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State and Local Government

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STATE AND LOCAL GOVERNMENT

I. TAXING POWER OF AN APPOINTED BODY

Few policies are as fundamental to American constitutionalism as the concept of no taxation without representation. The South Carolina Supreme Court recently reaffirmed this principle in *Crow v. McAlpine*,[1] holding that the Marlboro County Legislative Delegation could properly recommend Marlboro County Board of Education appointees to the Governor,[2] but that the Board, as an appointed body, could not levy the tax necessary to operate the county school district.[3]

The plaintiffs, as residents, electors, and taxpayers of Marlboro County, brought action seeking declaratory relief from alleged unconstitutional provisions of acts dealing with the Marlboro County Board of Education.[4] Those provisions authorized the County Legislative Delegation to recommend individuals for appointment by the Governor to the County Board of Education[5] and authorized the Board of Education, once appointed, to direct the levy and collection of taxes for the school district budget.[6]

In attacking the first provision, the plaintiffs argued that the power to recommend Board appointees was not a legislative function and that the exercise of that power by the Legislative Delegation violated article I, section 8 of the South Carolina Constitution, which requires separation of the powers of the governmental branches.[7] In attacking the second provision, the plaintiffs asserted that the delegation of the taxing power by the General Assembly to a local board, not elected by popular vote, violated article X, section 5 of the state constitution, which pro-

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1. ___ S.C. ___, 285 S.E.2d 355 (1981).
2. *Id.* at ___, 285 S.E.2d at 357.
3. *Id.* at ___, 285 S.E.2d at 358.
4. *Id.* at ___, 285 S.E.2d at 356.
5. 1966 S.C. Acts 2624, No. 1026 (codified at S.C. CODE § 21-3503 (1962, as amended)).
6. 1963 S.C. Acts 624, No. 389 (codified at S.C. CODE §§ 21-3515 to -3517 (1962, as amended)).
7. S.C. CONST., art. I, § 8 (1976).

hibits taxation without representation.[8] The trial court upheld the constitutionality of both challenged provisions.[9]

The supreme court discussed the adjudication of constitutional challenges to statutory enactments, following the principle that the South Carolina Constitution is a limitation on what would be an otherwise plenary power. The court noted that it would strike down an act of the General Assembly only if it offended a specific provision of the South Carolina Constitution and only if no construction of the act would render the statute constitutional.[10]

Applying this rationale, the court found no constitutional limitation on the recommendation by the Legislative Delegation of appointments for the Board of Education and affirmed that part of the lower court's decision. For support the court cited *State ex rel. Lyon v. Bowden*,[11] which held that the power to recommend appointments did not necessarily belong to any specific branch of government. Therefore, unless restrained by the constitution, the General Assembly could delegate to any branch the power of recommendation. Hence, the General Assembly could make the recommendation of Board of Education members a legislative function that could be conferred upon the Delegation.[12]

On the issue of whether the General Assembly could confer upon the Board of Education the power to levy a tax, the court reversed, finding a violation of article X, section 5 of the constitution,[13] which prohibits taxation without representation. From this provision, the supreme court deduced that the power of tax-

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8. S.C. CONST., art. X, § 5 (1976).

9. ___ S.C. at ___, 285 S.E.2d at 356-57.

10. *Id.* at ___, 285 S.E.2d at 356 (quoting Bauer v. South Carolina State Housing Authority, 271 S.C. 219, 246 S.E.2d 869 (1978)).

11. 92 S.C. 393, 75 S.E. 866 (1912). *Bowden* had such a constitutional restraint requiring that recommendations for magistrates be from the judicial branch. *Id.*

12. ___ S.C. at ___, 285 S.E.2d at 357. *See also* Gould v. Barton, 256 S.C. 175, 181 S.E.2d 662 (1971)(local councils directly appointed commissioners to the Riverbanks Parks Commission); Benjamin v. Housing Auth., 198 S.C. 79, 15 S.E.2d 737 (1941)(county legislative delegation investigated the need for a county housing authority); State *ex rel.* Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936)(legislative delegations from the judicial districts given the right to elect the district highway commissioners).

