

Water Management District, investment of funds

Number: INFORMAL

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Mr. Mark T. Mustian
Attorney for the Suwannee River Water Management District
Barnett Bank Building, Suite 800
315 South Calhoun Street
Tallahassee, Florida 32301

Dear Mr. Mustian:

In accordance with the recommendation of the Auditor General and on behalf of the Suwannee River Water Management District (district), you ask what action the district should take regarding its current investment of funds in the Bayerische Landesbank.

In 1992 and 1993, the district issued certain Land Acquisition Revenue Refunding Bonds for the purpose of refunding certain bonds issued in 1988, 1989, and 1990, to pay for certain expenses associated with the bond issuance, and for making a required reserve account contribution. It appears that the 1993 bonds have been retired; the 1992 bond series, however, will mature in the year 2004.

Section 373.584, Florida Statutes, provides for the issuance of revenue bonds by water management districts and provides the legal authority under which the above referenced bonds were issued. Subsection (2) of the statute provides in part:

"Revenue bonds and notes shall be, and shall be deemed to be, for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds and notes for registration. *The powers and authority of districts to issue revenue bonds*, including, but not limited to, . . . enter into contracts incidental thereto, and to do all things necessary and desirable in connection with the issuance of revenue bonds, shall be coextensive with the powers and authority of municipalities to issue bonds under state law. The provisions of this section constitute full and complete authority for the issuance of revenue bonds and shall be liberally construed to effectuate its purpose." (e.s.)

The district acquired a bond issue policy with AMBAC Indemnity Corporation (corporation) providing that if the district is unable to repay the bonds, the corporation would make such payments. As a condition of the policy, the district was required to establish a reserve account to be held for the benefit of the bonds. The district elected to invest the reserve account in an investment contract with Bayerische Landesbank Girozentrale.

In investing the funds, the district relied on the language in section 373.584(2), Florida Statutes, stating that its powers and authority to issue bonds are coextensive with the powers and authority of a municipality to issue bonds. The authority of a municipality to invest surplus funds is provided for in Part III of Chapter 166, Florida Statutes, relating to municipal finance and

taxation, not Part II of Chapter 166, Florida Statutes, which concerns municipal borrowing, including the issuance of bonds. A municipality is authorized to adopt an ordinance permitting investment of surplus municipal funds and securities which are not specifically enumerated in this section subject to any restrictions imposed by provisions of special law or municipal charter.[1]

A water management district's authority to invest funds, however, is set forth in section 373.556, Florida Statutes, which provides:

"The governing body of the district may, in its discretion, invest funds of the district in the following manner.

(1) That portion of the funds of the district which the board anticipates will be needed for emergencies may be invested in bonds or other obligations, either bearing interest or sold on a discount basis, of the United States, or the United States Treasury, or those for the payment of the principal and interest of which the faith and credit of the United States is pledged.

(2) All other funds of the district may be invested in securities named in subsection (1) hereof, or in bonds or other interest-bearing obligations of any incorporated county, city, town, school district or road and bridge district located in the state, for which the full faith and credit of such political subdivision has been pledged; provided, such political subdivision or its successor, through merger, consolidation or otherwise, has not within 5 years previous to the making of such investment, defaulted for more than 6 months in the payment of any part of the principal or interest of its bonded indebtedness; and, provided, the securities purchased under the provisions of this subsection shall have a maturity date on or before the anticipated date of need for the funds represented thereby."

Thus, the Auditor General, in reviewing the above transactions, made the following findings:

"Our review disclosed that \$1,164,500 of the bond reserve account from the District's Land Acquisition Revenue Refunding Bonds, Series 1992, was invested in a domestic guaranteed investment contract with Bayerische Landesbank (a German bank) New York Branch. It was not apparent from the District's records that this guaranteed investment contract would be an authorized investment of the District pursuant to the statutes cited above. Accordingly, it does not appear that the District had the authority to enter into this arrangement. In the absence of specific legal authority to invest the bond reserve account in this manner, *we recommend* that the District refrain from making future similar investments. *We further recommend* that the District consult with the Attorney General to determine what action, if any, the District should take regarding the current investment of funds in the Bayerische Landesbank." [2] (emphasis in original)

In accordance with the Auditor General's recommendation, you ask this office what action, if any, the district should take regarding the current investment of funds in the Bayerische Landesbank. You note however, that the investment agreement provides that while it may be drawn upon at any time without penalty for the purposes set forth in the documents securing the district's Series 1992 bonds, if the district elects to terminate the investment agreement or draw upon it for any other reason, it is liable to the bank for "break costs" incurred by the bank in breaking such investment.

In light of the above, and in view of the penalties that may be imposed for terminating the investment agreement, this office cannot advise the district to withdraw the funds at this time. However, it would appear advisable for the district to seek legislative clarification of its responsibilities in this matter. Moreover, as the Auditor General recommended, the district should refrain from making additional such investments until the Legislature has had the opportunity to comment upon the district's powers to invest its funds.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Section 166.261, Fla. Stat. *And see* Op. Att'y Gen. Fla. 87-32 (1987).

[2] State of Florida Auditor General, Operational Audit of the Suwannee River Water Management District, dated September 9, 1997.