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OFFICE OF THE ATTORNEY GENERAL  
State of California

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OPINION  
  
of  
  
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No. 81-303  
  
JULY 3, 1981

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THE HONORABLE SUSANNE MORGAN, CHAIRPERSON, STATE  
PUBLIC WORKS BOARD, has requested an opinion on the following question:

Is it mandatory for the State Public Works Board to make additional or redemption payments any time the amount in the sinking fund account, issue 1956, exceeds by \$25,000 the amount equal to one year's interest on all certificates then outstanding?

CONCLUSION

The State Public Works Board must make additional or redemption payments any time the amount in the sinking fund account, issue 1956, exceeds by \$25,000 the amount equal to one year's interest on all certificates then outstanding.

## ANALYSIS

The State Building Construction Act of 1955<sup>1</sup> (Stat. 1955, ch. 1686) authorizes the State Public Works Board (hereinafter “board”) to acquire property and construct buildings for use as state office buildings. (See 27 Ops. Cal. Atty. Gen. 115 (1956).) Under this act the board may issue certificates or revenue bonds to finance the cost of such buildings. Certificates, or “building certificates” as they have been called, were not originally negotiable instruments and were transferable only between state agencies having jurisdiction over special or trust funds. (Gov. Code, § 15821)<sup>2</sup> The certificates were transformed into negotiable instruments by the Legislature in 1976. (Stat. 1976, ch. 391, p. 1041, § 1; see also 60 Ops. Cal. Atty. Gen. 39 (1977).) Section 15822 requires the board to promulgate a resolution before issuing certificates and section 15824 provides that the resolution becomes part of the contract with a certificate holder.

Section 15845 creates the Public Building Construction Fund with three separate accounts: a construction account, a revenue account, and a sinking fund account. Each of these three accounts is further segregated by separate accounting procedures for each issue of certificate. Section 15845 further provides:

“ . . . . .

“The use and disposition of the sinking fund account is subject to the regulations provided in the resolution. . . . *Subject to the provisions of the resolution*, any money in the sinking fund account of each series in excess of the amount equal to one year’s interest on all certificates or revenue bonds then outstanding *may* be applied to the purchase or redemption of certificates or revenue bonds. . . .” (Emphasis added.)

This portion of section 15845 establishes a statutory reserve requirement and provides: that any amount in excess of the reserve requirement may be used to purchase or redeem certificates as the board directs.

The subject of this opinion is the authorization for construction of state office buildings in specified locations contained in Statutes 1955, chapter 1687. The resolution implementing this act provides how, each of the three separate accounts in the Public Buildings Construction Fund operates. Section 6.02 of the resolution provides that any unencumbered balance remaining in the construction account one year after the date of

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<sup>1</sup>Part 10b (commencing with § 15800) of division of title 2 of the Government Code.

<sup>2</sup>All unidentified section references will be to the Government Code.

completing an office building shall be transferred into the sinking fund account. Under section 6.03 of the resolution, any rentals, revenues, and receipts received by the board for the operation of the public buildings will go into the revenue account. The money in the revenue account is used to pay the costs of operating the buildings, and any surplus at the end of a fiscal year is transferred into the sinking fund account. The sinking fund account is made up of the moneys transferred from the other two accounts as well as any other funds that the board causes to be deposited therein. The money in this account is used to pay the principal and interest on the certificates and any “additional or redemption payments.” (§ 6.04 of the resolution.) The additional or redemption payments pay off the debt earlier than the stated maturity date.

The Public Buildings Construction Fund has been designated by the board and the Department of General Services as appropriate for investment as part of the Surplus Money Investment Fund handled by the state treasurer. Section 15822 limits the interest rate on certificates at five percent per year, which is substantially below the return for the Surplus Money Investment Fund. This difference in interest rates is the reason for the question posed by the board. It is evident that if the board can invest money at an interest rate above the rate paid to the certificate holders, the board will be able to earn extra income for the fund. On the other hand, the certificate holders, who receive five percent per year from this issue, can also make investments at substantially higher interest rates if their certificates are paid off early.

Section 15845 does not require that the funds in excess of the statutory reserve requirement be used for additional redemption of certificates but merely states that the board may choose to make this use of them. The board is thus free to decide the use of the excess funds and make this determination a part of the resolution. Section 4.04 of the resolution, entitled “Funds Available for Redemption Payments,” provides in pertinent part:

“Any money in the Sinking Fund Account, Issue 1956, of the Fund in excess of the amount equal to one year’s interest on all Certificates of this issue then outstanding *may* be applied to the purchase or redemption of such certificates.

“If at any time the amount of said Sinking Fund Account shall exceed by \$25,000.00 the amount equal to one year’s interest on all Certificates then outstanding as in this section 4.04 provided, the amount in said Sinking Fund Account in excess of said interest reserve requirement, *shall* be applied to additional or redemption payments in accordance with the provisions of this Resolution.”

“.....” (Emphases added.)

Section 6.05 of the resolution provides:

*“Notwithstanding any provision of this Resolution to the contrary and subject to the obligations of the board to the holders of the Certificates issued hereunder, the Department of Finance is authorized to invest and re-invest surplus moneys in any of the accounts in the Fund. . . .”* (Emphasis added.)<sup>3</sup>

Once there is more than \$25,000 over the statutory requirement the terms of the resolution require the excess to be paid as additional or redemption payments. However, the phrase “[n]otwithstanding any provision of this resolution to the contrary” in section 6.05 of the resolution might be read so as to allow the board to ignore the mandatory nature of the language in section 4.04 of the resolution.

Section 6.05 of the resolution is based upon section 15874, which provides in pertinent part:

*“Subject to the obligations of the board to its certificate holders or bondholders, the Department of Finance is authorized to invest and reinvest surplus moneys in any of the accounts in the Public Building Construction Fund. . . .”* (Emphasis added.)

The focus of this section is only upon those funds which have not been committed to the certificate holders. In light of this statutory provision we conclude that the phrase “subject to the obligations of the board to the holders of the certificates issued hereunder” appearing in section 6.05 of the resolution is in the nature of a condition precedent which must be observed before the money can be invested or reinvested under this section. As stated above, funds in excess of \$25,000 over the reserve required by section 15845 is an obligation of the board to its certificate holders and as such prevails over the authority to invest the funds found in section 6.05 of the resolution.

Section 4.04 of the resolution requires the redemption payments to be made when the sinking fund account exceeds \$25,000. Section 9.01 of the resolution provides that the resolution may not be amended without agreement of the certificate holders representing 75 percent of the aggregate principal amount of the issue. Section 15845 requires the board to invest the surplus funds as provided in the resolution.

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<sup>3</sup>Evidently the Department of Finance had the original duty under these sections. It is our understanding that the Department of General Services has supplanted the Department of Finance in this regard.

We conclude that it is mandatory for the State Public Works Board to make additional or redemption payments at any time the amount in the sinking fund, issue 1956, exceeds by \$25,000 the amount equal to one year's interest on all certificates then outstanding. This obligation continues until such time as the board causes the resolution to be properly modified.

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