13. S.C. CONST., art. X, § 5 (Supp. 1980). The relevant portion provides: "No tax, subsidy, or charge shall be established, fixed, laid, or levied under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. . . ."

ation reposes in the people who have entrusted it to the General Assembly and the power cannot be delegated without express permission from the people.[14] Article X, section 6 of the constitution does permit delegation of the taxing power to the state's political subdivisions,[15] including school districts.[16] The South Carolina Supreme Court, however, interpreted article X, section 5 as imposing an implied limitation on the ability of the General Assembly to delegate the taxing power, requiring that those to whom this power is delegated be elected by and responsible to the people. This requirement ensures that any tax will be levied with the consent of the people and provides a means for controlling abuses of the taxing power.[17] Because the Marlboro County Board of Education was appointed, and not composed of elected representatives, a delegation of the taxing power to the Board was unconstitutional.

Although the court limited its decision to prospective applications to prevent disruptive effects on the financial operation of the school system, it allowed an exception for one plaintiff, J. Steven Hinson, who prayed for a refund of the tax he paid under protest to the Marlboro County Board of Education. Because South Carolina permits a refund for a tax declared unconstitutional if the tax is paid under protest,[18] the court excepted Hinson from the prospective application of its decision, holding that he was entitled to the refund he requested.[19]

The decision does not prevent the General Assembly from making school boards appointive, but it does prohibit the unrestricted use of the taxing power by appointed bodies. Thus the effect of the decision is to reaffirm a principle as old as this

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14. ___ S.C. at ___, 285 S.E.2d at 357.

15. S.C. CONST., art. VI, § 6 (Supp. 1980).

16. ___ S.C. at ___, 285 S.E.2d at 357.

17. *Id.* at ___, 285 S.E.2d at 358. Other jurisdictions have refused to permit delegation of the taxing power to an appointed body. *See, e.g.*, Schultes v. Eberly, 82 Ala. 242, 2 So. 345 (1887)(appointed school district members levied tax to support the separate school district for Cullman, Ala.); State *ex rel.* Howe v. Mayor of Des Moines, 103 Iowa 76, 72 N.W. 639 (1897) (appointed library trustees levied tax to support the city's public library); Vallelly v. Bd. of Park Comm'rs, 16 N.D. 25, 111 N.W. 615 (1907)(appointed park commissioners levied tax to support a city park); Wilson v. School Dist. of Phila., 328 Pa. 225, 195 A. 90 (1937)(appointed school district members levied tax to support the school system).

18. S.C. CODE ANN. §§ 12-47-10 to -230 (1976).

19. ___ S.C. at ___, 285 S.E.2d at 358.

country: no taxation without representation.

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II. STATE SALES TAX EXEMPTION FOR MACHINERY PARTS

Section 12-35-550(17) of the South Carolina Code exempts from state sales tax the proceeds from sales of machinery or machinery parts used in the manufacture of tangible personal property.[20] Recently, the South Carolina Supreme Court broadly construed the section to apply to sales to manufacturers who did not use the purchased machinery or parts in their own processes. In *Southeastern-Kusan, Inc. v. South Carolina Tax Comm'n*,[21] the court held that the clear and unambiguous language of the statute did not restrict the exemption to machinery buyers who own *and* use their purchases in their own manufacturing processes.[22]

Southeastern-Kusan (Southeastern) manufactured plastic parts for sale to other manufacturers. Because these parts were normally custom ordered, Southeastern had to design a special mold for each customer. The mold then became a necessary part of Southeastern's machinery during production of the customer's order. Although the mold was sold to the customer, Southeastern stored the mold for use in future orders. In billing customers, Southeastern charged no sales tax on the sale of molds,[23] claiming a tax exemption under section 12-35-550(17).

The South Carolina Tax Commission disallowed Southeast-

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20. S.C. CODE ANN. § 12-35-550(17)(1976). The pertinent parts of the section provide the following exemptions:

There are exempted from the provisions of this article

. . .

(17) The gross proceeds of the sale of . . . machinery used in . . . processing and manufacturing of tangible personal property; *provided* that the term *"machines,"* as used in this article, shall include the parts of such machines [and] attachments . . . which are used . . . on or in the operation of such machines and which are necessary to the operation of such machines. . . .

(Emphasis in original).

21. 276 S.C. 487, 280 S.E.2d 57 (1981).

