

be offered for resale to private, commercial or industrial enterprises, provided that inhabitants of the area, if any, are suitably rehoused in other facilities. (3) The phrase "with the primary objective of creating suitable sites for housing" is not inconsistent in the sense that it vitiates all other provisions of the law, but in the light of the legislative history, it is to be given due consideration from the overall objectives of the Urban Redevelopment Law and the Housing Redevelopment Assistance Law, *supra*, and the policies set forth in both laws, as well as the provision of Section 7 of the Housing and Redevelopment Assistance Law. (4) The directive which authorizes the State Planning Board "to make capital grants to Redevelopment Authorities in the furtherance of slum clearance and redevelopment with the primary objective of creating suitable sites for housing" must be interpreted as applying to the entire program of redevelopment and housing or overall pattern and not to segments of the pattern. This, however, is to be applied not on a State-wide basis as your example sets forth, but on a community or political subdivision basis.

Very truly yours,

DEPARTMENT OF JUSTICE,

ROBERT E. WOODSIDE,
Attorney General.

HARRINGTON ADAMS,
Deputy Attorney General.

OPINION No. 635

Pennsylvania Tax Anticipation Notes, Series KT, dated October 14, 1952, maturing May 29, 1953.

Harrisburg, Pa., October 16, 1952.

Honorable John S. Fine, Honorable Weldon B. Heyburn, Honorable Charles R. Barber.

Sirs: We have your request for an opinion as to the legal status of eighty million dollars (\$80,000,000) Tax Anticipation Notes, Series KT, dated October 14, 1952, maturing May 29, 1953.

We have examined the proceedings relative to the issuance by the Commonwealth of Pennsylvania of Tax Anticipation Notes, Series KT, to the amount of eighty million dollars (\$80,000,000).

This issue was authorized by the General Assembly of this Commonwealth by the Act approved September 29, 1951, P. L. 1646. As stated in Formal Opinion No. 626, dated November 29, 1951, we are satisfied that the Act of September 29, 1951, *supra*, was duly and properly

enacted. We have examined the journals of both Houses and the original records on file in the office of the Secretary of the Commonwealth as to certain appropriation acts aggregating \$676,214,000.

The constitutionality of the issuance of tax anticipation notes was upheld by the Supreme Court of Pennsylvania in the case of *Kelly v. Baldwin, et al.*, 319 Pa. 53 (1935). Since the Act of September 29, 1951, *supra*, is similar to the act held to be constitutional in *Kelly v. Baldwin, supra*, we believe it to be constitutional.

The Act provides, *inter alia*, that the current revenues for any biennial fiscal period accruing to the General Fund of the State Treasury shall be pledged for the payment of principal of and interest on the notes during such fiscal biennium, and that so much of said revenues as may be necessary, are specifically appropriated for such payment, the Department of Revenue being authorized to allocate such revenues to said payment. The Act authorizes the Governor, the Auditor General and the State Treasurer to determine the terms and conditions of the issue, rates of interest and time of payment of interest, provided that the notes shall not mature later than May 31 of the second fiscal year of any current biennium, and shall not bear interest in excess of 4½% per annum. The minutes of the meetings held by the Governor, the Auditor General and the State Treasurer, show that all proceedings taken relative to the issuance of the notes comply fully with the provisions of the Act and are in due legal form, and that all necessary action has been taken.

We have examined notes number one of the following denominations: five thousand dollars (\$5,000), ten thousand dollars (\$10,000) and one hundred thousand dollars (\$100,000), in bearer form and find that the same are duly and properly executed and conform with the form approved by you.

In conclusion, we have no hesitation in advising you that the eighty million dollars (\$80,000,000) notes of the Commonwealth of Pennsylvania, Series KT, dated October 14, 1952, maturing May 29, 1953, constitute legal obligations payable by the Commonwealth of Pennsylvania, from current revenues accruing to the General Fund of the State Treasury of the Commonwealth of Pennsylvania during the two fiscal years ending May 31, 1953, and are secured by the current revenues levied and assessed for revenue purposes of every kind and character accruing to the said General Fund during said biennial period.

The Appropriation Acts are appropriations made for the current biennium by the General Assembly for the general purposes of the fiscal

biennium and are appropriations of amounts that exceed the amount of the notes and of the Series JT Tax Anticipation Notes previously issued and paid in this biennium by more than three times.

