



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-247969

June 17, 1992

The Honorable Wendell Ford
United States Senate

Dear Senator Ford:

On March 2, 1992, you forwarded to our office a request from Ms. Jo Ann Kaeuper. Ms. Kaeuper asked about requirements in the Internal Revenue Code for issuance of private activity bonds to finance expansion of the Northern Kentucky/Greater Cincinnati Airport. The bonds were discussed at a public hearing held at on the airport grounds on February 12, 1992, and approved by the Kenton County Airport Board the next day.

A final determination as to whether these or any other particular bonds qualify for tax exempt status rests with the Internal Revenue Service. However, we have reviewed the materials Ms. Kaeuper submitted and we offer some observations on several of the matters raised.

The Internal Revenue Code permits an exemption from federal tax for the interest on properly issued municipal bonds. So-called private activity bonds (I.R.C. § 141 et seq.) are among the types of bonds that enjoy this tax advantage. Airport expansion is one of the activities for which private activity bonds may be issued. (I.R.C. § 142(a)(1).) The Code also establishes certain procedural requirements that must be met in order for a municipal bond to qualify for the tax benefit. One specific requirement is "public approval" of the bond issue. According to the Code, "public approval" occurs when bonds are issued by appropriate action of the cognizant governmental unit (I.R.C. § 147(f)(2)(E)(3) after holding a public hearing with adequate notice (I.R.C. § 147(f)(2)(B)).

Ms. Kaeuper asked some specific questions regarding the procedural requisites for the public hearing. Most significant among her concerns are whether the negative statements made at the public hearing indicate a lack of "public approval" for the bond issue and whether her town government or some other local government entity could stop issuance of the bonds.

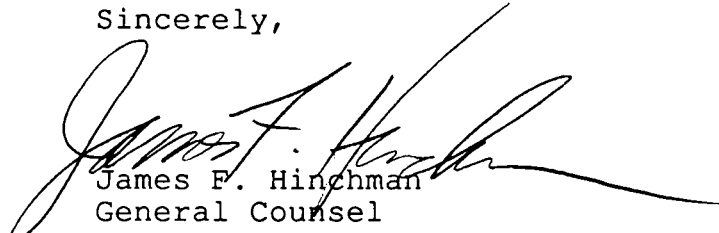
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On the first matter, the term "public approval" used in the law refers to the process of holding a hearing in which the public may participate and of having the bond issue approved by the correct governmental unit. "Public approval" does not mean that a majority of participants at the hearing must favor carrying out the business activity the bonds will finance. Therefore, although many witnesses at the February 12, 1992 hearing spoke against airport expansion, holding the hearing accomplished one component in the "public approval" of the airport bonds.

Secondly, the general requirement for a tax exemption to be allowed is approval of the cognizant governments. Normally, the approval requirement would extend to all governmental units affected by the activity being financed. For bonds to improve airports, however, the tax law contains a special approval rule. It provides that the only governmental body needed to approve airport bonds is the body that owns or operates the airport. In this case, that appears to be the Kenton County Airport Board. (We assume for purposes of this response that the Board is a special purpose unit of government, authorized under Kentucky law to execute government functions and contract bonded indebtedness.) If so, the Board has the sole prerogative to approve the bonds, and objections from other local governments cannot cancel the federal tax exempt status of the airport bonds.

We also looked briefly at the other technical matters Ms. Kaeuper raised, but found nothing that caused us to doubt that the bonds were properly issued. We hope this information is useful to you and to your constituent.

Sincerely,



James F. Hinchman
General Counsel