22. *Id.* at 489, 280 S.E.2d at 59.

23. S.C. CODE ANN. § 12-35-510 (1976) provides that "there is levied . . ., upon every person engaged or continuing within this state in the business of selling at retail any tangible personal property whatsoever,. . . an amount equal to four percent of the gross proceeds of sales of the business."

ern's exemption, interpreting the statute to require that the buyer both own the purchased machine or part and use it in his own manufacturing process in order for the seller, who is legally responsible for payment of the sales tax, to claim an exemption.[24] The Commission expressed concern that if the exemption were not restricted to this specific group, claims for the exemption would be unlimited.[25] Southeastern paid the tax under protest and sought a refund,[26] but the trial court ruled in favor of the Tax Commission.[27]

On appeal, the South Carolina Supreme Court reversed the lower court and rejected the Tax Commission's argument.[28] In reaching its decision, the court noted that although tax exemption statutes normally are construed strictly against the taxpayer, the court would not search for an interpretation of the statute in favor of the Tax Commission unless literal application of the statute would produce an absurd result.[29] Finding that the language of section 12-35-550(17) was clear and unambiguous, and that the legislative design of the section was unmistakable, the court concluded that statutory construction was unwar-

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24. Brief for Respondent at 7.

25. *Id.* The Tax Commission stated:

> It is a manufacturer's plant exemption and applies where use is by the manufacturer for production. Thus there is a specific and defined group or classification of persons or corporations that can claim the exemption benefit. Without such a classification there is no limit on the machines that may be claimed to be exempt. An exemption without limitation clearly was not intended.

Id.

26. S.C. CODE ANN. § 12-35-1430 (1976) provides that:

> In case any sales or use tax shall be charged by the Commission against any person and the Commission shall claim the payment of the tax so charged or shall take any step or proceedings to collect it, the person against whom such step or proceedings shall be taken shall, if he conceives the same to be unjust or illegal for any cause, pay the tax, which shall include the penalties, under protest in writing in such funds and moneys as the Commission shall be authorized to receive.

In addition, section 12-35-1440 allows a person paying a tax under protest, within thirty days, to ". . . bring an action against the Commission for the recovery thereof in the court of common pleas of any county having jurisdiction." S.C. CODE ANN. § 12-35-1440 (1976).

27. Record at 103, 114.

28. 276 S.C. at 490, 280 S.E.2d at 59.

29. *Id.* at 489-90, 280 S.E.2d at 58. The court stated that strict construction normally means that "constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor." *Id.* at 489, 280 S.E.2d at 58.

ranted. Consequently, the court was left with only one question: did the taxpayer clearly bring itself within the scope of the literal statutory language?[30] The court held that the statute did not expressly restrict or condition the exemption upon the owner's use and, therefore, Southeastern was entitled to claim the exemption.[31]

Southeastern-Kusan leaves intact the supreme court's traditional approach to interpreting tax exemption statutes. It is well established in South Carolina that courts are not "always confined to the literal meaning of a statute; the real purpose and intent of the lawmakers will prevail over the literal import of the words."[32] Thus, as noted by the court in *Southeastern-Kusan*, when literal application of a statutory exemption fails to carry out the intent of the legislature, the court will give the provision a different construction, one that will better serve the legislative design.[33] The court's reference in *Southeastern-Kusan* to the recent cases of *Owen Industrial Products Inc. v. Sharpe*[34] and *John D. Hollingsworth on Wheels, Inc. v. Greenville County Treasurer*,[35] indicates that a construction in favor of the Tax Commission is generally appropriate.[36]

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30. *See* York County Fair Ass'n. v. South Carolina Tax Comm'n, 249 S.C. 337, 154 S.E.2d 361 (1967)(quoting Textile Hall Corporation v. Hill, 215 S.C. 262, 276, 54 S.E.2d 809, 814 (1949). *E.g.*, Bob Jones Univ. v. South Carolina Tax Comm'n, 274 S.C. 93, 261 S.E.2d 209 (1979); *In re* Marlow, 269 S.C. 219, 237 S.E.2d 57 (1977); State v. Life Ins. Co. of Ga., 254 S.C. 286, 175 S.E.2d 203 (1970).

31. 276 S.C. at 490, 280 S.E.2d at 59.