We are further of the opinion that the allocation of the moneys in the General Fund, which are specifically set forth on the face of the notes, made by the Department of Revenue, and approved by the Governor, the Auditor General and the State Treasurer, to provide a sinking fund for the payment of said notes, are payable into and shall be set aside in the sinking fund accounts, mentioned on the face of the notes in the amounts and at times specified, prior to all other expenditures, expenses, debts and appropriations, including current expenses, payable from the General Fund.

Very truly yours,

ROBERT E. WOODSIDE,
Attorney General

HARRINGTON ADAMS,
Deputy Attorney General

October 16, 1952.

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To the Purchasers:

Re: \$80,000,000 Commonwealth of Pennsylvania Tax Anticipation
Notes, Series KT, dated October 14, 1952, maturing in seven and

one-half months on May 29, 1953, bearing interest at the rate of $1\frac{1}{2}\%$ per annum; principal and interest payable at The Philadelphia National Bank, Philadelphia, Pennsylvania.

Dear Sirs:

We have examined in your behalf the proceedings relative to authorization and issuance of \$80,000,000 aggregate principal amount of Commonwealth of Pennsylvania Tax Anticipation Notes, Series KT, dated October 14, 1952 (hereinafter called 'the "Notes"').

The Notes are authorized by and have been issued pursuant to the Act of the General Assembly of the Commonwealth of Pennsylvania, approved September 29, 1951, P. L. 1646 (hereinafter called the "Act"), and certain determinations made and resolutions adopted by the Governor, the Auditor General, and the State Treasurer, pursuant to authority vested in them by the Act.

Under the Act, when the General Assembly has provided revenues for the general purposes of any fiscal biennium and the Governor, the Auditor General, and the State Treasurer determine that such revenues will not be available in large part for the current and other expenses of the State government, as a result of which the collectible revenues may not be sufficient to meet the current and other expenses of the State government for such biennium as they fall due, such officials are authorized and directed to borrow from time to time on the credit of the current revenues of such current biennium a sum or sums of money not exceeding in the aggregate one-third of the moneys appropriated for such biennium by the General Assembly, for the general purposes of such fiscal biennium.

Under the provisions of the Act loans made pursuant thereto shall be evidenced by notes of the Commonwealth which are declared by the Act to be tax anticipation notes; such notes shall mature not later than May 31 of the second year of the fiscal biennium in which they are issued; such notes shall be issued from time to time for such total amounts, in such sums, and shall be subject to such terms and conditions, rates of interest, not in excess of four and one-half per cent ($4\frac{1}{2}\%$) per annum, and time of payment of interest as the Governor, the Auditor General, and the State Treasurer shall determine and direct; and such notes shall be offered for sale to the highest and best bidder after due public advertisement and open competitive bidding on such terms and conditions as said officials shall direct. The Act also stipulates that the manner and character of advertising and times of advertising shall be prescribed by the same officials.

The Act requires that the proceeds from the negotiation of loans under its provisions shall be paid into the General Fund of the State Treasury and shall be used for the payment of appropriations made from such fund to defray the current and other expenses of the State government for the current fiscal biennium.

The Act provides, in effect, that any notes issued under its provisions shall be secured by the current revenues levied and assessed for revenue purposes of every kind or character accruing to the General Fund of the State Treasury during the fiscal biennium in which the notes are issued, and that such current revenues shall be pledged for the payment of the principal and interest on such notes. The Act also provides that such notes shall be paid out of such revenues; specifically appropriates so much thereof as may be necessary for the payment of the principal of and interest upon such notes; and provides that the Department of Revenue shall allocate such appropriated current revenues accruing to the General Fund of the State Treasury to the payment of the notes.

The Notes are the second issue of tax anticipation notes to be made in the present biennium. The previous issued of \$58,000,000 Commonwealth of Pennsylvania Tax Anticipation Notes, Series JT was paid in full and retired on May 29, 1952.

