

November 15, 1999

**OPINION NO. 99-6**

HARRY TAKAHASHI, Director of Finance  
25 Aupuni Street  
Hilo, Hawaii 96720

RUSSELL KOKUBUN, Deputy Director of Planning  
25 Aupuni Street  
Hilo, Hawaii 96720

**SUBJECT: Application of Bond Proceeds**

Dear Msrs. Takahashi and Kokubun:

This is a response to your oral inquiry concerning the ability of the administration to apply funds generated by the sale of bonds to projects in amounts greater than called for in the ordinance authorizing the sale of the bonds.

The general rule, under the provisions of the Charter, is that the Mayor may "...transfer part or all of any unencumbered balance between classifications of expenditures or programs within an agency or executive agency..." *Hawaii County Charter §10-9*. This section makes no distinction between operating and capital budget items; and thus, if there are no other restrictions on the funds, such transfers may be made.

In the case of bond proceeds, however, other considerations come into play.

It is well established that municipal bond proceeds can only be used for the purposes authorized. In most states, this authorization is in the form of voter approved in a bond election, *City of Morningside Hill v. City of Salom*, 158 Or. App. 80, 973 P. 2d. 367 (1999); *Friends of Chamber Music v. City*

*and County of Denver*, 696 P.2d. 309, (Colo. 1985). In Hawaii, HRS Sec. 47-5 has a similar requirement, although changes are allowed by two-thirds vote of the governing body.

Harry Takahashi, Director of Finance  
Russell Kokubun, Deputy Director of Planning  
November 15, 1999  
Page 2

This limitation is founded upon the theory that bond proceeds are received in trust, *Thompson v. City of St. Louis*, 253 SW 969 (Mo 1923) and that any breach of this trust is an unlawful diversion of funds. *Wood v. City of Birmingham*, 276 Ala. 544, 165 So. 2d. 95 (1964). This has been held to the true, even when the announced project becomes impossible or unfeasible. *City and County of Denver*, 147 Colo. 125, 362 P.2d. 1060 (1961), or when the money is insufficient to pay for the planned project *Sooner State Water Inc. v. Town of Allen*, 1964 OK 202, 396 P.2d. 654 (1964), although the combining of bond monies into a single project accomplishing multiple purposes, has been upheld. *Coggins v. City of Asheville*, 278 NC 428, 180 S.E. 2d. 149 (1971). An exception, however, has been found when the bond authorization did not specify the proportion to be applied to the various specified purposes; in which case executive discretion has been allowed. *City of Gastonia v. Citizens Nat. Bank*, 165 NC 507, 81 SE 755 (1914).

In the case that you present, various improvements were listed along with the relevant appropriation, and bonds were authorized for the sole purpose of financing the projects authorized by those appropriations *Ordinance 99-41, Sec. 14*.

Whereas, in Hawaii such a strict recitation of purpose need not be recited, HRS Sec. 47-3, when it is so recited, it is binding. HRS Sec. 47-5.

To summarize should the funds authorized for the expenditure of the bond proceeds for any particular project be inadequate, they may be supplemented by funds from other sources. They may **not**, however, be supplemented from bond proceeds, unless the procedure outlined in Hrs Sec. 47-5 (1) (allowing for a change of purpose) is followed.

Sincerely,

RICHARD D. WURDEMAN  
Corporation Counsel

RDW:bre5

TAKAHASHI/KOKUBUN-App Bond Proceeds