32. Gunnels v. American Liberty Insurance Company, 251 S.C. 242, 244, 161 S.E.2d 822, 824 (1968). *E.g.*, Arkwright Mills v. Murph, 219 S.C. 438, 65 S.E.2d 665 (1951).

33. *See* State v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

34. 274 S.C. 193, 262 S.E.2d 33 (1980). In *Owen*, the supreme court construed a statute exempting new industrial enterprises locating in Lexington County from certain countywide property taxes. The sole issue before the court was whether certain taxes were county taxes within the meaning of the exemption statute. The court determined, from the plain meaning of the statute, that the county's Hospital Operating Tax, levied by the county on a countywide basis, was a county tax, whereas the county's Fire District Tax, which was not levied on a countywide basis, was not a county tax.

35. 276 S.C. 314, 278 S.E.2d 340 (1981). In *Hollingsworth*, the court again determined, by the plain meaning of the statute, whether certain taxes were or were not county taxes.

36. This implication can be found in both *Hollingsworth* and *Owen*, in which the court stated that the statute must be construed against the exception. 276 S.C. at 317, 278 S.E.2d at 342; 274 S.C. at 195, 262 S.E.2d at 34. If a tax statute is ambiguous, except in the case of a section granting an exemption, any substantial doubt about the meaning is resolved in favor of the taxpayer. *E.g.*, Southeastern Fire Ins. Co. v. South Carolina Tax Comm'n, 253 S.C. 407, 171 S.E.2d 355 (1969).

Southeastern-Kusan illustrates, however, that when the statutory tax exemption is clear, unambiguous, and furthers the legislative intent, the court will construe the provision strictly and literally. Under these circumstances, the exemption will be granted if the taxpayer can bring himself clearly within the language of the statute.

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III. General Obligation Bonds and Industrial Revenue Bonds

In *State ex rel. McLeod v. Riley*,[37] the South Carolina Supreme Court held in part that without a showing of primary rather than incidental or speculative benefit to the public, the issuance of State general obligation bonds for an alcohol fuel development program was unconstitutional.[38] The court also ruled that because industrial revenue bonds financing computer and office facilities or shopping centers benefitted primarily private developers with little advantage to the public,[39] legislation authorizing these bonds failed to serve a public purpose as required by the South Carolina Constitution.[40]

General obligation bonds and industrial revenue bonds are financing devices for projects deemed by the legislature to serve a constitutionally sufficient public purpose. Because general obligation bonds pledge the public credit by guaranteeing the bond holder's investment, failure of a project financed by the bonds leaves the local government with the ultimate burden of paying for the venture. Industrial revenue bonds, however, are issued by the local government to finance revenue-producing projects. Because these projects generate funds to repay the debt, revenue bonds avoid the disadvantage of general obligation bonds while still providing financial incentive to industries to relocate within

37. 276 S.C. 323, 278 S.E.2d 612 (1981).

38. *Id.* at 332-33, 278 S.E.2d at 617. The court also held that 1980 S.C. Acts 518, § 6 violated article I, section 8 of the South Carolina Constitution which provides for the separation of legislative, executive, and judicial powers. The court reasoned that the attempted delegation of legislative power to the Budget and Control Board gave the Board an undefined discretion to set the direction and scope of the governmental loan program.

39. 276 S.C. 332-33, 278 S.E.2d at 617.

40. *Id.* at 333, 278 S.E.2d at 617.

the area.[41]

As with most litigation concerning the issuance of these types of bonds, *McLeod* focused on the existence of sufficient public purpose.[42] In McLeod, plaintiffs brought two actions for declaratory judgment,[43] seeking a determination of the constitutionality of sections 6 and 10 of Act 518 of 1980, which dealt respectively with the issuance of general obligation bonds and industrial revenue bonds.[44] In the first action, the plaintiff Attorney General alleged that the authorization of an alcohol fuel development program financed by loans to private persons violated the South Carolina Constitution, which prohibits the pledging of public credit for the benefit of private parties[45] and allows general obligation bonds to be issued only for a public purpose.[46] The supreme court found that the primary benefit of the general obligation bonds accrued to private parties and that despite the General Assembly's finding to the contrary, the potential development of alternative energy sources was too indirect and speculative to meet the public purpose requirement.[47] Because the benefits accruing to private parties outweighed the benefits to the public, the court concluded that the legislation violated the constitutional prohibition of pledging the public credit to private enterprise.[48]

In the second action, the court held that industrial revenue bonds could not be used to finance either the development of

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41. *See, Current Legislation: Industrial Bond*, 7 B.C. INDUST. & COM. L. REV. 696 (1966).