We have examined:

- (a) The relevant provisions of the Constitution of Pennsylvania;
- (b) The Act and the original records on file in the offices of the Chief Clerk of the House of Representatives, of the Secretary of the Senate, and of the Secretary of the Commonwealth as to the enactment of the Act by the General Assembly and its approval by the Governor:
- (c) The original records on file in the offices of the Chief Clerk of the House of Representatives, of the Secretary of the Senate, and of the Secretary of the Commonwealth as to the enactment by the General Assembly of Appropriation Acts Nos. 7A, 27A, 58A, 63A, 85A, 88A and 134A, appropriating moneys, among other things, for the general purposes of the current fiscal biennium. The aggregate of the appropriations made for the general purposes of the current fiscal biennium by said Acts (hereinafter called the "Appropriation Acts") is in excess of \$676,214,000;
- (d) Signed copies of the Preambles and Resolutions of the Governor, the Auditor General, and the State Treasurer adopted in accordance with the authority vested in them by the Act, which Preambles and Resolutions, among other things, make determinations as to (i) the

revenues provided for the current fiscal biennium, (ii) the times at which they will be received, (iii) the estimated amount of the current expenses of the State government, (iv) the times at which they fall due; and such Preambles and Resolutions also fix the amount to be borrowed, authorize the issuance of the Notes, determine the form and denominations thereof, fix the time of payment of interest, prescribe the times, manner, and character of the public advertisement for bids, direct the terms and conditions of the open competitive bidding for the Notes, pledge certain current revenues accruing to the General Fund of the State Treasury in the fiscal biennium ending May 31, 1953, approve the allocations by the Department of Revenue of such revenues to the payment of the Notes, irrevocably direct the application thereof to the sinking fund for the Notes prior to the payment of current expenses, require that the sinking fund accounts be held exclusively for the holders of the Notes, adopt the Public Invitation for Proposals, Form of Proposal, and Proposed Official Statement used in connection with the sale of the Notes, fix the rate of interest, award the Notes to the bidder making the highest and best bid, and adopt the Official Statement used in connection with the sale of the Notes;

(e) The Public Invitation for Proposals, proofs of publication thereof, the proposal of the successful bidders, the Proposed Official Statement, and the Official Statement issued in connection with the sale of the Notes;

(f) Signed copies of the letters of the Department of Revenue executed by the Secretary of Revenue allocating to the payment of the principal of and interest on the Notes so much of the current revenues as is necessary for the payment thereof, and directing the payment of such revenues into a sinking fund for the Notes, and fixing the amounts payable into the sinking fund as follows:

November 28, 1952	\$ 750,000
December 31, 1952	1,500,000
January 29, 1953	1,500,000
February 26, 1953	1,500,000
March 31, 1953	11,500,000
April 30, 1953	20,000,000
May 28, 1953	44,000,000

(g) A Certificate of The Philadelphia National Bank as Loan and Transfer Agent of the Commonwealth as to the countersignature of the Notes, and the delivery thereof.

(h) The receipt of the State Treasurer for the proceeds of the Notes in the amount of the accepted proposal, being not less than par and accrued interest to the date of settlement, and his direction to the

fiscal officials of the State that the proceeds derived from the sale of the Notes shall be paid into the General Fund of the State Treasury and shall be used only for the payment of appropriations made from such fund to defray the current and other expenses of the State government for the current fiscal biennium;

(i) A fully executed Note of each authorized denomination;

(j) A Certificate of The Philadelphia National Bank as Loan and Transfer Agent of the Commonwealth as to the payment in full on May 29, 1952, of Fifty-eight Million Dollars (\$58,000,000) aggregate principal amount of Commonwealth of Pennsylvania Tax Anticipation Notes, Series JT; and

(k) Such other statutes, certificates, affidavits, documents, decisions, and all other proceedings and matters which we have deemed relevant or necessary in connection with the authorization, issuance, public offering and sale of the Notes, as a basis for expressing the opinion hereinafter set forth.

We have also attended the settlement held this day, at which time the Notes in the denominations and numbered as follows:

\$5,000, Nos. V1 to V166, inclusive,
\$10,000, Nos. X1 to X507, inclusive,
\$100,000, Nos. C1 to C741, inclusive,

dated as of October 14, 1952, in bearer form, calling for the payment of interest at the rate of 1½% per annum (calculated at 15/24ths of one year's interest) payable at maturity were delivered to the purchasers against payment therefor.

