal gross income. I.R.C. 103 (1987). However, recent federal tax reforms have somewhat altered the landscape. Now, generally, pursuant to Internal Revenue Code Section 141 and its appendant Treasury Regulations, bonds whose proceeds are used for private activity are not exempt. The provided test to determine activity use is whether or not more than ten percent of the proceeds is being used directly or indirectly for private use. I.R.C. 141(b) (1987). Thus, distilled, we must provide an opinion as to the possible outcome of this test as applied to those bond proceeds transferred immediately to and from the Development Authority.

Although we cannot offer a controlling opinion on an issue of federal law, it is our belief, based on this test, that the interest from these bonds should not be included in federal gross income; in other words, this transfer does not satisfy the private activity test. We predicate this belief on three reasons. First, these proceeds always stay under the control of the Parkways Authority. The Parkways Authority controls the proceeds when they are in the Special Highways Fund before the instantaneous transfer to and from the Insurance Fund. The Parkways Authority continues to control the proceeds after the transfer because of the fact that the said United States Treasury Obligations are assigned to the Special Highway Fund of the Authority. Second, any interest accrued by the bond proceeds is the property of the Parkways Authority. The Treasury Obligations, which were purchased with revenue from the bond proceeds, were assigned to the Special Highway Fund and therefore are the property of the Parkways Authority. Accordingly, the interest from these obligations is the property of the Parkways Authority. Third, the bond proceeds solicited for the general needs of the state road system will eventually be applied towards these ends as stipulated in Code 17-16A-23(c). Thus, the bond proceeds will be controlled and enjoyed by the Parkways Authority, and will ultimately be applied to Parkways needs. Therefore, the Parkways Authority uses the bond proceeds both directly and indirectly.

In conclusion, after viewing the applicable federal law and the design of this transaction, it is the opinion of this office that the 1989 Bond Series interest should not be included in gross income, pursuant to Internal Revenue Code 103.

In summary, this office is of the opinion that:

1. Code provisions 17-16A-23 and 31-15-8 are constitutional under Article X, Sections 4 and Section 6, of the West Virginia Constitution.

Page 14

2. Funds received from the issuance of revenue refunding bonds may not be transferred to or expended on projects outside of those set forth in Code 17-16A-22 and 17-6A-23.

3. The interest from the 1989 Bond Series should be excluded from federal gross income.

Very truly yours,

ROGER W. TOMPKINS
ATTORNEY GENERAL

By  Deputy
John Ernest Shank

JES/JJA/mgm