42. *See, e.g.*, Anderson v. Bauer, 265 S.C. 153, 217 S.E.2d 43 (1975); Harper v. Schooler, 258 S.C. 486, 189 S.E.2d 284 (1972); Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967).

43. The actions were brought under the Uniform Declaratory Judgment Act, S.C. CODE ANN. §§ 15-53-10 to -140 (1976) and were heard together by order of the court dated October 22, 1980.

44. 1980 S.C. Acts 518, §§ 6, 10.

45. S.C. CONST. art. X, § 11 provides that "[t]he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, assocation, corporation or any religious or other private education institution except as permitted by Section 3, Article XI of this Constitution."

46. S.C. CONST. art. X, § 13 provides that "General obligation debt may not be incurred except for a public purpose. . . ."

47. 276 S.C. at 329, 278 S.E.2d at 615. The General Assembly concluded that "the promotion of the alcohol fuel development loan program . . . will subserve a public purpose by promoting the planting of grain crops and the development of a substitute for gasoline." 1980 S.C. Acts 518, § 6.

48. 276 S.C. at 329-30, 278 S.E.2d at 616.

computer and office facilities of "significant employment impact" or shopping centers leased to two or more merchants employing sixty or more full-time employees upon completion of the project.[49] The court held that the projects were of negligible and speculative benefit to the public and consequently not within the scope of public purpose required by the constitution.[50] Concluding that the funds sought "would solve no problems confronted by substantial numbers of the public," the court explicitly overruled the legislative finding that section 10 of Act 518 served a public purpose.[51]

Industrial revenue bond financing is of relatively recent origin in South Carolina, having its basis in the Industrial Revenue Bond Act of 1967.[52] In *Elliott v. McNair*,[53] a declaratory judgment case decided the same year, the court held that the Bond Act "was for a public purpose and represents merely an expansion of the established legislative policy of improving the industrial climate of South Carolina. . . ."[54] Furthermore, relying on *Fairfax County Industrial Development Authority v. Coynes*,[55] a Virginia case which addressed the issue of judicial interference

49. *Id.* at 330-33, 278 S.E.2d at 616-17. The General Assembly found that "investment in this State in computer and office facilities with significant employment impact is in the public interest and should be encouraged." 1980 S.C. Acts 518, § 10(7). In addition, the legislature expanded the Bond Act to include "certain commercial shopping centers [which] would aid in the commercial development of this State. . . . It has been found and determined that the minimum level of employment which will assure that such a shopping center will serve and promote the interest set forth above is sixty full-time employees." 1980 S.C. Acts 518, § 10(9).

50. S.C. CONST. art. I, § 3 provides: "The privileges and immunities of Citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." This provision has been interpreted by the courts to require that all legislation serve a public purpose. *See, e.g.*, Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967); *see also*, Ellison v. Cass, 241 S.C. 96, 127 S.E.2d 206 (1962).

51. 276 S.C. at 332, 278 S.E.2d at 617. The General Assembly found that expanding the Bond Act to include computer and office facilities would induce certain industries to locate new or expand existing enterprises within the state. 1980 S.C. Acts 518, § 10(4)-(7). Furthermore, the legislature concluded that aid or encouragement of certain commercial shopping centers may encourage development of the less urban areas of the state, reduce travel costs, conserve energy, and provide employment. 1980 S.C. Acts 518 § 10(e).

52. S.C. CODE ANN. §§ 4-29-10 to -140 (Supp. 1981).

53. 250 S.C. 75, 156 S.E.2d 421 (1967).

54. *Id.* at 89, 156 S.E.2d at 428.