In our opinion:

1. The Act is valid and constitutional.
2. Existing tax laws passed by the present and by previous Sessions of the General Assembly provide revenues for the general purposes of the present fiscal biennium.
3. The Governor, Auditor General, and State Treasurer have, pursuant to the authority conferred by the Act, duly and validly determined that such revenues will not be available in large part for the current and other expenses of the State government; and such officials have duly and validly determined that as a result thereof the collectible revenues may not be sufficient to defray the current and other expenses of the State government as they fall due.
4. The Act confers full and adequate legal power upon the Governor, the Auditor General, and the State Treasurer to issue and sell the

Notes; and the Notes have been validly authorized, issued and sold pursuant to proper and appropriate action of those three officials, in accordance with the Act.

5. The Notes are obligations of the Commonwealth, valid and binding in accordance with their terms, limited to repayment from the current revenues of every kind and character accruing to the General Fund of the State Treasury in the fiscal biennium ending May 31, 1953. The Notes are not direct and general obligations of the Commonwealth and the full faith and credit of the Commonwealth has not been pledged for their repayment.

6. The issue and sale of the Notes is not prohibited by Section 4 of Article IX of the Constitution of the Commonwealth of Pennsylvania, as the Notes are not debts of the Commonwealth within the meaning and intent of the Constitution.

7. The Notes, and notes of any other series under the authority of the Act during the fiscal biennium, are equally and ratably secured by the current revenues of every kind and character accruing to the General Fund of the State Treasury during such fiscal biennium.

8. Pursuant to authority conferred by the Act and the specific appropriation contained therein, the Department of Revenue has validly allocated to the payment of the Notes so much of the current revenues as is necessary for the payment of the principal of, and interest on, the Notes and directed that the payments be made into a sinking fund for the Notes at the times and in the amounts indicated on the face of the Notes.

9. The Governor, the Auditor General, and the State Treasurer and the Department of Revenue have validly pledged the revenues so allocated for the payment of the Notes.

10. The allocations of moneys accruing to the General Fund of the State Treasury, and pledged for the payment of the Notes, are payable into and must be set aside in the sinking fund for the Notes in the amounts and at the times specified prior to all other expenditures, debts and appropriations, including current expenses payable from the General Fund.

11. The Official Statement, which has been referred to, accurately describes the Act and properly provides other relevant information with respect thereto and with respect to the fiscal powers and duties of the Governor, the Auditor General and the State Treasurer, except that we express no opinion as to the financial information, estimates and statistics contained therein, which were furnished by representatives of the Commonwealth.

12. The Appropriation Acts include appropriations made for the current biennium by the General Assembly for the general purposes of the fiscal biennium and make appropriations for such purposes of amounts that exceed by more than three times the aggregate principal amounts of the Notes, and of all other notes heretofore issued in the current biennium (which other notes have heretofore been paid in full). Therefore, the principal amount of the Notes is within every debt and other limit fixed by the Act and the other laws of the Commonwealth of Pennsylvania.

13. Interest on the Notes is not subject to present Federal income taxes under existing statutes.

14. Under the Act, the Notes are exempt from taxation for State and local purposes in Pennsylvania; but this exemption does not, in our opinion, include gift, succession or inheritance taxes, or any other taxes not levied directly upon the Notes or the receipt of the income therefrom.

15. Under the Fiduciaries Investment Act of 1949 (Act of May 26, 1949, P. L. 1828, as amended), the Notes are authorized investments for fiduciaries as defined in that Act, within the Commonwealth of Pennsylvania.

16. The Notes are legal investments in Pennsylvania for savings banks, banks and trust companies, and insurance companies, and are acceptable as security for deposits of funds of the Commonwealth.

Very truly yours,

FAIRFAX LEARY, JR.

FOR SCHNADER, HARRISON, SEGAL & LEWIS

OPINION No. 636

Parole—Inmates of House of Correction (Philadelphia).

The Pennsylvania Board of Parole does not have jurisdiction to parole persons committed to the House of Correction, Employment and Reformation for Adults and Minors, in the City of Philadelphia, except where there is a commitment from the Philadelphia County Prison to the House of Correction of a person over whom the Board of Parole does have jurisdiction, or a transfer to the House of Correction by authority granted to the Department of Welfare of the Commonwealth of Pennsylvania.