55. 207 Va. 351, 150 S.E.2d 87 (1966).

with legislative determinations of public purpose, the court concluded that the Legislature's finding of public purpose in the Industrial Revenue Bond Act could not be overturned by the court unless the finding was "clearly wrong."[56]

Although concurring with the majority in *McLeod* that the general obligation bonds were unconstitutional, Justice Harwell argued in his dissent that because no showing of clear wrong in the findings could be made, the majority's interference with the legislative intent was without merit.[57]

Citing the "reasonable relation" test for judicial interference formulated in *Elliott*, Harwell argued that a reasonable relation existed between aid given to non-industrial and non-manufacturing enterprises and the economic well-being of the State.[58] Harwell suggested a case by case approach, requiring each project to demonstrate clearly its public purpose by showing that the project would "quicken" the overall pace of local commercial activity rather than merely displace established businesses.[59]

Although Harwell's approach followed the legislative intent of the Act, the majority found that the possibility of primarily private benefit placed the Act outside the scope of public purpose.[60] The court reached a similar conclusion in *Anderson v. Baehr*,[61] in which the city of Spartanburg sought to issue industrial development bonds to finance slum clearance and redevelopment by private developers. The supreme court ruled in *Anderson* that the benefit to the public would be negligible and speculative in comparison to the profit reaped by the developer as a result of the unfair business advantage derived from the use of the bonds.[62] The possibility of a similar result in *McLeod* forced the majority to declare the Act unconstitutional.

The court's reaction to the legislative enactments allowing revenue bond issuance for non-industrial and non-manufacturing enterprises might be interpreted as a judicial attempt to limit the use of industrial revenue bonds.[63] However, a better

56. *Id.* at 357, 150 S.E.2d at 93.
57. 276 S.C. at 333-40, 278 S.E.2d at 618-21.
58. *Id.* at 340, 278 S.E.2d at 621.
59. *Id.* at 339, 278 S.E.2d at 620.
60. *Id.* at 332-33, 278 S.E.2d at 617.
61. 265 S.C. 153, 217 S.E.2d 43 (1975).
62. *Id.*
63. After the use of industrial revenue bonds first gained popularity in the early

conclusion can be reached by limiting the decision in *McLeod* to the particular legislation in question. Like *Anderson*, the legislative enactment in *McLeod* failed to restrict the primary benefits to the public rather than to private developers. The public purpose requirement is easily shown in projects involving industrialization and manufacturing, but is less readily shown in economic inducements for other commercial activity. Hence, in order to meet the public purpose requirement, the legislature must carefully tailor any legislation seeking to promote such activity.[64]

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sixties, opposition began to mount to their widespread use. The former Chief Counsel for the Internal Revenue Service characterized the tax-exempt status of the bonds as a "truckhole" in the law which gave a competitive edge to industries qualifying for the bonds while disproportionately burdening the income-producing activities inherently incapable of using the bonds. In 1968 the Internal Revenue Service amended its interest provisions on industrial development bonds, making interest on the bonds taxable. The amendment closed the loophole which allowed tax-exempt issuance of bonds in large amounts, but allowed small issues of up to $1,000,000 to remain tax free. Tax exemption for projects with a public purpose were also allowed. The $1,000,000 exemption was for the benefit of smaller industries which would be financed by such an issue and would provide a greater economic boost for a small town than for a large city. *See* 26 U.S.C. § 103 (1954)(amended June 28, 1968). *See also*, Mumford, *The Past, Present, and Future of Industrial Development Bonds*, 1 URB. LAW 157 (1969). Misuses of the exemption are discussed in Note, *Amended Section 103: The Industrial Development Bond Loophole Further Restricted*, 30 U. PITT. L. REV. 180 (1968) and Spiegel, *Financing Private Ventures with Tax Exempt Bonds: A Developing 'Truckhole' in the Tax Law*, 17 STAN. L. REV. 224 (1965).

64. After the decision in *McLeod*, the South Carolina General Assembly amended the Industrial Development Bond Act, greatly expanding the allowable uses to which the bonds could be put. The amendment, codified at S.C. CODE ANN. § 4-29-10(3) (Supp. 1981), defines allowable projects to include "any enterprise engaged in commercial business, including, but not limited to wholesale, retail, or other mercantile establishments. . . ." The amendment does not mention the significant employment impact requirement discussed in 1980 S.C. Acts 518, § 10A(7), and goes further to include projects for tourism, sports, and recreational facilities.

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